

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

+ **Ex. S. A. No.5/2015**

% **18th May, 2017**

SUNIL JAIN

..... Appellant

Through: Mr. G.P. Thareja, Advocate
with Mr. Usman Khan,
Advocate.

versus

ZAMIRUDDIN

..... Respondent

Through: Mr. Sanjeev Soni, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Execution Second Appeal is filed by the appellant/objector/Sh. Sunil Jain against the impugned judgment dated 28.9.2015 of the first appellate court. The first appellate court allowed the appeal filed by the respondent/deGREE holder/Zamiruddin and set aside the judgment of the executing court dated 13.3.2015 whereby the executing court had allowed the objections filed by the present objector and thereby refused to grant execution of the decree for possession dated 28.9.2004 passed in favour of the respondent/deGREE holder.

2. Before turning to the facts of the present case I would like to note that the first appellate court has indeed given a very elaborate, exhaustive and thorough judgment dated 28.9.2015. The issues at hand have been discussed in a threadbare manner. Even this Court could possibly can do no better and therefore this Court would at the relevant places simply reproduce the relevant portions of the impugned judgment dated 28.9.2015 as regards the issues decided for the purpose of dismissing this execution second appeal.

3. The property in question is property bearing no.C-5/210, Yamuna Vihar, Delhi. Admittedly the respondent/decreed holder is the allottee of this property from the Delhi Development Authority (DDA) inasmuch as DDA had executed a perpetual lease deed in favour of the respondent/decreed holder. One Shanu Mohd. had claimed to be a tenant in possession of the suit property and who filed a suit for injunction against the respondent/decreed holder whereby Shanu Mohd. claimed rights of a tenant in the suit property. In this suit filed by Shanu Mohd. the respondent/decreed holder filed a counter-claim. It is this counter-claim which was decreed by the first appellate court and which judgment and decree is the subject matter of the present execution proceedings. The civil court in which Shanu Mohd. filed a suit claiming rights as a tenant, and in which counter-claim was filed by the

respondent herein, both the suit and counter-claim were dismissed by the first/trial court. Respondent/decreed holder/Zamiruddin appealed against the judgment of the trial court and this appeal being RCA No.51/2002 was allowed by the first appellate court of Ms. Anju Bajaj Chandna, Addl. Senior Civil Judge in terms of the judgment dated 28.9.2004. As a result of the judgment dated 28.9.2004, a decree for possession stood passed in favour of the respondent/decreed holder and against the judgment debtor/Shanu Mohd. The formal decree in RCA No.51/2002 was drawn on 23.3.2006 after the requisite court fee was paid by the respondent/decreed holder, and which court fee was required to be paid in terms of the judgment of the first appellate court because the entitlement of possession as per the decree was to arise on payment of 50% of the court fee on the market value of the property in question.

4. When the respondent/decreed holder filed execution proceedings to execute the subject judgment and decree dated 28.9.2004 passed by the first appellate court, firstly one Sh. Margoob Ahmed filed the objections on 10.11.2006 claiming himself to be owner of the suit property. Sh. Margoob Ahmed claimed ownership on the ground that the respondent/decreed holder had sold the suit property to one Sh. Hakikat Ali on 9.12.2003 and Sh. Hakikat Ali had sold the suit property to Sh. Margoob Ahmed on 2.12.2005. Sh. Margoob

Ahmed claimed that he got the suit property converted into a freehold property from the DDA and a conveyance deed was executed in his name on 4.7.2006. Accordingly, it was prayed that the execution proceedings be dismissed.

5. In these objections filed by Sh. Margoob Ahmed issues were framed by the trial court vide order dated 12.10.2009 and after evidence was led by both the parties, objections were ultimately dismissed by the executing court by its order dated 19.2.2010, the objections of Sh. Margoob Ahmed being dismissed in default. Fresh warrants of possession were therefore issued in favour of the respondent/decreed holder.

6. At this stage the present appellant/Sh. Sunil Jain filed his objections on 13.8.2010 to the execution of the decree that the appellant had purchased the suit property from Sh. Margoob Ahmed on 12.1.2007 through a registered sale deed and since the appellant was a *bonafide* purchaser, hence, he could not be dispossessed. It is these objections which were allowed by the trial court, and against which the impugned judgment has been passed by the first appellate court setting aside the judgment of the trial court consequently dismissing the objections filed by the present appellant/Sh. Sunil Jain, which are in issue in this second appeal.

