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

\+ **Date of Decision: 29.10.2015**

% **RSA 125/2015**

SATYAWATI GARG ..... Appellant

Through: Mr. Rajat Aneja & Mr. Chetan Kakkar, Advocates.

versus

PRADUMAN TIWARI .....Respondent

Through: Mr. Kirti Uppal, Senior Advocate, Mr.Praveen Kumar Singh, Mr. Rajeev Gupta & Mr. Navlender Kumar, Advocates along with respondent in person.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal under Section 100 CPC is directed against the judgment and decree dated 15.11.2014 passed by the First Appellate Court, namely the learned Additional District Judge, East District, Karkardooma Courts, Delhi in RCA No.33/2013, whereby the first appeal preferred by the appellant/ plaintiff has been dismissed and the judgment and decree passed by the Trial Court, namely the JSCC/ASCJ/ Guardian

Judge (East), Karkardooma Courts Delhi in Suit No.351/2008 dated 23.04.2013 has been affirmed.

2. The appellant/ plaintiff had filed a suit for redemption of mortgage, possession, injunction, mesne profits against the respondent on the premise that she is the owner/ mortgagor of the suit property bearing No.C10, situated at village Ghonda, Gujran Khadar in the abadi of C Block, Main Road, Bhajanpura, Delhi 53 along with the structure constructed thereon. The plaintiff stated that the defendant is the mortgagee of the suit property. The plaintiff claimed that she had purchased the suit property from one Sh. Ranjeet Singh in the year 2004 for a consideration of Rs.3,00,000/-. She stated that she was in urgent need of money and requested the defendant to provide financial assistance of Rs.30,000/ as loan on a monthly interest of 1.5% per month. The plaintiff claimed that the loan was granted and to secure the same, the suit property was mortgaged to the defendant by delivery of possession. She stated that since 28.09.2005, the defendant was in possession of the suit property as a mortgagee.

3. The plaintiff stated that the mortgage deed was reduced in writing between the parties on 28.09.2005 in the form of irrevocable GPA. She claimed that she had not understood the meaning of the said document, and the same was explained by the defendant/ mortgagee to the plaintiff as a mortgage. She stated that she had paid interest @ Rs.1.5% per month on the loan amount upto July, 2008. She claimed that she expressed her willingness to redeem the mortgage, in order to get possession of her property. However, the defendant flatly refused to hand over the possession. Consequently, she issued a legal notice dated 11.08.2008, which was

returned back unserved. Resultantly, she filed the suit on the premise that the defendant had misrepresented to her, and in the garb of mortgage deed, he had got executed the irrevocable GPA in his favour.

4. Upon issuance of summons, the defendant appeared and filed his written statement before the Trial Court. He claimed that the plaintiff has transferred her interest in the suit property by way of an irrevocable General Power of Attorney dated 28.09.2005 and a chain of documents executed on the same date, i.e. agreement to sell, affidavit, deed of Will and receipt dated 28.09.2005. The defendant stated that the actual consideration amount paid was Rs.20 Lakhs, which had been paid to the plaintiff for purchase of the suit property. The defendant stated that the plaintiff had executed another receipt for Rs.20 Lakhs as the sale amount for the suit property. The defendant produced all the aforesaid documents, including the receipt of Rs.20 Lakhs dated 28.09.2005.

5. The Trial Court framed the following issues in the suit:

> *"1. Whether plaintiff is entitled for the relief of redemption? OPP.*
>
> *2. Whether the plaintiff is entitled to the relief of injunction? OPP.*
>
> *3. Whether the plaintiff is entitled for mesne profits as prayed for? OPP.*
>
> *4. Whether the present suit is not maintainable without seeking relief of declaration? OPD.*
>
> *5. Whether there was a mortgage deed between the plaintiff and defendant? OPD.*

6. Relief.”

6. The plaintiff examined herself as PW1 and she relied upon several documents. She herself exhibited the irrevocable GPA dated 28.09.2005 in favour of the defendant as ExPW-1/2. In her cross-examination, the plaintiff exhibited further documents, namely, the agreement to sell etc. as Ex.PW-1/D1 to PW-1/D5. The defendant examined himself as his witness as DW1.

7. The Trial Court disbelieved the case of the plaintiff that the GPA Ex.PW-1/2 dated 28.09.2005 was, in fact, a mortgage deed between the plaintiff and the defendant. The Trial Court held that there was no mortgage created by the plaintiff in respect of the suit property in favour of the defendant. Consequently, there was no right of redemption on the plaintiff. The Trial Court, accordingly, dismissed the plaintiff's suit.

8. The First Appellate Court has concurred with the findings returned by the Trial Court.

9. The submission of learned counsel for the appellant Mr. Aneja is that the defence set up by the defendant was inconsistent. While on the one hand, he claimed that the defendant had "purchased" the suit property from the plaintiff for Rs.20 Lakhs, on the other hand, the entire set of documents, namely the irrevocable GPA, agreement to sell, affidavit, etc. reflected the sale consideration as Rs.30,000/- only.

