

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

+ **RSA No .159/2012 and C.M. Appl. Nos. 16525/2012 (under Section 151 CPC for stay of operation of impugned Order dated 1.9.2012), 5455/2016 (under Section 151 CPC for early hearing) & 5608/2016 (under Section 151 CPC for directions)**

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27th July, 2016

GOVINDAN SOMAN

..... Appellant

Through: Mr. Neeraj Gaur, Advocate with appellant
in person.

versus

ATAM PRAKASH MALIK & ANR.

..... Respondents

Through: Mr. Amiet Andley and Mr. Arun Kumar
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant challenging the Judgment of the First Appellate Court dated 1.9.2012, whereby the first appellate court has decreed the suit for possession and mesne profits filed by the respondents/plaintiffs with respect to the suit property being the first floor of property no.27, Sewa Nagar Market, New Delhi. The suit was filed around 19

years back on 8.10.1997. The suit was dismissed by the Trial Court vide Judgment dated 29.1.2010. The first appeal of the respondents/plaintiffs was successful as the impugned judgment decrees the suit for possession and mesne profits.

2. On 19.7.2016, this matter was specifically listed for today for disposal of the appeal. The Order dated 19.7.2016 reads as under:-

- “1. Instead of arguing the interim application it is agreed that the appeal which is already admitted for hearing be heard and disposed of.
2. List on 27th July, 2016.
3. Counsel for the parties are directed to ensure that they have the necessary page numbering of the trial court for the purpose of arguments.”

3. Counsel for the appellant/defendant has requested for an adjournment but counsel for the respondents/plaintiffs has vehemently opposed the adjournment on the ground that for 19 years litigation has been continuing and the appellant/defendant is illegally sitting in the property of the respondents/plaintiffs, and therefore respondents/plaintiffs seek an end to the litigation. On account of the vehement opposition of the respondents/plaintiffs, I have declined the adjournment and have heard the arguments.

4. The facts of the case are that the respondents/plaintiffs filed the subject suit for possession and mesne profits against the appellant/defendant with

respect to the suit property. Respondent no.1/plaintiff no.1 is the husband of plaintiff no.2/respondent no.2. Both the respondents filed the suit as plaintiffs because the suit property was purchased from the original owner Sh. Narender Paul by means of documents being the Agreement to Sell, registered Will, receipt and registered General Power of Attorney, and, the Agreement to Sell of the suit property was by Sh. Narender Paul in favour of plaintiff no.2/wife, whereas in favour of the plaintiff no.1/respondent no.1/husband a registered General Power of Attorney was executed. The documents in question executed by Sh. Narender Paul in favour for respondents/plaintiffs are dated 16.6.1994. The documents are documents whereby respondent no. 2 got transfer of the title in her favour of the suit property on payment of consideration. By the documents dated 16.6.1994 respondents/plaintiffs purchased not only the suit property being the first floor but also the second floor of the property. Pleading that appellant/defendant is a trespasser in the suit property, and who had illegally entered into the suit property being an associate of Sh. M.A. Shamsuddin who was handed over possession of the second floor of the property by the erstwhile owner Sh. Narender Paul, the subject suit was filed for possession and mesne profits with respect to the first floor in illegal occupation of the appellant/defendant.

5. The appellant/defendant contested the suit and pleaded that he was not a trespasser but a tenant, inasmuch as, he was inducted as a tenant at a rent of Rs.500/- per month by the original owner Sh. Narender Paul. Relationship of landlord and tenant is also claimed between the appellant/defendant and the respondents/plaintiffs. These averments are made in paragraphs 1 and 4 of the preliminary objections in the written statement filed by the appellant/defendant and these paragraphs read as under:-

“1. That the suit is not maintainable as the plaintiffs are not the owners, landlord of the property in any sort whatsoever. Narendar Pal is the real brother of Atam Prakash, who had committed criminal wrongs to get the property in question by all means within his limits. When he failed to do so, then he had filed this present suit which is not maintainable on account of title as well as relationship between the plaintiff and the defendant as a landlord/land-lady.

