

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : October 27th, 2017

+ RFA 13/2014

CHANDERBHAN MALIK Appellant
Through: Mr.Saurabh Kansal, Advocate with
appellant in person.

versus

CHANDER PRAKASH SABHARWAL Respondent
Through: Mr.Naresh Gupta, Mr.Gaurav Gupta,
Advocates.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The appellant has filed the present appeal being aggrieved by the judgment and decree dated 18.12.2013 passed by the learned Additional District Judge, Delhi whereby the suit filed by the appellant/plaintiff stood dismissed.

2. The facts enumerating from the plaint filed before the Court below are that the appellant/plaintiff had purchased a property no.1770, Gali No.7 & 8, Govindpuri Extension, Kalkaji, New Delhi-110019 measuring 200 sq. yards from Shiv Dayal on 16.06.1966 for a sum of Rs.99/-. It was an agricultural land comprising khasra no.93. The said plot was mutated by the plaintiff/appellant with MCD on a sale value of Rs.900/- by paying the transfer duty on 10.08.1979

which was intimated vide letter dated 20.08.1979. The plaintiff/appellant had been depositing the house tax since 1979. The suit property was given to the respondent on rental basis. On 30.11.1990, a notice was issued by the plaintiff/appellant to the respondent demanding rent and thereafter eviction petition under Section 14(A) of the Delhi Rent Control Act, 1958 which was later on converted into a petition under Section 14(C) of the DRC Act. The said petition was allowed and the matter reached Hon'ble Apex Court wherein the matter was remanded back. The matter was decided in favour of the respondent/defendant holding that there was no relationship of landlord and tenant between the parties. Vide order dated 09.02.2004, the Hon'ble Apex Court gave liberty to the appellant/plaintiff to approach the Civil Court to establish his right, title and interest over the suit property. On 29.04.2004, the plaintiff/appellant sent a notice to the defendant/ respondent to vacate the premises but the same was refused. Thereafter the suit for declaration, possession and recovery of damages and mesne profits was filed before the Court below.

3. In the written statement filed on behalf of the defendant/respondent, different objections have been taken by the respondent/defendant, like the suit was barred by res-judicata in view of judgment dated 19.08.1998; suit was barred by time; suit was not properly valued for the purpose of court fee and jurisdiction. On merits, it was submitted that the plaintiff/appellant was not the owner of the suit premises. The measurement of the premises is 235 sq. yards and not 200 sq. yards as alleged. The allegations with regard to

mutation of the premises with MCD and payment of transfer duty were false. In the earlier eviction petition, case of the plaintiff/appellant was that he was the owner of the suit premises but he failed to prove his ownership. The respondent/defendant was in possession of the suit premises and his possession was lawful. Rest of the case of the plaintiff/appellant was denied by the defendant/respondent.

4. On the basis of pleadings of the parties, following issues were framed by the Court below :

(1)Whether the suit has been filed within the period of limitation? OPP

(2)Whether the suit is barred by the principle of res judicata as alleged by the defendant? OPD

(3)Whether the plaintiff is the owner of the suit premises as alleged by him? OPP

(4)Whether the plaintiff is entitled to relief of declaration in respect of suit property or possession of the suit property from the defendant? OPP

(5)Whether the plaintiff is entitled to recover any amount on account of damages/mesne profits? If so at what rate, to what amount and for what period?

(6)Whether the suit has been properly valued for the purpose of court fee and jurisdiction, if so its effect? OPP

(7)Relief

5. Vide impugned judgment, the issue nos.2 and 6 were decided against the defendant and in favour of the plaintiff. Issue nos.1 and 3 to 5 were decided against the plaintiff and in favour of the defendant.

Feeling aggrieved by the decision on issue nos.1 and 3 to 5, the present appeal has been preferred by the plaintiff/appellant.

6. Arguments advanced by the counsel for the parties were heard and I have gone through the evidence available on record.

