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

\+ RSA 174/2014

Date of Decision: 01.04.2016

SAVITRI DEVI ..... Appellant

Through: Mr.Sonal Sinha, Advocate.

versus

GOPAL ..... Respondent

Through: Mr.J.P.Sengh, Sr.Advocate with Ms.Zubeda Begum, Ms.Sana Ansari and Ms.Vanessa Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. Smt.Savitri Devi, the appellant/plaintiff, has put up a challenge to the judgment dated 09.04.2014 passed by the learned Additional District Judge-01(East), Karkardooma Courts, Delhi in RCA No.27/2011 whereby the judgment and decree dated 02.04.2011 passed by the learned Trial Court in Civil Suit No.538/2007 whereby the suit preferred by the appellant/plaintiff was dismissed, has been upheld and affirmed.

2. The appellant had preferred the suit for mandatory and perpetual injunction seeking a direction to the respondent/defendant to hand over vacant possession of the suit property, (a house), and

permanent injunction restraining the respondent/defendant in creating any third party interest in the suit property.

3. The appellant/plaintiff claims to have purchased the suit property from the father of the respondent in the year 2011. Since the father of the respondent was not being looked after well, he was permitted to stay in the suit property where he stayed till his death on 03.02.2002. During the pendency of the suit, the appellant/plaintiff claimed that the respondent/defendant made forcible occupation of the remaining portion of the suit property by ousting a tenant. The property was purchased for a consideration of Rs.1,50,000/- vide General Power of Attorney, Agreement to Sell, receipt, affidavit and registered Will dated 23.01.2001. It was asserted in the plaint that the possession was handed over by the father of the respondent/defendant on the same day of the purchase. The aforesaid suit was contested by the respondent/defendant primarily on the ground that the documents conveying the property to the appellant/plaintiff was executed by the father of the respondent in a state of drunken stupor and the father of the respondent had earlier lodged a complaint before the police regarding the same. It was further averred in the written statement that the suit property always remained in the possession of the father of the respondent/defendant wherein the respondent/defendant stayed with his family during the life time of his father and thereafter. A counter claim was also lodged by the respondent/defendant seeking permanent injunction restraining the appellant/plaintiff from taking possession from the respondent/defendant as also from creating any third party rights in the suit property.

4. Based on the pleadings of the parties, the Trial Court, vide order dated 28.11.2002 framed the following issues:

i. *Whether the plaintiff has no cause of action to file the present suit? OPD*
ii. *Whether the suit has not been properly valued for purposes of court fee and jurisdiction? OPD*
iii. *Whether the plaintiff is entitled to the relief of mandatory injunction prayed for? OPP*
iv. *Whether the plaintiff is entitled to equitable relief of permanent injunction prayed for? OPP*
v. *Whether the licence to use the suit property given by the plaintiff to Sh. Ram Bharose stood expired on his death. If so, its effect? OPP*
vi. *Whether the father of defendant Sh. Ram Bharose transferred his right, title or interest in the suit property for consideration in favour of the plaintiff, if so its effect? OPP*
vii. *Whether the suit is barred by Section 41 (h) of S.R. Act? OPD*
viii. *Whether the suit of plaintiff is hit by section 54 of Transfer of Property Act? OPD*
ix. *Whether the suit of plaintiff is maintainable in its present form? OPD*
x. *Relief.*

5. The appellant/plaintiff examined herself as PW.1 before the Trial Court and deposed that after the registration of the property, she had gone to the property for taking possession along with her husband. The possession of one room, kitchen and bathroom and toilet of the property was taken. The other part of the suit property could not be taken possession of as one Virender Tyagi was residing there as a tenant. She denied the suggestion that her husband was a property dealer and had been running his business under the name and style of

Laxmi Property Dealer at Vikas Marg, Delhi.

