

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

+ **RSA No. 157/2017**

% **29th May, 2017**

VIMLA DEVI Appellant

Through: Mr. Yatendra Sharma, Advocate.

versus

PUSHPA DEVI AND 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. Nos. 20929-30/2017 (for exemptions)

Exemptions allowed, subject to all just exceptions.

C.Ms. stand disposed of.

RSA No. 157/2017 and C.M. Appl. No. 20928/2017 (for stay)

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) impugns the concurrent judgments of the courts below; of the Trial Court dated 28.3.2016 and the First Appellate Court dated 4.3.2017; by which the suit filed by the appellant/plaintiff for possession, permanent injunction and mandatory injunction, has been dismissed.

2. The facts of the case are that appellant/plaintiff claimed that she was the owner of 200 sq. yards of the property situated in khasra no. 419, Village Saboli, Gali No. 10, Shahdara, Delhi. Out of the area of 200 sq. yards, the appellant/plaintiff sold 70 sq. yards to the respondent no.1/defendant no.1 on 11.2.1998 for a sale consideration of Rs.1,75,000/-. On 11.2.1998, appellant/plaintiff executed the usual set of documentation being the agreement to sell, general power of attorney, Will, receipt, etc. in favour of the respondent no.1/defendant no.1. I may note that the defendant no. 1 in the suit expired *pendente lite* and therefore she is now represented by her legal heirs. The area of 70 sq. yards consists of two rooms, a latrine and a bath room, and possession of which was taken by the respondents/defendants on 11.2.1998. It was further pleaded in the plaint that since there was non-payment of the entire consideration hence the appellant/plaintiff cancelled the documentation dated 11.2.1998 by the cancellation document dated 6.4.1998, and appellant/plaintiff also sent a legal notice of the same date to the respondents/defendants. It was further pleaded that inspite of cancellation of the documents on 6.4.1998 the respondents/defendants did not vacate the suit property, and hence the subject suit was filed. For the sake of completion of narration it may be stated that defendant no. 1 in the suit was the wife of defendant no.

2, and respondents in this appeal are the defendant no. 2 and the legal heirs of the deceased defendant no. 1.

3. The suit was contested by the respondents/defendants. It was pleaded by the respondents/defendants that complete consideration of Rs.1,75,000/- was paid when the documents dated 11.2.1998 were executed in favour of the respondent no.1/defendant no. 1. It was also pleaded that the appellant/plaintiff with dishonest intentions cancelled the documents on 6.4.1998. It was pleaded by the respondents/defendants that appellant/plaintiff had no authority to cancel the documents and hence the cancellation has no significance to the purchase of the suit property by the respondent no.1/defendant no. 1. The respondents/defendants pleaded that the adjoining 130 sq. yards to the plot of 70 sq. yards was already owned and was in possession of the respondents/defendants, and hence the respondents/defendants are in possession of the whole 200 sq. yards. The suit was accordingly prayed to be dismissed.

4. The main issue which was argued before the courts below, and also before this Court on behalf of the appellant/plaintiff, was that since the complete consideration was not paid hence the documents dated 11.2.1998 executed by the appellant/plaintiff in favour of the respondent no.1/defendant no. 1 were validly cancelled by the

cancellation document dated 6.4.1998 and which was duly registered before the Sub-Registrar.

5. The courts below have held that the documents dated 11.2.1998 executed by the appellant/plaintiff in favour of the respondent no.1/defendant no. 1 could not have been legally cancelled. For the disentitlement of the appellant/plaintiff to cancel the general power of attorney reliance is placed by the courts below to Section 202 of the Indian Contract Act, 1872 which provides that the general power of attorney given for consideration is irrevocable. The courts below have also held that the cancelled documents do not mention that consideration was not received as was the case of the appellant/plaintiff and nor is any other cause mentioned for cancellation of the documents dated 6.4.1998. Also, the courts below have held that the cancellation is only of the general power of attorney and there is no cancellation of the agreement to sell. Trial court has in this regard made the following salient observations in paras 20 to 25 of its judgment, and which paras read as under:-