7. To complete the narration of facts, it is required to be stated that Sh. Margoob Ahmed had filed a suit for permanent and mandatory injunction against the respondent/decreed holder in the civil court and which suit was dismissed in default and even the restoration application stood dismissed in default. Sh. Margoob Ahmed did not stop there and he yet filed one more suit on 27.10.2006 against the respondent/decreed holder impleading DDA as an additional party but which was with the same basic facts and also by concealing the factum of dismissal in default of the earlier suit as also dismissal of the restoration application. The fresh suit (second suit) of Sh. Margoob Ahmed was dismissed by the civil judge on 20.3.2008 with costs and appeal of Sh. Margoob Ahmed being RCA No.8/2009 was also dismissed by the first appellate court of the concerned ADJ on 21.12.2009. As already stated above, the appellant/Sh. Sunil Jain had filed the objections on 13.8.2010 i.e after dismissal of the appeal filed by Sh. Margoob Ahmed on 21.12.2009. Earlier the present appellant had filed a civil suit against Sh. Margoob Ahmed in this Court seeking declaration that he is the *bonafide* purchaser of the suit property. In this suit filed against Sh. Margoob Ahmed the respondent/decreed holder was intentionally not made a party. When the present decreed holder moved an application under Order I Rule 10 CPC in this suit

filed by the appellant/Sh. Sunil Jain, the suit was withdrawn by the appellant from this Court with liberty to file a suit against Sh. Margoob Ahmed, Sh. Shanu Mohd. as also the present respondent/deGREE holder.

8. The following issues were framed by the executing court in the objections filed by the appellant:-

“1. Whether the purported GPA, Agreement to Sell, Receipt of consideration amounting to Rs.1,10,000/-, Will, Affidavit all dated 9-12-2003 allegedly executed by DH in favour of Sh. Hakikat Ali s/o Shokat Ali are forged and fabricated? OPDH

2) Whether the DH has not delivered the actual physical possession of the suit property on 9-12-2003 to Sh. Hakikat Ali s/o Sh. Shokat Ali as he himself was not in physical possession? OPDH

3) Whether the present objections are liable to be dismissed in view of the doctrine of lis-pendence as provided under section 52 of Transfer of Property Act? OPDH

4) Whether the objector Sh. Sunil Jain is the owner of the suit property? OP objector

5) Relief.”

9. There were three main issues as regards the validity of the objections and conversely of the entitlement of the respondent/deGREE holder to get possession under the judgment and decree dated 28.9.2004. The first issue was that whether the respondent/deGREE holder did or did not execute the documentation dated 9.12.2003 in favour of Sh. Hakikat Ali because the respondent/deGREE holder categorically denied that he ever executed any such documents or ever

transferred title in the suit property to Sh. Hakikat Ali. The second issue was that whether Sh. Hakikat Ali was ever at all in possession of the suit property so that he could have transferred the same to Sh. Margoob Ahmed in terms of documents by which Sh. Margoob Ahmed purchased the property from Sh. Hakikat Ali and from which Sh. Margoo Ahmed the appellant/Sh. Sunil Jain purchased the suit property, inasmuch as, it was the judgment debtor/Shanu Mohd. and not Sh. Hakikat Ali who was in possession of the suit property when the alleged documentation was executed by the respondent/deGREE holder in favour of Sh. Hakikat Ali on 9.12.2003. It be noted that various litigations were pending on 9.12.2003 between the respondent/deGREE holder and the judgment debtor/Shanu Mohd. The third issue is that whether Sh. Margoob Ahmed or Sh. Sunil Jain can be said to have received a valid title to the suit property under the documentation executed in their favour because the documentation was executed in favour of Sh. Hakikat Ali when the counter-claim/subject litigation was pending against the judgment debtor/Shanu Mohd. who was in possession of the suit property and thus such documentation is hit by the doctrine of *lis pendens* contained in the Section 52 of the Transfer of Property Act, 1882.

10. As already stated above in the second para of this judgment that since the first appellate court in the impugned judgment has done a very thorough job of discussing the issues and therefore I had observed that I would reproduce the paras of the judgment of the first appellate court, I accordingly propose to do this at this stage. The first issue is whether there took place any genuine sale transaction between the respondent/decree holder and Sh. Hakikat Ali on 9.12.2003 (Issue no.1). This issue has been dealt with and decided in favour of the respondent/decree holder by the impugned judgment of the first appellate court as under:-

“ This fact is not in dispute that original allottee of the suit property was DH as per lease deed executed in his favour by the DDA. Respondent relied upon the sale documents Ex. OW1/10 to 14 i.e. GPA, Agreement to Sell, Will and Receipt dated 9-12-2003 to show that title and possession of the suit property itself was transferred by DH to Sh. Hakikat Ali. The Agreement to Sell was initially undervalued and deficient stamp duty was paid on it but this deficiency was removed on 28-11-2005 by Sh. Hakikat Ali just before the sale of the suit property to Sh. Margoob Ahmed. DH has described these documents as forged and fabricated.