7. Argument advanced by the counsel for the appellant is that the appellant purchased the suit property on 16.06.1966 for a sum of Rs.99/- and the plot was initially an agricultural land. After purchasing the suit property, the appellant got it mutated with MCD on sale value of Rs.900/- by paying the transfer duty on 10.08.1979. Thereafter, the appellant had paid the house tax. It was submitted that the sale deed, mutation papers and house tax receipts in favour of the appellant prove his ownership on the suit property. It was submitted that since the suit property was purchased for a value of less than Rs.100/-, there was no legal impediment to get the documents registered. It was further argued that on 30.11.1990, the appellant issued a notice to the respondent to pay rent but since the respondent had not paid the rent, the appellant had filed an eviction petition against him which was ultimately dismissed by the Court below. It was further argued that during proceedings before the Hon'ble Supreme Court, the appellant was given liberty to approach the civil court to establish his right, title and interest over the suit property. Thereafter, the suit in question was filed by the appellant. It is further argued that a notice dated 29.04.2004 was issued to the respondent to vacate the premises, but the same was of no avail. It was further submitted that the suit property is still in the name of the appellant and

the respondent had malafidely got the property mutated in his name. It was further argued that the principle of res judicata does not apply in the present case for the reasons that in the earlier instituted eviction petition, the question involved was with regard to relationship of landlord and tenant between the parties and not with regard to ownership. It was further argued that the suit was well within limitation as the period spent in earlier litigation is to be excluded.

8. In support of the above contentions, counsel for the appellant has relied upon a judgment in case of **S. Kaladevi v. V.R. Somasundaram and others (2010) 5 SCC 401** in which it was observed that Section 49 of the Registration Act, 1908 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. It was further observed that when an unregistered sale deed is tendered in evidence as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the Registration Act, 1908. Next judgment relied upon is the case of **Padma Vithoba Chakkayya v. Mohd. Multani and another AIR 1963 SC 70** in which it was observed that the endorsement of cancellation on the back of the sale deed by the second defendant in favour of the first defendant is admissible in evidence to show the character of possession of the latter. On similar point, judgment in the case of **SMS Tea Estates Private Limited v.**

Chandmari Tea Company Private Limited (2011) 14 SCC 66 has been relied upon. Next judgment relied upon is the case of ***M.P. Steel Corporation v. Commissioner of Central Excise (2015) 7 SCC 58*** in which it was observed that in an application for condonation of delay the appellant pointed out that they were pursuing a remedy before another appellate forum which ought to be excluded. The Hon'ble Apex Court found the reasoning given by the appellant sufficient to contend that Section 14 of the Limitation Act or principles laid down under it would be attracted to the facts of the case. Next judgment relied upon is the case of ***Tribhuvanshankar v. Amrutlal (2014) 2 SCC 788*** in which it was observed that the relief sought in the plaint was for delivery of possession. It was not a forum that lacked inherent jurisdiction to pass a decree for delivery of possession. It showed the intention of the plaintiff to act and to take back the possession. It was further observed that after the institution of the suit, the time for acquiring title by adverse possession had been arrested or remained in a state of suspension till the entire proceedings arising out of suit were terminated. Be it ingeminated that if by the date of the suit the defendant had already perfected title by adverse possession that would stand on a different footing.

9. Per contra, arguments advanced by the counsel for the respondent are that the suit filed by the appellant/plaintiff was barred by limitation. It was further argued that the appellant is not the owner of the suit property. It was submitted that earlier an eviction petition was filed by the appellant against the respondent specifically claiming

therein that the appellant was the owner of the suit premises and there existed a relationship of landlord and tenant between the parties. The said petition had been dismissed by the Hon'ble Apex Court thus denying the case of the appellant/plaintiff that he was the owner of the suit premises. It was further submitted that the appellant had contended that he had filed the eviction petition assuming the respondent as tenant and then the suit in question was filed claiming the respondent as an unauthorized possessor of the suit premises. The issue with regard to ownership of the appellant over the suit property has already been decided and thus the suit was barred by the principle of res judicata too. It was further argued that there is no document on record to establish the ownership of the appellant over the suit property. The appellant has claimed the ownership on the basis of sale deed dated 16.06.1966 showing that it was purchased for a sum of Rs.99/-, but the said document does not confer any right to the appellant over the suit property for the reasons that as per Section 54 of the Transfer of Property Act, 1882 if the value is less than Rs.99/- with regard to immovable property, then the person could acquire title only by way of execution of registered sale deed or by delivery of its possession. It is further argued that the appellant has never pleaded that he was handed over possession of the suit property and the right of the respondent over the suit property is on the basis of adverse possession.

