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

\+ **Date of Decision: 17.08.2015**

% **RSA 301/2015**

POONAM KHURANA & ANR ..... Appellants

Through: Mr. S.C. Arora, Advocate.

versus

VED PARKASH KHURANA & ANR ..... Respondents

Through: Mr. Ravi Gupta, Senior Advocate along with Mr. Siddhartha Bhamba, Mr. Shyam D. Nandan & Mr. Ajay Gulati, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

Caveat No.860/2015

1. Since learned counsel for the caveator has appeared, the caveat stands discharged.

RSA 301/2015 and C.M. No.15287/2015

2. The present appeal has been preferred by the appellants to assail the judgment and decree dated 03.07.2015 passed by the learned Additional District Judge - 01 (West), Tis Hazari Courts, Delhi in R.C.A. No.27/2011

arising out of Suit No.834/2006 filed by the respondent/ plaintiffs against the appellants/ defendants.

3. By the impugned judgment, the First Appellate Court decreed the suit for possession of the suit property being Flat No.J-9, Second Floor, Navbharat Co-operative Group Housing Society Ltd. known as Navbharat Apartments, Paschim Vihar, New Delhi in favour of the respondent/ plaintiffs and against the appellants/ defendants. The respondents were also held entitled to receive damages @ Rs.5,000/- per month from 16.04.2002 till possession is actually received by the plaintiffs.

4. The respondent/ plaintiffs had filed the suit to seek possession of the suit premises on the premise that originally one Smt. J.I. Ram was the allottee of the suit premises against his membership No.96 with the Navbharat Co-operative Group Housing Society Ltd. Smt. J.I. Ram had sold the suit property to defendant No.1 for sale consideration of Rs.1,72,000/-. In consideration of the said amount, the documents purporting to transfer the title in the property were executed on 05.08.1988. These documents did not constitute a formal sale deed, however, they were documents, which gave de facto ownership and created a right in favour of the defendant. The documents were an Agreement to Sell, General Power of Attorney, Will, Affidavits, etc.

5. The case of the plaintiffs was that the suit property was similarly 'sold' by defendant No.1 in favour of the plaintiffs, by executing a similar set of documents for consideration of Rs.2,90,000/-. The documents were executed on 06.12.1999 by defendant No.1 in favour of the plaintiffs. The

entire sale consideration of Rs.2,90,000/- stood paid to defendant No.1/ appellants.

6. The further case of the plaintiffs was that she and her family members were residing in the same society in Flat No.C-6, and the families of the plaintiff and defendants were enjoying very cordial relationship. Negotiations between the parties in respect of sale and purchase of the suit property took place in June 1998, which led to execution of registered General Power of Attorney, Special Power of Attorney and Will all dated 22.06.1998 by the defendant No.1. The attorneys were executed by defendant No.2 in favour of the husband of the plaintiff, whereas the Will was executed by defendant No.1 in favour of the plaintiff. On 06.12.1999, when the final payment of Rs.15,000/- was made by the plaintiffs, defendant No.1 had executed the remaining transfer documents and possession of the suit property was also handed over to the plaintiff by defendant No.1.

7. The plaintiff claimed that even though the entire sale transaction, including the delivery of the possession was made, still defendant No.1 and her family members desired to live in the said flat for a short period and, therefore, possession of the suit property was re-delivered by the plaintiff to the defendant No.1 on 07.12.1999, permitting the defendants to reside in the suit property on temporary basis up to 31.03.2000. However, the said date was extended from time to time, and ultimately, on 22.12.2001, an undertaking (Ex.PW-4/1) was given by the defendants that they would hand over the charge of the flat on or before 15.04.2002.

8. The defendants then sought to file a suit for perpetual injunction, on

the ground that defendants had taken a loan of Rs.1,50,000/- from the plaintiff, and under duress, the plaintiff had got some documents signed from the defendants and had also got the same registered in the office of the Sub-Registrar, Janakpuri, New Delhi. Thereafter the present suit was filed by the respondent/ plaintiffs.

9. The case of the plaintiffs was that possession and control of the defendants in the suit premises was merely permissive, and was only a privilege given to the defendants to use and hold the said flat temporarily.

