

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.110/2014**

Decided on : 12th March, 2015

SUSHIL GROVER Appellant
Through: Mr.Jugal Wadhwa, Mr.Rishabh Wadhwa,
Mr.Parth Kaushik and Mr.Shashank
Singh, Advocates.

Versus

SATISH SHARMA Respondent
Through: Mr.Manish Vashisht, Adv.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment dated 20.01.2014 passed by the first appellate court in RCA No.01/2013.
2. Before dealing with the submission of the learned counsel for the appellant/defendant which is stated to be constituting substantial question of law and requiring to be dealt with, it will be pertinent here to give a brief background of the case.

3. The respondent/plaintiff filed a suit for perpetual injunction against the present appellant claiming himself to be the owner of the suit property consisting of a plot of land measuring 457 square yards forming part of plot no.301, Block-B-2, Rect No.13, Killa No.21 and Rect No.16, Killa No.1 situated in the revenue estate of Village Kakrola, Delhi. The respondent had claimed himself to be the owner of the suit property on the basis of documents like GPA, Will, agreement to sell, receipt etc.
4. The appellant/defendant contested the suit and also filed an application under Order 7 Rule 11 CPC raising various objections with regard to the rejection of the plaint on the ground of the documents of the respondent/plaintiff not being registered under the Registration Act, 1908 as well as no proper stamp duty having been paid and thus there being no cause of action in favour of the respondent/plaintiff to file the suit.
5. The case which was set up by the appellant/defendant was that he is the owner of the said parcel of land. The reply to the application was filed by the respondent/plaintiff and the application of the appellant/defendant was allowed by the trial court and the plaint was rejected.

6. The respondent/plaintiff feeling aggrieved preferred an appeal before the court of ADJ and the learned ADJ dealt with the pleas for the rejection of the plaint in detail and set aside the order of rejection passed by the trial court.

7. It may be pertinent here to refer to some paragraphs of the order of the learned ADJ to see as to what was observed by the first appellate court.

6. Ld. Counsel for the respondent not only read out the entire application word by word but also argued on the same line. In the application, rejection of plaint is sought on the following grounds:- (a) The documents are not registered as per Sub Section 1A of Section 17, U/S 49 of the Registration Act and Section 53 of Transfer of Property Act, suit is not maintainable. (b) Article 23A of Schedule I of The Stamp Act with regard to agreement to sell and Power of Attorney and Article 48 with regard to stamping of Power of Attorney. (c) The Delhi Stamp (Prevention of Under Valuation of Instruments) Rules 2007 by virtue of powers derived under Section 75 of Indian Stamp Act, no transaction can be entered in below the circle rate of the property which comes to Rs. 49,29,498/-. (d) That the suit is without any cause of action and is barred under Order VII Rule 11 (a) to (d). (e) That the suit is barred under Section 34 of The Specific Relief Act. (f) That the suit is barred under Section 41(h) of the Specific Relief Act. (g) That the suit is not properly valued for the purpose of court fees and jurisdiction.

7. Section 34 do not deal with rejection of plaint rather lays down for the purpose of relief of declaration, relief of mere declaration is not to be sought.

8. Similarly Section 41(h) and (i) lays down – as to when injunction can be refused. The said grounds are absolutely beyond the scope of Order VII Rule 11 CPC. Similarly plea taken that under Section 15 of Registration Act and Article 23A and Article 48 bans a registration, are also not ground specified under Order 7 Rule 11 CPC.

9. So far as ground of pecuniary jurisdiction or under valuation of plaint is concerned, Order VII Rule 11 CPC lays down that court has to arrive at a conclusion that thereafter gives time to do the needful or correct the same and if the same is not done within time granted by the court, plaint can be rejected.

10. So far cause of action is concerned, the ground taken is that there is no cause of action which is not a ground as the ground is that the plaint do not disclose a cause of action and the plaint being without cause of action or without disclosing a cause of action are absolutely two different propositions i.e. to say that plaint may disclose a cause of action but ultimately it can be decided that it is without cause of action. So it is an averment in the plaint which is to be seen and not the plaint, at the end of trial, and in the present case, the plaint does disclose a cause of action.

