

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

+ **RSA No. 118/2017**

% **21st April, 2017**

JAI DEV Appellant

Through: Mr. S.K. Kaushik, Advocate.

versus

JAI DEVI & ANR. 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. 14899/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RSA No. 118/2017 and C.M. Appl. No. 14898/2017 (for stay)

1. By this Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) the appellant/plaintiff impugns the concurrent judgments of the courts below; of the Trial Court dated 31.1.2014 and the First Appellate Court dated 4.1.2017; by which the courts below have dismissed the suit filed by the appellant/plaintiff seeking possession of the suit property being shop no. 35, Ashok Market, Bullbird Road, Old Subzimandi, Delhi.

2. Appellant/plaintiff claimed that he was the owner of the property and that he, on account of shifting of the old subzimandi to new subzimandi where he started carrying on business, gave his shop to his brother Sh. Sukhdev Singh on license and after the death of Sh. Sukhdev Singh the shop was in the possession of the respondents/defendants, including the respondent no.1/defendant no.1 who is the widow of Sh. Sukhdev Singh. Since after termination of the license by the notice of the appellant/plaintiff dated 22.5.2008 the defendants/respondents failed to vacate the suit property, hence the subject suit came to be filed.

3. Respondents/defendants in their written statement pleaded that the appellant/plaintiff had in fact transferred rights in the suit property to late Sh. Sukhdev Singh under the agreement to sell dated 20.1.1976 and therefore appellant/plaintiff was not the owner of the suit property and hence respondents/defendants were in possession of the suit property as owners and not as licensees as the appellant/plaintiff contended.

4. The agreement to sell dated 20.1.1976 was duly proved and exhibited by the respondents/defendants as Ex.DW1/1 before the trial court. In fact, the respondents/defendants also proved that

appellant/plaintiff after selling the property had applied to the Land and Development Office (L&DO) for sale of the suit property in favour of his late brother Sh. Sukhdev Singh i.e there was in fact acting upon the agreement to sell by the appellant/plaintiff. Accordingly, the courts below have held that by virtue of the agreement to sell dated 20.1.1976 Ex.DW1/1 and pursuant to the rights created therein in favour of Sh. Sukhdev Singh under Section 53A of the Transfer of Property Act, 1882, the suit was liable to be dismissed. The trial court has referred to these aspects in paras 14 to 18 of its judgment and which reads as under:-

“14. In any case, it has to be ascertained from the evidence on record as to whether the plaintiff executed the agreement to sell Ex. DW1/1. The plaintiff denied that the agreement and documents seeking sale permission bore his signatures however, the plaintiff in his cross examination admitted that the suit property was of L & DO and also admitted that to sell the property permission was required. The plaintiff made certain vital admissions in his cross examination as follows:-

“It is correct that I applied with the L & DO for sale permission of the suit property. It is correct that L & DO gave sale permission to sell the property. I do not remember if I have filed form no. 8, site plan and proposed sale deed in triplicate.” Plaintiff further deposed evasively that he might have received letter regarding grant of permission voluntarily deposing that he could not read English. Evasive denial is no denial in law. The plaintiff quite categorically admitted applying to the L & DO for grant of sale permission. Noteworthy is the fact that the plaintiff has nowhere in the plaint or even the replication uttered a single word regarding applying for permission from the L & DO for sale of the suit property or even that he wrote to the L & DO for cancelling the sale permission as per Ex. DW3/4.

15. Through DW3 Sh. Hemant Kumar, LDC from Land & Estate Department, the defendants proved the application of plaintiff for sale permission in respect of the suit property in favour of the defendant as Ex. DW3/1 and two more reminder applications seeking sale permission dated 17.06.1977 and 19.08.1977 as Ex. DW3/2 and Ex. DW3/3 and the permission granted by the Land & Development Office dated 04.05.1977

was proved as Ex. DW3/15. Ex. DW3/4 on the other hand, is a letter dated 11.01.1978 by Sh. Jai Dev seeking to cancel the documents submitted for sale permission and stop sale permission of the suit property.

16. The old records of the year 1971 –1978 have been produced by DW3 Sh. Hemant Kumar from proper custody and have gone un rebutted. Additionally, plaintiff/PW1 has himself admitted to applying for sale permission and has admitted to receiving the same therefore these documents Ex. DW3/1 to Ex. DW3/5 find due corroboration from the plaintiff's own evidence. These documents are of the year 1977 near about the period of the agreement to sell Ex. DW1/1, of the year 1976, and there is a specific mention of permission being sought for sale of the suit property in favour of Sh. Sukhdev in Ex. DW3/1 (also Ex. DW1/2). Considering the testimony of the plaintiff in cross examination in conjunction with the original record produced by the witness from the L & DO, it is quite apparently proved that the plaintiff in fact executed an agreement to sell in favour of his deceased brother and thereafter applied for sale permission from the L & DO so as to execute the sale deed and even received the permission for the same. As regards the 'stop permission for sale' application, no further correspondence in this regard has been sought to be filed and in absence of the same, it is to be assumed that the same was never pursued by the plaintiff. The plaintiff's case that he only used to sign in English and not in Hindi though he knew Hindi is unbelievable in the facts of the case especially since at one point in his cross examination he deposed voluntarily that he could not read English. Further, in his cross examination he deposed thus:-

"I have seen the agreement Mark 'X' and signature thereon at point 'A' as Jaidev and Sukhdev at point 'B' and the witnesses at points 'C & D' are not mine. However, I cannot say about the signature of my brother and the witnesses on the documents."

