

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

+ **RSA No. 94/2017**

% **18th April, 2017**

NATHO DEVI Appellant
Through: Mr. Arijeet Singh and
Mr. Bhupendra Kumar Bhardwaj, Advocates.

versus

TEK CHAND & ORS. Respondents

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) impugns the concurrent judgments of the courts below; of the first appellate court dated 20.10.2016 and the trial court dated 23.12.2015; by which the courts below have dismissed the suit filed by the appellant/plaintiff for possession, declaration and *mesne* profits with respect to the property bearing no. 1/2300-B, Mandoli Road, Shahdara, Delhi – 110032 having an area of 100 sq. yards (hereinafter referred to as the 'suit property')

2. Appellant is the wife of respondent no. 1/defendant no. 1/Tek Chand. Appellant had executed documents being the Agreement to Sell, receipt, General Power of Attorney, etc. dated 13.8.1999 with respect to the suit property in favour of the respondent no. 1/defendant no. 1 and which have been proved and exhibited before the trial court by the respondent no. 1/defendant no. 1 as Ex.PW1/D-2 to PW1/D-6. Out of the aforesaid documents the GPA Ex.PW1/D-2 and the Will Ex. PW1/D-6 are duly registered before the concerned Sub-Registrar. On the basis of these documents the courts below have held that the appellant/plaintiff had transferred rights in the suit property to the respondent no.1/defendant no. 1. The courts below have further held that the case of the appellant/plaintiff cannot be believed that the said documents Ex. PW1/D-2 to PW1/D-6 were got signed by the respondent no. 1/defendant no. 1/husband on the pretext of obtaining electricity connection. The courts also noted that in fact the appellant/plaintiff in the cross-examination gave a different explanation and evidence for execution of the documents with respect to these documents being executed for 'undisclosed work' and which was different than her pleadings for 'electricity connection'. The courts below have also held that the documents in question are supported by consideration as stated in the documents. It has also been held by the

courts below that the documents in question bear signatures of Sh. Rajesh Kumar/defendant no. 8, and who is the son of the appellant and to whom the appellant had sold 27 sq. yds. of the original property of 155 sq. yards. This son Sh. Rajesh Kumar/defendant no.8 was in fact a supporting defendant to the case of the appellant/plaintiff.

3. I do not find any illegality or perversity arising in the impugned judgments of the courts below dismissing the suit by upholding the transfer of title of the suit property admeasuring 100 sq. yards by the appellant/plaintiff to the respondent no. 1/defendant no. 1 in terms of the documents Ex.PW1/D-2 to PW1/D-6, and also giving the other aforesaid reasons, and therefore, no substantial question of law arises for this second appeal to be entertained under Section 100 CPC.

4. Learned counsel for the appellant argued that the documents in question Ex.PW1/D-2 to PW1/D-6 cannot be looked into in view of the judgment of the Supreme Court in the case of ***Suraj Lamp Industries Pvt. Ltd. Vs. State of Haryana 183 (2011) DLT 1 (SC)***, however, it is seen that the trial court has referred to this argument and judgment of the Supreme Court in the case of ***Suraj Lamp Industries Pvt. Ltd. (supra)*** and observed that the judgment of

Suraj Lamp Industries Pvt. Ltd. (supra) will not apply since documents in question executed by the appellant/plaintiff in favour of respondent no.1/defendant no. 1 are of the year 1999 i.e prior to the amendment of Section 53A of the Transfer of Property Act, 1882 by Act 48 of 2001 with effect from 24.9.2001. This aspect has been dealt in detail by this Court in the judgment in the case of ***Ramesh Chand vs. Suresh Chand and Anr. 188 (2012) DLT 538*** and wherein the relevant paras of the judgment of the Supreme Court in ***Suraj Lamp Industries Pvt. Ltd.'s case (supra)*** are referred to and which protect rights are created under Section 53A of the Transfer of Property Act and Section 202 of the Indian Contract Act, 1872. The relevant paragraph of the judgment of the trial court dealing with this issue is para 33, and the same reads as under:-

“33. So far as the contention that the document viz. GPA, Agreement and Receipt all dated 22.08.1980 did not give any title over the property to the plaintiff in terms of the judgment of Hon’ble Supreme Court of India in *Suraj Lamp Industries Pvt. Ltd. V. State of Haryana, 183 (2011) DLT 1 (SC)*, it has no force or merits as in fact the Hon’ble Apex Court in the said judgment did make it clear by holding that, “*We have merely drawn attention to and reiterated the well settled legal position that SA/GPA/Will transactions are not ‘transfers’ or ‘sales’ and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered deeds of conveyance to complete their title. The said SA/GPA/Will transactions may also be used to obtain specific performance or to defend possession u/s 53A of Transfer of Property Act*”. It was further held that, “*If they are entered before this day, they may be relied upon to apply for regularization of allotment/leases by development authorities. We make it clear that if the documents relating to SA/GPA/Will transaction has been accepted acted upon by DDA or other development authorities or by*

the municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.”

Reference herein can also be made to the judgment of Hon’ble High Court of Delhi in Ramesh Chand v. Suresh Chand, 188 (2012) DLT 538 wherein it was held that the power of attorney given for a consideration coupled with interest is irrevocable u/s 202 of the Contract Act, 1872 and subsists even after the death of the executants. It was further held that the purchaser may not be a classical owner as would be an owner under the registered sale deed but surely he would have better rights/entitlement of possession than the person who is in actual physical possession.

Thus, the plaintiff having a better right/entitlement of possession of the entire property bearing no. 1/2300-B, Mandoli Road, Shahdara, Delhi measuring 155 sq. yds by virtue of documents executed on 22.08.1982 is an admitted fact and stands proved on record.”

Accordingly, I reject the first argument urged on behalf of the appellant/plaintiff.

5. The second argument urged on behalf of the appellant/plaintiff was that the respondent no. 1/defendant no. 1 in an sworn affidavit executed prior to the filing of the present suit had admitted that the appellant/plaintiff is the owner of the suit property, however, it is seen that this document which is relied upon by the appellant/plaintiff is not a document which is proved before the trial court and the same is only a marked document. Hence, this argument of the appellant also cannot be considered for being accepted.

6. In view of the above, no substantial question of law arises and therefore this second appeal is dismissed, leaving the parties to bear their own costs.

APRIL 18, 2017/ AK.

VALMIKI J. MEHTA, J