

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

+ **Ex.F.A. No.13/2017**

% **31st May, 2017**

JUGAL KISHORE Appellant
Through: Mr. Puneet Yadav, Advocate.
versus

ROSHAN LAL 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. No.20665/2017 (exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

Ex.F.A. No.13/2017 and C.M. No.20664/2017 (stay)

2. This Execution First Appeal has been filed by the appellant/objector/Sh. Jugal Kishore impugning the judgment of the executing court dated 10.3.2016 which has dismissed the objections filed by the appellant/objector claiming ownership rights in the suit property bearing no.1200, Gali Mata Wali, Najafgarh, New Delhi, situated on a plot of 120 sq. yds. Execution petition is filed by the respondent no.1/plaintiff/decreed holder of the judgment and decree

dated 24.5.2007 of possession of the suit property passed against respondent no.2/defendant/judgment debtor.

3. (i) The facts of the case are that the respondent no.1 herein/ Sh. Roshan Lal has filed against the respondent no.2/Smt. Surekha Rani subject suit for possession and *mesne* profits with respect to the suit premises. In the suit plaint, it was pleaded that the suit property belonged to Sh. Mehnga Ram, father of the respondent no.1/plaintiff, and Sh. Mehnga Ram had allowed his two brothers, namely Sh. Sohan Lal and Sh. Mohan Lal to be in permissive user of the suit property. The respondent no.2/defendant/judgment debtor/Smt. Surekha Rani is the daughter-in-law of Sh. Sohan Lal. It was pleaded in the suit that the family of Sh. Sohan Lal comprised of his son Sh. Hira Lal and daughter-in-law Smt. Surekha Rani. Sh. Hira Lal died on 16.6.1998 and Smt. Surekha Rani shifted to Moga in Punjab after re-marriage on 18.3.2001. Sh. Sohan Lal, who was said to be in the permissive user of the suit property died on 1.6.2002 and since then the suit property is lying vacant. Since Sh. Sohan Lal and Smt. Surekha Rani falsely claimed rights in the suit property, respondent no.1/plaintiff/Sh. Roshan Lal had filed an earlier suit for injunction against Sh. Sohan Lal and Smt. Surekha Rani on 19.4.2001 and which was decreed on 28.7.2005 in favour of the respondent no.1/Sh. Roshan Lal, the

plaintiff in that other injunction suit. As per the judgment dated 28.7.2005 passed in civil suit no.166/04/01, the defendants in that suit, who were Sh. Sohan Lal and Smt. Surekha Rani were enjoined from in any manner transferring the suit property.

(ii) The respondent no.1/plaintiff in the present suit terminated the licence of Smt. Surekha Rani and filed the present suit for possession and *mesne* profits.

(iii) Smt. Surekha Rani failed to appear in the suit. Respondent no.1/plaintiff led *ex-parte* evidence and proved on record ownership of the suit property of Sh. Mehnga Ram vide documents Ex.PW1/1 to Ex.PW1/7. By the judgment dated 24.5.2007, and execution whereof resulted in the objections filed by the present appellant/objector, the suit of the respondent no.1/plaintiff was decreed for possession of the suit property.

4. The case of the appellant/objector is that the respondent no.2/Smt. Surekha Rani had been appointed as an attorney holder by her father-in-law Sh. Sohan Lal. This power of attorney dated 28.10.2000 is a registered power of attorney. It is further pleaded by the appellant/objector that Sh. Mehnga Ram gave up his rights in the suit property in terms of the family settlement entered into between Sh. Mehnga Ram and his two brothers namely Sh. Mohan Lal and Sh.

Sohan Lal. It was pleaded that hence as regards half of the property admeasuring 120 sq. yds of Sh. Sohan Lal, Smt. Surekha Rani as attorney of Sh. Sohan Lal sold rights in the same to one Sh. Bal Ram in terms of the documentation dated 3.3.2001 and which included the agreement to sell, power of attorney, receipt etc. The present appellant/objector Sh. Jugal Kishore is said to have purchased the suit property from Sh. Bal Ram in terms of a registered sale deed dated 17.1.2008. Accordingly, the appellant objected that he was the owner of the suit property, and therefore, execution petition was liable to be dismissed.

5. The executing court below has held that the appellant/objector could not have a better title than the respondent no.2/Smt. Surekha Rani. It was also held by the executing court below that when the respondent no.2/Smt. Surekha Rani executed the documents dated 3.3.2001 in favour of Sh. Bal Ram, at that time the executant of the power of attorney Sh. Sohan Lal was alive and hence the general power of attorney in favour of Smt. Surekha Rani will not make Smt. Surekha Rani owner of the suit property for transferring title to Sh. Bal Ram. The court below also notes that earlier suit no.166/04/01 titled as ***Roshan Lal Vs. Smt. Surekha Rani & Anr.*** for perpetual injunction was decreed against Smt. Surekha Rani and Sh.

