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

\+ **RSA 255/2013**

Date of Decision: 26.05.2016

DIN MOHAMMAD ..... Appellant
Through: Mr.G.A.Malini, Mr.M.M.Singh, Mr.Narender Kumar, Ms.Srijana Suman Mund, Advocates.

versus

NASIR AHMED ..... Respondent
Through: Mr.P.K.Rawal, Advocate.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. The respondent/plaintiff, Nasir Ahmed had filed civil Suit No.805/2006 seeking mandatory injunction, possession, damages/mesne profits and permanent injunction as against the appellant/defendant with respect to the suit premises.

2. The respondent/plaintiff claims to have purchased the suit property from the appellant/defendant for Rs.2 lakhs by way of GPA, Agreement to Sale and the receipt, all dated 30.07.1996. Thereafter the appellant/defendant was inducted in the suit property as a licensee for a brief period so as to provide him with sufficient time to find out an alternative accommodation. However, the appellant/defendant failed to hand over the possession of the suit property despite repeated

demands.

3. The suit was contested by the appellant/defendant on various grounds including the locus of the respondent/plaintiff to file the suit and the factum of his having sold the property to the respondent/plaintiff or that he was ever handed physical possession of the suit property.

4. Based upon the pleadings of the parties, the Trial Court vide order dated 09.07.2002 framed the following issues:-

> *(i) Whether the plaintiff is entitled for permanent injunction and mandatory injunction as prayed for? OPP*
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> *(ii) Whether the plaintiff is entitled for a sum of Rs.1,08,000/- along with pendentelite and future interest @ 24% per annum? OPP*
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> *(iii) Whether the plaintiff is entitled for damages/mesne profits @ Rs. 1200/- per day w.e.f. 1.8.1999 from the defendant till realization? OPP*
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> *(iv) Whether no cause of action to file the suit accrued to the plaintiff? OPD*
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> *(v) Whether the suit is not properly valued? OPD*
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> *(vi) Whether this Court has got no pecuniary jurisdiction to entertain and try the present suit? OPD*
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> *(vii) Whether the suit is not maintainable in the present form? OPD*
>
> *(viii) Whether the defendant has taken a loan of Rs.1,00,000/- on interest from the plaintiff and paid Rs.300/- per month to the plaintiff? OPD*
>
> *(ix) Relief.*

5. The Trial Court dismissed the suit but in para 14 of the judgment held as hereunder:-

> *"Perusal of the GPA Ex.PW1/4 and the Will Ex.PW1/5 show that they are registered documents which coupled with the agreement to sell Ex.PW1/2 and the receipt Ex.PW1/3 gives rise to presumption that the sale transaction had taken place between the plaintiff and the defendant. The oral evidence given by the defendant and his witnesses to deny this transaction has been noticed only to be rejected. Section 91 of Indian Evidence Act deals with the exclusion of oral evidence where the terms and conditions of contract have been set out writing by agreement of parties and the documents is intended to be a record of transaction and therefore, no other evidence can be given to prove the transaction except the documents itself. Oral evidence is excluded when a document does exists. Thus, from perusal of the evidence adduced by the parties, I am of the considered opinion that the defence raised by the defendant has no merits and the same is liable to be rejected. The plaintiff has proved by way of preponderance of probabilities that he had purchased the suit property from the defendant for a valuable consideration. Hence, it cannot be said that the present suit is without any cause of action. Accordingly, I am of the considered opinion that the defendant has failed to discharge the onus cast on him. The issues are accordingly decided in favour of the plaintiff and against the defendant."*

6. Thus what the Trial Court held was that the respondent/plaintiff though had been able to prove the execution of the documents by which the property was conveyed to him but the aforesaid documents did not create any right/title or interest of the respondent/plaintiff in the suit property. Thus, the claim of the respondent/plaintiff was rejected.

7. The First Appellate Court however considering the fact that the respondent/plaintiff had a better title than the appellant/defendant, reversed the judgment of the Trial Court. The First Appellate Court took note of the fact that as against the findings given in para 14 of the Trial Court judgment, no appeal or cross objections have been preferred by the appellant/defendant.

8. The First Appellate Court, relying upon the judgment delivered in ***Ramesh Chand vs. Suresh Chand & Anr.***, RCA No.358/2000 decided on 09.04.2012 held that the right to possession of the respondent/plaintiff to the immovable property is not only on the basis of complete ownership rights in the property but for his displaying a better title or better entitlement to the possession of the property notwithstanding that the appellant/defendant is in actual possession thereof.

9. In ***Suraj Lamp and Industries Pvt. Ltd (2) through Director vs. State of Haryana and Anr***, (2012) 1 SCC 656 the scope of the Power of Attorney, Agreement of Sale and Wills have been discussed. The Supreme Court in the aforesaid case has laid down that Section 54 of the Transfer of Property Act makes it very clear that the contract of sale i.e. an agreement of sale does not, by itself, create any interest in or charge on such property. Similarly, a power of attorney is not an instrument of transfer of an immovable property and is only creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of the grantor, which when executed will be binding on the grantor as if done by him (See Section 1-A and Section 2 of the Powers of Attorney Act, 1882). With respect to a

Will, in Suraj Lamp (Supra), the Supreme Court has held that it is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death and cannot be treated as a transfer inter vivos. In the following paragraphs of the aforesaid judgment {Suraj Lamp (Supra)}, the Supreme Court has gone on to state as hereunder:-

> ***23.*** *Therefore, an SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court in Asha M. Jain v. Canara Bank [(2001) 94 DLT 841] , that the "concept of power-of-attorney sales has been recognised as a mode of transaction" when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/will transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.*
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> ***24.*** *We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of 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 recognised or valid mode of transfer of immovable 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 recognised as deeds of title, except to*

the limited extent of Section 53-A 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.

25. *It has been submitted that making declaration that GPA sales and SA/GPA/will transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularise the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.*

26. *We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/will transactions are not "transfers" or "sales" and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. The said "SA/GPA/will transactions" may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularisation of allotments/leases by development authorities. We make it clear that if the documents relating to "SA/GPA/will transactions" have been accepted/acted upon by DDA or other developmental authorities or by the municipal or*

Revenue Authorities to effect mutation, they need not be disturbed, merely on account of this decision.

27. *We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding "SA/GPA/will transactions" are not intended to apply to such bona fide/genuine transactions."*

10. Thus the judgment of Suraj Lamp (Supra) cannot be applied stricto senso in the facts of this case as the property is stated to have been conveyed to the respondent/plaintiff in the year 1996.

11. Thus on the basis of evidence adduced on behalf of the parties, the appellant/defendant was also directed to deposit damages/mesne profits at the rate of Rs.3000/- per month with effect from 1.12.1996 for the first year of illegal occupation with increased damages at 10% for every subsequent year till such time the possession is handed over

to the respondent/plaintiff.

12. This Court is unable to find out any anomaly with the impugned judgment.

13. Hence the second appeal is dismissed but without costs.

CM Appln. 18181/2013

1. In view of the petition having been dismissed, the application has become infructuous.

2. The application is disposed of accordingly.

ASHUTOSH KUMAR, J

MAY 26, 2016

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