10. The main issue to be decided in the present case is whether the appellant/plaintiff is the owner of the suit property or not. To prove

his ownership over the suit property, the appellant/plaintiff relied upon documents Ex.PW1/2 and Ex.PW1/3. Ex.PW1/2 is the sale deed dated 16.06.1966 claiming to be executed by Sh.Shiv Dayal in favour of the appellant/plaintiff for a sum of Rs.99/-. Ex.PW1/3 is the receipt of the transaction. It is apparent from the sale deed Ex.PW1/2 that it is not a registered document. It is also apparent from the record that the appellant/plaintiff had not pleaded in his entire pleadings that he was ever handed the possession of the suit property. The appellant/plaintiff has claimed the ownership on the basis of sale deed Ex.PW1/2, but admittedly it is not a registered document. It would be relevant to quote Section 54 of the Transfer of Property Act, 1882. It reads :

“54. ‘Sale’ is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made. Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.”

11. Section 54 of the Transfer of Property Act, 1882 provides that in the case of tangible immovable property of a value less than Rs.100/-, transfer of such a property can be made only by way of registered document or by delivery of property. In the case at hand, it is the case of the appellant/plaintiff that he had purchased the suit property for a sum of Rs.99/- vide sale deed Ex.PW1/2. It is an admitted fact that the said sale deed is not a registered document. The appellant/plaintiff is claiming his ownership over the suit property on the pretext that since the value involved was Rs.99/-, the sale deed was not required to be registered. There is no basis in this contention of the appellant/plaintiff for the reasons that Section 54 of the 1882 Act clearly provides that in case of transfer of an immovable property of value less than Rs.100/-, it can be only by way of a registered document or by delivery of property. It has also come on record that the possession of the suit property was never handed over to the appellant/ plaintiff and the same is in possession of the defendant/respondent. It is also an admitted fact that the respondent is in possession of the suit property since 1979.

12. It has also come on record that despite purchasing the suit property for a sum of Rs.99/- in the year 1966, the appellant/plaintiff valued the same for a sum of Rs.900/- at the time of its mutation, which falsifies the case of the appellant/plaintiff. Another important aspect of the case is that neither Sh.Shiv Dayal was produced as witness before the Court below nor any document showing his ownership in the suit property was produced on record. The appellant/

plaintiff also failed to provide any document on record to show that he was in possession of title deeds of the suit property to prove his case that either Sh.Shiv Dayal or the appellant had a title in the suit property. Thus, the appellant/plaintiff has failed to establish his case that he was the owner of the suit property. The judgments relied upon by the appellant/plaintiff are distinguishable from the facts and circumstances of the present case and do not come to the aid of the appellant.

13. The next question involved in the present case is whether the suit filed by the plaintiff/appellant was barred by time or not. It is the case of the appellant that earlier he was pursuing another case by way of eviction petition against the respondent and was given liberty by the Hon'ble Apex Court to approach the civil court to establish his right, title and interest in the suit property which precluded him in filing the suit within the time prescribed.

14. Perusal of record shows that earlier eviction petition was filed by the appellant on 22.05.1991 and it was dismissed by the Hon'ble Apex Court in the year 2004. The suit was filed by the plaintiff/appellant on 02.08.2004. The claim of the appellant is that as he had preferred an eviction petition, thus he was bonafidely precluded in filing the present suit within time. This contention of the appellant is not acceptable for the reasons that the eviction petition was filed by the appellant against the respondent on the basis that the appellant was the owner of the suit property and since the respondent was not paying the rent, he was liable to be evicted. The said litigation between the

parties came to an end in the year 2004 and thereafter on the liberty being given by the Hon'ble Apex Court, the appellant had filed the suit in question on 02.08.2004. In the suit, it was pleaded by the plaintiff/appellant that he had assumed the respondent as tenant and that was the reason for filing the eviction petition. It was on the assumption of the appellant/plaintiff that the litigation went on from 1991 till 2004 and then the suit was filed on 02.08.2004. It is apparent from the record that the earlier eviction petition was not filed by the appellant with due diligence and good faith. Firstly, he preferred the eviction proceedings and when he failed to succeed in the same, he filed the suit claiming declaration, possession and damages. The appellant has miserably failed to bring his suit within the prescribed time and is thus barred by limitation.

15. As discussed above, this Court does not find any merit in the present appeal. The appellant/plaintiff has failed to make out any error in the impugned judgment and decree passed by the Court below. Consequently, the present appeal is dismissed.

16. No order as to costs.

(P.S.TEJI)
JUDGE

OCTOBER 27, 2017
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