

*

HIGH COURT OF DELHI AT NEW DELHI

+

Ex. F.A. No.4/2016 & C.M. No.2971/2016

Decided on : 25th February, 2016

ANITA RANI & ANR.

..... Appellants

Through: Mr. K.C. Mittal & Mr. Sanjay Kumar
Singh, Advocates.

Versus

SNEH LATA & ORS.

..... Respondents

Through: Ms. Neha Garg & Mr. Nitin Garg,
Advocates for R-1 to R-3.
Mr. Amit Saxena, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is an execution first appeal filed by the appellants under Order 21 Rule 58 CPC against the order dated 19.12.2015 by virtue of which the objections filed by the appellants under Section 4 read with Order 21 Rule 99 and Section 151 CPC were dismissed.

2. Briefly stated the facts of the case are that the suit property was owned by one Sudesh Kumari Babbar, who executed a registered general power of attorney and a Will in favour of her son Rajesh Babbar on 10.11.2000. The general power of attorney authorised Rajesh Babbar to transact the property. On 22.4.2002, Rajesh Babbar executed a registered document in favour of Gaurav Jain in the nature of an agreement to sell, Will, etc. Gaurav Jain wanted to perfect his title in respect of the suit

property and requested Rajesh Babbar to put him into possession which he did not do. This resulted in filing of a suit for specific performance by Gaurav Jain in 2008. On 30.4.2009, a decree was passed in favour of Gaurav Jain and against Rajesh Babbar as later failed to appear despite service in the matter. Thus, the *ex parte* decree for possession and specific performance was passed against Rajesh Babbar. On 10.8.2009, Gaurav Jain filed execution petition. On 14.1.2010, Sudesh Kumari Babbar cancelled the documents purported to be executed by her in favour of her son Rajesh Babbar. Simultaneously on 7.10.2010, Sudesh Kumari Babbar filed her objections to the execution of the decree in respect of the suit property. On 15.5.2012, after almost more than 1 ½ years, objections of Sudesh Kumari Babbar were dismissed. On 6.12.2013, Sudesh Kumari Babbar allegedly executed some fresh documents in favour of the present objector/appellants, that is, Anita Rani and Ritu Sethi. On 28.4.2014, Rajesh Babbar filed objections to the execution of the decree. These objections were also dismissed on 27.8.2014. Thus, left with no other alternative, the present appellants, who were claiming to be the subsequent purchasers of the suit property on the basis of fresh set of documents purported to have been executed by Sudesh Kumari Babbar, also filed objections before the executing court on 6.4.2015 which have been dismissed by the impugned order. Simultaneously, Rajesh Babbar had also filed regular first appeal No.226/2015 against the judgment and the decree dated 30.4.2009 which was also dismissed on 30.10.2015. Rajesh Babbar also filed Civil Revision Petition No.171/2015 on

6.11.2015 which was also dismissed. On 19.12.2015, the objections which were filed by the present appellants was also dismissed.

3. Feeling aggrieved, the present appeal has been filed by the objectors/appellants.

4. Mr. Mittal, the learned counsel for the appellants has contended that the appellants/objectors are *bona fide* purchasers of the suit property from the registered owner, that is, Sudesh Kumari Babbar by way of a registered document and therefore, the learned executing court could not have dismissed the objections of the appellants/objectors without holding an inquiry into the matter and giving an opportunity to them to adduce evidence. He has also referred to the judgment of the Apex Court in *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr.*; 2012 (1) SCC 656, *AIR 2012 SC 206* case to contend that a person who is the owner of the suit property must have a registered document in his favour and in the instant case, the ownership document which was duly registered by Sudesh Kumari Babbar in favour of the appellants is the document of title and therefore, the decree cannot be executed against them.

5. This has been countered by the learned counsel for the respondents. It has been contended by the learned counsel for the respondents/decreed holders that the entire offer on the part of the appellants is to defeat the fruits of decree being enjoyed by the respondents. It has been stated that all the three, namely, the mother Sudesh Kumari Babbar, Rajesh Babbar (the son) and the present appellants are hand in gloves with each other. Objections of Sudesh Kumari Babbar and Rajesh Babbar have been rejected by the executing court. Rajesh Babbar preferred an appeal against

the original decree as well as the revision which has also been rejected and having suffered these adverse orders, the only opening which was seen by the appellants was to file the objections in their own right on the basis of the documents and claim themselves to be the *bona fide* purchasers. The documents have been executed in favour of the purchaser after the decree having been passed and therefore, this cannot be treated to be genuine *bona fide* transaction.

6. I have carefully considered the submissions made by the learned counsel for the parties and have gone through the record. I find merit in the contention of the learned counsel for the respondents that the entire exercise on the part of the appellants is to defeat the fruits of decree being enjoyed by the respondents/decreed holders. This has been precisely done by the learned executing court with a reasoned and detailed order. The fact of the matter is that no doubt Rajesh Babbar was attorney of his mother Sudesh Kumari Babbar and she had conferred the power to transact the property in favour of her son. Having done so, Rajesh Babbar had taken the money and executed documents of sale, general power of attorney etc. in favour of the respondents. *Suraj Lamp's* case (*supra*) is a case which helps the respondents instead of helping the appellants inasmuch as it clearly says that a person who is the holder of documents of this nature has a remedy available to him to go to the court and get a suit for specific performance filed. The necessary observations are contained in paragraph 16, which read as under :-

“16. We, therefore, reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed on conveyance.

Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property.

They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales."

7. A perusal of the aforesaid paragraph clearly shows that the respondent/decreed holder had chosen a correct line of action and obtained a decree as the objector/Rajesh Babbar failed to appear despite service. In addition to this, mother Sudesh Kumari Babbar as well as Rajesh Babbar have tried their luck by filing objections not only before the executing court but one of them taking it to higher court also by way of revision and Rajesh Babbar also selected to file an appeal against the decree which has also been dismissed. Therefore, for all practical purposes all the doors of the sellers have been closed. It is only when their intention had become dishonest that they sold the property after the decree having been passed in favour of the present appellants/objectors. The present appellants/objectors had also tried their luck and filed objections which have also been dismissed. Admittedly, they cannot be considered to be

bona fide purchasers because they have not taken due care and attention to check the record and obtain necessary affidavits and documents from the sellers with regard to their clear title. Moreover, the principle is that nobody can sell a title better than he has and on a date when the property was transacted by Sudesh Kumari Babbar, she did not have any title to the property as she had authorized her son to transact the property and after the property was transacted only then she had woken up to cancel. Therefore all these facts clearly show that all these three persons are in collusion with each other trying to defeat the rights of the decree holder which she has earned after a considerable resistance in court.

8. I, therefore, find no merit in the execution first appeal and dismissed the same. The parties are left to bear their own costs.

V.K. SHALI, J.

FEBRUARY 25, 2016
‘AA’