

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

+ **RSA No. 242/2016**

% **14th September, 2016**

SH. DIWAN CHAND Appellant

Through: Mr. Anuj Kumar, Advocate

versus

SH. DAL CHAND (THROUGH LRS) Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This matter is taken up today as 13.9.2016 was declared a holiday on account of Id-ul-Zuha (Baqried) vide Notification No.2092/G-4/Genl./DHC dated 9.9.2016.

2. On 31.8.2016, the following Order was passed:-

“1. Although, this appeal should be dismissed in limine inasmuch as, there is a height of negligence of the appellant who has filed this second appeal, and who seeks to raise a substantial question of law under Section 100 CPC, without filing a single pleading or a single document or a single deposition which was led before the trial court, however, in the interest of justice and in spite of the fact that it costs the Registry of this Court around Rs.5000/- of public monies to list a case on each occasion, list on 13th September, 2016.

2. It is made clear that if the necessary pleadings, documents and evidence led in the courts below are not filed before the next date of hearing, it will be presumed that the same are deliberately not being filed and the appeal

then be disposed of on the basis of the existing record of this second appeal. It is also made clear that no adjournment shall be granted on the next date of hearing.”

3. The aforesaid order was passed in the facts of the present case where it was found concurrently by the courts below that the brother of the appellant/defendant had earlier filed a suit with respect to the same property bearing no.3788/17, Ragharpura, Karol Bagh, New Delhi-110005 and on the same issues, and which suit filed by the brother namely Sh. Gulab Singh has been dismissed. The issues in the said earlier suit filed by Sh. Gulab Singh as also in the present suit are same as to whether the suit property was HUF property or the self acquired property of the father Sh. Panna Lal and who had sold the suit property to the plaintiff, since deceased, and thereafter appearing through his legal heirs. Though this judgment in the suit filed by Sh. Gulab Singh is a part of the trial court record, the appellant/defendant has deliberately not filed the same in spite of opportunity being granted.

4. This aspect with respect to Sh. Gulab Singh’s suit being dismissed and further appeals being also dismissed is found in paragraphs 10 and 11 of the Judgment of the First Appellate Court dated 18.04.2016 and these paragraphs read as under:-

“10. In so far as the respondent is concerned, they have submitted that there is no illegality in the impugned judgment and decree of Ld. Trial Court and have pointed out that the suit filed by Sh. Gulab Singh the real brother of appellant challenging the sale deed of the property purchased by Dal Chand, had been dismissed on 3.8.2009 as the first appeal filed against the same as well as the

second appeal have also been dismissed and now the judgment as well the decree stands final. It is submitted that the respondent have been proved to be owner of the property by virtue of the sale deed Ex.PW1/C and this aspect cannot be re-opened before this court.

11. I have considered the rival contentions. I have also perused the Trial Court record and the evidence adduced by the parties and the documents upon which they have placed their reliance. At the very outset I may observe that in so far as the challenge to the sale deed dated 28.3.1990 is concerned, the court of competent jurisdiction in the case of “Gulab Singh Vs. Dal Chand” vide judgment dated 3.8.2009 which is Ex. PW 1/B has already given very categorical findings holding that the suit property is not a joint family property and or a HUF and being self-acquired property of Panna Lal, he has every right and authority to sell the same by registered sale deed. It was also held that the sale deed dated 28.3.1990 was a genuine sale deed duly registered and not a fabricated document and hence rightly held by the Ld. Trial Court that these issues cannot be permitted to be re-opened again in the present suit.”

5. So far as the aspect of whether the suit property was purchased by the plaintiff and whether there was HUF and the aspect of earlier suit of Sh. Gulab Singh being dismissed, these aspects have been rightly decided against the appellant/defendant by the first appellate court as per paragraphs 12 and 13 of its judgment and which paragraphs read as under:-

“12. Secondly, in so far as the aspect of the sale of property in favour of the plaintiff by Panna Lal vide registered sale deed Ex.PW1/C is concerned, the same has been duly proved. I may observe that the evidence on record exclusively establishes that the suit titled “Gulab Singh vs. Dal Chand” was dismissed on 03.08.2009. The first appeal was filed by the brother of the appellant no.2 and the same was dismissed vide RCA-22/09 dated 22.12.2012 and again the second appeal filed was also dismissed by the Hon’ble High Court of Delhi vide RSA No. 82/2013 on 28.01.2014. Admittedly, the appellant (defendant) was also a party in those appeals. Thereafter, no appeal was preferred and hence the above judgment as well as decree sheet dated 03.08.2009 has attained finality and PW-1/B which is the final order/judgment dated 03.08.2009 in the suit titled “Gulab Singh vs. Dal Chand and Ors.” shows that the appellant was the respondent No.4 therein and had been contesting the suit.