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XXXXX

4. That a suit has been filed by Govindan Soman on 10-6-1994 against Shri Narendar Pal Atam Parkash @ Pappu, Shri Kaley all sons of – Hari Chand residents of 27, Sewa Nagar Market Ground floor, New Delhi. It is the admitted case of the plaintiffs and Narendar Pal and his brother Shri Kaley @ Narain Dass that Shri Narendar Pal son of Hari Chand is the owner of the property. It is also the admitted case of Narendar Pal and his brother Atam Parkash @ Pappu that Shamsuddin and the present defendant are the tenants of Narendar Pal in respect of First floor and Second floor. It is the admitted case of Narendar Pal and Atam Parkash before many courts that Shamshuddin and Govindan Soman were doing business there. So the defendant being the tenant of Shri Narendar Pal at the rate of Rs.500/- is running an Institute of Industrial Management & Security. He is also a Partner of M/s Shamshuddin International Traders (Regd.) alongwith M.A. Shamshuddin (ii) J.Peter s/o Mr. Joosa (iii) Mr. Govindan Thampy and business is duly registered under Shops and Establishment Act vide registration no. 9/8074/II dated 8.7.1988, so the allegations raised by Atam Prakash has no value in the eyes of law as he is not the landlord and owner of

the property alongwith his wife Smt. Darshna and the suit is liable to be dismissed on that account also. M.A. Shamsuddin and the defendant Govindan Soman were inducted as tenants by Narinder Pal in respect of second floor and first floor respectively.” (underlining added)

6. The trial court on 16.10.1998 framed the following issues:-

“(I). Whether the plaintiffs are not competent to file the suit? (OPD)

(II). Whether the suit is not maintainable for want of pecuniary jurisdiction? (OPD)

(III). Whether there is any relationship of landlord and tenant in between the parties and the defendant is lawful tenant in respect of suit property? (OPD)

(IV). Whether the plaintiffs are entitled to claim damages? If so, at what rate and for what period? (OPP)

(V). Whether the plaintiffs are entitled to claim possession? (OPP)

(VI). Relief.”

7. Two issues have been urged on behalf of the parties before this Court, firstly with to lack of respect to *locus standi* of the respondents/plaintiffs to file the subject suit and which was the subject matter of issue no.V framed by the trial court, and secondly as to whether the appellant/defendant has proved relationship of landlord and tenant between the parties and which was the subject matter of issue no.III framed by the trial court.

8. Before proceeding further it is required to be noted that the agreement to sell by Sh. Narendra Paul in favour of the respondent no.2/plaintiff no.2/wife has been proved as Ex.PW1/1, receipt of the payment of sale

consideration from respondent no.2/plaintiff no.2/wife to the erstwhile owner Sh. Narendra Paul has been proved as Ex.PW1/3, Will in favour of the respondent no.2/plaintiff no.2/wife has been proved as Ex.PW1/4 and the registered General Power of Attorney in favour of the respondent no.1/plaintiff no.1/husband has been proved as Ex.PW1/2. The sale consideration for purchasing of the title in the suit property by respondent no.2/plaintiff no.2 is a sum of Rs.1,90,000/- and which is said to be received as per the receipt Ex.PW1/3.

9. I may at this stage state that on the basis of the registered General Power of Attorney executed by Sh. Narendra Paul in favour of the respondent no.1/plaintiff no.1/husband, the respondent no.1 had executed a registered sale deed in favour of his wife/respondent no.2/plaintiff no.2 on 29.6.2010, but this sale deed executed during the pendency of the litigation was not allowed to be brought on record as an application filed under Order XLI Rule 27 CPC of the respondents/plaintiffs was dismissed by the first appellate court. However, that would not make any difference, inasmuch as, respondents/plaintiffs have proved their title to the suit property, inasmuch as, the documents executed in this case give rights to the plaintiffs under Section 53A of the Transfer of Property Act, 1882 containing the doctrine of part performance and Section 202 of the Indian Contract Act, 1872 which provides for irrevocability of a general power of

attorney given for consideration. These documents are documents prior to 24.9.2001 when by Act 48 of the year 2001 provision of Section 53A of the Transfer of Property Act and other related provisions were amended and thereby benefit of the doctrine of part performance after 24.9.2001 could only be taken if the agreement to sell was stamped and registered. The subject documents, therefore, having been executed before 24.9.2001 are valid and confer title upon the respondents/plaintiffs and so held by this Court in the judgment in the case of ***Shri Ramesh Chand Vs. Suresh Chand and Anr., 188 (2012) DLT 538*** and in which judgment the relevant paras of the judgment of the Supreme Court in the case of ***Suraj Lamps and Industries Pvt. Ltd. Vs. State of Haryana and Anr., 183 (2011) DLT 1 (SC)*** have been reproduced which allow transactions which are in the nature of doctrine of part performance under Section 53A of the Transfer of Property Act, and irrevocable general power of attorney falling under Section 202 of the Indian Contract Act, once the documents are executed prior to 24.9.2001.