11. So far as ground (d) is concerned not only Trial Court but both the parties in the appeal had relied upon the judgment of Hon'ble Supreme Court in the case of Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs & Ors. In Civil Appeal No.6191 of 2001 decided on 25.03.2008. In the plaint, the averments are to the effect

that plaintiff is the owner of the suit property i.e. piece of land measuring 457 sq. yards forming part of plot no.301, Block-B 2, Rect. No.13, Killa No.21 and Rect. No.16, Ill No.1 situated in the revenue estate of village Kakrola, Delhi having purchased the same from Shri Rameshwar and is in possession of the same. There is a boundary wall and a small room and that plea was amended by moving application under Order VI Rule 17 CPC by stating that there is a Tin shed. Further averment is that on 10.03.2010 defendant came to the suit property along with some persons and also shown some documents regarding ownership of the defendant but the documents were incomplete and they pertain to some other property and defendant threatened to dispossess him, though he is owner and in possession of the suit property since 25.11.2009 and has prayed for the following reliefs:- (a) restraining the defendant and their agents from taking forcible possession of the suit property; (b) restraining the defendant not to create any nuisance or interfere in the peaceful possession of the plaintiff over the suit property coupled with; (c) restraining the defendant from claiming himself as the owner of the suit property.

12. In the judgment relied upon the relevant para applicable to the present case is 11.3 where it is held that when plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. It has also been held that in case plaintiff is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction. Cloud has been contemplated as to where a person's title has some apparent defect or when some prima facie right of other

party over it or is shown and in such case action for declaration is remedy to remove the cloud on the title to the property. It has also been held that even if a suit filed for injunction is dismissed, the plaintiff may file a suit for declaration with consequential relief thereafter and it is so held that in a suit for injunction the decree is not to decide the title of the parties and and it is only in case of suit property being a vacant land the decision of title though is not required, but is necessarily to be given, as it is the title which follows possession.

13. Perusal of the judgment reveals that two things are material: Firstly, whether the plaintiff is in possession or not? In case he is in possession the language used is declaration along with injunction is to be sought, if there is a cloud, but in case the person is not in possession the expression used is that 'necessarily declaration has to be sought'. Coupled with finding that even if a suit for injunction is dismissed, still a suit for declaration can be filed, goes to show that the ruling do not discuss at all the rejection of plaint under Order VII Rule 11 CPC. It deals with the maintainability of the suit after evidence has been led, so as to ascertain that there is a cloud over the title of not once finding in this regard is recorded and relief of declaration has not been sought, then the suit will be dismissed as not maintainable. Clause (d) of Order 7 Rule 11 CPC says that the plaint is to be rejected where the suit appears from the statement of plaint to be barred by any law and at this stage it can not be said that the suit is barred by any law i.e. Law of Limitation etc. In as much as, in the body of the plaint, it is mentioned that the plaintiff is the owner in possession of the suit property and the defendant claims himself to be owner on the basis of some documents which in fact do not pertain to the suit property, but to some other property. Yet in the prayer clause, the relief has been sought 'restraining the defendant from claiming himself

as the owner of the suit property'. Now it may be declaration sought in a negative sense as the plaintiff has not sought declaration of his title but in a way has sought declaration, that the defendant should be restrained from claiming himself as the owner of the suit property i.e. declare that the documents in possession of the defendant be declared either that they do not pertain to property in dispute or that they do not confer any right of the defendant in respect of the suit property. So in a way declaration has been sought. No doubt the relief of declaration sought is couched in a different manner and no court fees has been paid on the same for the said relief.”

8. Accordingly, on the basis of the aforesaid reasoning, it set aside the judgment of rejection of plaint passed by the trial court.

9. Feeling aggrieved by the aforesaid allowing of appeal by the first appellate court, the appellant/defendant has filed the present regular second appeal.