“20. In the matter of *Hardik Kaur v. Kailash & Anr. (S.B.) 193 (2012) DLT 168* it was stated “the words” and interest in property which forms the subject matter of the agency” in Section 202 of the Contract Act, 1872 are of wider amplitude than the words “an interest in or charge on such property” in Section 54 of the Transfer of Property Act, 1882. Where the seller has received the sale consideration in pursuance of the agreement to sell and has delivered the possession to the purchaser, the purchaser would have interest in the property within the meaning of Section 202 of the Contract Act”

21. Thus the GPA dated 11.02.1998 is irrevocable in view of Section 202 of the Contract Act, 1872. The plaintiff, therefore, had no right to terminate the said GPA. The revocation of the GPA by plaintiff is, therefore, of no consequence.

22. Moreover the plaintiff has shown only the photocopies of the cancellation deeds Ex.PW1/7 and Ex PW1/8 dated 06.04.1998. The cancellation deeds are thus not proved on record. The documents can be looked at, at the instance of the opposite party. The cancellation deed neither mentions that consideration was not received nor has any other cause of cancellation been specified. The non-disclosure of any reason in the cancellation deed clearly suggests that there was in fact no dispute about consideration, as being claimed by the plaintiff in his suit. In addition, the legal notice sent makes no mention of the fact that the consideration amount had not been received. Moreover, the legal notice also does not state as to whether upon cancellation the consideration amount paid was being returned to the defendant by the plaintiff.

23. Even if it is assumed for the sake of argument that the cancellation deeds are genuine, the agreement to sell of which the plaintiff has placed on record a certified copy Ex.PW1/2 was never cancelled by the plaintiff. As per the agreement to sell, it is on record that the possession was handed over by the plaintiff to defendant no. 1 while executing the documents. It is also clearly stated in the agreement to sell which is a document admitted by both parties that the consideration of Rs.1,75,000/- has been paid by the defendants to the plaintiff. The plaintiff has also executed a receipt of the same amount. Hence the plaintiff has no right to cancel or revoke documents dated 11.02.1998 which were executed by the plaintiff in favour of defendant no. 1 for sale of 70 sq. yards of the suit property.

24. Placing reliance on judgments of the Hon'ble High Court of Delhi in **Ramesh Chand v. Suresh Chand, 188 (2012) DLT 538 and Hardip Kaur vs Kailash & Anr. Supra**, it is held that Defendant no. 1 in the matter at hand thus may not be a classical owner as would be in case of a registered sale deed, however, they would have certain rights and entitlement over the property. Furthermore this coupled with the fact that the defendants also have actual physical possession, builds a strong case in their favour. Thus, the interest created by the agreement entered into between the parties still lies with the defendant.

25. On basis of the discussion above, it is held that plaintiff is not entitled to the relief of possession or injunction in regard 70 sq. yards of the suit property as claimed for. Furthermore the plaintiff has asked for the relief of permanent injunction in relation to the whole 200 sq. yards. When the relief of 70 sq. yards out of 200 sq. yards cannot be granted, there is no question of granting a relief in relation to whole 200 sq. yards.”

(underlining added)

6. The first appellate court has upheld the findings and conclusions of the trial court by similarly observing that the general

power of attorney given for consideration could not be cancelled under Section 202 of the Indian Contract Act with the fact that no reasons have been given in the cancellation document dated 6.4.1998 for cancellation of documents dated 11.2.1998. The first appellate court also mentions that the amount of sale consideration is duly mentioned as received in the receipt dated 11.2.1998 executed by the appellant/plaintiff in favour of the respondent no.1/defendant no. 1.