The above documents in favour of Sh. Hakikat Ali as relied upon by the respondent are not proved as per law because the said Sh. Hakikat Ali has not been examined by the respondent despite mentioning his name in his list of witnesses. Respondent in his list of witnesses mentioned the name of five private witnesses including Sh. Hakikat Ali and Sh. Margoob Ahmed besides witnesses of the sale documents but none of them was called in the witness box and withheld from the court for the reasons best known to him. The argument advanced on behalf of respondent now that sufficient opportunities were not given by the Id. Executing Court to complete the evidence and his evidence was closed abruptly despite objections cannot be accepted because respondent had not challenged that order in higher court ever. Due to non examination of material witness Sh. Hakikat Ali and attesting witnesses of the documents in his favour by the respondent, adverse inference has to be drawn against him because it is not the case of the respondent that this witness was not available or could not come to the court. Even Notary Public who attested these documents Ex. OW1/10 to 14 is examined. The sale documents in favour of Sh. Hakikat Ali allegedly

executed by DH were also unregistered documents. These alleged documents in favour of Sh. Hakikat Ali were not executed in presence of the respondent, so he could not prove it and exhibit it. Even no expert witness is examined by the respondent to establish that signatures on these documents are of DH. Supreme Court in ***Rosammal vs. Joosa Mairyan Fernandez 2000 VI AD (SC) 569*** held that where document is unregistered and its execution is disputed, then atleast one of its attesting witnesses is required to be examined to prove it. Accordingly, it is held that the same is not proved as per law and thus it cannot be looked into even if respondent has put exhibit mark on the same.

The attestation of GPA and other documents in favour of Sh. Hakikat Ali done by Notary Public are also not proper and defective because no entry number of register of such notary is mentioned anywhere. There is no endorsement of the Notary Public on these documents who had identified DH before him. How, Notary Public satisfied himself that person appearing before him is the DH and none other is not reflected from any of his statement made while attesting the same. Hence, the attestation done by the Notary Public on the GPA and other documents Ex. OW1/10 to 14 is liable to be discarded due to violation of the notary rules.

In the said GPA Ex. OW1/10, DH allegedly has described himself as ‘Owner General Attorney’ which fact is incorrect because he was only the allottee of the DDA property at that time. DH has also described himself in possession of the suit property which fact is also incorrect because he was not there actually as held below while dealing with issue no. 2. Thus, the above details allegedly given by the DH in the GPA is wrong and these facts create doubt about the genuineness and correctness of the said document.

Further Agreement to Sell Ex. OW1/11 dated 9-12-2003 allegedly executed by DH in favour of Sh. Hakikat Ali is unregistered document. This was required to be compulsorily registered as per provisions of Section 17 (1A) of Registration Act at that time so due to its non registration, it cannot be read in evidence. In this regard, reliance can be placed upon the decision of Delhi High Court in case ***Arun Kumar Tandon vs. Akash Telecom Pvt. Ltd. CM (M) no. 1371/2008 decided on 2-3-2010.***

As per judgment of Supreme Court in ***Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana (2012) 1 SCC 656*** the transfer of title and ownership through GPA, Agreement to Sell etc. is not permissible and only those GPA etc. have been exempted executed prior to the date of judgment which were genuinely executed. Here in this matter, the alleged first sale transaction in favour of Sh. Hakikat Ali itself is found not genuine and accordingly he could not have got any right or title of the suit property. Accordingly, he could not transfer any title better than himself to his successors.

All the above mentioned facts leads to the conclusion that there was no genuine transaction between DH and Sh. Hakikat Ali on 9-12-2003 as alleged by respondent and no title or ownership of the suit property passed from DH to said Sh. Hakikat Ali on the basis of documents Ex. OW1/10 to 14. The findings given by Id. Executing Court in this regard is not correct and is liable to be set aside.”
(underlining added)

11.(i) A reading of the aforesaid paras of the first appellate court showed that the documentation executed in favour of Sh. Hakikat Ali dated 9.12.2003 was proved by the appellant/Sh. Sunil Jain as Ex.OW1/10 to Ex.OW1/14. This documentation was held by the court below to be illegal and had no effect for various reasons.