6. Amar Chand Goyal, (PW.2), husband of the appellant/plaintiff, stated in his affidavit that the suit property was purchased for a consideration of Rs.1,50,000/- and the father of the respondent/defendant executed a General Power of Attorney, Agreement to Sell, Affidavit and Will dated 23.01.2001. The General Power of Attorney and the Will were duly registered in the Office of the Sub-Registrar, East District, Delhi, on the same date i.e. on 23.01.2001. Thereafter, possession was given to the appellant/plaintiff and him.

7. It was further stated by PW.2 in his affidavit that one Virender Tyagi who was inducted as a tenant in the suit property was forcibly dispossessed and in a malicious manner the suit property was not vacated by the respondent/defendant. In his cross-examination, PW.2 stated that his wife is an income tax payee but he does not know about her income though she has been filing income tax return for the last 20 years. About him, he stated himself to be dealing in paint and hardware.

8. Ashok Kumar (PW.3) deposed before the Trial Court that the documents of sale (Ex.PW.1/1 to Ex.PW.1/5) were prepared in his presence and he had signed those documents as a witness. He could not state with certainty whether the father of the respondent/defendant was in an inebriated condition at the time of execution of the documents whereby the property was allegedly conveyed to the appellant/plaintiff.

9. The respondent/defendant examined himself as DW.1 and his

wife deposed before the court as DW.2. The affidavit of defendant no.1, by way of evidence, disclosed that the suit property was a self-acquired property of his father whereas the husband of the appellant/plaintiff was a property dealer, who with malafide motives of grabbing the property, taking advantage of the bad habits of his father, had approached him for purchasing the property for a sum of Rs.11,50,000/-. Another option which was given to his father was that if he were to agree, the building would be demolished and four flats would be constructed out of which two floors would be given to the father of the respondent/defendant and two would be occupied by the appellant/plaintiff. In some moment of indiscretion, the father of the respondent/defendant gave his signature on certain papers while he was in a state of intoxication. A complaint was filed by the father of the respondent/defendant on 22.02.2001 (Ex. PW.1/1) regarding the incident when the husband of the appellant/plaintiff had created ruckus in the house alongwith the antisocial elements. After the aforesaid complaint with the police and till the death of the father of the respondent/defendant, nothing untowards happened and it was only after the demise of his father that the present suit was filed by the appellant/plaintiff. Nothing contradictory was elicited in his cross-examination.

10. Smt. Vimla Devi, (DW.2), wife of the respondent/defendant, in her affidavit supported the case of the respondent/defendant. In the cross-examination, she has stated that her husband worked with Oriental Bank of Commerce. All the suggestions given to her regarding her ignorance about the suit property was denied. She also

denied the suggestion that an FIR had been registered against her and her husband for forcible dispossession of one of the tenants, Virender Tyagi.

11. The Trial Court held that the appellant/plaintiff could not establish that she was the owner of the property as the documents relied upon were not valid and enforceable. What was required, in the estimation of the trial court, to prove that the title was transferred by the father of the respondent/defendant to the appellant/plaintiff was whether full consideration was given to the father of the respondent/defendant; whether possession was delivered; and whether the two registered documents namely General Power of Attorney and the Will contained any information regarding the consideration for which the property was sold. Though the consideration amount is stated in the Agreement to Sell, Receipt, etc. but those documents are not registered documents.

12. The Trial Court took note of the deposition of PW.2 wherein it was admitted that the amount in the receipt and the Agreement to Sell was filled up later i.e. after obtaining the signature of the father of the respondent/defendant.

13. Ex.PW.1/2 and Ex. PW.1/3 are computer typed documents whereas the amount of consideration appears to have been typed by a manual typewriter on a blank space left. This, the Trial Court observed, raised serious suspicious about the transaction being above board. Since the aforesaid documents were not registered documents, therefore, it could not be said that they were not prone to manipulation/interpolation. Neither from the documentary evidence

nor from the oral testimony could the Trial Court get any clue as to the sources for funding the purchase of the property. The appellant/plaintiff, though is an income tax assessee for several years but her husband PW.2 did not know her vocation which she pursued for fetching income. In the absence of income tax return having been brought on record, an adverse inference was drawn by the Trial Court regarding the capacity of the appellant/plaintiff to purchase the property.