10. Mr. Aneja further submits that the original title documents of the plaintiff/ appellant are still in her possession. This would not have been the case, had she "sold" the suit property to the defendant.

11. Mr. Aneja further submits that the consideration of Rs.20 Lakhs is reflected only on the receipt Ex.PW-1/D5, and is not reflected in the other documents, namely the irrevocable GPA, agreement to sell, etc. The respondent/ defendant has not even explained his source of funding to the tune of Rs.20 Lakhs.

12. Having heard learned counsel for the parties, I am of the view that there is absolutely no merit in the present appeal. No substantial question of law arises for consideration by this Court. The two Courts below have, upon appreciation of evidence, returned consistent findings of fact.

13. The primary claim of the appellant/ plaintiff that she had mortgaged the suit property to the defendant for obtaining a loan of Rs.30,000/- has been disbelieved as the plaintiff/ appellant could not lead any evidence whatsoever to establish that the transaction was that of a "mortgage" and not of "sale" of the suit property to the defendant by way of irrevocable GPA for consideration, agreement to sell, will, affidavit, etc – as was the generally prevailing practice at the relevant time.

14. It has come out in the cross-examination of the appellant that she is an educated person and so is her husband. The claim of the plaintiff that she had signed the documents without reading them, or without understanding their purport, was disbelieved by the Courts below. The approach of the Trial Court and the First Appellate Court is reasonable and cannot be faulted. There is no perversity pointed out in the judgments of the Courts below by the appellant, calling for interference by this Court. Merely because the entire sale consideration is shown to have been paid in cash,

does not lead to the conclusion or inference that the transaction was not genuine. Also, the fact that the appellant continues to hold her "title documents" also does not lead to the inference that the transaction was a "mortgage" and not a "sale". The defendant has explained that though he transaction was for Rs.20 Lakhs, the parties had reflected the same as only Rs.30,000/- in the documents. Thus, there was no inconsistency, as alleged. Consequently, I find no merit in the present appeal and dismiss the same.

15. There is another important aspect which has come to light during the course of hearing of the present appeal. The respondent was, and continues to be an employee of the Delhi Urban Shelter Improvement Board (DUSIB). In his written statement, he has averred that Rs.30,000/- was paid as earnest money and little amount was shown to save the stamp duty and registration costs, etc. and actually the consideration amount of Rs.20 Lakhs was paid by the defendant to the plaintiff for the sale of the suit property. In support of this plea, he even produced the receipt dated 28.09.2005 executed by the plaintiff for Rs.20 Lakhs as Ex.PW-1/D2. In his own cross-examination, the defendant again stated that he had produced and filed the payment receipt of Rs.20 Lakhs as Ex.PW-1/D2 dated 28.09.2005, which bears the signatures of the plaintiff at point 'A'. He stated that Rs.20 Lakhs was paid in installments. He started making payment in 2005. He stated that he made payment of Rs.20 Lakhs prior to execution of the receipt Ex.PW-1/D2. He stated that the defendant has three other brothers, and that they had collected the money, which was paid to the plaintiffs in installments. He also stated that *"we have also borrowed money from the known person including relatives"*. He also stated that the market value of 15 sq.yards land at a

nearby area – where the suit property is situated, was more than 20 Lakhs in the year 2005. He stated that he was a Junior Engineer in MCD.

16. The respondent was required to remain personally present in Court today and I have interacted with him. On a query by the Court, he stated that he has not disclosed the factum of his acquisition of the suit property to his employer, which is mandatory under the service rules. It is also a matter of concern that the respondent – who is a public servant, claims to have made payment of Rs.20 Lakhs in cash for purchase of property so as to suppress its value for the purpose of payment of stamp duty. It also raises doubt about his integrity since a large amount of Rs.20 Lakhs has been arranged by him in cash to purchase the suit property. Though he claims in his cross-examination that he and his brothers had arranged the amount, and that the defendant had also obtained loan, the fact remains that the agreement to sell, etc. were executed singularly in the name of the defendant, and not jointly in the name of the defendant with his brothers. It does not stand to reason, as to why the documents would not be executed in joint names of all the brothers, if the contribution had been made by the four brothers.

17. In view of the aforesaid, even though the appeal stands dismissed, I consider this to be a fit case for being brought to the notice of the CEO, DUSIB. Let a copy of this order be placed before the CEO, DUSIB, who shall consider whether, and if so, what action should be taken in the matter for further investigation and possible action against the respondent.

18. The appeal stands disposed of.

19. A copy of this order be communicated to the CEO, DUSIB directly by the Court.

VIPIN SANGHI, J.

OCTOBER 29, 2015
B.S. Rohella