

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

+ **RFA No.699/2017**

% **4th August, 2017**

ASRAR AND ANR. Appellants

Through: Mr. Bhuwan Jayant, Advocate
with Mr.A.K. Upadhayay,
Advocate and Mr. P.V.
Yogeswaran, Advocate.

versus

OM PRAKASH MAWAR AND ORS. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Nos.27771/2017 & 27772/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M.s stand disposed of.

C.M. No.27773/2017 (for condonation of delay)

2. For the reasons stated in the application, delay of 35 days
in re-filing the appeal is condoned.

C.M. stands disposed of.

RFA No.699/2017

3. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant nos.6 and 7 in the suit impugning the judgment of the Trial Court dated 21.4.2017 by which the trial court has decreed the suit for possession filed by the respondent no.1/plaintiff by declaring the transfer documents of ownership executed by Sh. Chattar Singh in favour of the defendant no.1 on 3.5.1991 Ex.D1/W1(colly) as being null and void and the appellants/defendant nos.6 and 7 have been directed to hand over possession of the suit property to the respondent no.1/plaintiff. The suit property is property bearing no.O-76, Seelampur-III, Welcome, Delhi.

4. The facts of the case are that the suit property was originally owned by one Sh. Chattar Singh. Parties to the suit, besides the appellants/defendant nos.6 and 7, were the sons and daughters/legal heirs of Sh. Chattar Singh who expired on 28.2.1992. The case of the appellants/defendant nos.6 and 7 was that Sh. Chattar Singh had sold the suit property to his son being the defendant no.1 in the suit namely Sh. Rajender Kumar Mawar and Sh. Rajender Kumar

Mawar had further sold the suit property by means of documents of the February, 2013 to the appellants/defendant nos.6 and 7. It was pleaded in the suit that documents executed by Sh. Chattar Singh in favour of defendant no.1 are null and void documents/fabricated documents, and therefore, defendant no.1 had no title in the property for being further transferred to the appellants/defendant nos.6 and 7. Defendant nos.2 to 5 were supporting the respondent no.1/plaintiff and therefore effectively disputes in the suit concern defendant no.1 in the suit (one son of Sh. Chattar Singh) along with defendant nos.6 and 7 on the one hand and the other sons and daughters of the deceased Sh. Chattar Singh on the other hand.

5. The issue in the suit boils down to the validity and existence of the documents allegedly executed by Sh. Chattar Singh on 3.5.1991 in favour of the defendant no.1/Sh. Rajender Kumar Mawar/respondent no.2 herein. In this regard, the trial court has rightly held that the defendant no.1/respondent no.2 in the suit could not be the owner of the suit property because defendant no.1/respondent no.2 who is said to have paid Rs.20,000/- to Sh. Chattar Singh as sale consideration in the documents dated 3.5.1991

would not be the owner because in the year 1991, defendant no.1/respondent no.2 was only 19 years of age. Trial court has further rightly held that defendant no.1/respondent no.2 pleaded that a bank account was maintained but no such bank account was filed and proved before the trial court. Trial court also further rightly held that is not believable that defendant no.1/respondent no.2 was doing business since the age of 8 to 10 years and was engaged in the business of making cowdung. If defendant no.1/respondent no.2 had become the owner in the year 1991 then why till the year 2008 no application was made to get the property mutated in his name with the licensor Slum & JJ Department of Municipal Corporation of Delhi. Accordingly, the trial court held that since the defendant no.1/respondent no.2 was not the owner, hence, defendant no.1/respondent no.2 could not have transferred the suit property to the appellants/defendant nos.6 and 7 by virtue of the documents dated 7.2.2013, Ex.DW1/C(colly). Trial court has also rightly held that documents in question by which the appellants/defendant nos.6 and 7 claimed rights in the property are of the year 2013 and since these documents are neither stamped nor registered, therefore, these

documents cannot be looked into in view of Section 53-A of the Transfer of Property Act, 1882 as amended w.e.f 24.9.2001 by Act 48 of 2001 and Article 23 of the Indian Stamp Act, 1899 as applicable to Delhi. These observations are made by the trial court while dealing with issue no.3 and these observations read as under:-

“ISSUE NO. 3:-

This fact is not in dispute that suit property was allotted to Sh. Chattar Singh by Slum and JJ Department of MCD under Jhuggi Jhopri Removal Scheme. Defendants no. 1 and 6 in their cross examination have admitted this fact. The status of Sh. Chattar Singh was only of a licensee in the suit property which actually belonged to govt. Sh. Chattar Singh could not have sold this property to anyone including to defendant no. 1 as he was not the sole owner of the same. He was merely a licensee of the Slum and JJ Department and thus the claim made by him in the documents dated 03.05.1991 that he is the rightful and absolute owner of the suit property and it is free from all sort of encumbrances is totally a false plea.

D6W1 stated in his cross examination that last receipt of payment of licensee fee is of year 2008 which is in the name of Sh. Chattar Singh. It clearly shows that defendant no. 1 did not take any steps for transfer of the suit property in his name at any time after its alleged purchase in the year 1991 in the record of Slum and JJ Department. In fact, suit property could not have been transferred to anyone without permission of this department by the original allottee Sh. Chattar Singh. Thus, defendant no. 1 could not have become owner of the suit property which belonged to govt. agency and was merely given to Sh. Chattar Singh on license basis. Due to this reasons, defendant no. 1 also could not transfer the ownership right in the suit property legally in favour of defendants no. 6 and 7. Even otherwise also, defendant no. 1 has failed to bring on record any evidence that he had paid the amount of Rs. 20,000/- to Sh. Chattar Singh towards sale consideration as mentioned in the documents dated 03-05-1991. From the cross examination of defendant no. 1, it has come on record that he was merely aged about 19 years in the year 1991. He allegedly was working and studying. He maintained a bank account but no statement of account of such bank account is produced to show that he was having income and was capable to pay the sale consideration to his father. The plea taken by the defendant no. 1 that he started the business of making cowdung at the age of 8 to 10 years is not acceptable and reliable. Thus, the purchase of the suit

property for valuable sale consideration by defendant no. 1 becomes highly doubtful specially when he also admitted in his cross examination that he does not know whether his father was having any requirement of money in the year 1991.

