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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA 184/2017

SUKHBIR SINGH

..... Appellant

Through: Ms. E.S. D. Ahuja, Adv.

Versus

JASWANT SINGH & ANR

..... Respondents

Through: Mr. Paromod K. Sharma and Mr.
Prashant Bajaj, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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17.09.2018

1. This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 28th March, 2017 in RCA No.399/2016 of the Court of the Additional Senior Civil Judge] of dismissal of First Appeal under Section 96 of the CPC filed by the appellant against the judgment and decree [dated 2nd November, 2015 in Suit No.366/2014 of the Court of Civil Judge-11 (Central)] of dismissal of suit filed by the appellant/plaintiff.

2. This appeal came up first before this Court on 18th July, 2017 when notice thereof was ordered to be issued albeit without expressing satisfaction as to the substantial question of law if any which the appeal entails and without framing any substantial question of law and the Trial Court record was requisitioned.

3. The counsel or the respondent no.2/defendant has been appearing. Service of respondent no.1/defendant who was *ex parte* in the suit as well as

in First Appeal was dispensed with.

4. The counsel for the appellant/plaintiff and the counsel for the respondent/defendant no.2 Rajender Kumar Sharma have been heard and the Suit Court record requisitioned perused.

5. The appellant/plaintiff instituted the suit, from which this Second Appeal arises, for permanent injunction to restrain the respondent/defendant no.1 from forcibly dispossessing the appellant/plaintiff from a plot of land *ad measuring* about 1000 sq. yds. forming part of Plots No.301 to 310 carved out of Khasra No.63/24 in the Revenue Estate of village Bakarwala. It was the case of the appellant/plaintiff that the respondent/defendant no.1 Jaswant Singh had approached the appellant/plaintiff for loan of Rs.1,00,000/- and which the appellant/plaintiff was unable to give; that the respondent/defendant no.1 thereafter proposed that he would pay a sum of Rs.50,000/- to the appellant/plaintiff immediately and the appellant/plaintiff executed a General Power of Attorney, Agreement to Sell and other documents showing sale of the aforesaid land to enable the respondent/defendant no.1 to mortgage the plot with the bank to obtain loan and on receiving the loan, the respondent/defendant no.1 would pay the balance amount of Rs.50,000/- to the appellant/plaintiff and take possession of the land. However, the respondent/defendant no.1 never paid the balance price and the possession of the land remained with the appellant/plaintiff.

6. The judgment of the Suit Court records that the respondent/defendant no.1 though initially appeared in response to summons of the suit but stopped appearing thereafter and was proceeded against *ex parte*; however the respondent/defendant no.2 applied for impleadment and was impleaded

and contested the suit by filing a written statement.

7. It was the case of the respondent/defendant no.2 that the respondent/defendant no.2 had purchased the land through the mode of Agreement to Sell, Power of Attorney etc. after the land had changed several hands through such mode, from the respondent/defendant no.1 and others.

8. The Suit Court dismissed the suit of the appellant/plaintiff reasoning that though in the light of judgment of the Supreme Court in ***Suraj Lamp & Industries P. Ltd. Vs. State of Haryana*** 2009 (7) SCC 363 and (2012) 1 SCC 656, the documents viz. General Power of Attorney, Agreement to Sell in favour of the respondent/defendant no.2 did not constitute documents of title but retained efficacy under Section 202 of the Contract Act, 1872 and the appellant/plaintiff was not entitled to protect his possession.

9. The First Appellate Court has agreed with the aforesaid reasoning of the Suit Court.

10. I have enquired, who is in possession of the land aforesaid and whether any construction has been raised thereon.

11. Both, appellant/plaintiff and the respondent/defendant no.2 claim to be in possession and state that the land remains open land and no construction has been raised thereon.

12. I have enquired from the counsel for the respondent/defendant no.2, whether the respondent/defendant no.2 admits the title of the appellant/plaintiff since the respondent/defendant no.2 is claiming under Agreement to Sell, Power of Attorney etc. originating from the appellant/plaintiff.

13. The counsel for the respondent/defendant no.2 initially stated that the respondent/defendant no.2 only admits title of the executant of the documents in favour of the respondent/defendant no.2 but subsequently agrees that ultimately the said title is flowing from the appellant/plaintiff.

14. I have next enquired from the counsel for the respondent/defendant no.2, whether the respondent/defendant no.2 has filed any suit for specific performance of the Agreement to Sell claimed by him.

15. The counsel for the respondent/defendant no.2 states that the respondent/defendant no.2 does not desire to file a suit for specific performance against the appellant/plaintiff.

16. It is thus quite clear that the respondent/defendant no.2 is not desirous of acquiring any title to the subject land and is satisfied merely with the documents claimed by him.

17. The counsel for the respondent/defendant no.2 then states that he will file a suit for specific performance only against the executant of the documents in favour of the respondent/defendant no.2.

18. However the said executant himself had no title and when the executant is not in a position to convey any title to the respondent/defendant no.2, it is not understood what purpose will be served by instituting the suit against the executant of the documents in favour of the respondent/defendant no.2.

19. The counsel for the appellant/plaintiff states that the appellant/plaintiff will file a suit for declaration and cancellation of the documents.

20. I may in this regard notice, that the suit from which this Second

Appeal arises, was a simpliciter suit for permanent injunction against dispossession. Issues framed in the suit also were only as under:-

- “1. *Whether the plaintiff is entitled for the decree of permanent injunction as prayed for? OPP*
2. *Whether no cause of action has arisen in favour of the plaintiff for filing the present suit? OPD*
3. *Whether the plaintiff has no locus standi to file the present suit? OPD*
4. *Whether the suit is properly valued for the purpose of court fees and jurisdiction? OPD*
5. *Relief.”*

21. As would be obvious from the aforesaid, no issue qua title of the land was framed.

22. Once Supreme Court in ***Suraj Lamp & Industries P. Ltd.*** supra has held that documents as Agreement to Sell, Power of Attorney do not constitute documents of title, it has but to be held that title continues to vest in the appellant/plaintiff whose title is admitted by the respondent/defendant no.2 also.

23. The impugned judgment also merely records that the Power of Attorneys are for consideration, without giving any reason therefor and without discussing as to what constitutes a Power of Attorney for consideration.

24. At this stage, the counsel for the appellant/plaintiff and the counsel for the respondent/defendant no.2 state that this appeal be disposed of by modifying the judgment and decree impugned as under:-

- (i) that the appellant/plaintiff shall have liberty to take appropriate legal proceedings as may be advised;
- (ii) that similarly, the respondent/defendant no.2 shall be entitled to take appropriate legal proceedings as may be advised, including of specific performance of Agreement to Sell against the appellant/plaintiff;
- (iii) that in the aforesaid legal proceedings if initiated, all defences shall be open to the respective parties;
- (iv) the findings in the impugned judgment qua nature of the documents and especially qua the Power of Attorney being for consideration are set aside and the interpretation of the said documents shall also be open for consideration in the fresh proceedings as under.

25. It is ordered accordingly.

26. Since the order is a consent order, need to frame substantial question of law before modifying the impugned decree as aforesaid is not felt.

27. Decree sheet be prepared.

28. The Trial Court record be sent back forthwith.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 17, 2018

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