

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : October 13th, 2017

+ RFA 451/2008

SHASHI RANJAN

..... Appellant

Through: Mr.R.K. Jain and Mr.Himanshu Setia,
Advocates.

versus

SECUNDER SHAH (SINCE DECEASED) & ORS..... Respondent

Through: Ms.Gurmeet Bindra, Advocate.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellant being aggrieved by the judgment and decree dated 31.07.2008 passed by the learned Additional District Judge, Delhi whereby the suit filed by the plaintiff/respondent for possession and damages has been decreed in favour of the plaintiff/respondent and against the appellant/defendant.

2. The facts enumerating from the record are that the suit was filed against two defendants i.e. appellant/defendant no.1-Shashi Ranjan and defendant no.2-R.K. Soni. It was contended that the plaintiff/respondent purchased a flat no.4, property no.E-234, Greater Kailash II, New Delhi from Anita Kanwal for a sale consideration of Rs.2,00,000/-. Anita Kanwal purchased the said flat from M/s

Paradise Home Builders. The said builders had given no objection to the selling of flat to the plaintiff/respondent. Defendant no.2-R.K. Soni was the owner of the plot on which the flat was constructed. The plaintiff had taken the possession of the flat on 09.02.1982. In May, 1984 it was found that the appellant/defendant was in illegal possession of the flat and for this an FIR No.5606/1984 under Sections 448/380/420/34 IPC, Police Station Kalkaji was lodged. It was claimed by the appellant/defendant that she was a tenant under defendant no.2-R.K. Soni and had produced rent receipt. A legal notice dated 03.08.1987 was issued to the defendants for restoration of possession of the flat to the plaintiff.

3. Written statement was filed on behalf of the appellant in which it was alleged that the plaintiff/defendant was inducted as a tenant in the flat in question by defendant no.2 on a monthly rent of Rs.1,000/- which was paid up to October 1987 but rent receipts were issued only for March and April, 1984. The rent receipts were issued showing the rent as Rs.3,000/- per month but actually the rent paid was Rs.1,000/- per month. It was claimed that the plaintiff/respondent was neither the owner nor the landlord and the suit was filed in collusion with defendant no.2.

4. In the written statement filed by defendant no.2-R.K. Soni, it was alleged that the plaintiff was neither the owner nor the landlord of the flat in question. He claimed himself to be the owner of the flat having purchased from DLF Housing and Construction Pvt. Ltd. vide sale deed dated 25.03.1966. The construction over the flat

had been raised by Arun Mittal C/o Paradise Home Builders vide agreement dated 01.07.1980. Rest of the case of the plaintiff had been denied.

5. On the basis of pleadings of the parties, following issues were framed :

1. Whether the plaintiff is entitled to a decree for possession?

2. Whether the plaintiff is entitled to any damages, if so, at what rate and amount?

3. Whether the plaintiff has no locus standi to file the suit?

4. Whether the suit is without cause of action?

5. Whether the suit is bad for misjoinder of defendant no.2?

6. Whether the suit has been properly valued for the purpose of court fee and jurisdiction, if not, what is the correct valuation for that purpose?

7. Whether the suit is not maintainable for the reasons stated in para no.1 to 4 and 5 of the preliminary objections of the written statement of defendant no.1?

6. During the pendency of the suit, plaintiff/respondent expired and his legal heirs were brought on record. Defendant no.2- R.K. Soni also expired but his legal heirs were not brought on record, consequently the proceedings against him were abated.

7. The Court below vide impugned judgment dated 31.07.2008 decided all the issues in favour of the plaintiff/respondent and against the appellant/defendant and decreed the suit in favour of the plaintiff. Feeling aggrieved by the same, the present appeal has been preferred.

8. Argument advanced by the counsel for the appellant is that defendant no.2-R.K. Soni was the owner of the plot in question on which the flat in question was built by Arun Mittal C/o Paradise Home Builders vide collaboration agreement dated 01.07.1980. The appellant was inducted as tenant in the flat in question by R.K. Soni for which rent receipts were issued to her. On 07.02.1994, plaintiff died and his LRs filed fake documents on record to claim the ownership of the flat. It was further argued that there is no sale deed or any other document to prove the sale of the flat to the plaintiff or delivery of its possession to him. It was further argued that there was no evidence that Anita Kumari was the owner of the flat. As per the collaboration agreement, possession of the property was never delivered to the builder and when the builder himself did not fulfill the conditions of agreement, he could not transfer any right to any person.

In support of the above contentions, counsel for the appellant has relied upon judgments in the case of **Ripu Daman Haryal & Anr. v. Miss Geeta Chopra & Anr** (CS (OS) 297/2009 decided by this Court on 04.07.2011) in which it was observed that no right or title or interest in any immovable property is passed on to the purchaser until and unless the document is duly registered. On this similar point,

judgments in the case of *Imtiaz Ali v. Nasim Ahmed AIR 1987 Delhi 36*, *A. Lewiz & Anr v. M.T. Ramamurthy & Ors AIR 2008 SC 493* and *Gela Ram v. Brahm Pal and Ors 2011 LawSuit (Del) 1907* have also been relied upon.

9. On the contrary, argument advanced by the counsel for the respondent is that defendant no.2-R.K. Soni had entered into a collaboration agreement Ex.PW5/1 with M/s Paradise Home Builders to build the ground floor, first floor and second floor. The ground floor fell in the share of defendant no.2-R.K. Soni, whereas first and second floor fell into the share of the builder-Mr.Arun Mittal. Mr.R.K. Soni gave the right to the builder to sell the property falling in his share to the prospective buyers. Mr.Arun Mittal executed an agreement to sell in favour of Anita Kanwal for sale of suit property and its possession was handed over to her. Anita Kanwal sold the said flat to the plaintiff/respondent and its possession was handed over to him. When plaintiff came to Delhi, he found the appellant in possession of the flat in question. It is submitted that the appellant is in an unauthorized possession of the flat in question and it is her own case that she was just a tenant.

