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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No. 400/2015

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22nd September, 2016

SHEELU RAM

..... Appellant

Through: Mr. R.K. Bali and Mr. G.S. Randhawa,
Advocates.

versus

SH. PRADEEP JOHN & ORS

..... Respondents

Through: None.

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 impugning the concurrent Judgments of the courts below; of the Trial Court dated 3.1.2012 and the First Appellate Court dated 8.9.2014; by which the suit filed by the appellant/plaintiff for injunction and possession was dismissed with respect to the suit property bearing flat no. 319. DDA Flats, Block-E, Type A, Pocket 3, Bindapur, Dwarka, New Delhi.

2. The case of the appellant/plaintiff as per the plaint was that the suit property was owned by respondent no.3/defendant no. 3/Sh. Pramod John. Respondent no.1/defendant no. 1/Sh. Pradeep John is the brother of respondent no.3/defendant no. 3/Sh. Pramod John. Respondent no. 2/defendant no. 2/Smt. Sonia is the wife of respondent no.1/ defendant no.1. Appellant/plaintiff claims to have purchased rights in the suit property from respondent no.3/defendant no.3 by means of transfer documents being Agreement to Sell, General Power of Attorney, Receipt, etc, dated 25.1.2006, Ex.PW1/2 to PW1/4. Original owner of the suit property was one Sh. M.P. Raheja and who has transferred rights in the suit property to the defendant no. 3 by virtue of the documents dated 24.1.2001. Plaintiff pleads that defendant no. 1 being the brother of defendant no. 3 and defendant no. 2 being the wife of defendant no. 1 were allowed by defendant no. 3 to reside in the property on gratuitous license basis. It is further pleaded that before the appellant/plaintiff purchased rights in the suit property he met defendant nos. 1 and 2 who said that they would vacate the suit property, however, since they failed to do so the subject suit came to be filed seeking relief of possession and injunction as regards the suit property.

3. Only respondent no.2/defendant no.2, wife of defendant no. 1 and the sister-in-law of defendant no. 3 contested the suit. Defendant no. 2 pleaded that the house was her matrimonial house and she was allowed to have this

matrimonial home in view of a family Settlement in the family dated 10.2.2005.

The suit was hence prayed to be dismissed.

4. After pleadings were complete, the trial court on 1.3.2008 framed the following issues:-

“(a) Whether the plaintiff is entitled for recovery of possession of the suit premises? OPP

(b) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

(c) Relief.”

5. For the purpose of disposal of this second appeal, the following substantial question of law is framed:-

“Whether the courts below have not committed a gross illegality and perversity in dismissing the suit in spite of the direct ratio of the judgment of the Supreme Court in the case of ***S.R. Batra and Another Vs. Taruna Batra (Smt.)***, (2007) 3 SCC 169 which holds that a house cannot be a matrimonial home unless the house is owned by the husband?”

6. The courts below have dismissed the suit by observing that the documents relied upon by the appellant/plaintiff do not confer any title in view of the judgment of the Supreme Court in the case of ***Suraj Lamp and Industries Private Limited. Vs. State of Haryana and Another***, (2009) 3 SCC 363. It is however noted that the contesting respondent no.2/defendant no. 2/Smt. Sonia did not claim ownership of the suit property and she only claimed it as a matrimonial home. In my opinion, once the suit property is not owned by the

husband of respondent no.2/defendant no. 2, and it was owned by her brother-in-law, who is the respondent no.3/defendant no. 3 in the suit, the suit home cannot be a matrimonial home in view of the judgment of the Supreme Court in the case of ***S.R. Batra (supra)***.

7. It is also noted that neither Sh. M.P. Raheja who transferred rights in the suit property to respondent no. 3/defendant no. 3 and nor respondent no.3/defendant no. 3 who transferred rights by means of documents Ex.PW1/2 to PW1/4 to appellant/plaintiff, do not claim any rights in opposition to the appellant/plaintiff. Also, it is seen that the general power of attorney as well as the agreement to sell in favour of appellant/plaintiff are duly registered documents and once those documents in favour of the appellant/plaintiff executed by respondent no.3/defendant no. 3 are registered documents, the ratio of the judgment of the Supreme Court in the case of ***Suraj Lamp and Industries Private Limited (supra)*** would not apply because the ratio of the judgment in ***Suraj Lamp and Industries Private Limited (supra)*** would have applied only if the agreement to sell was not registered and stamped, whereas the agreement to sell is duly registered and stamped. Also, the general power of attorney is also duly registered before the concerned Sub-Registrar and thus giving benefit to appellant/plaintiff under Section 202 of the Indian contract Act, 1872.

8. It may be noted that respondent no.2/defendant no.2/Smt. Sonia did rely upon a family Settlement dated 10.2.2005 to claim entitlement for her to reside in the suit property as a matrimonial home, however, no such document has been proved. Even if any such document would have been proved or the other evidence led, the same would not bind respondent no.3/defendant no. 3 and his successor-in-interest being the appellant/plaintiff because a right can be created in a property as a matrimonial home only if the property belongs to the husband in view of the ratio of the Supreme Court in the case of ***S.R. Batra (supra)*** and the suit property was never owned by respondent no.1/defendant no.1, the husband of respondent no.2/defendant no.2.

9. The documents dated 25.1.2006 being the Agreement To Sell and General Power of Attorney in favour of the appellant/plaintiff are registered and they give a cause of action to the appellant/plaintiff to sue for injunction and possession with respect to the suit property as the appellant/plaintiff, and in any case, the appellant/plaintiff has a better title than respondent no.2/defendant no.2 in the suit property and is thus entitled to the reliefs of possession etc as against the defendant no.2/respondent no.2.

10. In view of the above discussion, the substantial question of law is answered in favour of the appellant/plaintiff and against the respondents/defendants. The impugned judgments of the courts below are

therefore set aside and this second appeal allowed and the suit of the appellant/plaintiff will stand decreed by directing the respondents/defendants to hand over the possession of the suit property bearing flat no. 319. DDA Flats, Block-E, Type A, Pocket 3, Bindapur, Dwarka, New Delhi, as shown in the site plan Ex.PW1/1 to the appellant/plaintiff and a decree for possession is accordingly passed in favour of the appellant/plaintiff and against the defendants/respondents. Defendants/respondents are also restrained from in any manner creating third party rights or transferring possession of the aforesaid suit property in favour of anyone else than the appellant/plaintiff. Parties are left to bear their own costs.

SEPTEMBER 22, 2016

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VALMIKI J. MEHTA, J