10. I have heard the learned counsel for the appellant/defendant.

11. The main contention of the learned counsel for the appellant/defendant with regard to second appeal is that a substantial question of law is arising from the present appeal on account of the fact that the respondent/plaintiff is claiming to be the owner of a property on the basis of documents like GPA, agreement to sell, receipt, Will, etc.

which are not registered documents and the Hon'ble Supreme Court in Suraj Lamp & Industries Pvt. Limited v. State of Haryana & Anr. (2011) 11 SCALE 438 has categorically observed that the documents such as GPA, agreement to sell cannot be the basis of sale of an immoveable property and the only remedy available to such a person is to perfect his title against the transferor. It has also been contended by the learned counsel that in terms of the judgment of Supreme Court in Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra; 2004 (8) SCC 614 which is also quoted in Suraj Lamp's case (supra), the apex court has categorically observed that protection provided to the proposed transferee under Section 53A of the Transfer of Property Act, 1882 is a shield only against the transferor and not against third parties. It has been contended since in the instant case, the appellant/defendant is not the transferor of the property in favour of the respondent/plaintiff, therefore, he cannot be bound by Section 53A of the Transfer of Property Act, 1882. In addition to this, the learned counsel has also pointed out that as a matter of fact protection of Section 53A would not be available to the appellant on account of the amendment in the Transfer of Property Act, 1882. On the basis of these submissions, the contention of the learned counsel is that

the judgment which has been passed by the first appellate court is not sustainable in the eyes of law and accordingly this entails a substantial question of law which needs examination by this court.

12. I have carefully considered the submissions made by the learned counsel for the appellant as well as gone through the record.

13. I do not agree with the contention of the learned counsel for the appellant that the present appeal is raising any substantial question of law. The submission which has been made by the learned counsel regarding the non registration of the documents or the lack of proper payment of stamp duty, have been dealt with in the judgment passed by the first appellate court. It has specifically observed that no doubt the stamp duty may be deficient, but before the stamp duty is held to be deficient, not only a finding has to be returned by the court, but also the plaintiff has to be given an opportunity to make up the deficiency in payment of stamp duty and in case such a deficiency is not removed, it is only thereafter that the plaint can be rejected. So far as the non registration of the documents like agreement to sell, power of attorney, etc. are concerned, it has been observed by the first appellate court and rightly so, that the respondent/plaintiff in the instant case is not claiming the declaration. All

that, he is claiming is an injunction against the present appellant and, therefore, even as per the judgment in Suraj Lamp's case (supra), a person who is admittedly in settled possession has a right to protect his possession till the time he is dispossessed by a due process of law. Therefore, non-registration of the documents, at this point of time, cannot be a ground for rejection of the plaint as has been ordered by the learned Civil Judge which order was set aside by the first appellate court.

14. The next ancillary submission which was made by the learned counsel for the appellant that the possession of the respondent/plaintiff can be protected under Section 53A of the Transfer of Property Act, 1882 in terms of Rambhau Namdeo Gajre's case (supra) is only against the transferor while as he is not the transferor in the instant case and, therefore, the suit for injunction against him would not lie.

15. It is the case of the appellant/defendant that he is in possession as has been urged by the learned counsel before this court. In case this is the defence of the appellant/defendant that he is in possession in contrast to the plea of the plaintiff who has claimed himself to be in possession, this becomes a disputed question of fact. Unless and until, the court returns a finding be that prima facie, it will not pass an ad interim injunction in

favour of the respondent/plaintiff and consequently, the respondent/plaintiff will also not be granted a permanent injunction as prayed for by him, but merely on account of judgment in Rambhau Namdeo Gajre's case, which observes that the possession can be protected under Section 53A against the transferor and the appellant/defendant himself not being the transferor cannot be a ground for rejection of the plaint as is sought to be done. So far as other aspects with regard to the non claim of declaration by Section 41(h) of the Specific Relief Act, 1963, the respondent/plaintiff having an efficacious remedy available to him are concerned, these are the pleas which are to be adjudicated by the court on merits and no summary judgment in this regard can be passed.

16. For the reasons mentioned above, I feel that the present regular second appeal does not raise any substantial question of law and accordingly the same is dismissed.

V.K. SHALI, J.

MARCH 12, 2015
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