

\$~21

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

%

Date of Decision: January 25, 2017

+

RSA 207/2016

SUNITA

..... Appellant

Through: Mr.Abdul Sattar, Advocate

versus

AMAR SINGH

..... Respondent

Through: Mr.Nitin Sharma, Advocate

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

RSA 207/2016 & CM No.3147/2017

1. The challenge by means of this Regular Second Appeal is to the concurrent judgments dated 26th September, 2005 passed by the learned Trial Court and dated 26th April, 2016 passed by the First Appellate Court by which the civil suit No. 287/03/99 filed by the appellant/plaintiff seeking possession of property bearing Plot No.537 in Khasra No.1601, situated at Sangam Vihar, Gali No.12, Block G, New Delhi, measuring 150 sq. yds. has been dismissed.

2. The appellant/plaintiff is claiming her ownership in respect of the above plot on the basis of documents i.e. unregistered General Power of Attorney Ex.PW-1/1, Agreement to Sell Ex.PW1/2, Affidavit Ex.PW1/3 and Receipt Ex.PW-1/4 executed in her favour by Sh.Ram Avadh Pandey on 13th January, 1994 for sale consideration of ₹1,05,000/-. The case of the

appellant/plaintiff is that the respondent/defendant had earlier (no date, month or year is mentioned in the plaint) attempted to commit trespass on her property but due to police intervention the possession was restored to her. The appellant had to visit her sister in Gorakhpur, U.P. to participate in the marriage of her daughter where she stayed for 15 days. On her return from Gorakhpur on 20th April, 1997, she found her property being trespassed by the respondent/defendant and since then he is living there illegally. She had lodged a complaint with Police Station, Okhla on 22nd April, 1997 and despite the fact that she is having title over the property nothing has been done by the police to restore the possession to her. The respondent/defendant has filed a civil suit No.511/1997 seeking permanent injunction against her which was pending trial.

3. The appellant/plaintiff has also filed a complaint under Section 145 Cr.P.C. against the defendant for his illegal and unauthorized occupation in the suit property by him which was also pending disposal before the SDM, Kalkaji. She has also pleaded that Sh.Ram Avadh Pandey from whom she purchased the suit property, is a practicing advocate at Patiala House Court. The respondent/defendant had fabricated the documents with regard to the suit property in his name whereas she is the actual owner. She prayed for decree for possession in respect of the suit property as per site plan annexed with the plaint.

4. The suit was contested by the respondent/defendant taking the following pleas:-

- (i) The suit filed by the appellant/plaintiff is a counter blast to the suit filed by him seeking permanent injunction in respect of the suit property.
- (ii) The suit property which actually bears the No.G-12/580, Sangam Vihar has been referred to as G-12/537, Sangam Vihar by the

appellant/plaintiff.

(iii) He has never committed trespass on the suit property or ever evicted with the assistance of the local police. The appellant/plaintiff was never in possession of the suit property. He denied that when the appellant/plaintiff had gone to Gorakhpur, U.P. to attend wedding in her family, he committed trespass in the suit property.

(iv) He claimed himself to be absolute owner in possession of the suit property and pleaded that Sh.Ram Avadh Pandey had no right vested in the said property which he could transfer to the appellant/plaintiff.

5. After considering the pleadings of the parties, learned Trial Court settled the following issues:-

(i) Whether the plaintiff is rightful owner of the property in question?

OPP

(ii) Whether the defendant is a trespasser in the property in question?

(iii) Whether the plaintiff is entitled to possession of the property?

(iv) Relief

6. In respect of the issue No.(i) and (ii), learned Trial Court after considering the evidence adduced by the parties held that the suit for possession is based on title and that the plaintiff had failed to prove that she was ever in possession of the suit property or it was trespassed in her absence. Her claim based on Ex.PW1/1 to Ex.PW1/4 to be owner of the suit property was rejected by the learned Trial Court.

7. Learned counsel for the appellant has submitted that following substantial questions of law have been raised in this appeal:-

A. Whether the defendant who has no title, can remain in exclusive possession of the suit property?

B. Whether the prior possession of the plaintiff in action of ejectment to

the defendant who criminally trespassed the suit property of the plaintiff is sufficient title if the suit brought by plaintiff after more than six months?

C. Whether the evidence which are led by the defendant beyond his pleadings can be relied upon?

8. On hearing learned counsel for the parties, following substantial question of law is formulated:-

“Whether, keeping in view the evidence which has been adduced by the parties, the findings of the fact with regard to the title and possession of the appellant/plaintiff on the basis of documents exhibit PW-1/1 to PW-1/4 in respect of the suit property is perverse?”