Sohan Lal in terms of the judgment dated 28.7.2005. In the said suit no.166/04/01 Smt. Surekha Rani as defendant no.1 has taken up a plea that Sh. Sohan Lal had become the owner of the suit property on the basis of the family settlement but this plea was not accepted. The court below has also held and commented upon the non-existence of documents Ex.AW1/8 to Ex.AW1/13 in favour of Sh. Bal Ram dated 3.3.2001, including because respondent no.2/defendant no.1/judgment debtor in the earlier suit no.166/04/01 did not take up any stand that she had already transferred the suit property to Sh. Bal Ram. In para 21 of the judgment the executing court below has clearly observed that the documents Ex.AW1/8 to Ex.AW1/13 dated 3.3.2001 in fact should be treated as non-existent documents. The court below also notes that in the suit no.166/04/01 Sh. Sohan Lal as defendant no.2 had made a statement in favour of the plaintiff/Sh. Roshan Lal admitting to the claim of Sh. Roshan Lal that Sh. Sohan Lal had no right, title and interest in the suit property and which has the effect that if Sh. Sohan Lal had no right, title and interest then his daughter-in-law Smt. Surekha Rani would not have any right/title, and consequently even assuming that the documentation dated 3.3.2001 are existing documents, yet such documents dated 3.3.2001 could not have given any right to Sh. Bal Ram and hence the appellant/Sh. Jugal Kishore

could not have purchased the suit property from Sh. Bal Ram. The court below has also relied upon Section 52 of the Transfer of Property Act, 1882 that any property transferred during the pendency of the legal proceedings would become invalid and that in the present case the appellant/objector claimed rights in the suit property in terms of the registered sale deed dated 17.1.2008 which has been executed after the subject judgment and decree dated 28.7.2005 which was passed in favour of the respondent no.1/plaintiff/decree holder. The court below has also observed that the present appellant/objector is related to the respondent no.2/Smt. Surekha Rani as it is the admitted position that the respondent no.2/Smt. Surekha Rani after re-marriage is the daughter-in-law of the sister of the appellant's mother.

6. In law by virtue of Section 11 CPC and the provision of Order XXI Rule 96 to 103 CPC any person who claims any independent title is not to be bound by a judgment in the suit. In the present case judgment in the present suit has been passed on 24.5.2007 with respect to the suit for possession instituted on 30.11.2005 by the respondent no.1/plaintiff against the respondent no.2/Smt. Surekha Rani. The appellant/objector can claim to have better title only if he has a valid independent title arising in terms of the documents executed prior to filing of the suit on 30.11.2005, and also in fact a title arising

prior to the earlier suit filed on 19.4.2001 for injunction and which was decreed vide judgment dated 28.7.2005.

7. No doubt the documentation executed by Smt. Surekha Rani in favour of Sh. Bal Ram dated 3.3.2001 are those prior to filing of the earlier suit on 19.4.2001 being suit no.166/04/01 titled as ***Roshan Lal Vs. Smt. Surekha Rani & Anr.*** and decreed on 28.7.2005 as also prior to the filing of the present suit on 30.11.2005, however, the appellant/objector can only claim a valid legal right if the documentation dated 3.3.2001 in favour of Sh. Bal Ram by the respondent no.2/Smt. Surekha Rani are valid and not fabricated documents. Validity of the documents dated 3.3.2001 is to be judged from two aspects. One aspect is as regards whether at all there existed validly executed documents of 3.3.2001 i.e these documents were in fact executed on 3.3.2001 and these documents dated 3.3.2001 are not non-existent/fraudulent/forged documents. The second aspect is that even assuming the documents dated 3.3.2001 did exist then even then whether at all Sh. Sohan Lal or her daughter-in-law Smt. Surekha Rani could have at all transferred the title in the suit property to Sh. Bal Ram by the documentation dated 3.3.2001.

8. It is seen that the executing court below has rightly come to a finding that documentation dated 3.3.2001 executed by the

respondent no.2/Smt. Surekha Rani in favour of Sh. Bal Ram are non-existing documents i.e they are not valid documents but are fabricated documents. This is because it is seen that the documentation dated 3.3.2001 although allegedly came into existence prior to the filing of the earlier suit for injunction being suit no.166/04/01 instituted on 19.4.2001, yet the defendants in the said earlier suit namely Smt. Surekha Rani and Sh. Sohan Lal, made no mention of existence of these documents dated 3.3.2001 allegedly executed by the respondent no.2/Smt. Surekha Rani as the attorney holder of Sh. Sohan Lal and in favour of Sh. Bal Ram and thus the earlier suit was decreed only against the respondent no.2/Smt. Surekha Rani and Sh. Sohan Lal in terms of the judgment dated 28.7.2005 restraining them from in any manner selling or transferring the suit property.

