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

+ **Date of Decision: 15.12.2015**

% **RSA 410/2015 and C.M. Nos.28435-436/2015**

JANNAT KHAN

..... Appellant

Through: Mr. M.K. Singh, Advocate along with
appellant in person.

versus

RANBIR SIGH VIJAYRAN

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment and decree dated 06.10.2015 passed by the First Appellate Court, namely the Additional District Judge-04 (North-West), Rohini District Courts, Delhi in RCA No.82/2014 preferred by the respondent/ plaintiff against the judgment & decree dated 22.09.2014 passed by the Trial Court, namely the Civil Judge (North-West), Rohini Courts, Delhi in Suit No.126/14/09. The Trial Court had dismissed the suit of the respondent/ plaintiff by the said judgment and decree, and the First Appellate Court has allowed the appeal and decreed the suit of the respondent/ plaintiff. Consequently, the appellant/ defendant have preferred the present second appeal.

2. The plaintiff had filed the suit for seeking relief of possession, recovery of arrears of rent and recovery of mesne profits/ damages and permanent injunction on the basis that he is the absolute and legal recorded owner of the suit property and the defendant had trespassed into the same in connivance and collusion with one Shafiq Khan, who was deputed by the plaintiff to look after and maintain the land in his absence. The plaintiff claimed that the defendant had been inducted by the said Shafeeq Khan illegally, who had raised a temporary structure over the suit property. The defence taken by the defendant was that they had purchased the said property from the plaintiff through his agent. The Trial Court by the judgment dated 22.09.2014 returned the finding that the plaintiff had been able to prove the ownership of the suit property. However, the defendant had also been able to prove that the suit property had been sold to her vide GPA, Agreement to Sell and Purchase, Affidavit, Receipt, Deed of Will all dated 14.07.2008 [Ex.DW-1/1 (Colly.)] executed by the plaintiff in favour of the defendant. Consequently, the suit of the plaintiff was dismissed by the Trial Court.

3. The First Appellate Court while reversing the said judgment placed reliance on the judgment of the Supreme Court in ***Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Another***, 183 (2011) DLT 1 (SC). The Appellate Court held that the documents relied upon by the defendant/ appellant had no legal significance as they were neither registered, nor appropriately stamped. The First Appellate Court held that the respondent/ plaintiff was the owner of the suit property. The First Appellate Court also reversed the finding with regard to the authenticity of the several documents

dated 14.07.2008 relied upon by the appellant/ defendant, namely Ex.DW-1/1 (Colly.). The report of the handwriting expert relied upon by the appellant/ defendant was also rejected on the premise that he had taken the photographs of the admitted and disputed signatures from the photocopies only. Consequently, the suit was decreed by the First Appellate Court.

4. The submission of learned counsel for the appellant, firstly, is that reliance placed on *Suraj Lamp & Industries Pvt. Ltd.* (supra) is misplaced since the transaction is of the period 2001-08, whereas the said judgment was rendered only in the year 2011. The said judgment is not retrospective in its operation. It is further submitted that the First Appellate Court has committed a patent error inasmuch, as, the said Court has proceeded on the basis that the handwriting expert produced by the defendant had not taken the photographs of the plaintiff's signatures from the judicial record with prior permission of the Court. He submits that, as a matter of fact, specific orders were passed by the Trial Court permitting the handwriting expert appointed by the appellant/ defendant to take photographs and on that basis the report has been prepared qua the signatures attributed to the plaintiff on the documents Ex.DW-1/1 (Colly.).

5. A perusal of the judgment passed by the Trial Court shows that, according to the appellant/ defendant, on 02.12.2001, the defendant approached the plaintiff and his agents, namely Mohd. Safiq Khan and Azamt to buy the suit property of the plaintiff. The defendant claimed that Mohd. Safiq and Azamt entered into an oral agreement with the defendant for sale of the property @ Rs.1,000/- per square yard. The defendant claimed that she paid Rs.10,000/- as advance on 02.11.2001, in lieu of which

Mohd. Safiq Khan and Azamt issued a receipt bearing their signatures. The defendant claimed that she made a further payment of Rs.25,000/- on 01.05.2002 towards second instalment, in lieu of which the plaintiff got issued the receipt through his agents with the signatures of the agents of the plaintiff. She claimed that after this the plaintiff handed over the peaceful possession of the suit property to the defendant and permitted the defendant to raise construction over the same. She further claimed that on 10.11.2002, in the presence of the agents of the plaintiff, the remaining amount of Rs.65,000/- was paid by the defendant to the plaintiff and the plaintiff and his agents promised the defendant that they would execute the documents regarding the suit premises on the next day. The defendant, in this background, produced before the Court and relied upon the set of documents dated 14.07.2008 consisting of GPA, Agreement to Sell and Purchase, Affidavit, Receipt, Deed of Will executed by the plaintiff in favour of the defendant.

6. Even if the submissions of the appellant were to be accepted that the parties entered into the said transaction as claimed by the defendant/appellant, in my view, the relief granted to the respondent/ plaintiff cannot be interfered with, considering the fact that the entire transaction between the parties, admittedly, took place between 02.12.2001 and 14.07.2008. With effect from 24.09.2001, The Registration Act, 1908 and The Transfer of Property Act, 1881 were amended, the effect of which is that no plea of delivery of possession in part-performance is entertainable when the agreement to sell – in pursuance of which possession is claimed to have been delivered, is not registered. It is not open to the agreement purchaser

to set up a defence premised on Section 53-A of the Transfer of Property Act (TPA) if the agreement to sell is not registered when the claim of the agreement purchaser is that he has taken possession in part-performance of the agreement to sell, unless the agreement itself is duly stamped and registered. The relevant amendment in Section 17 of the Registration Act was introduced vide sub-Section (IA), which was inserted after sub-Section (1) of Section 17. Section 17(IA) reads as follows:

“(IA) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A”

7. A corresponding amendment was introduced in Section 49 of the Registration Act. A similar amendment was carried out in Section 53-A of the TPA. In Section 53-A, the words *“the contract, though required to be registered, has not been registered, or”* were omitted. Amendment was also carried out simultaneously in the Indian Stamp Act, which provided that 90% of the stamp duty would be payable in respect of the agreement to sell, whereunder possession was transferred.

8. The effect of the said amendment of law is that the appellant/defendant was not entitled to set up a defence premised on Section 53-A of the TPA. Admittedly, the respondent/ plaintiff is the registered owner of the suit property. Being the registered owner, he is entitled to seek a decree of possession and the appellant – who claims to be an agreement purchaser,

cannot defend her possession as against the true owner. If the appellant/ defendant is so minded, it is up to the appellant/ defendant to sue the respondent/ plaintiff for specific performance of the agreement, subject to the law of limitation.

9. Consequently, I find no merit in the present appeal and dismiss the same.

VIPIN SANGHI, J

DECEMBER 15, 2015

B.S. Rohella