

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

+ **RSA No. 112/2016**

% **24th April, 2017**

JOGINDER CHADDA Appellant

Through: Mr. Ashok K. Singh, Adv.

versus

RAKESH KUMAR Respondent

Through: Mr. P.K.Dixit, Adv.

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 plaintiff in the suit, against the concurrent judgments of the courts below; of the Trial Court dated 18.3.2014 and the First Appellate Court dated 28.11.2015; by which the suit for possession, injunction and declaration filed by the appellant/plaintiff was dismissed with respect to the suit property being Shop No. 1, Chadha Market, Village Mukundpur, New Delhi. The subject shop is said to be part of land of 2700 sq. yds forming part of Khasra No. 301/223, Village Mukundpur, Delhi. Appellant/plaintiff claimed that he purchased the 2700 sq. yds (actually it is 1600 sq. yds) of Khasra No. 301/223 from one Sh. Krishan Kumar by virtue of the

documents dated 4.9.1996 and which are the agreement to sell, general power of attorney, Will, receipt and affidavit. Appellant/plaintiff pleaded that suit shop/property was given by the appellant/plaintiff to one Sh. Ram Garhwala to look after the same but the said Sh. Ram Garhwala illegally handed over the shop to the respondent/defendant on the ground that respondent/defendant is a chowkidar and would look after the shop. When the appellant/plaintiff asked the respondent/defendant to vacate the suit premises the respondent/defendant did not do so and on 15.12.2004 the appellant/plaintiff was shocked to see that the respondent/defendant was constructing stairs from inside the shop and had broken the roof of the shop and intended to take possession of the roof over the shop. The said shop No.1 is an area of approximately 13 ½ ft. by 14 ft. The subject suit therefore came to be filed. Originally, the suit was filed only for declaration and injunction, but subsequently, the suit plaint was amended to seek possession and also damages.

2. Respondent/defendant claimed that he was the owner of the suit shop/property having purchased the same from Sh. Vinod Kumar and Sh. S.K. Sharma. Sh. Vinod Kumar and Sh. S.K. Sharma are stated to have purchased the suit shop/property from Sh. Jai Prakash. Sh. Jai Prakash had purchased the suit shop/property from

Sh. Braham Prakash in the year 1997. The suit shop as per the written statement was said not to be Shop No.1 but Shop No.2-A which fell in Khasra No. 307/202, 301/223, Chadha Market, Village Mukundpur, Delhi. The suit was therefore prayed to be dismissed as it was pleaded that respondent/defendant was the owner of the suit property and which fell in two Khasra nos. 307/202 and also 301/223.

3. After pleadings were completed the trial court on 20.3.2006 framed the following issues:-

- “(i) Whether the plaintiff is entitled for permanent injunction as claimed? OPP.
- (ii) Whether plaintiff is entitled for declaration as claimed? OPP
- (iii) Whether plaintiff is entitled for possession as claimed? OPP
- (iv) Whether plaintiff is entitled for damages as claimed? OPP
- (v) Whether plaintiff has no locus standi to file the present suit? OPD
- (vi) Whether there is no cause of action in favour of the plaintiff and against the defendant? OPD
- (vii) Relief.”

4. Trial court dismissed the suit by holding that the documents dated 4.3.1993 exhibited by the plaintiff as Ex.PW1/2 to Ex.PW1/5 in favor of Sh. Krishan Kumar are unregistered documents and so also unregistered are the documents dated 4.9.1996 Ex.PW1/6

to Ex.PW1/10 showing purchase by the appellant/plaintiff from Sh. Krishan Kumar. Trial court therefore held that by virtue of Section 17 of the Registration Act, 1908 such documents do not confer any title and hence appellant/plaintiff is not entitled to relief. Trial court also held that out of the documents filed and proved by the respondent/defendant being Ex.DW1/1 to Ex.DW1/16, being the entire chain of documents from earlier owners to the respondent/defendant, there is a registered GPA in each set and consequently, the documents of the respondent/defendant should be believed. Hence the suit of the appellant/plaintiff was dismissed.