(ii) The first reason is that the documents dated 9.12.2003 including therein the agreement to sell were for seeking rights on the basis of the doctrine of part performance contained in Section 53A of the Transfer of Property Act. By Act 48 of 2001 the provision of Section 53A of the Transfer of Property Act was amended w.e.f 24.9.2001, and also by introduction of Article 23A in the Stamp Act, 1899 as applicable to Delhi, and as a result of which amendment no agreement to sell in the nature of part performance could give valid rights unless the agreement to sell was duly stamped and registered. Admittedly, the agreement to sell was not registered. Therefore the appellant cannot seek validity of the documents dated 9.12.2003 allegedly executed by the respondent/decreed holder in favour of Sh. Hakikat Ali.

(iii) Another reason for the documents not being valid and as held by the first appellate court is that the documents are not proved to have been duly executed inasmuch as neither Sh. Hakikat Ali was examined and nor the attesting witnesses to the documents dated 9.12.2003 were

examined. Obviously the appellant could not have proved due execution of the documents dated 9.12.2003 as those documents were not executed in his presence.

(iv) Also the documents being notarized, the notary public could have been summoned to show the factum with respect to due notarization at a particular serial number of the register of notary but this was also not proved inasmuch as there was no entry of the number of the register of the notary mentioned anywhere in the documentation Ex.OW1/10 to Ex.OW1/14.

(v) The next reason given by the first appellate court is that signatures of Sh. Hakikat Ali could have been proved if an expert witness was examined to show that the signatures on the documents are of Sh. Hakikat Ali, but no expert was examined.

12. In my opinion, the aforesaid reasoning of the first appellate court is faultless and I completely agree with the same that documentation dated 9.12.2003 allegedly executed by the respondent/decreed holder in favour of Sh. Hakikat Ali are not valid documents. It may also be noted that counsel for the respondent/decreed holder states that the original perpetual subject lease executed by the DDA in favour of the respondent/decreed holder is still with the respondent/decreed holder and which has not only been brought to this

Court today but also was shown to the first appellate court and that in case the respondent/decreed holder had transferred title to Sh. Hakikat Ali then this original perpetual lease deed would have been given to Sh. Hakikat Ali because if title is transferred then the original title documents are handed over to the transferee. I may note that the case of the appellant was that original perpetual lease deed executed by the DDA in favour of the respondent/decreed holder was with him but no such original lease deed was filed, and surely the same could not have been filed because the original of this lease deed has always been and continues to be with the respondent/decreed holder as stated above.

13. To the above discussion I would like to add an additional reason for holding as non-genuine the documents executed by the respondent/decreed holder in favor of Sh. Hakikat Ali and this additional reason is that there is no consideration which is paid by Sh. Hakikat Ali to the respondent/decreed holder by cheque. Whenever a document is forged/fabricated it is very easy to state therein that payment of price is in cash. If payment was by cheque then its encashment would have shown the transaction to be genuine but admittedly there is no payment by a bank instrument made to the respondent/decreed holder and thus clearly the documentation said to be

executed by the respondent/decreed holder in favor of Sh. Hakikat Ali are forged and fabricated documents.

14. The next issue which arises was as regards whether the documentation dated 9.12.2003 allegedly executed by Sh. Hakikat Ali in favour of Sh. Margoob Ahmed could at all be valid because actually on 9.12.2003 Sh. Hakikat Ali was not in a position to transfer the possession of the suit property to Sh. Margoob Ahmed because on this date it was the judgment debtor/Shanu Mohd. who was in possession of the suit property. The first appellate court again in a very detailed and exhaustive manner has dealt with this aspect and shown as to how in different litigations, different FIRs, different documentations etc etc the address of the suit property was of Shanu Mohd. and where Shanu Mohd. was served with different processes issued by the different courts as also such address of Shanu Mohd. existed in the public record. The relevant portion of the judgment of the first appellate court dealing with this aspect reads as under:-

“The documents Ex. OW1/10 to 14 allegedly executed by DH in favour of Sh. Hakikat Ali on 9-12-2003 and relied upon by the respondent says that possession of the suit property was handed over by the DH to Sh. Hakikat Ali on the date of execution of these documents. However, the same could not have been possible as on the said date, DH himself was not in actual physical possession of the suit property. The following evidence on record establishes the same;