10(i) Learned counsel for the appellant/defendant very strongly argued that these documents dated 16.6.1994 cannot confer title upon the respondents/plaintiffs because Sh. Narendra Paul never executed these documents. However, the argument urged on behalf of the appellant/defendant is liable to fail for various reasons.

(ii) Firstly, the appellant/defendant has no *locus standi* to question the transfer of title through the documents dated 16.6.1994 of Sh. Narendra Paul in favour of the respondents/plaintiffs because it is only Sh. Narendra Paul who could have questioned the documents. Admittedly, Sh. Narendra Paul has never questioned or challenged execution of the documents dated 16.6.1994 executed by him in favour of the respondents/plaintiffs. Therefore this argument is liable to be rejected that the respondents/defendant have no title on the ground that the appellant/defendant has no *locus standi* to question the documents dated 16.6.1994.

(iii) Challenge by the appellant/defendant to the documents dated 16.6.1994 is also liable to fail because self-serving stand in the written statement and in deposition that the documents are not executed by Sh. Narendra Paul in favour of the respondents/plaintiffs would not amount to acceptable evidence for this Court to hold in favour of the appellant/defendant that Sh. Narendra Paul did not execute the documents in favour of the respondents/plaintiffs on 16.6.1994. Mere oral deposition cannot be taken as discharge of onus of proof.

(iv) Yet another reason is that in last line of preliminary objection no.1 of the written statement, the appellant/defendant himself admits the relationship of landlord and tenant between him as the tenant and the plaintiffs as the landlord.

Therefore, in my opinion, the contention and the argument of the counsel for the appellant/defendant, that the respondents/plaintiffs and especially respondent no.2/plaintiff no.2 is not the owner of the suit property, is an argument without any substance and is accordingly rejected.

11. The only issue which now calls for decision is as to whether the appellant/defendant has proved that he was a tenant in the suit property at Rs.500/- per month under the original owner Sh. Narendra Paul and as stated in preliminary objection no.4 of the written statement as reproduced hereinabove. In this regard, it is noted that the appellant/defendant has miserably failed to prove relationship of landlord and tenant either between him and the original owner Sh. Narendra Paul or between him and the respondents/plaintiffs. No documentary evidence whatsoever has been filed and proved by the appellant/defendant as to the existence of tenancy in his favour of the suit property in the form of a rent agreement or a rent receipt by Sh. Narendra Paul or of the respondents/plaintiffs or of payment of rent to Sh. Narendra Paul or respondents/plaintiffs. Clearly, therefore, appellant/defendant cannot be held to be a tenant in the suit premises. It is also noted that the appellant/defendant during the course of his testimony claimed that he had paid a sum of Rs.88,000/- to Sh. Narendra Paul for purchase of the property, however, once again this is only an oral deposition without any

substantiation by means of written documents, and in any case even assuming that payment is proved by appellant/defendant to Sh. Narender Paul, yet mere payment cannot lead to transfer of title in favour of the appellant/defendant because transfer of title can only be by means of documents either in the nature of part performance as per Section 53A of the Transfer of Property Act, or a registered irrevocable general power of attorney given for consideration under Section 202 of the Indian Contract Act, provided these documents are prior to 24.9.2001 or if they are after 24.9.2001 then under a registered agreement to sell or of course at best by a registered sale deed, and no such documents exist or have seen the light of the day for the appellant/defendant to claim title in the suit premises on account of having purchased the same from Sh. Narender Paul. In any case, this stand of purchase is not a stand which is taken in the written statement and was for the first time taken only during the course of evidence of the appellant/defendant.

12. In view of the above, no substantial question of law arises for this second appeal to be entertained under Section 100 CPC, and the first appellate court has by the impugned judgment rightly decreed the appeal of the respondent/plaintiffs for possession and mesne profits.

13. The present Regular Second Appeal is accordingly dismissed.

14. Whatever amount has been deposited in this Court by the appellant/defendant towards user charges of the suit premises be released to respondent no.2/plaintiff no.2 along with accrued interest thereon, if any, by the Registry of this Court within a period of four weeks from today.

JULY 27, 2016

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VALMIKI J. MEHTA

