

\$~9.

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

+ **Date of Decision: 24.09.2015**

% **RSA 31/2015 and CAV 79/2015 and CM APPL. 1107-1108/2015**

RAM ASHREY Appellant

Through: Mr. Chandan Mishra, Advocate.

versus

SULEKH CHAND SINGHAL Respondent

Through: Mr. Yogesh Saxena, Advocate for Jai
Devi.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present appeal has been preferred by the appellant to assail the judgment and decree dated 10.12.2014 passed by the First Appellate Court, namely, ADJ-02, NE, Karkardooma Courts, Delhi in RCA No.43/2014 preferred by the appellant/defendant. By the impugned judgment, the said first appeal has been dismissed. The first appeal had been preferred by the appellant/defendant to assail the judgment and decree dated 27.08.2013 passed by the Trial Court, namely, ACJ-cum-ARC (NE), Karkardooma Courts, Delhi in Suit No.573/2007 filed by the respondent/plaintiff. The said suit had been filed to seek recovery of possession of the suit property, as well as recovery of rent of Rs.55,000/- and damages @ Rs.5,000/- p.m.

2. The case of the respondent/plaintiff was that he had purchased the suit property bearing no.X-182/13, Gali No.9, Brahampuri, Delhi-110053 from Ms. Jai Devi – wife of the defendant, for consideration of Rs.1,50,000/- by way of a registered power of attorney, registered will, receipt, agreement to sell and affidavit, all executed on 24.04.2004 in favour of the plaintiff by Jai Devi. The plaintiff claimed that Jai Devi had handed over physical possession of the property to the plaintiff on 24.04.2004. The defendant/husband of the erstwhile owner Jai Devi requested the plaintiff to give the suit property on rent and, accordingly, the plaintiff created a tenancy in favour of the defendant in respect of the suit property @ Rs.5,000/- p.m. excluding electricity and other charges vide agreement dated 24.04.2004. The said agreement had been executed between the parties. The plaintiff claimed that the defendant was in arrears of rent since November 2006 and the amount had not been paid despite demand. The plaintiff sent a legal notice dated 13.07.2007, which was not complied with by the defendant. He sent a false reply to the said notice. The plaintiff called upon the defendant to vacate the premises and to pay the arrears of rent and mesne profits with electricity charges. Since this demand was not met, the plaintiff preferred the suit.

3. In his written statement, the defendant pleaded that he had borrowed a sum of Rs.30,000/- from the plaintiff in the month of April 2004 and had mortgaged the property papers of the suit property. He stated that in the month of June 2004, the plaintiff visited his house and told him that the blank papers – which had been signed by him, had been destroyed and he required new security for the loan advanced. Accordingly, the defendant's

son, Sh. Ram Kishore handed over three blank cheques drawn on Delhi Nagrik Sevakari Bank Ltd., Bajanpura, Delhi. The defendant pleaded that he was shocked to receive the legal notice dated 20.07.2007, wherein the plaintiff claimed himself to be the owner of the suit property and demanded arrears of rent from the defendant. The defendant stated that he had filed a suit for declaration, mandatory and permanent injunction against the plaintiff which was pending adjudication.

4. In the said suit, the defendant in the present suit (plaintiff in the said suit) had sought the relief that his signed blank papers be declared to be null and void, and he be handed over the property documents and three blank signed cheques. He had also sought a restraint against his dispossession from the suit property. He also denied the execution of the registered GPA, the will, receipt, agreement to sell by his wife in favour of the plaintiff herein. He also denied the execution of the rent agreement dated 24.04.2004 and 24.03.2006 between the parties.

5. The Trial Court framed the following issues on 25.02.2009:

- i) Whether defendant is the tenant of plaintiff? OPP
- ii) If issue No.1 is decided in affirmative, whether rate of rent is Rs.5,000/- per month? OPP
- iii) Whether the plaintiff is entitled for decree of possession, as claimed? OPP
- iv) Whether the plaintiff is entitled for recovery of amount, as claimed? OPP
- v) Whether the suit has not been properly valued for the purpose

of proper court fees and jurisdiction? OPD.

vi) Relief.

6. The plaintiff examined himself as PW-1. He tendered in evidence his affidavit by way of evidence and relied upon the documents, namely, the GPA dated 24.04.2004 (Ex. PW-1/A); Will dated 24.04.2004 (Ex. PW-1/B); Receipt dated 24.04.2004 (Ex. PW-1/C); Agreement to Sell dated 24.04.2004 (Ex. PW-1/D); Affidavit dated 24.04.2004 (Ex. PW-1/E); Site Plan (Ex. PW-1/F); Rent Agreement dated 24.03.2006 (Ex. PW-1/G) and a few other documents. He also examined the witnesses to the rent agreement dated 24.03.2006, namely, Sh. Pawan Kumar as PW-2 and Sh. Subash Chand as PW-3. He also summoned a witness from the office of the sub-registrar as PW-4, who proved the registration of the GPA dated 24.04.2004 (Ex. PW-1/A) and the Will dated 24.04.2004 (Ex. PW-1/B).

7. The defendant examined himself as DW-1. He tendered his evidence on affidavit as Ex. D-1 and relied upon documents, namely, electricity bills for the month of February 2011 as DW-1/1; copy of the ration card as DW-1/2; certified copy of Civil Suit No.486/2007 as DW-1/3; copy of assessment of property tax for the year 2007-08 as mark "X" and copy of election ID Card as mark "Y".

8. The Trial Court returned the findings in favour of the plaintiff on all the issues and, consequently, decreed the suit. The First Appellate Court has concurred with the said findings while passing the impugned judgment.