5. The first appellate court by its impugned judgment dated 28.11.2015 has dismissed the first appeal by observing that appellant/plaintiff failed to prove that the suit shop fell in Khasra No. 301/223. The relevant observations of the first appellate court are contained in para 9 of the judgment and which reads as under:-

“9. The contention of the counsel for the appellant that Ld. Trial court has not appreciated the oral and documentary evidence which is devoid of force and liable to be rejected inasmuch as the appellant has failed to prove on record that the suit shop is falling within Khasra No. 301/223. The report of the Ld. Tehsildar that the said shop is falling in Khasra no.301/223 has not been proved by summoning the record on the basis of which this report was prepared. The case of the appellant is that the suit shop is falling within Khasra no. 301/223 as per the evidence on record. The said Khasra owned by the Central Government as owner in terms of khasra girdawari and as per his own admission, the plaintiff is only a Kastkar (cultivator) in the above said Khasra. The documents placed on record by the respondent is having a registered GPA in each set of sale documents. The appellant has also failed to establish that suit shop falls in Khasra No. 301/223 and not in Khasra no.

307/202 by leading any oral or documentary evidence except his solitary statement.”

6. For the purpose of disposal of this regular second appeal, the following substantial questions of law are framed:-

“(i) Whether the trial court has not committed a gross illegality and perversity in holding that the documents of title of the appellant/plaintiff dated 4.9.1996 being unregistered cannot give title inasmuch as these documents have been executed prior to 24.9.2001 when by Act 48 of 2001, Section 53A of the Transfer of Property Act, 1882 was amended, i.e only after 24.9.2001 an unregistered agreement cannot get the benefit of Section 53A of the Transfer of Property Act as held by the Supreme Court in the case *Suraj Lamp Industries Pvt. Ltd. Vs. State of Haryana 183 (2011) DLT 1 (SC)*, and so elaborated by this Court in the case of *Ramesh Chand vs. Suresh Chand and Anr. 188 (2012) DLT 538*

(ii) Whether the first appellate court has not committed a gross illegality and perversity in holding that the appellant/plaintiff failed to prove that the shop was not situated in Khasra No. 301/223 when as per the trial court record an order was passed by the trial court on 18.12.2007 directing the Tehsildar of the concerned area as a Local Commissioner to file the Status Report as regards the physical possession of the suit shop, and the Tehsildar vide his Status Report has reported that the suit shop fell in Khasra No. 301/223 the land purchased by the appellant/plaintiff i.e not in Khasra No. 307/202?

(iii) Whether the courts below have committed a gross illegality and perversity in failing to nullify the documents of the respondent/defendant dated 17.10.2002 inasmuch as it is only for the first time in these documents executed by Sh. S.K. Sharma and Sh. Vinod Kumar in favour of the respondent/defendant that not only Khasra No. 307/202 was mentioned but Khasra No. 301/223 was mentioned whereas in all earlier chain of title documents it is only Khasra No. 307/202 which has been mentioned?”

7. All the aforesaid questions of law have to be answered in favour of the appellant/plaintiff and against the respondent/defendant. The reasons are contained hereinafter.

8. On the aspect as to the existence of the property falling whether in Khasra No. 301/223 or in Khasra No. 307/202 the order of the trial court dated 18.12.2007 and the Status Report filed by the Tehsildar would have to be referred to and this Order and the report of the Tehsildar read as under:-

“Order dated 18.12.2007

Present: Sh. Pradeep Kumar Adv. counsel for Plaintiff with Plaintiff in person.

Sh. P.K. Dixit Adv. counsel for Defendant with defendant in person.

Plaintiff claims to be the owner of the suit shop which as per the Plaintiff falls in Khasra No.301/223 in village Mukandpur, Delhi.

On the other hand, Defendant claims ownership in the suit shop by way of registered GPA dated 17/10/02 and as per the defendant the suit shop falls in Khasra No.307/202 in village Mukandpur, Delhi.

In the present circumstances, it appears that for the same suit property, both the parties are claiming that the same falls in different Khasra No., which cannot be the case. Therefore, in order to ascertain the true picture, it is important that Local Commissioner be appointed, therefore, Tehsildar, Civil Lines, Delhi is appointed as Local Commissioner in the present case. He is

directed to visit the suit shop and submit report with the following terms of reference. "What is khasra no. of suit shop? And what does the Revenue record reflects?"

The actual shop shall be pointed out by both the parties. Both the parties are directed to appear before Tehsildar on 04/-1/08 at 11.00 A.M., and thereafter the Tehsildar shall fix a time and visit the suit shop.

To come up for F.P., on 02/04/08.

Tehsildar to submit his report within three weeks.

