

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

+ **RSA No. 165/2017**

% **3rd July, 2017**

TRILOK NATH Appellant
Through: Mr. F.K. Jha and
Mr. Vivekanand Jha, Advocates.

versus

KHEM CHAND & ORS. Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 22815/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M. Appl. No.22817/2017 (under Order XXXIII read with Section 151 CPC)

Counsel for the appellant says that appellant/plaintiff was allowed to sue as a pauper in the courts below.

This application is therefore allowed.

C.M. stands disposed of.

C.M. Appl. Nos. 22818/2017 (for condonation of delay of 13 days in filing the appeal), 22819/2017 (for condonation of delay of 16 days in re-filing the suit)

For the reasons stated in the applications the delay in filing and re-filing the appeal stands condoned.

C.Ms. stand disposed of.

RSA No. 165/2017 and C.M. Appl. No. 22816/2017 (for stay)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit. Appellant/plaintiff impugns the concurrent judgments of the courts below; of the trial court dated 26.7.2014 and the first appellate court dated 1.12.2016; by which the suit filed by the plaintiff for possession, declaration and permanent injunction was dismissed. The suit property is property bearing No. F-59A, Sudarshan Park, Delhi. Appellant/plaintiff sought the relief of declaration of his ownership of the suit property and for a decree of declaration of cancellation of the documents including the registered General Power of Attorney dated 25.9.2006 executed by him in favour of the respondent no. 1/defendant no. 1/Khem Chand with respect to the transfer of the suit property. The appellant/plaintiff besides executing a registered General Power of Attorney had also executed sale documents of the same date viz.

25.9.2006 and in favour of the respondent no. 1/defendant no. 1 and which were notarized. Respondent no. 1/defendant no. 1 had further transferred the suit property to one Smt. Kamla Devi by a registered sale deed dated 8.11.2007. Smt. Kamla Devi thereafter sold the suit property to the respondent no.3/Sh. Devender Chabra/defendant no.3 vide a registered sale deed dated 28.3.2011, and who though originally was not impleaded as a defendant in the suit and was subsequently impleaded as defendant no. 3. The case of the appellant/plaintiff was that he had not sold the suit property to the respondent no. 1/defendant no. 1 but had only taken a loan of Rs.1,00,000/- and since after paying the loan the respondent no.1/defendant no. 1 had refused to cancel the documents including the registered General Power of Attorney, hence the subject suit was filed.

2. The suit was contested by the respondents/defendants. The case of the respondents/defendants was that the appellant/plaintiff had transferred the suit property by means of sale documents dated 25.9.2006 to the respondent no. 1/defendant no. 1 and had also executed a registered General Power of Attorney of the same date. This General Power of Attorney was registered at serial no. 22396 in Book no. IV, volume 11554 on pages 133 to 136 at the office of the

Sub-Registrar-II, Janakpuri, New Delhi. The suit property thereafter was transferred by means of registered sale deed firstly to Smt. Kamla Devi on 8.11.2007 and thereafter to the present owner being respondent no. 3/Sh. Devender Chabra vide the sale deed dated 28.3.2011. It was denied that the appellant/plaintiff had even taken a loan from the respondent no. 1/defendant no. 1 or that the appellant/plaintiff had returned the loan to the respondent no. 1/defendant no.1. Suit was hence prayed to be dismissed.

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

- “(I) Whether the plaintiff is entitled to relief of possession as prayed for in prayer clause (a) of the plaint? OPP
- (II) Whether the plaintiff is entitled to the relief of declaration as prayed for in prayer clause (b) of the plaint? OPP
- (III) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for in prayer clause (c) of the plaint? OPP”

4. The evidence recorded of the parties has been referred to in paras 9 to 11 of the judgment of the trial court, and which paras read as under:-

“9. **Plaintiff's Evidence:-**

To prove her case, plaintiff has examined himself as PW-1 and he has relied upon the following documents:-

- (i) Copy of Ration Card is Ex.PW1/1(OSR).
- (ii) Copy of handicapped certificate is mark X.
- (iii) Copy of sale deed is Ex.PW1/3 (OSR).
- (iv) Copy of khasra girdawari is mark Y.