9. To ascertain the correct identity of the suit property, before the first appellate court the appellant/plaintiff filed an application under Order XLI Rule 27 CPC. She was permitted to examine AW-1 Sh.Giriraj Singh, Patwari of the area to establish the exact identity of the suit property.

10. After considering the additional evidence and the documents on the basis of which the appellant was claiming her title and possession in respect of the suit property and the judgment of the learned Trial Court, the first appellate court arrived at the following conclusions:-

(i) The documents like GPA, Agreement to sell, Affidavit, Receipts all dated 13th January, 1994 exhibited as Ex.PW-1/1 to PW-1/4 are neither registered nor bearing certificate of notarization in terms of Section 8 of Notary Act, which renders these documents to be suspicious.

(ii) There is no evidence of handing over the possession of the suit property by seller to buyer. While executing documents Exhibit PW-1/1 to PW-1/4 it is not recorded that possession was also handed over. Even PW-3, the appellant/plaintiff did not state that she was handed over the possession by the vendor, PW-1, Sh.Ram Avadh Pandey.

(iii) Exhibit PW-1/4 relied upon by the appellant/plaintiff was legally not sustainable.

(iv) There is discrepancy about the date of sale which as per PW-1, Sh.Ram Avadh Pandey was on 13th January, 1996 whereas the appellant/plaintiff claimed that the sale was dated 13th January, 1994.

(v) There is no evidence as to from whom Sh.Ram Avadh Pandey, the vendor had purchased the suit property.

(vi) Even from the statement of AW-1, Giriraj Singh and Aksshajra of village Tuglagabad, Exhibit as AW-1/1, Khasra No.981 is a government land encircled as 'A' and Khasra No.1601 is a private land encircled as 'B'. There is no evidence as per the record that out of Khasra No.1601, part of 150 sq. yds. is owned by the appellant/plaintiff.

11. On behalf of the appellant/plaintiff it has been vehemently argued that apart from proving the title documents i.e. GPA etc. Ex.PW-1/1 to PW-1/4, she has also examined Sh.Ram Avadh Pandey, the vendor as PW-1 whereas the respondent/defendant failed to examine any witness to prove his title in the suit property. He submitted that it is a clerical error that PW-1 mentioned the date of sale as 13th January, 1996 instead of 13th January, 1994 which fact can be ascertained from the various documents executed by him. The various complaints made by her as well the complaint before the SDM under Section 145 Cr.P.C. support her claim to be owner in possession of the suit property till she was forcibly dispossessed when she was away from Delhi for about 15 days to attend a family wedding. Learned counsel for the appellant/plaintiff has contended that as per the respondent/defendant's claim, number of the suit property is 580 in Gali No.12 situated in Khasra No.981 (which as per AW-1 is a government land) in Village Tughlakabad but the case of the appellant/defendant is that the number of the property is

537 in Gali No.12 Block-G situated in Khasra No.1601 (which as per AW-1 is a private land) in Village Tughlakabad. Thus, respondent/defendant is also not having any title in the suit property. It has been submitted that since both the Courts below have failed to appreciate the oral and documentary evidence, the findings therefore suffers from perversity hence liable to be set aside.

12. I have perused the Trial Court Record as well the record of first appellate Court wherein additional evidence has been recorded.

13. The suit for possession filed by the appellant/plaintiff in the year 1999 is on the basis of title claimed to have been acquired by her vide documents exhibit PW-1/1 to PW-1/4. PW-1, Sh.Ram Avadh Pandey when examined before the Trial Court had stated that he was owner of property Khasra No.1601, Tugalakabad Extension, New Delhi, Plot No.537, Gali No.12, G Block, Sangam Vihar, measuring around 200 sq. yds, out which he sold 150 sq. yds. to the appellant/plaintiff vide documents exhibit PW-1/1 to PW-1/4. He stated that he purchased this property from Sh. Rajinder Singh in the year 1985. He had sold 50 sq. yds. to one Sh.Ramesh Gupta prior to selling 150 sq.yds. to the plaintiff.

