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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**RSA No.232/2016 and C.M. Appl. No. 30147/2016 (for stay,
under Order XLI Rule 5 and Section 151 CPC)**

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19th August, 2016

SMT. OMWATI

..... Appellant

Through: Mr. Kulwant Swaroop Sharma,
Advocate.

versus

SH. SAMAY SINGH & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 30148/2016 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

RSA No.232/2016

1. This Regular Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) against the Judgment of the First Appellate Court dated 5.5.2016 by which the first appellate court set aside the Judgment of the Trial Court dated 31.8.2015. Trial court by its judgment had decreed the suit for specific performance, possession, mandatory injunction and damages

filed by the appellant/plaintiff. The first appellate court by the impugned judgment has therefore dismissed the suit which was decreed by the trial court.

2(i) The case of the appellant/plaintiff was that he purchased the suit property admeasuring 50 sq. yds being property no.25 out of khasra no.188 at Village Kirari, Suleman Nagar, Delhi known as Baldev Singh Park, Delhi (new number B-190, Shish Mahal Enclave, 25 Foota Road, Prem Nagar III, Nangloi, Delhi-110041) under the documentation dated 15.2.2001 from respondent no.1/defendant no.1. The documentation dated 15.2.2001 includes an Agreement to Sell, receipt, Will and also a registered General Power of Attorney. These documents were proved by the appellant/plaintiff before the trial court as Ex.PW1/A to Ex.PW1/D. The case of the appellant/plaintiff was that since defendants had good relations with the appellant/plaintiff therefore in spite of purchase of the suit property and paying the entire consideration, the appellant/plaintiff allowed the defendants to stay in the suit property. The defendants however since did not vacate the suit property, therefore ultimately a Legal Notice dated 25.9.2006, Ex.PW1/E was served on the defendants cancelling the license and thereafter the subject suit came to be filed.

(ii) The case of the defendants was that defendant no.1 had only taken a loan of Rs.15,000/- from the appellant/plaintiff and the appellant/plaintiff had got fraudulently executed the documents being Agreement to Sell, General Power of Attorney, etc. The market value of the suit property was much more

than Rs.6,00,000/- on the date of filing of the suit and that the loan of Rs.15,000/- was already re-paid by the defendant no.1 to the appellant/plaintiff. Accordingly, it was prayed that the subject suit be dismissed.

3. On completion of pleadings the trial court on 3.12.2009 framed the following issues:-

“1. Whether the plaintiff is entitled of Specific performance of Agreement to Sell dated 15.02.2001 (date of agreement to sell is read as 15.02.2001, in view of the amended plaint as taken on record vide order dated 29.07.2010) against defendant no.1 as prayed for? OPP

2. Whether plaintiff is entitled to relief of possession against defendants for handing over the vacant possession of the suit property as shown in red colour in site plan? OPP

3. Whether the plaintiff is entitled to relief of Mandatory Injunction directing defendant no.1 to demolish the constructions raised upon the property, as prayed for? OPP

4. Whether the plaintiff is entitled to recovery of Rs.200/- as damages from 15.10.2006 to 18.10.2006 @ Rs.50/- per day and further damages till handing over the vacant possession of suit property? OPP

5. Whether the plaintiff has concealed material facts in her plaint? OPD

6. Whether the suit has not been properly valued and proper court fee has not been affixed? OPD

7. Whether the suit of plaintiff is barred by limitation and bad for mis-joinder? OPD”

4(i) Trial court held that since respondent no.1/defendant no.1 in his written statement admitted his signatures and thumb impression on documents Ex.PW1/A to Ex.PW1/D, therefore, the subsequent denial of the same in the cross-examination was of no effect and therefore the case of the

appellant/plaintiff stood proved. Accordingly, the trial court held that the suit for specific performance was bound to be decreed.

(ii) The first appellate court has by the impugned judgment set aside the judgment of the trial court and arrived at the following salient conclusions:-

(a) The Power of Attorney in question clearly appears to be fabricated on the face of it on account of complete overwriting in the same and also the fact that if this Power of Attorney was correctly registered with correct particulars then appellant/plaintiff ought to have summoned the witness from the Sub-Registrar's office to prove the correctness of this Power of Attorney and which was not done.

(b) There is no reason why the appellant/plaintiff who purchased the suit property after paying valuable consideration as per the case of the appellant/plaintiff would have allowed complete strangers being the respondents/defendants to continue to stay in the suit property allegedly on account of "good relations".

(c) The witness Ram Veer Singh (PW2) who is an attesting witness to the documents and who deposed in favour of the appellant/plaintiff was found to be a property broker by profession and in fact even the appellant/plaintiff in her cross-examination categorically admitted that she is into property dealing business with Ram Veer Singh (PW2) and who was her partner.

(d) The appellant/plaintiff claims that she paid Rs.40,000/- in cash for purchase of property but in her cross-examination on 5.11.2011 she said that no receipt of Rs.40,000/- was executed in her presence. In

fact, PW2 in his cross-examination also admitted that no payment was made under the documentation dated 15.2.2001 in his presence.