7. In my opinion, the courts below have rightly held that the cancellation of the documents dated 11.2.1998 by the appellant/plaintiff by the documentation dated 6.4.1998 is of no legal effect. It is required to be noted that transfer of rights in an immovable property is by a contract i.e the same is a bilateral act, and such bilateral contract cannot be cancelled unilaterally i.e by unilateral cancellation of documents by which rights in immovable property are transferred by the transferor to the transferee. The courts below have also rightly placed reliance upon the Section 202 of the Indian Contract Act as also the judgment delivered by this Court in the case of ***Shri Ramesh Chand Vs. Suresh Chand and Anr., 188 (2012) DLT 538*** and which holds that documents which are in accordance with the amended Section 53A of the Transfer of Property Act, 1882 and executed prior to 24.9.2001 when by Act 48 of 2001 Section 53A of the Transfer of

Property Act was amended to require compulsory stamping and registration of an agreement to sell, then such documents prior to 24.9.2001 are valid documents because the amendment to Section 53A of the Transfer of Property Act is prospective in nature. Also, this aspect is clearly stated by the Supreme Court in the judgment in the case of *Suraj Lamps and Industries Pvt. Ltd. Vs. State of Haryana and Anr., 183 (2011) DLT 1 (SC)* wherein the Supreme Court has held that those agreements to sell, power of attorneys and Wills, which are in accordance with Section 53A of the Transfer of Property Act, Section 202 of the Indian Contract Act and the relevant provisions of the Indian Succession Act, the same will continue to be valid i.e documents executed prior to 24.9.2001 being in accordance with the then existing Section 53A of the Transfer of Property Act which did not require stamping and registration of the agreement to sell would be valid documents. The courts below, in my opinion, have also rightly held that the fact that possession was given to the respondent no.1/defendant no. 1 by the appellant/plaintiff in terms of the documents dated 11.2.1998 shows that the appellant/plaintiff had received the entire sale consideration. I also adopt the other reasoning as given by the courts below showing that complete sale consideration has been duly received by the appellant/plaintiff.

8. Learned counsel for the appellant/plaintiff during the course of arguments sought to argue a completely new ground, and which does not form part of the pleadings of the appellant/plaintiff in the courts below, and nor was any such issue got framed and hence not decided, that the subject suit was for the entire 200 sq. yards and not for 70 sq. yards only. I asked counsel for the appellant/plaintiff to show me anything in the plaint or any issue framed by the courts below and such an issue is decided that the subject suit is for entire 200 sq. yards and not only for 70 sq. yards, however, no cause of action is found to have been pleaded in the main body of the plaint, and no evidence led on behalf of the appellant/plaintiff, that, the appellant/plaintiff seeks possession not only of 70 sq. yards but of the entire 200 sq. yards. Merely some language in the prayer clause in the plaint will not mean that the cause of action in the plaint could not be read as it is, and which is only with respect to 70 sq. yards and not 200 sq. yards.

9. A second appeal under Section 100 CPC lies only if there arises a substantial question of law. Arriving at conclusions on the basis of the evidence on record falls in the realm of the jurisdiction of the trial court and the first appellate court, and the same has been validly done by the courts below by rightly holding that bilateral

documentation dated 11.2.1998 could not have been unilaterally cancelled by the appellant/plaintiff, more so in view of Section 202 of the Indian Contract Act as also unamended Section 53A of the Transfer of Property Act read with the judgment of this Court in the case of *Shri Ramesh Chand (supra)*.

10. Not only no substantial question of law arises, even a question of law does not arise, and therefore this regular second appeal being devoid of merits, is accordingly dismissed.

11. The present appeal being clearly an abuse of process of law as the appellant/plaintiff had sold 70 sq. yards to the respondents/defendants, the same is dismissed with costs of Rs.25,000/- and which costs will be deposited by the appellant/plaintiff to the government website www.bharatkeveer.gov.in within a period of four weeks from today and proof/receipt be filed in this Court within four weeks, failing which appropriate action will be taken by the Court against the appellant/plaintiff and the Registry will list the matter in the Court after four weeks in case the receipt of deposit of costs is not filed in this Court by the appellant/plaintiff.

MAY 29, 2017
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VALMIKI J. MEHTA, J