- (v) Site plan of the suit property is ex.PW1/5.
- (vi) Copy of complaints are mark Z and M.
- (vii) Copy of house tax deposit receipt is mark X-1.
- (viii) Copy of electricity bill is mark X-2.

10. **Defendant No.1's Evidence:-**

In his defence, defendant No. 1 has examined himself as DW-1 and he has relied upon the documents already exhibited as PW1/D1 (colly) and Ex. PW1/X1 (OSR).

11. **Defendant No. 2 and 3's Evidence**

Defendant No. 2 and 3 have examined Sh. Devender Chhabra as D3W-1, Smt. Kamla Devi as D3W-2, Sh. Om Prakash as D3W-3, Sh. Deshbandhu Gosain as D3W-4. Defendant no. 2 and 3 have relied upon the following documents:-

- (i) Copy of sale deed dated 08.11.2007 is Ex.D3W1/1.
- (ii) Copy of sale deed dated 28.03.2011 is Ex.D3W1/2.
- (iii) Electricity bill dated 03.06.2010 is Ex.D3W1/3.
- (iv) Five electricity bills are Ex.D3W2/1 (colly)."

5. Both the courts below have arrived at the following findings and conclusions, and with which I completely agree, and therefore there does not arise any question of law much less a substantial question of law:-

(i) Appellant/plaintiff has failed to prove that he ever returned any alleged loan amount of Rs.1 lakh with interest to the respondent no. 1/defendant no.1.

(ii) When the General Power of Attorney dated 25.9.2006 Ex.PW1/X1 was registered before the Sub-Registrar even the wife of the appellant/plaintiff was present.

(iii) In view of the fact that the appellant/plaintiff failed to prove that there was only a loan transaction and sale documents including a registered General Power of Attorney were executed in favour of the respondent no. 1/defendant no.1, hence, it was the respondent no.1/defendant no.1 and thereafter the subsequent purchasers; with the present purchaser being the respondent no.3/defendant no.3; who were the owners of the suit property.

6. To the above conclusions of the courts below I would like to add the fact that as regards the suit property third party rights have come into existence on the basis of the registered General Power of Attorney dated 25.9.2006 executed by the appellant/plaintiff in favour of the respondent no.1/defendant no.1 and once third party rights come into existence, and that too by virtue of the registered sale deeds, such third party rights have to be protected in view of Section 41 of the Transfer of Property Act, 1882, and which provision reads as under:-

“41. Transfer by ostensible owner.— Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.”

7. Learned counsel for the appellant/plaintiff has sought to argue that since in the written statement of the respondent no.3/defendant no.3 it was written that the suit property was transferred to Smt. Kamla Devi for Rs.3,25,000/- and now the circle rates at the time of filing of the written statement was Rs.5 lacs as stated in para 3 of the preliminary objections of the written statement of the respondent no. 3/defendant no.3, therefore, the transaction since was only for a sum of Rs.1 lakh which was paid to the appellant/plaintiff by the respondent no.1/defendant no.1 hence it should be held that the documents dated 25.9.2006 are illegal. Unfortunately undervaluing of immovable properties so as to either pay less stamp duty or for other reasons of concealment of income etc, is ripe in this country, however, the appellant/plaintiff cannot take any benefit of the same in view of the provision of Section 25 of the Indian Contract Act, 1872 and which specifies that inadequacy of consideration is not a ground for cancelling of a contract. In any case, it is very much possible that the declared consideration need not have been the actual consideration, and which of course this Court does not deal with or is not concerned with in view of the categorical provision of Explanation II to Section 25 of the Indian Contract Act.

8. No substantial question of law arises. Dismissed.

JULY 3, 2017

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VALMIKI J. MEHTA, J