14. A bare look at the documents exhibit PW-1/1 to PW-1/4 forming basis of title of the appellant/plaintiff record the boundary of the said plot as under:-

East: Road

West: Plot of Sohan Lal and Jogishwar Gupta

North: Gali

South: Plot of others

Thus, there is no mention of direction/demarcation of 50 sq.yds. of plot claimed to have been sold to Ramesh Gupta while specifying the description of the plot sold to her. Nowhere it is mentioned as to how Sh.Ram Avadh Pandey acquired title in respect of the suit property. The

agreement to sell exhibit PW-1/2 (clause 3) records that:-

“3. That all the relevant papers pertaining to the said plot/property is given to the second party/purchaser.”

15. However, no description of the documents on the basis of which PW-1 Sh.Ram Avadh Pandey acquired the title in respect of the suit property which he could transfer to appellant/plaintiff, have been pleaded or proved by the appellant/plaintiff.

16. On the affidavit exhibit PW-1/3 and the receipt exhibit PW-1/4 the name and description of appellant/plaintiff have been re-typed after applying fluid, rendering these documents to be suspicious. It may also be noted that the receipt exhibit PW-1/4 does not bear the signature of Sh.Ram Avadh Pandey at the place meant to be signed by the executant. The manner in which the two witnesses have signed the documents without even giving their complete description so as to ascertain their identity, creates suspicion about the genuineness of the documents forming basis of claim of appellant/plaintiff.

17. PW-3, the appellant/plaintiff claimed to have acquired and in possession of the suit property since 13th January, 1994. She has deposed that she left Delhi on 1st April, 1997 and returned on 20th April, 1997 when she found that the respondent/defendant Amar Singh had broken open the lock of her house and had taken possession of the same. But she has lodged the police report on 22nd April, 1997 i.e. after two days. The suit for possession has been filed by her on 26th July, 1999 i.e. after more than two years of the civil suit No.216/1997 on 15th June, 1997 for injunction was filed against her by the respondent/defendant.

18. The averments made in the plaint by the appellant/plaintiff are that she was in actual physical possession from the date of purchase i.e. 13th January,

1994 till 1st April, 1997 when she allegedly left Delhi for Gorakhpur and dispossessed when she was away from Delhi. For this period of almost three years she had not annexed even an electricity bill showing her possession in the suit property. In ordinary course, if a person is in physical possession of the property which is duly constructed, water/electricity bills, telephone/mobile bills, gas connection, house tax assessment, address mentioned in the voter identity card or ration card are usual documents in possession of such occupant. Despite her claim that she left the suit property on 1st April, 1997 for Gorakhpur and on her return on 20th April, 1997 she found her house being trespassed by the respondent/defendant, no PCR call was made by her or report was lodged to the police immediately thereafter complaining about dispossession and that she had no other place to go except her own house which had been allegedly trespassed. Not even a single neighbour has been examined by her that after purchasing this property, she was residing there for all these years till she was dispossessed.

19. Surprisingly, though the property is stated to have been purchased from PW-1 Sh.Ram Avadh Pandey, an Advocate, no document showing title of Sh.Ram Avadh Pandey in the suit property was pleaded and proved to prove that Sh.Ram Avadh Pandey had legal title and possession of suit property which was transferred to her. If Sh.Ram Avadh Pandey had no title document, he could not have passed a better titled than what he had. Mere examination of Sh.Ram Avadh Pandey as a witness without proving on record his title in respect of the suit property or even proper description of the suit property in the unregistered documents Ex.PW1/1 to Ex.PW1/4, the findings recorded by the Courts below cannot be faulted with.

20. Although the respondent/defendant had tried to prove his ownership by means of documents like agreement to sell etc. but it is not necessary to

deal with those documents in the second appeal as the respondent/defendant is not before this Court to establish his title or seek any relief. If the suit property is on government land and he has encroached on the same, it is for the government to take necessary steps to recover the land in his possession. The main issue is whether the appellant/plaintiff was owner in possession of the suit property which has been determined against her in the concurrent finding of fact in this regard by the Courts below. Therefore, looking at her claim from any angle, it has rightly been held by both the Courts below that the appellant/plaintiff failed to prove her ownership and possession in respect of the suit property or even dispossession in April, 1997 by even not proving that she was out of Delhi during that period.

21. The courts below have rightly appreciated the evidence while arriving at the conclusion that she had failed to establish her possession in the suit property. Had she remained in possession from 1994 till 1997, there could have been numerous documents to establish her possession in the suit property which were neither pleaded nor proved.

22. In view of the above discussion the substantial question of law is decided against her. The appeal is dismissed.

23. The parties to bear their own costs.

CM No.28124/2016

Dismissed as infructuous.

PRATIBHA RANI
(JUDGE)

JANUARY 25, 2017

'pg'