17. The plaintiff thus evasively answered the question neither admitting nor denying the signatures of Late Sh. Sukhdev or the witnesses on the documents. Another important thing to note is that the plaintiff/PW1 deposed that he could not identify his brother's signatures perhaps with a view to avoid answering questions regarding signatures of Late Sh. Sukhdev appearing on the agreement to sell. On the other hand, DW1 in cross examination categorically denied the suggestion that Ex. DW1/2 and Ex. DW1/3 (Ex. DW3/3) did not bear the plaintiff's signatures or that Ex. DW1/1 did not bear the plaintiff's signature and maintained that the plaintiff sold the property to her father (Late Sukhdev). DW1 also denied the suggestion that the agreement to sell was false. Nothing useful to the plaintiff's case could be extracted by the plaintiff through the cross examination of the defendants' witnesses. Similarly, DW2/defendant no. 1 also denied the suggestion that Ex. DW1/1 did not bear the plaintiff's signatures and deposed that the consideration amount was paid in cash. DW2 further stood firm to her stand denying the suggestion that Ex. DW1/1 and Ex. DW1/3 were forged and fabricated. The plaintiff admitted in cross examination that he had applied for sale permission with the L & DO and the witness from the Land & Building

Estate proved the applications for sale permission which bore the signatures of the plaintiff in Hindi and ocular comparison of the signatures appearing of Ex. DW3/1 to Ex. DW3/3 with Ex. DW1/1 shows that the signatures are identical on all these documents, which is also the observation of the defendants' handwriting expert. The plaintiff's handwriting expert PW2 was put the suggestion that the specimen signatures were disguised signatures and not fit for comparison which was denied by him but it must be noted at this juncture that the plaintiff was directed to give his specimen signatures for the purpose of handwriting analysis and on the date he gave the specimen signatures Ex. DW3/P1 the plaintiff's hand was in bandaged condition which naturally would have affected the formation of the alphabets in the specimen signatures provided. The defendant's handwriting expert Sh. Deepak Jain specifically mentioned in his report at point four that an inter se comparison between the comparative signatures and the specimen signatures (Ex. DW3/P1) revealed an attempt of disguise in the specimen signatures and the same were excluded for the purpose of comparison. In his cross examination also DW Sh. Deepak Jain admitted that the specimen signatures on Ex. DW3/P1 did not tally with the comparative signatures, voluntarily deposing that the reasons had already been given in his report and the plaintiff did not put any specific question regarding the specimen signatures not being disguised and only a general suggestion was put to the witness that he had prepared a false and fabricated report which the witness denied.

18. The corroborative evidence on the record i.e. the correspondence of the plaintiff with the L&DO Ex. DW3/1 to Ex. DW3/5, plaintiff's admission regarding seeking sale permission from the L & DO and also receiving it, the plaintiff's evasive testimony regarding signatures of his brother Late Sh. Sukhdev on Ex. DWS1/1 agreement and the defendants' firm denial to the suggestion that the agreement Ex. DW1/1 did not bear the plaintiff's signatures all lead to the irresistible conclusion that in fact Ex. DW1/1 was executed by the plaintiff in favour of Sh. Sukhdev. Ld. counsel for the plaintiff argued that Ex. DW1/1 agreement itself contained a clause i.e. clause 8 that recorded that the vendor and vendee were real brothers and the vendee was occupying the shop free of rent being the younger/elder brother, and contended that this in fact strengthened the plaintiff's case that Late Sh. Sukhdev had been occupying the suit premises as a licensee of the plaintiff. It may be that prior to execution of Ex. DW1/1, the deceased brother Sukhdev was occupying the suit premises as a licensee of the plaintiff, but it is to be seen whether Section 53A of Transfer of Property Act is applicable or not in the present case and would Late Sh. Sukhdev and subsequently his LRs i.e. defendants herein be entitled to protection U/s 53A of the Transfer of Property Act.” (underlining added)

5. The first appellate court has adopted the above reasoning, and I do not find any illegality in these findings of the courts below,

much less arising of a substantial question of law, for this Court to interfere under Section 100 CPC.

6. Learned counsel for the appellant/plaintiff argued that the document Ex.DW1/1 should not be taken as proved because on the one hand appellant/plaintiff has filed his handwriting expert's report showing that the same does not bear the signatures of the appellant/plaintiff whereas the respondents/defendants have filed their own handwriting expert's report which shows that the document Ex.DW1/1 is signed by the appellant/plaintiff and hence the document Ex.DW1/1 is proved, however in my opinion the handwriting expert's reports are conveniently given by the handwriting experts in favour of the parties who engage them and therefore handwriting expert reports are not necessarily determinant to the issue of executing of the document. In the present case in fact it has rightly been held that the document being the agreement to sell dated 20.1.1976 is a valid document as there is corroborative evidence in terms of various correspondences which the appellant/plaintiff himself entered into with the L&DO for sale of the suit property to late Sh. Sukhdev Singh and these correspondences are mentioned in para 15 of the judgment of the trial court. In fact, the appellant/plaintiff after writing two letters dated 17.6.1977 and 19.8.1977 Ex.DW3/2 and DW3/3 and granting of

permission by the L&DO on 4.5.1977/Ex.DW3/15, by a subsequent letter dated 11.1.1978 Ex.DW3/4 sought to get the permission cancelled, and therefore it does not lie in the mouth of the appellant/plaintiff to contend that he did not execute the agreement to sell Ex.DW1/1.

7. No substantial question of law arises and therefore this Regular Second Appeal is dismissed, leaving the parties to bear their own costs.

APRIL 21, 2017

AK.

VALMIKI J. MEHTA, J