9. In my opinion the documents dated 3.3.2001 are clearly fabricated and non-existing documents and created only to frustrate the subject judgment and decree dated 24.5.2007 of which execution is sought. The fact that documents dated 3.3.2001 are non-existent and fabricated documents becomes clear from the following facts:-

(i) The consideration which is sought to be paid in terms of the documents dated 3.3.2001 is said to be paid in cash. It is always easy to manufacture documents of a back date by showing payment of

consideration in cash. Validity would have been given to the documents dated 3.3.2001 if consideration was paid through a bank instrument and admittedly neither whole nor part consideration of the documentation dated 3.3.2001 is by means of a cheque or bank draft.

(ii) If way back in the year 2001 Sh. Bal Ram by virtue of documents dated 3.3.2001 would have become owner of the suit property then Sh. Bal Ram would have acted upon the ownership by seeking mutation of the property in his name in the municipal record, but Sh. Bal Ram who sold the suit property to the appellant/objector in the year 2008, took no steps from the year 2001 to 2008 for getting the suit property mutated in his name and nor were these documents dated 3.3.2001 ever declared before any public authority.

(iii) As rightly noted by the court below that if these documents dated 3.3.2001 did in fact exist, then, there was no reason why in the earlier suit for injunction being suit no.166/04/01 instituted in April, 2001 would the defendants in the said suit Smt. Surekha Rani and Sh. Sohan Lal not mention at all existence of these documents dated 3.3.2001. Obviously, these documents have now been created for frustrating the judgment and decree for possession passed in favour of the respondent no.1/Sh. Roshan Lal and against the respondent no.2/ Smt. Surekha Rani.

10. In this earlier suit no. 166/04/01 it was decided that the respondent no.2/Smt. Surekha Rani or Sh. Sohan Lal had no right, title and interest in the suit property because it was Sh. Mehnga Ram who was the owner of the suit property. In the earlier judgment dated 28.7.2005 in suit no.166/04/01 the court held that though Sh. Roshan Lal failed to prove ownership of the suit property yet in that suit it was admitted by the defendants Smt. Surekha Rani and Sh. Sohan Lal that the suit property was purchased in the name of Sh. Mehnga Ram, and that although the claim of the defendants in the said suit was that the suit property was purchased out of the joint family funds but the onus to prove that the property was joint family property was on Smt. Surekha Rani and Sh. Sohan Lal in the earlier suit and which onus they failed to discharge because no evidence to this effect was led on behalf of Smt. Surekha Rani and Sh. Sohan Lal. Accordingly holding Sh. Roshan Lal as owner of the suit property injunction was granted in his favour in terms of the judgment dated 28.7.2005 in suit no. 166/04/01.

11. I may also note that in the present case it was for the appellant/objector to show that the title to the suit property which was purchased in the name of Sh. Mehnga Ram was given up to Sh. Sohan Lal and Sh. Mohan Lal, but the appellant/objector who is claiming through Smt. Surekha Rani and Sh. Sohan Lal, is estopped and barred

from doing so in view of the earlier judgment dated 28.7.2005 in suit no.166/04/01 and in which suit the title of the suit property in favour of Sh. Roshan Lal and against Smt. Surekha Rani and Sh. Sohan Lal stood decided.

12. The conclusion thus is that either the documentation dated 3.3.2001 are forged and fabricated documents or that even if the documents dated 3.3.2001 are not fabricated but since Sh. Sohan Lal and Smt. Surekha Rani were not the owners of the suit property and which property was in the ownership of Sh. Mehnga Ram as held in the judgment in the suit no.166/04/01, hence the appellant/objector could not have purchased rights in the suit property in terms of the sale deed dated 17.1.2008 because of the maxim *nemo dat quod non habet*, i.e no one can give what he has not got. Putting it in other words, if Smt. Surekha Rani and Sh. Sohan Lal did not have any right, title and interest in the suit property obviously then neither the first transferee Sh. Bal Ram and the second transferee/appellant/Sh. Jugal Kishore would have any right, title and interest in the suit property.

13. In view of the above, there is no merit in the appeal and the same is therefore dismissed, leaving the parties to bear their own costs.

MAY 31, 2017/ Ne

EFA No.13/2017

VALMIKI J. MEHTA, J

Page 11 of 11