(e) Appellant/plaintiff in her cross-examination admitted that she did not sign the documents Ex.PW1/A to Ex.PW1/D before the Sub-Registrar and Sh. Ram Veer Singh (PW2) admitted in his cross-examination that he did not know the contents of Ex.PW1/A to Ex.PW1/D

5. The first appellate court in this regard to arrive at the above-stated conclusions has given the following reasoning:-

“(7) **Secondly**, in so far as the documents which form the basis of the suit i.e. agreement to sell dated 15.2.2001 which is **Ex.PW1/A**, receipt dated 15.02.2001 which is **Ex.PW1/B**, Will dated 15.02.2001 which is **Ex.PW1/C** and registered GPA dated 15.02.2001 which is **Ex.PW1/D** are concerned, admittedly the agreement to sell, receipt and Will are unregistered documents. In so far as the GPA **Ex.PW1/D** is concerned, the credibility of the said document is under a very serious cloud and its credibility and authenticity questionable. Though the plaintiff claims that the same is registered document but careful perusal of the said documents shows that there is overwriting on the same by putting a white fluid on the same and the name and address of the executant has been completely changed. There is an overwriting by putting white fluid in the name of Samay Singh and name of his father Sh. Karan Singh has been written thereafter. Further, in so far as the address is concerned, again there is an overwriting / over typing and after putting white fluid, the address of 317, Illana, Teh. Siana, Distt. Bulandsahar, U. P. (India), has been typed. Again on the General Power of Attorney which is **Ex.PW1/D** the stamp which the plaintiff claims is of Sub Registrar’s office is totally smudged and is not clear. It does not bear the number of register and name of Samay Singh has been mentioned after cutting the name which appears to be of some Mohd. ? (I may observe that the name is not legible). Also no witnesses from the office of Sub Registrar has been called to prove the authenticity and correctness of this document which on the face of the observations as made herein above, is liable to be rejected.

(8) **Thirdly** the fact that Ram Veer Singh (PW2) is the only attesting witness to the documents is another reason why grave suspicion has been raised, because Ram Veer Singh is himself a property dealer by profession and Om Bati in her cross examination has categorically admitted that she herself is into a property dealing business Ram Veer Singh being her partner thereof. The relevant portion of her cross examination is reproduced as under:

“..... It is also correct that Sh. Ram Veer used to come for the court works for the purpose of registration of properties alone. It is also

correct that whenever required, Sh. Ram Veer used to take signatures / thumb impression of mine at my home.....”

XXX

XXX

XXX

(10) **Fifthly**, though the plaintiff / respondent claims that she had paid a sum of Rs. 40,000/- in cash to the appellant as consideration amount for purpose of property, she has before the trial court failed to place on record any evidence to prove the source of the said money. While on the one hand she claims that the money was paid whereas on the other hand with the question about the execution of receipt Ex.PW1/C, she is claiming ignorance regarding the same in her cross examination dated 5.11.2011 i.e. “no receipt in respect of the payment of Rs. 40,000/- was executed in my presence on 15.2.2001”. Om Bati was also questioned with regard to the execution of the documents upon which she has placed her reliance i.e. Ex.PW1/A to Ex.PW1/D and she has clarified that she did not sign or put her thumb impression on any of these documents before the Sub Registrar and only signed on the sheet of the Advocate. Even PW2 Ram Veer Singh when questioned with regard to the contents of the same, conceded that he had no got any documents prepared and is also not aware of the contents of the said documents. In this regard the relevant portion of the cross examination of PW2 Ram Veer Singh dated 8.2.2011 is reproduced as under:

“..... I am graduate. It is correct that I do not know about the contents what is written in the documents on record Ex.PW1/A to Ex.PW1/D.”

(11) Further, when questioned on the aspect of payment, PW2 Ram Veer Singh also admitted that no payment was made in his presence and no earnest money was paid at the time of deal by the plaintiff to the defendant. Relevant portion of his deposition in this regard is reproduced as under:

“..... I do not know whether the payment was made on the day of registration of agreement to sale” (underlining added)

6. The first appellate court, under Section 96 CPC is entitled to re-appraise the entire findings of facts and conclusions arrived at by the trial court, and which the first appellate court has done in this case by giving convincing and valid reasoning. I completely agree with the reasons of the first appellate court because it does not stand to reason as to why a person after paying entire price for purchase of the property would allow complete strangers to stay in the property which is purchased and that too without any written document

allowing such persons as the defendants to continue to occupy the property. Also, I have specifically put a query to counsel for the appellant/plaintiff to show me as to how for five years from 2001 to 2006, the suit having been filed in November 2006, that the appellant/plaintiff in any manner acted as a owner of the property either by applying for mutation with the house tax authorities or seeking change of electric meter installed in the suit property in the name of the appellant/plaintiff or any other act before public authority to assert ownership of the suit property, and to this query counsel for the appellant admits that no evidence whatsoever has been led of assertion of appellant/plaintiff of title to the suit property pursuant to the documentation dated 15.2.2001 till the suit was filed in November, 2006.

7. The first appellate court, therefore, has in my opinion rightly held that the suit property was never sold to the appellant/plaintiff and in fact there was only a loan transaction between the parties.

8. In view of the above, no substantial question of law arises for this Regular Second Appeal to be entertained under Section 100 CPC.

9. The present second appeal is accordingly dismissed.

AUGUST 19, 2016

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VALMIKI J. MEHTA, J