10. On 20.12.2003, the plaintiff claimed that they learnt that the defendants were showing the suit premises to some third persons for creating third party interest and, consequently, a legal notice was also issued to the defendants on 06.12.2003, but to no avail. The plaintiffs sought damages on account of continued use and occupation of the said premises @ Rs.8,000/- per month w.e.f. 16.04.2002. The present suit was filed to claim possession of the suit premises, along with damages to the tune of Rs.2,01,300/- with interest.

11. The defence of the defendants/ appellants was that they had never agreed to sell the suit property at any point of time. The defence was that the defendants had taken a loan of Rs.1,50,000/- from the plaintiff and her husband on different intervals, as they were in urgent need of money. The defendants claimed that the alleged documents of 'sale' were actually documents of a loan transaction, and the loan amount had been paid to the plaintiff and her husband along with interest @ 1% per annum. It was claimed that the entire loan amount stood paid till October-November 2002.

However, no receipt was ever issued by the plaintiff and her husband to the defendants in lieu of the same. The defendants claimed that the husband of the plaintiff is a property dealer of the area, and had exploited the need of the defendants and exercised their dominant position. The defendants claimed that the plaintiff and her husband compelled the defendants to execute the documents relied upon by the plaintiffs, on different dates before the Sub-Registrar, Janakpuri, New Delhi. The defendants also stated that their title documents in respect of the suit premises were taken over by the plaintiff and her husband while granting the loan. It was also claimed that the defendants had cancelled the said documents vide registered cancellation dates. The defendants also claimed that they had never received any amount of Rs.1,25,000/- by the alleged cheque, nor received any cash amount of Rs.15,000/- on 06.12.1999, or any other amount from the plaintiff. The defendants claimed that they never handed over the possession of the suit property to the plaintiff at any point of time.

12. The plaintiff filed the replication denying the contents of the written statement and reiterating the averments in the plaint. The Trial Court framed the following issues:

i) Whether the plaintiff has not come before the Court with clean hands and suppressed material facts? OPD

ii) Whether the plaintiff is entitled to possession as prayed for? OPP

iii) Whether the plaintiff is entitled to the amount claimed? OPP

iv) Whether plaintiff is entitled to decree of permanent injunction? OPP

v) Relief.

13. The parties led their respective evidence. The plaintiffs exhibited the Power of Attorney in favour of PW-1/ Ved Prakash Khurana as Ex. PW-1/1, Ex. PW-1/2 as the Agreement to Sell dated 06.12.1999, Affidavit dated 06.12.1998 as Ex.PW-1/3, Possession Letter as Ex. PW-1/4, Receipt as Ex.PW-1/5, certificate of the bank with regard to encashment of cheques in favour of defendant No.1 as Ex.PW-1/6, Registered GPA as Ex. PW-1/7, the Registered Will as Ex.PW-1/9, legal notice was exhibited as Ex.PW-1/10 along with postal proof Ex.PW-1/11 to Ex.PW-1/15.

14. The plaintiff also summoned the witness from the concerned bank as PW-2. The plaintiff also summoned and examined the witness from the office of the Sub- Registrar, who proved the Registered GPA (Ex.PW-1/7) and registered Will (Ex.PW-1/9). The plaintiff entered the witness box as PW-5.

15. The Trial Court, after marshalling the evidence, returned the finding that the defence set up by the defendants with regard to the transaction between the parties being merely a loan transaction, and with regard to the alleged exercise of undue influence, duress and coercion upon the defendants to execute the documents relied upon by the plaintiff, was not believable and the same was rejected. The Trial Court returned the finding that the plaintiff had proved that the documents of 'sale' were executed by the defendants and sale consideration was duly paid by the plaintiff. The Trial Court, however, held that the plaintiff could not prove the factum of taking over actual possession of the suit property. On this premise, the Trial

Court returned a finding that the plaintiff could not be held entitled to relief of possession qua the suit property. The Trial Court held that since the plaintiff had proved on record that she had paid the sale consideration to the defendants – in respect of which the receipt (Ex.PW-1/5) was executed, the plaintiff is entitled to recovery of the said amount from the defendants along with interest @ 12% per annum from the date of filing of the suit till the date of realization. The relief of permanent injunction was, consequently, denied.

