

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : September 15th, 2017

+ RFA 555/2015

NARENDER & ANR Appellant
Through: Mr.C.P. Tyagi, Advocate.

versus

MAHESH SHARMA & ORS Respondent
Through: Mr.Shesh Datt Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellant under Section 96 read with Order XLI CPC against the judgment dated 06.07.2015 passed by the learned Additional District Judge, Delhi whereby the suit filed by the plaintiffs/respondents for possession, permanent injunction, declaration and damages has been decreed in favour of the plaintiffs/respondents and against the appellants/defendants.

2. The facts enumerating from the plaint are that two civil suits were filed by the parties against each other; one was CS No.320/2014 titled Mahesh Sharma & ors v. Desh Raj & Anr. and the other was CS No.323/2014 titled Narender v. Mahesh Sharma & Ors. Both the said suits were decided vide common impugned judgment dated 06.07.2015. Brief facts of suit no.320/2014 are that the said suit was filed for possession of a shop forming part of property no.C-3, out of

Khasra No.17/13/1, Village Johri Pur, Illaqa Shahdara, Delhi, for declaration of documents of sale dated 02.01.2009 in the name of Narender as null and void, and mesne profits/damages @ Rs.2,000/- per day and restraining the defendants from creating any third party interest in the suit property. It was contended that the suit property was purchased by the wife of Mahesh Sharma and after her death on 03.12.2006, all her LRs became the owner of the suit property and Mahesh Sharma had no right to execute any document in respect of the said property. Desh Raj was running the shop in question being let out by defendant no.1 on a monthly rent of Rs.4,000/- and had paid the rent up to January, 2009. For obtaining an electricity connection, Desh Raj fraudulently obtained the copy of documents of the suit property under the pretext that one property at Khasra no.17/1 was to be purchased.

3. In the suit no.323/2014, the plaintiff Narender had contended that he had purchased a built property bearing No.C-32, out of Khasra No.17/13/1, Village Johripur, Illaqa Shahdara, Delhi measuring 50 sq. yards on 05/12.01.2009 from defendant no.1 for Rs.17,30,000/- vide GPA, agreement to sell, will and cash receipt attested by Notary Public on 12.01.2009. The plaintiff Narender got the physical possession of the property on 05.01.2009 and paid Rs.17,30,000/- towards the same. He got an electricity connection transferred in his name. It was alleged that the defendant no.1 illegally and forcibly trespassed in the portion of the suit property by breaking locks in the night of 04/05.03.2009. The remaining portion i.e. a shop is in

possession of the plaintiff and he is carrying the work of property dealing from the same. On 17.03.2009, the defendants tried to dispossess the plaintiff from the said shop. The plaintiff claimed the damages @ Rs.10,000/- per month.

4. On the basis of pleadings of parties, following issues were framed in civil suit no.320/2014 :

(I)Whether plaintiffs are entitled to decree for possession in regard of shop, forming part of property bearing No.C-3, Out of Khasra No.1/13/1 Village Joharipur in abadi of Joharipur Extn. Shahdara, Delhi?

(II)Whether plaintiffs are entitled to decree for permanent injunction in respect of 50 Sq. yards of land including shop, forming part of property bearing No.C-3, Out of Khasra No.17/13/1 village Joharipur in abadi of Joharipur Extn. Shahdara, Delhi?

(III)Whether plaintiffs are entitled to decree for declaration as null and void documents of sale dated 05.01.09 in respect of 50 Sq. yards of land including shop, forming part of property bearing No.C-3, Out of Khasra No.17/13/1 Village Joharipur in abadi of Joharipur Extn. Shahdara, Delhi?

(IV)Whether plaintiffs are entitled to decree for mesne profits and damages at the rate of Rs.2,000/- per day in respect of shop, forming part of property bearing No.C-3, Out of Khasra No.17/13/1 Village Joharipur in abadi of Joharipur Extn. Shahdara, Delhi with effect from 15.12.10 till the date of handing over of possession of the same?

(V)Relief.

In suit no.323/2014, following issues were framed :

(I)Whether the plaintiff is entitled to decree for specific performance of the agreement to sell dated 05.01.2009 and possession of the suit property?

(II)Whether the plaintiff is entitled for recovery of damages at the rate of Rs.10,000/- per month w.e.f. 01.04.2009 till the date of handing over the possession of the suit property?

(III)Whether the plaintiff is entitled to the relief of permanent injunction to restrain the defendants from creating third party interest in the suit property and from dispossessing plaintiff from a shop in the suit property?

(IV)As an alternative to the relief of specific performance, whether plaintiff is entitled to recovery of Rs.17,30,000/- alongwith interest at the rate of 25% per annum w.e.f. 05.01.2009 till the realization as well as damages of Rs.10,000/- per month w.e.f. 01.04.2009?

(V)Whether the agreement dated 05.01.2009 cannot be enforced as the same has been obtained by the plaintiff from the defendants by way of mis-representation and playing fraud upon the defendants?

(VI)Relief.

5. Vide impugned judgment and decree dated 06.07.2015, the suit no.323/2014 filed by the appellant/defendant-Narender was dismissed, whereas the suit no.320/2014 filed by the plaintiffs/respondents-Mahesh Sharma and others was decreed in their favour and against the appellant/defendant-Narender. Feeling aggrieved by the same, the present appeal has been preferred.

6. The main grouse of the appellant is with regard to finding of the Court below on issues no.1 to 3 in Suit no.320/2014 and on issue no.1

and 2 in Suit No.323/2014. Apparently, all these issues were decided together by the Court below.