Defendants no. 6 and 7 have allegedly purchased the suit property for Rs. 15 lakhs from defendant no. 1 through GPA, Agreement to Sell etc. dated 7-2-2013 which are Ex. DW1/C (Colly). These documents in favour of defendants no. 6 and 7 are unregistered. GPA, Agreement to Sell & Purchase are prepared on the stamp paper of Rs. 50/-. The transfer of immovable property through such type of documents was prohibited by Hon'ble Supreme Court vide order dated 11-10-2011 in case ***Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana 2011 LawSuit (SC) 1107***. Thus, defendants no. 6 and 7 cannot be treated as legal owners of the suit property on the basis of these defective and invalid documents.

Further more, these documents Ex. DW1/C (Colly) are neither registered nor appropriate stamp duty is paid on it. Delhi High Court in case ***Ashwani Kumar vs. Sukh Devi 2014 (4) Capital Law Judgment 90 (Delhi)*** held that where claim is raised regarding purchase of the suit property on basis of unregistered agreement to sell, then such agreement to sell cannot be relied upon to claim part performance and entitlement to possession unless the agreement to sell is registered and stamped at 90% of the value of the sale deed. Such agreement has to be treated as void and illegal. In this case, High Court even raised doubt about the existence and validity of the agreement itself when the payment was made in cash and not by cheque.

In another ***Yeshvir Singh Tomar vs. Dr. O.P. Kohli 222 (2015) DLT 285***, Delhi High Court held that where agreement to sell is in the nature of part performance then it cannot create rights unless the same is registered and stamped at 90% of the value of the sale deed. Thus on the basis of such unregistered and unstamped agreement to sell no rights can be claimed. A power of attorney, even if it is registered will not confer rights in the nature of ownership in the property without payment of stamp duty. In fact a power of attorney which effectively gives ownership rights of the suit property by allowing the attorney to sell the immovable property by virtue of Art. 48 (f) of the Indian Stamp Act as applicable to Delhi will have to have the same duty as a conveyance deed as per Article 23 of the Indian Stamp Act for the amount of consideration. In view of above decisions, defendants no. 6 and 7 cannot be held as legal owner of the suit property on the basis of the documents Ex. DW-1/C (Colly).

Further more, D6W1 in his cross examination also stated that though the suit property was allotted to Sh. Chattar Singh under Jhuggi Jhopri Removal Scheme but he did not know by which department it was allotted. He admittedly not made any inquiry from any department

regarding the allotment papers in the name of Sh. Chattar Singh even after purchasing the property to find out whether suit property could have been transferred without permission of that department or not. In fact he showed ignorance whether the suit property being license hold property could not have been sold to him without permission of MCD. He did not know anything about any license fee payable in respect of allotted property or how much amount was left to be paid because he had not paid anything to concerned department even after its purchase. According to this witness, his brother in law Shahid had verified the documents in the name of Sh. Chattar Singh at residence of defendant no. 1 as well as from the office of Sub-Registrar. This fact cannot be believed because admittedly neither any application was moved nor any fees was paid in the office of Sub-Registrar for purpose of inspection or verification of documents. Moreover, defendants also not examined the witness Shahid who allegedly done verification. Hence, in such situation it can be said that defendants no. 6 & 7 are not the legal owner of the suit property and documents Ex. DW1/C (colly) does not confer any ownership rights of the suit property upon these two defendants. They cannot be held as bonafide purchasers of the suit property also. These two defendants would not get any better title than the previous seller from whom the property was allegedly purchased. Even defendant no. 1 in his cross examination stated that he never checked whether any permission of Slum and JJ Department was required for sale and purchase of the suit property. Further defendant no. 1 was a government employee and he has not disclosed about the purchase of the suit property from his father in the year 1991 and its sale to defendants no.6 & 7 in the year 2013 in his office. Even he has not mentioned anything about these transactions in his income tax returns. It also leads to the inference that the transaction alleged by the defendant no. 1 regarding purchase of the suit property and then sale of the same is not correct/genuine and the possibility of the fake documents cannot be ruled out. This issue is accordingly decided in favour of plaintiff and against defendants no. 6 and 7.” (underlining added)

6. In view of the factual and legal position which has emerged as discussed above, I do not find any illegality or perversity in the impugned judgment of the trial court that defendant no.1/respondent no.2 was not the owner of the suit property and once

defendant no.1/respondent no.2 was not the owner hence the appellants/defendant nos.6 and 7 could not have become owners of the suit property on being transferred the suit property to them by defendant no.1/respondent no.2. I may also note that there are certain observations of the trial court as regards the property not being capable of being transferred as it was a government property however in my opinion these observations otherwise have no bearing to decision of the main issue that defendant no.1/respondent no.2 was not sold the suit property by his father Sh. Chattar Singh in terms of the documentation dated 3.5.1991.

7. There is no merit in the appeal. Dismissed.

AUGUST 04, 2017
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VALMIKI J. MEHTA, J