9. The submission of counsel for the appellant is that both the courts below have gravely erred in not appreciating that the appellant/defendant had been defrauded by the plaintiff/respondent. Learned counsel has, once

again, before this Court, sought to advance his submissions on the basis of the stand taken by the appellant/defendant in his written statement.

10. Having perused the judgment of the courts below and the evidence brought on record, and having heard learned counsel for the appellant, I am of the view that there is no merit in the present second appeal. It does not raise any substantial question of law. Both the courts below have returned concurrent findings of fact after appreciation of evidence. The appellant has not been able to show that there is any perversity or mis-direction of approach in the manner of appreciation of evidence by either of the courts below. The appellant has not been able to show that any material evidence has been ignored, or that irrelevant materials have been taken into consideration by the courts below.

11. Though the appellant/defendant claimed that only a loan transaction had taken place between the parties – whereunder the defendant had taken a loan of Rs.30,000/- from the plaintiff, and that the defendant had executed blank documents and, subsequently, delivered further documents with three cheques, the said plea has remained completely unsubstantiated. The case of the plaintiff was that he had purchased the suit property from the wife of the defendant by way of an agreement to sell, GPA etc. in the manner that was widely prevalent in the pre *Suraj Lamp* era [*Suraj Lamp & Industries (P) Ltd. v. State of Haryana & Anr.*, decided on 11.10.2011]. The defendant, however, failed to produce his wife as a witness. The mere statement of the defendant that his wife had not executed the documents Ex. PW-1/A to PW-1/E was not sufficient. It was for him to produce his wife Jai Devi as a witness, who could have denied the signatures on the aforesaid documents.

Pertinently, the GPA and the Will are registered instruments and bear the photograph of the defendant. Thus, the claim that the defendant had signed blank documents does not answer the signing and execution of several documents, as aforesaid, by his wife Jai Devi.

12. The plea of the defendant with regard to the so-called actual transaction between the parties – as that being of a loan taken by the defendant from the plaintiff, is hit by Sections 91 and 92 of the Evidence Act. The defendant did not plead, much less prove, a defence premised upon the exceptions to Section 91 of the Evidence Act, or the provisos to Section 92 of the Evidence Act. While dealing with issue no.1, the Trial Court, inter alia, observed:

“The very foundation of the present suit for recovery of possession is the existing relationship of landlord-tenant between the parties. The question of title with respect to the suit property does not assume significance.

In a Suit for Recovery of Possession from a tenant, whose tenancy is not protected under the Provisions of the Rent Control Act, all that is required to be established by the landlord / plaintiff is the existence of jural relationship of landlord and tenant between the parties and termination of tenancy either by lapse of time or by notice served by the landlord under Section 106 of Transfer of Property Act. So long as these two aspects are proved, the court can pass a decree in favour of the plaintiff.

Coming to the question of existence of jural relationship of landlord and tenant between the parties. The plaintiff / PW 1 has deposed that the defendant was inducted as a tenant on 24/04/2004 and the tenancy was being renewed. PW 1 has filed on record the rent agreement dated 24/03/2006 Ex. PW 1 / G. The plaintiff has examined the witnesses to the rent agreement Ex. PW 1 / G as PW 2 and PW 3 and they have proved the

execution of the rent agreement Ex. PW 1 / G between the parties. Even, the defendant / DW 1, admitted in his cross-examination that the document Ex. PW 1 / G bears his signature as well as his photograph has been affixed thereupon.

The defendant has taken a bald plea that the plaintiff had obtained his signatures on blank papers. Having admitted his signatures on the rent agreement Ex. PW 1 / G, the onus was upon the defendant to prove that the document Ex. PW 1 / G was blank when it was signed by him.

The defendant has failed to discharge the said onus. The defendant chose to keep silent about his signatures being taken on blank documents till the service of legal notice dated 13/07/2007 upon him, whereas, the alleged signatures had been taken in April, 2004. Normally, a person would not sign documents without realizing the consequences thereof. This plea is also difficult to accept for the reason that rent agreement Ex. PW 1 / G is a typed document and is signed at appropriate places. The only irresistible conclusion is that the version of the defendant that his signatures were obtained on blank documents is highly improbable and without any merits”.

13. The First Appellate Court, in the impugned judgment, inter alia, observed:

“In the present case respondent has claimed title on the basis of GPA, Agreement to Sell, Payment receipt, Affidavit and the Will and the GPA as well as Will is registered. From the record it is also proved that the possession of the suit property was handed over and the rent agreement between the parties was executed vide Ex. PW1/G. This Court is conscious of the judgment of the Hon’ble High Court in the case of Sh. Ramesh Chand v. Suresh Chand reported in 188 (2012) DLT 538 in which the judgment in the case of Suraj Lamps (supra) was interpreted. In the case of Ramesh Chand (supra) the Hon’ble High Court was pleased to hold that right to possess immovable property arises not only from a complete ownership right but also by having a better title. In this case the plaintiff proved the documents in support of his contentions. The defendant/appellant on the other hand

failed to discharge the onus and rebut the evidence regarding the ownership of the plaintiff and his tenancy. This court does not find any illegality or infirmity in the impugned judgment in this respect and the plaintiff is accordingly entitled for the relief of possession as prayed in the suit along with the arrears of rent”.

14. I entirely agree with the reasoning adopted by the two courts below while returning findings in favour of the respondent/plaintiff and, accordingly, I find no reason to interfere with the impugned judgment and decree. The appeal stands dismissed.

VIPIN SANGHI, J

SEPTEMBER 24, 2015

sr