

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

+ **RSA No.220/2014 and C.M. No.13877/2014 (stay)**

% **Reserved on: 21st August, 2017**
Pronounced on: 24th August, 2017

LAL PRATAP SINGH Appellant
Through: Mr. Sree Narain Jha, Advocate.
versus

SMT. DEVI & ORS. Respondents
Through: Mr. R.N. Dubey, Advocate for
respondent No.1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant no.2 in the suit challenging the judgment of the First Appellate Court dated 5.4.2014. Trial Court vide its judgment dated 11.2.2011 had dismissed the suit filed by the respondent no.1/plaintiff. Respondent no.1/plaintiff had filed the suit for declaration and permanent injunction claiming rights in the suit property bearing no.B-4/55, Nand Nagri, Delhi. The first appellate court vide its impugned judgment

dated 5.4.2014 has allowed the appeal filed by the respondent no.1/plaintiff and decreed the suit for one prayer of injunction restraining the defendants in the suit from raising any objection against the respondent no.1/plaintiff from carrying on construction in the suit property and interfering in the use and occupation of the suit property of the respondent no.1/plaintiff.

2. The facts of the case are that the respondent no.1/plaintiff filed the subject suit claiming rights in the suit property. Respondent no.1/plaintiff pleaded that she purchased rights in the suit property from respondent no.2/defendant no.1/Sh. Kanwar Lal in terms of the documentation being the agreement to sell, power of attorney, Will, receipt, affidavit etc dated 24.2.2009 after paying sale consideration of Rs.4.50 lacs. Respondent no.1/plaintiff pleaded that she has received vacant possession of the suit property and the respondent no.2/defendant no.1 had executed a possession letter in favour of the respondent no.1/plaintiff. The documentation dated 24.2.2009 in favour of the respondent no.1/plaintiff was preceded by an earlier agreement to sell dated 19.12.2008 and wherein the respondent no.2/defendant no.1 had received a sum of Rs.2 lacs from the

respondent no.1/plaintiff. It was further pleaded in the plaint by the respondent no.1/plaintiff that before the documentation dated 24.2.2009 was executed in her favour by the respondent no.2/defendant no.1, it was informed to her by the respondent no.2/defendant no.1 that he had cancelled the earlier documentation dated 26.3.2001 executed by him in favour of the appellant/defendant no.2. The documents dated 26.3.2001 executed by the respondent no.2/defendant no.1 in favour of the appellant/defendant no.2 were got cancelled inasmuch as the respondent no.2/defendant no.1 pleaded that the documentation was fraudulently got obtained from him by the appellant/defendant no.2. As per the plaint, respondent no.1/plaintiff further pleaded that she started raising construction on the suit property and the appellant/defendant no.2 illegally interfered with the same with the assistance of the local SHO who was sued as defendant no.3 in the suit. Hence the subject suit for declaration and injunction was filed.

3. The appellant/defendant no.2 contested the suit. He filed his written statement placing reliance upon the documents dated 26.3.2001 executed by the respondent no.2/defendant no.1 in his

favour and that the said documents were pleaded to be valid documents. Suit was hence prayed to be dismissed.

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

- “1. Whether the suit has been properly valued for the purpose of court fees and jurisdiction? OPP
2. Whether the suit is without cause of action? OPD
3. Whether the plaintiff is entitled for the relief of declaration as prayed for? OPP
4. Whether the plaintiff is entitled for the relief of permanent injunction? OPP
5. Relief.”

5.(i) The respondent no.1/plaintiff led evidence by filing her affidavit by way of evidence. She proved her case as also various documents including the documentation executed in her favour by the respondent no.2/defendant no.1 on 24.2.2009. Respondent no.1/plaintiff also deposed that the documentation dated 26.3.2001 was fraudulently obtained by the appellant/defendant no.2 from the respondent no.2/defendant no.1. Respondent no.1/plaintiff also led evidence in the form of documents to show that even after 2001, it was the respondent no.2/defendant no.1 who along with his family resided

in the suit property and thus showing that the documentation of the year 2001 in favour of the appellant/defendant no.2 were not valid documents.

(ii) The appellant/defendant no.2 did not lead evidence in spite of repeated opportunities and ultimately the right of the appellant/defendant no.2 to lead evidence was closed by the order of the trial court dated 30.11.2009. Thereafter an application was moved by the appellant/defendant no.2 for permission to lead evidence but the same was also dismissed by the trial court vide its order dated 21.1.2010. The order dated 21.1.2010 was challenged before the High Court but the said petition being C.M.(M) No.1010/2010 was dismissed by a learned Single Judge of this Court vide order dated 9.8.2010 with costs of Rs.10,000/-.

6. It is therefore seen that whereas respondent no.1/plaintiff proved her case, the appellant/defendant no.2 led no evidence. In such circumstances, the first appellate court was hence justified in granting the relief of injunction to the respondent no.1/plaintiff. I may note that the respondent no.1/plaintiff by her affidavit by way of evidence besides proving the documentation dated 24.2.2009 executed in her

favour by the respondent no.2/defendant no.1 as Ex.PW1/1 to Ex.PW1/8, respondent no.1/plaintiff also proved the ration card Ex.PW1/9 of the respondent no.2/defendant no.1 showing his address of the suit property as of 31.7.2005 and thus negating the stand of the appellant/defendant no.2 that he had ownership rights in the suit property in terms of 2001 documents and that he had received possession of the suit property in 2001. The respondent no.1/plaintiff further proved the water bill Ex.PW1/11 in the name of the respondent no.2/defendant no.1 dated 18.5.2006 and which water bill again being in the name of the respondent no.2/defendant no.1 showed that the appellant/defendant no.2 never got possession in terms of the documents of the year 2001 relied upon by him. Respondent no.1/plaintiff also proved the house tax receipt as Ex.PW1/12 issued in favour of Sh. Ram Kumar, the brother of the respondent no.2/defendant no.1 with respect to the suit property showing payment of property tax as on 22.12.2008 and therefore once again showing the appellant/defendant no.2 not only was not in possession of the suit property but he took no steps in furtherance of his claim of ownership of the suit property in terms of the documentation of the year 2001.

On record was also proved the document Ex.PW1/D1 and which was an election commission identity card of the year 2002 in favour of the respondent no.2/defendant no.1 showing the address of the respondent no.2/defendant no.1 as of the suit property in the year 2002 and once again therefore in terms of the aforesaid reasoning the documentation relied upon by the appellant/defendant no.2 of the year 2001 was shown not to have been acted upon.

7. In my opinion therefore the first appellate court has committed no error in decreeing the suit to the limited extent of the grant to the respondent no.1/plaintiff of the relief of injunction while denying the relief of declaration of the cancellation of the documents dated 26.3.2001. In my opinion, in fact the first appellate court could have even granted the relief of declaration because the respondent no.1/plaintiff led evidence and deposed as to 2001 documents being obtained fraudulently by the appellant/defendant no.2, and she stood the test of cross-examination, and there was no evidence which was led on behalf of the appellant/defendant no.2. In any case, I do not have to go to this aspect further as the respondent no.1/plaintiff is satisfied with the judgment of the first appellate court which granted

her one relief of injunction and against the defendants, including the appellant/defendant no.2, protecting her use and occupation of the suit property and also permitting her to raise construction on the same.

8. No substantial question of law arises. Dismissed.

AUGUST 24, 2017

VALMIKI J. MEHTA, J

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