Sd/-

(Munish Markan)

C.J./Delhi/18/12/07"

Status Report

As per orders of the Hon'ble Court vide which I had been appointed as Local Commissioner visited the property No. Shop No.1 Chadha Market, Village Mukund Pur on 07/04/08 at 2.00 P.M alongwith Field Kanoongo and Halka Patwari. Both the parties i.e Sh Joginder Chadha and Sh. Rakesh Kumar alongwith Sh. Suresh Kumar S/o Sh. Hari Ram, Jagdev Singh etc. were present on the site. As per our revenue record and the report of revenue officials that the land in question i.e shop No.1 Chadha Market is falls in Kh. No.301/223 min of the Revenue estate of village Mukundpur. The copy of Khasra Girdawari is attached herewith for ready reference.

Sd/-

(KULDIP KISHORE)

Tehsildar/Local Commissioner

Civil Lines

1, Kripa Narain marg, Delhi-54"

9. The report of the Tehsildar, filed pursuant to the order of the trial court dated 18.12.2007 therefore makes it clear that the suit shop/property is situated in Khasra No. 301/223 i.e not in Khasra No. 307/202, and therefore, the appellant/plaintiff has to be held to be the owner of the suit shop/property which falls in Khasra No. 301/223. The stand/case of the respondent/defendant that the property is in two Khasra numbers is absurd and unacceptable on the face of it as a property can fall only in one Khasra number and not in more than one Khasra numbers. Admittedly, no objections were filed by the

respondent/defendant to the report of the Tehsildar/Local Commissioner and the courts below have committed a gross illegality and perversity in not arriving at a finding that the suit shop fell in Khasra No. 301/223 and which khasra number was never purchased by the respondent/defendant although for the first time in the documents of the respondent/defendant dated 17.10.2002 this khasra number is mentioned in addition to Khasra No. 307/202, but mentioning of Khasra No. 301/223 in the documents dated 17.10.2002 is of no avail because khasra number of purchase of land of a khasra by the respondent/defendant can only be the khasra of his predecessors-in-interest, and such entire chain of documents from Sh. Braham Prakash to Sh. Jai Prakash and from Sh. Jai Prakash to Sh. S.K. Sharma and Sh. Vinod Kumar only show the documents with respect to title of property situated in Khasra No. 307/202 and there is no mention even remotely of the Khasra No. 301/223 in the chain of title documents prior to the title documents executed by Sh. S.K. Sharma and Sh. Vinod Kumar in favour of the respondent/defendant. To complete the narration I would also like to state that the documents being the agreement to sell of the respondent/defendant being of the year 2002 and being unregistered, the same will clearly fall foul of the amended Section 53A of the Transfer of Property Act, which became applicable w.e.f. 24.9.2001.

Therefore, it is held that the suit shop/property was infact situated in Khasra No. 301/223, and respondent/defendant never was the owner of any property situated in Khasra No. 301/223, but was only the owner of the property in Khasra No. 307/202, therefore, the suit had to be decreed with respect to the suit property in Khasra No. 301/223 in favour of the appellant/plaintiff and against the respondent/defendant.

10. The first appellate court has committed a gross illegality and perversity in holding that appellant/plaintiff led no evidence to show that the suit property is situated in Khasra No. 301/223, inasmuch as, the trial court had appointed the Tehsildar as a Local Commissioner, and who had filed his Status Report that the suit property falls in Khasra No. 301/223 i.e not in Khasra No. 307/202. This Court feels that the first appellate court has absolutely no basis to arrive at its conclusion in para 9 of the impugned judgment that the Status Report of the Tehsildar could not be looked into unless the revenue record was summoned, inasmuch as, once a report of the Local Commissioner is prepared in the presence of the parties and after notice to both the parties, the report can be read as an evidence in itself in view of Order XXVI Rule 10 CPC. It is only when a report of the Local Commissioner is prepared behind the back of a person i.e without notice to a person that the Local Commissioner's report cannot

be looked into unless the Local Commissioner is called in evidence and his report is substantiated by reference to revenue documents.

11. In view of the above discussion, the substantial questions of law are answered in favour of the appellant/plaintiff and against the respondent/defendant and consequently the suit for possession of the appellant/plaintiff would stand decreed with respect to the Shop No.1, Khasra No. 301/223, Chaddha Market, Village Mukundpur, Delhi and duly shown red in the site plan Ex.PW1/1. Since no evidence has been led with respect to the damages/*mesne* profits by the appellant/plaintiff and as conceded by the counsel for the appellant/plaintiff, hence no money decree can be passed for damages/*mesne* profits.

12. This regular second appeal is accordingly allowed to the extent as stated above decreeing the suit for possession of the appellant/plaintiff against the respondent/defendant with respect to the suit shop/property, leaving parties to bear their own costs.

APRIL 24, 2017/ib

VALMIKI J. MEHTA, J