

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

+ **R.S.A. No. 3/2015**

Decided on : 3rd March, 2015

BHAWANI PRASAD Appellant
Through Mr.S.N.Gupta and Ms.Nishtha
Garg, Advs.

versus

SMT. ASHA MUNDELLA Respondent
Through

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

V.K. SHALI, J. (ORAL)

RSA 3/2015 and CM No. 143/2015 (stay)

1. This is the regular second appeal filed by the appellant against the judgment and decree dated 30.04.2014 passed in RCA No.01/2014 passed by the learned ADJ-03, South West, Dwarka Courts, New Delhi upholding the judgment and decree dated 08.04.2013 passed by the learned trial court in CS No.120/2010 Smt.Asha Mundella v. Sh.Bhawani Prasad.

2. Briefly stated, the facts of the case are that respondent/plaintiff had filed a suit against the appellant/defendant and his wife alleging that the

appellant/defendant is her real brother who after his marriage on 12.10.2005 had been given the licence to live in the suit property. It was alleged in the plaint that as the appellant/defendant and his wife started misbehaving with the respondent/plaintiff and her husband, they were asked to vacate the premises after termination of their licence. Since they did not oblige, therefore, the suit for possession was filed.

3. The present appellant/defendant contested the suit and took the stand that the respondent/plaintiff had sold the suit property to him on 10.05.2004. Accordingly, it was contended by the appellant/defendant that the respondent/plaintiff had executed documents like GPA, Agreement to Sell, Will, Possession Letter, etc. in his favour.

4. On completion of pleadings of the parties, the following issues were framed and evidence was adduced on these issues by both the parties:

- “1. Whether the plaintiff is entitled for a decree of possession, as prayed in the plaint? OPP.
2. Whether the plaintiff is entitled for recovery of arrears of damages alongwith interest, as prayed in the plaint? OPP.
3. Relief.”

5. The learned trial court after analyzing the evidence, came to the conclusion that the appellant/defendant impliedly admitted that the respondent/plaintiff was the owner of the suit property by pleading that he had purchased the suit property from the respondent/plaintiff. As regards the documents on the basis of which, appellant/defendant was claiming ownership, the court observed that the documents like GPA, Agreement to Sell, Will, possession letter etc. were not registered documents and, therefore, could not be relied upon as conferring title on the appellant. All these documents were notarized documents and even the notary who had notarized these documents was not examined by the appellant/defendant. The court also took note of the fact that the respondent/plaintiff had denied her signatures on these vital documents purported to have been executed by her in favour of the appellant/defendant and for this purpose she had examined a hand writing expert who had given an opinion that none of these documents, which was sought to be relied upon by the present appellant, was actually bearing the signatures of the respondent/plaintiff. As against this, the appellant/defendant did not examine any hand writing expert to counter the testimony of this handwriting expert examined by the

respondent/plaintiff. In totality of circumstances, the defence of the appellant was not accepted and the respondent/plaintiff seeking vacation and possession of the suit premises was stated to have been proved by preponderance of probabilities and accordingly ejectment order was passed against the appellant.

6. The appellant, feeling aggrieved, preferred an appeal before the first appellate court which agreed with the finding arrived at by the trial court and thus upheld the judgment and decree passed by the trial court in favour of the respondent/plaintiff.

7. Still not feeling satisfied, the present appeal has been filed by the appellant. The contention of the learned counsel for the appellant is that the learned trial court as well as the first appellate court has failed to take into considerations the documents Ex.DW1/12, Ex.DW1/13 and Ex.DW1/14 which are respectively dated 22.07.2004, 23.07.2004 & 05.12.2004 which show that the appellant was in possession of the suit property much prior to 12.10.2005 i.e. the date when he was purported to have been given the licence by the respondent/plaintiff to live in the suit property. It has been stated that these documents have not been dealt with by learned trial court as well as the first appellate court and,

therefore, this raises a very vital and substantial question of law. It has also been contended by the learned counsel that Section 85 of the Indian Evidence Act, 1872 has not been referred to which clearly lays down that the court shall draw a presumption with regard to the correctness of a GPA purported to have been executed by the present appellant whose power of attorney it states to be. The exact language of Section 85 of the Indian Evidence Act, 1872 reads as under:

Section 85 in The Indian Evidence Act, 1872

85. Presumption as to powers-of-attorney.—The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.

8. I have carefully considered the submissions made by the learned counsel for the appellant and have also gone through the record.

9. The submissions which have been made by the learned counsel for the appellant do not raise any question of law much less a substantial question of law.

10. So far as the documents Ex.DW1/12, Ex.DW1/13 and Ex.DW1/14 are concerned, they are, at best, documents which show that he was in

possession of the suit property prior to the licence purported to have been given to the appellant on account of his marriage which took place on 12.10.2005.

11. It may be pertinent to mention here that the appellant and the respondent are siblings of same parents being brother and sister. It is nowhere stated in the plaint that the appellant was permitted to occupy the suit premises for the first time only after his marriage on 12.10.2005. Even if it is assumed that the appellant was living in the suit premises prior to 12.10.2005 being the brother of the respondent/plaintiff and it is only after he got married that he sought permission to continue to live because of his changed circumstances which was given in the form of a licence by his sister (respondent/plaintiff) till the time he finds alternative accommodation. Therefore, the documents Ex.DW1/12, Ex.DW1/13 and Ex.DW1/14, do not in any manner whatsoever detract from the stand of the respondent that she had given the licence to the appellant/defendant to occupy the premises. The appellant has failed to prove that there is any valid document of ownership in his favour. The judgment in *Suraj Lamp & Industries Pvt. Limited v. State of Haryana & Anr.* (2011) 11 SCALE 438 clearly lays down that there cannot be a document by way of an

agreement to sell, receipt, etc conferring title on a person which is not registered. If at all any such document was executed, it was open to the appellant to seek specific performance against the respondent in order to perfect his title which he has failed to do. These documents which are unregistered and are only notarized do not in any manner whatsoever establish the title of the appellant in respect of the suit property and there being a concurrent finding of fact in this regard, this does not raise any question of law much less a substantial question of law.

12. So far as Section 85 of the Indian Evidence Act, 1872, the same only deals with the presumption with regard to the GPA. All that it says is that a document shall be presumed to be correct and purported to have been executed by the person of whose power of attorney it turns out to be. In the instant case, even if the general power of attorney is taken to be validly executed, it is, at best, is appointing the appellant as an agent of the principal which happens to be the respondent. Therefore, the power of attorney *per se* does not confer any title on the appellant. Accordingly, this document also is of no consequence in order to establish the title of the appellant in respect of the suit property.

13. In totality of circumstances, I am of the considered opinion that none of the submissions raised by the appellant raises any substantial question of law much less warranting issuance of a notice to the respondent. Accordingly, the present regular second appeal is dismissed.

V.K. SHALI, J.

MARCH 03, 2015/dm