10. I have gone through the submissions made by the counsel for the parties and the evidence and documents available on record.

11. The main grouse of the appellant/defendant is that the plaintiff/respondent has never been the owner of the flat in question as the documents claimed to be executed in his favour have not been

registered and the same cannot be relied upon. It is also the grouse of the appellant that she was inducted as tenant in the suit premises by R.K. Soni, owner of the plot and the said owner never transferred the right of the property in question in favour of any builder including Arun Mittal who had claimed to have sold the flat to Anita Kanwal who further sold it to the plaintiff/respondent.

12. From the evidence available on record, it is apparent that the plaintiff/respondent had purchased the flat in question from Anita Kanwal on 09.02.1982 for a consideration of Rs.2,00,000/- vide receipt Ex.PW1/2. The said flat was purchased by Anita Kanwal from Arun Mittal, partner of M/s Paradise Home Builders. It was alleged that after taking the possession of the flat on 09.02.1982 by the plaintiff from Anita Kanwal, the appellant/defendant had trespassed into the property in May, 1984 and thus became an unauthorized possessor. It is further apparent from the record that the plaintiff/respondent got lodged an FIR No.606/1984 at Police Station Kalkaji against the appellant/respondent.

13. Arun Mittal was examined as PW5 who had deposed that he built up the property bearing No.E-234, Greater Kailash II, New Delhi on the basis of a collaboration agreement Ex.PW5/1 entered into between him and defendant no.2-R.K. Soni. PW5 further deposed that he sold the flat in question to Anita Kanwal by way of agreement to sell Ex.PW1/14 and its possession was given to her vide letter Ex.PW1/3. He further deposed that Anita Kanwal sold the said flat to

the plaintiff/respondent on 09.02.1982 and the sale was confirmed by him by making endorsements on documents Ex.PW1/4 to Ex.PW1/5.

14. Perusal of collaboration agreement Ex.PW5/1 shows that defendant no.2-R.K. Soni was the owner of the plot having purchased from DLF Housing Board vide sale deed dated 30.03.1966. Vide this agreement, it was agreed between defendant no.2-R.K. Soni and Arun Mittal that after construction, the ground floor shall be given to R.K. Soni without any costs while the first and second floor shall belong to Arun Mittal. It was further agreed that they both would execute the agreement to sell with the prospective buyer. It was further agreed that defendant no.2-R.K. Soni would execute the sale deed in favour of Arun Mittal. It is an admitted fact on record that the collaboration agreement Ex.PW5/1 was executed between R.K. Soni and Arun Mittal. The only objection raised by defendant no.2-R.K. Soni was that since Arun Mittal had failed to perform his part of payment of Rs.50,000/-, thus he committed a breach of agreement. Execution of agreement Ex.PW5/1 and the terms and conditions of the said agreement have never been in dispute. It is also a matter of record that defendant no.2 never initiated any legal proceedings against Arun Mittal for alleged breach of terms and conditions of the agreement.

15. A perusal of agreement to sell dated 30.06.1981 executed between Arun Mittal and Anita Kanwal shows that Arun Mittal agreed to sell the flat on the second floor of the plot for a sale consideration of Rs.1,42,000/- and the vacant possession of the flat was handed over to her on 23.01.1981 vide letter Ex.PW1/3. The payment was

received by him vide receipts Ex.PW1/4 and Ex.PW1/5. It is also apparent from the evidence led that the plaintiff/respondent had purchased the flat in question from Anita Kanwal for a sale consideration of Rs.2,00,000/- on 09.02.1982 vide receipt Ex.PW1/2. Arun Mittal had confirmed the sale of flat in question by Anita Kanwal to the plaintiff upon confirming his endorsements on the documents.

16. The stand taken by the appellant/defendant in her written statement and in her examination in chief by way of affidavit before the court below are contrary to each other. In the written statement, it was contended by her that she was inducted as tenant by the defendant no.2-R.K. Soni and rent receipts for the same were issued but after October, 1987 no rent receipt was issued. She deposed in her affidavit Ex.D1 that defendant no.2 assured her and her husband about the sale of flat in question; defendant no.2 offered them to live in the flat in question as a tenant till the execution of sale deed in favour of appellant/defendant and her husband. These two stands taken by the appellant/defendant are entirely different from each other. The fact that appellant was inducted as tenant in the suit property has categorically been denied by the defendant no.2-R.K. Soni. She had categorically pleaded in her written statement there was no relationship of landlord and tenant between her and defendant no.1/appellant and he never inducted appellant/defendant no.1 as tenant. In the absence of any rent receipt on record or the rent agreement, there is no evidence on record to show that

appellant/defendant was inducted as tenant in the suit premises by the defendant no.2-R.K. Soni.

17. In view of the above discussion, it has been duly established on record that the flat in question was purchased by the plaintiff/ respondent from Anita Kanwal and was in possession of the said flat. It has also been established on record that the appellant/defendant was in an unauthorized occupation of the flat in question. In view of this position of the matter, this Court does not find any fault in the judgment and decree passed by the Court below. The appeal is accordingly dismissed.

18. No order as to costs.

(P.S.TEJI)
JUDGE

OCTOBER 13, 2017
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