13. Thirdly, since the respondent (plaintiff) has been proved to be the owner of the suit property by virtue of Sale Deed Ex.Pw-1/C and hence the appellant becomes an unauthorized occupant in respect of the same. The appellant has

failed to bring on record any evidence to prove that the property in question was a HUF property or purchased from joint funds or that his father had no right, title or interest to execute the sale deed Ex. PW 1/C.” (underlining added)

The aforesaid paragraphs 12 and 13 of the judgment of the first appellate court along with the relevant discussion of the trial court show that the property purchased by the plaintiff was the self acquired property of the father Sh. Panna Lal and it was not an HUF property.

6. The trial court has dealt with these aspects in paragraphs 9 to 12 of its judgment and which paragraphs read as under:-

“9. I have heard the arguments and perused the judicial record. My issue-wise findings are as under:-

Issues no. 4, 5 & 6

4. Whether the suit property was purchased by Panna Lal, the father of the defendant out of joint fund of Hindu Undivided Family? OPD

5. Whether Panna Lal had no right, title or interest to execute any Sale Deed in respect of the suit property? OPD

6. Whether the Sale Deed dated 28.03.1990 was without any lawful consideration? OPD

10. All these three issues have already been decided vide judgment and decree dated 03.08.2009 passed in “Gulab Singh vs. Dal Chand & Ors.” wherein suit of the plaintiff Gulab Singh, i.e., brother of defendant in the present case was dismissed. The certified copy of the said judgment and decree has been exhibited as Ex. PW1/B. In that case, it was clearly held that the suit property was not a joint family property and was not a HUF property, therefore, being the self-acquired property of Sh. Panna Lal had every right, title or interest over the said property and was authorized to sell the said property by way of registered Sale Deed. It was also held in that case that said Sale Deed dated 28.03.1990 was a genuine Sale Deed duly registered and was not false and fabricated document. Thus, all three issues cannot be reaverred and reiterated in the present case as these have already been decided in favour of the plaintiff and against the defendant.

Issue no. 1

1. Whether the plaintiff has purchased the suit property from father of

the defendant? OPP

11. It has already been decided in judgment Ex. PW 1/B that the deceased father of defendant Sh. Panna Lal had executed a duly registered Sale Deed in favour of the plaintiff and that the said Sale Deed is a genuine document. By virtue of these facts it is clear that the plaintiff had purchased the suit property from father of the defendant. Therefore, this issue is decided in favour of the plaintiff and against the defendant.

Issue no. 2

2. Whether the defendant was licensee of his father in the suit property and now he is unauthorized occupant in respect of the suit property? OPP

12. It has already been decided that the suit property was self-acquired property of Sh. Panna Lal and that he had sold the same during his lifetime by virtue of duly registered Sale Deed dated 28.03.1990. Thus, it is clear from these contentions that the defendant is unauthorized occupant in respect to the suit property after purchase of the same by the plaintiff in the year 1990. Further, none of the contentions of the plaintiff have been denied by the defendant either by way of cross-examination of PW1 or by way of examination of any witness himself by the defendant. Thus, evidence of the plaintiff remains uncontroverted and as such, the plaintiff has established on record the onus of this issue as well as validity of Sale Deed Ex. PW1/C. Even the judgment Ex. PW1/B was challenged by the brother of defendant in 2nd Appeal before the Hon'ble Delhi High Court but the said appeal was also dismissed. The defendant has failed to establish that his father had purchased the property in question from joint funds of HUF or his father had no right, title or interest to execute the Sale Deed in respect of the suit property for lawful consideration. On the other hand, the plaintiff has proved that the defendant is occupying the suit property as an unauthorized occupant after execution of Sale Deed and thus, the defendant has no right to remain in possession without having any right, title or interest in the suit property. Hence, this issue is decided in favour of the plaintiff and against the defendant. The defendant is directed to handover the peaceful and vacant possession of portion in his occupation to the plaintiff with respect to the suit property."

(underlining added)

7. It is therefore clear that there was no HUF and the suit property was self acquired property of the father Sh. Panna Lal and which was purchased by the plaintiff by Sale Deed dated 28.3.1990 Ex.PW1/C.

8. In view of the above, no substantial question of law arises and the present suit was obviously only a continuance of the act of the harassment of the

plaintiff by the sons of Sh. Panna Lal, and, Sh. Panna Lal had rightly sold the property by a duly registered Sale Deed dated 28.3.1990 Ex.PW1/C as it was the self acquired property of Sh. Panna Lal.

9. No substantial question of law arises. Dismissed.

SEPTEMBER 14, 2016
Aj

VALMIKI J. MEHTA, J