16. The respondent/ plaintiff then preferred the Regular First Appeal, which has been allowed by the impugned judgment. Pertinently, the appellant/ defendants did not challenge the findings returned by the Trial Court, rejecting their defence, as aforesaid. The First Appellate Court, while returning its findings, relied upon Ex.PW-1/3 the affidavit, PW-1/4 the possession letter, whereby the possession of the suit premises was handed over to the plaintiff. Since the actual possession had not been handed over to the plaintiff and the defendant appellant had not vacated the suit premises, it was concluded that only symbolic possession of the suit property was handed over to the plaintiff at the time of execution of the sale documents.

17. The First Appellate Court also relied upon Ex.PW-4/1, which is an undertaking given on behalf of the defendants to vacate the suit premises on or before 15.04.2002. The plea of the appellants that the said undertaking was got executed under pressure, was rejected. The First Appellate Court returned the finding on the said material issue in the following terms:

> *"13. In these circumstances, the appellants having been able to prove on record the genuineness of her claim regarding the*

execution of sale documents coupled with the receipt of symbolic possession and continuation of actual possession with the respondents on their request is entitled to get back possession of the same in which circumstances findings of Ld. trial court on issue no.1 are affirmed but upon issue no.2 are set aside while holding the entitlement of the appellants to receive the possession of the suit premises."

18. The submission of learned counsel for the appellant is that the appellant continues to remain the owner of the suit premises since, admittedly, no instrument of transfer/ sale has been executed by the appellant/ defendant in favour of the respondent/ plaintiff and the suit preferred by the respondent was simplicitor a suit for claiming damages, mesne profits and injunction, whereas the plaintiff should have instituted a suit to seek specific performance of Agreement to Sell within the period of limitation. It is submitted that since the respondent/ plaintiff had not been placed in possession, the plaintiff could not invoke Section 53A of the Transfer of Property Act. Reliance is placed on the judgment of the Supreme Court in ***Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana & Another***, (2012) 1 SCC 656.

19. On the other hand, the submission of Mr. Ravi Gupta, learned senior counsel for the respondent/ caveator is that since the appellant had executed documents purporting the virtual transfer of suit property to the respondent/ plaintiff prior to the date when the judgment in ***Suraj Lamp*** (supra) was rendered, the said chain of documents could be relied upon to claim a better title than that of the appellant/ defendant. On that premise, the respondent was entitled to seek a decree of possession against the appellant/ defendant. He has placed strong reliance on the judgment of this Court in ***Ramesh***

Chand Vs. Suresh Chand & Anr., 188 (2012) DLT 538. However, it has been brought to the notice of this Court that the judgment in ***Ramesh Chand*** (supra) has been stayed by the Supreme Court in S.L.P. (Civil) No.16706/2012.

20. The decision in ***Suraj Lamp*** (supra), in terms, applies prospectively. It has been settled by several decisions of this Court that the mode of transfer of immovable property practiced in Delhi, over several decades, prior to the judgment in ***Suraj Lamp*** (supra) being rendered, was by way of execution of chain of documents such as Registered General Power of Attorney, Registered Will, Agreement to Sell, Special Power of Attorney, Possession Letter and Receipt. It was only when the Supreme Court rendered its decision in ***Suraj Lamp*** (supra), that the said practice labeled as pernicious by the Supreme Court, was put to an end.

21. In the present case, the appellant had undisputedly executed the Possession Letter and Affidavit coupled with other routine documents, i.e. Registered GPA, Registered Will, Agreement to Sell, etc. This shows that even though actual physical possession of the suit premises was not delivered to the respondent/ plaintiff, the appellant/ defendant acknowledged the transfer of symbolic possession to the respondent/ plaintiff. In other words, the appellant/ defendant conceded the position that on and from the date of execution of the chain of documents, as aforesaid, including the possession letter and affidavit, he occupied the said premises not in his own right, but as a licensee of the "transferee" of title under the said chain of documents.

22. I may add here itself that the chain of documents does not *stricto senso* amount to transfer of title. However, it does create rights in favour of the transferee qua the property to which they relate.

23. In my view, the present case is on a much better footing than ***Ramesh Chand*** (supra), since the appellant/ defendant had executed not only the Possession Letter, but thereafter also gave an undertaking (Ex. PW-4/1) on 22.12.2001 to vacate the suit premises on or before 15.04.2002.

24. In these circumstances, I do not find any patent error, or perversity in the impugned judgment. In my view, it does not call for any interference. No substantive question of law arises for consideration of this Court.

25. The appeal and the application, accordingly, stand dismissed.

VIPIN SANGHI, J

AUGUST 17, 2015

B.S. Rohella