14. As to the issue of the complaint made by the father of the respondent/defendant (Ex.DW.1/1), nothing was either suggested to DW.1 or DW.2 nor any serious attempt was made to demonstrate that Ex. DW.1/1 was a forged and fabricated document.

15. The contention of the appellant/plaintiff that the sale documents were never challenged by the father of the respondent/defendant during his life time, was not accepted by the Trial Court for the reason that admittedly the father of the respondent/defendant was not keeping good health. The Trial Court took notice of the fact that complaint proceeding had been initiated against the husband of the appellant/plaintiff.

16. So far as registered documents namely General Power Of Attorney and the Will dated 23.01.2001 are concerned, the Trial Court held it to be unacceptable as no prudent person would fritter away his property, leaving his own heirs dissatisfied and high and dry.

17. Though apparently, the effort of the appellant/plaintiff was to seek mandatory and permanent injunction as against the respondent/defendant but in actuality she was seeking the relief of

possession through back door. The suit, thus in the form it was presented before the Trial Court, was not maintainable as being barred under Order 41(h) of the Specific Relief Act, 1963. The suit was also required to be valued in terms of the market value of the suit property to be inconsonance with the provisions contained in Section 7 (V)(e) of the Court Fees Act, 1870.

18. The suit thus was dismissed as a big question mark was put on the veracity of the sale and purchase of the documents.

19. The First Appellate Court concurred with all the findings given by the Trial Court.

20. The counter claim of the respondent/defendant was also dismissed by the First Appellate Court for the reason that no issue was framed with respect to the same and there was no evidence on record regarding any attempt at forcible dispossession of the respondent/defendant at the instance of the appellant/plaintiff from the suit premises. There is also no evidence of any attempt on the part of the appellant/plaintiff for creating any third party interest at the suit premises. Since the possession of the suit property continuously lay with the respondent/defendant, there was no occasion for any counter claim against the appellant/plaintiff. That apart, the counter claim was also not pressed specifically.

21. The appellant/plaintiff has assailed both the judgments of the Court below on the ground of same having been delivered without any evidence.

22. It has been submitted that the police complaint (Ex.DW.1/1) was not proved in accordance with law and the objections in that

regard were noted during the cross-examination of the respondent/defendant. Once the document was found to be not proved in accordance with law, it was urged, the same could not have been relied upon. It was further argued that in the absence of any specific denial of the execution of transferred documents and only defending the case by harping upon the intoxicated state of the father of the respondent/defendant while the documents were signed was not good enough ground for both the Courts to have rejected the claim of the appellant/plaintiff. It was also submitted that merely because some of the entries in the registered documents were made by a manual typewriter when the entire documents were computer generated, the documents could not have been completely discarded.

23. The challenge to the impugned judgments is also on the ground that if at all the documents were executed while the executant (father of the respondent/defendant) was in a state of intoxication, that could have been easily discerned by the Registrar before whom the General Power of Attorney was registered, and where the father of the respondent/defendant had appeared.

24. What cannot be disputed is that the appellant/plaintiff had to prove her own case and had to succeed on the strength of the materials which were offered by her. If at all there was any inherent weakness in the defence of the respondent/defendant, the same could not be blown beyond proportion for staking her claim.

25. The appellant/plaintiff has not been able to prove her title and possession and both the Courts below, therefore, rightly rejected her claim.

26. No substantial question of law has been raised in the present second appeal.

27. Being completely devoid of merits, this second appeal is dismissed but without costs.

CM Appln.11588/2014

1. Since the RSA No.174/2014 is dismissed, this application has become infructuous.

2. Dismissed as having become infructuous.

ASHUTOSH KUMAR, J

APRIL 01 2016/ab