7. Arguments advanced by the counsel for the appellants/defendants is that in the suit filed by the appellant it was contended that the respondents be directed to execute the sale deed and to hand over the possession of suit property which was transferred vide documents dated 05/12.01.2009. Vide said documents, the suit property was transferred in the name of appellant-Narender and its possession was handed over. Electricity connection was taken in the name of the appellant. Thereafter, the respondents illegally trespassed the suit property for which a criminal complaint was filed by the appellants. After about a lapse of one year from the date of execution of sale documents in favour of appellant no.1, the respondents had filed a suit no.320/2014 against the appellants. The respondents have failed to prove that documents dated 05.01.2009 were obtained by fraud. No document or witness was produced by the respondents in support of his case. It is further argued that appellant no.2-Deshraj was acting in the capacity of an attorney for the purpose of filing of the suit. Respondent no.1 was the sole witness to prove his case but he miserably failed to do the same. He failed to prove that there was any property under Khasra no.17/1, Karam Farm, Johripur, Delhi in his name or in the name of any other person, the documents of which were allegedly prepared on 02.01.2009.

8. I have heard the arguments advanced by the counsel for the parties and have gone through the evidence and documents on record.

9. From the material available on record, it is apparent that two suits were filed by the parties against each other. Suit no.323/2014 was filed by the appellants-herein against the respondents for specific performance of agreement, damages, injunction and possession, whereas suit no.320/2014 was filed by the respondents-herein against the appellants-herein for possession of a shop in the suit property, declaring the documents as null and void and for damages and injunction.

10. Apparently, both the suits were filed with regard to one property. It is an admitted fact that the owner of the property was Smt.Raj Kumari wife of respondent/plaintiff Mahesh Sharma. It was claimed by the appellant no.1-Narender that he had purchased the suit property from the respondent no.1-Mahesh Sharma vide documents dated 05/12.01.2009. The documents which were allegedly executed by respondent/plaintiff Mahesh Sharma were General Power of Attorney (Ex.PW1/2), Agreement to Sell (Ex.PW1/3), Will (Ex.PW1/4), Receipt (Ex.PW1/5), Possession letter (Ex.PW1/6) and site plan (Ex.PW1/7). It is also an admitted fact that the said documents were not registered documents rather the same were notarized. A perusal of documents Ex.PW1/2 to Ex.PW1/7 shows that the same were allegedly executed on 05.01.2009 but the same were notarized or attested by the Notary Public on 12.01.2009. No explanation has come on record as to why the documents were not attested on 05.01.2009, the date of their alleged execution. It is the consistent case of the appellants/defendants that the said documents

were executed on 05.01.2009 but no reasoning has been given for their attestation on 12.01.2009. It is also the case of the appellants/defendants that they had made the payment of Rs.17,30,000/- at the time of execution of said documents, but it was specifically denied by the respondents/plaintiffs that any such documents were executed with regard to sale of the suit property.

11. It is a settled law that the title over an immovable property of the value of Rs.100/- and above can be transferred only by way of execution of a sale deed and that too by way of registration of documents as provided under Section 17 of the Indian Registration Act, 1908 and by way of documents of sale as recognized under Section 54 of the Transfer of Property Act, 1882. As already observed by Hon'ble Apex Court in the case of **Raghunath & Ors. v Kedarnath** **AIR 1969 SC 1316**, if a document for transfer of an immovable property is not registered, the same is inadmissible in evidence. The said ratio has further been affirmed in the case of **Suraj Lamps & Industries Pvt. Ltd. v. State of Haryana & Anr. 183 (2011) DLT 1 (SC)** stating that the document of title i.e. General Power of Attorney, Agreement to Sell, Will and Receipt do not confer ownership rights in respect of an immovable property. It was observed that immovable property can be legally transferred/conveyed only by way of a registered deed of conveyance and the transaction in the nature of GPA or Will do not convey title and do not amount to transfer and the same cannot be recognized as a valid mode of transfer of immovable property.

12. In the instant case, it is an admitted fact that the possession of the suit property excluding the shop in question is with the respondents/plaintiffs. As discussed above, the ownership of an immovable property can be transferred only by way of execution of registered sale documents which in the present case has not been done as per the provisions of Transfer of Property Act. Thus, the appellants /defendants have failed to prove on record that any transfer of property in question was made by respondent no.1-herein in his favor rather it has been observed that the respondents are the owners of the suit property. The execution of documents as alleged by the appellants/defendants in favor of appellant no.1 cannot be said to have created any title in his favor as the same are not registered. So far as the contention of the appellants that the electricity bills are in the name of appellant no.1-Narender to prove his case that he was the owner of the property is concerned, the same is not admissible for the reasons that no electricity bill was produced on record rather an application for change of name was produced which falsifies the case of the appellant.

13. Thus, the appellants have failed to prove their case for specific performance of agreement, damages, injunction and possession of the suit property. On the contrary, it was proved that the respondents/plaintiffs are the owners of the entire suit property and are entitled for possession and declaration of documents dated 05.01.2009 as null and void and for permanent injunction.

14. In view of the above discussion, this Court does not find any illegality or infirmity in the impugned judgment and decree passed by

the Court below. The entire case of the appellants/defendants was based upon the execution of documents dated 05.01.2009 which were held to be null and void and thus they have no title over the said suit property. This Court is of the considered opinion that the judgment under challenge has been passed on the basis of evidence, documents and material available on record. The same is accordingly upheld. As a result, the present appeal is hereby dismissed.

15. No order as to costs.

SEPTEMBER 15, 2017
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(P.S.TEJI)
JUDGE

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