(a) The judgment of court of Addl. Senior Civil Judge Ms. Anju Bajaj Chandna in RCA no. 51/2002 dated 28-9-2004 which is Ex. DH- 1/1 clearly reveals that DH who was in possession of the suit property at one time was dispossessed by the JD, that is why direction was given to the

JD to restore possession to the DH. Thus, it is established from the judicial pronouncement that DH was not in possession of the suit property even as on 28-9-2004. If the judgment dated 28-9-2004 is read as a whole especially paragraphs no. 21 and 23, then it is clear that the suit no. 244/2000 was filed by the JD himself. Thus the argument advanced on behalf of respondent that the signatures of JD on the plaint of the said suit and other documents are different and accordingly it cannot be said that he had filed this suit has no merits. The record indicates that infact JD was of the habit of signing in different manner at different time.

- (b) JD Sh. Shanu Mohd. and his wife Smt. Shalu Khan were the injured/eyewitness of the case FIR no. 3/2001 under section 308/324/452 IPC registered in PS Bhajanpura against the DH. They had given their residential addresses of the suit property to the police as per chargesheet Ex. DH-1/2. Even during trial of this case, both were served through summons of the Sessions Court for date of 24- 1-2004 and throughailable warrants for 18-3-2004 at the same address. They appeared in the Sessions Court on 18-3-2004 as a witness and gave statement on oath in which also gave their residential addresses as of suit property. It also proves that JD was in the possession of the suit property even in March, 2004.
- (c) In respect of one money decree dated 13-2-2004 passed in suit no. 256/2003, an execution bearing no. 14/04 between DH and JD was pending in the court. In that execution Ex. DH-1/3, warrants of attachment of movable property of the JD were issued at the address of the suit property. On 1-10-2004, a part payment of Rs. 8,000/- was made to the DH on behalf of the JD and time was given to the parties for compromise but it could not be materialized. The report of the bailiff on warrants of attachment proves on record through statement of concerned bailiff given in the concerned court on 23-9-2005 says that he had met wife of the JD at the suit property address and even recorded her statement which says that JD had gone out of station and she would inform him about the warrants as and when comes. The concerned Executing Court even issued warrants of arrest against the JD vide order dated 23-9-2005 at the address of the suit property. These facts also prove that JD was residing at the suit property address and DH was not in possession of the same even in September, 2005.
- (d) Ld. Addl. Senior Civil Judge Ms. Anju Bajaj Chandna passed judgment in RCA no. 51/2004 on 28-9-2004 but decree could not be prepared as the DH was required to pay some court fees. In the year 2006, DH moved an application u/s 151 CPC for preparation of the decree as he showed willingness to pay the requisite court fee. The court issued notice of this application to the JD at the address of the suit property and he was served because his counsel appeared in the court and filed vakalatnama as per order sheet Ex. DH-1/4. There after no one appeared for the JD, so the court framed formal decree on 23-3-2006. The fact of service of notice of the application of the DH at the address of the suit property upon JD also point out that he was occupying the same even in the year 2006.

- (e) It is also proved from the certificate issued by the ADM cum Election Returning Officer dated 12-10-2006 Ex. DH-1/5 that name of JD was still existing in the electoral roll of the area at the suit property address. Respondent has not led any evidence to show that JD was living somewhere else at that relevant time and the entry in this electoral roll is not reliable. Accordingly, this fact also proves that JD was in possession of the suit property and not the DH.
- (f) Respondent himself gave a police complaint in police station on 19-8-2010 in which he stated that JD Sh. Shanu Mohd. has left no concern with the possession of the suit property with effect from 12- 1-2007 i.e. the date of purchase of the property by him. It also leads to the conclusion from the above admission of the respondent that 15 JD remained in possession of the suit property atleast till 12-1- 2007.
- (g) From two FIRs Ex. DH2/1 and 3 registered against JD and others in police station Bhajanpura on 10-10-2002 and 31-8-2003 respectively under section 448/380 IPC on the complaint of one Sh. Majid Ali Khan advocate, it is also clear that JD had tried to dispossess the said advocate from one room in his possession in the capacity of a tenant on the first floor. Some Kalandras under section 107/151 Cr.P.C. are also proved on record by the DH prior to the period of 2003 instituted against the JD. Though those are not material one but these facts apparently brought on record by the DH only to prove that JD was of the habit of encroaching upon the properties of others and thus the directions given against him to restore the possession of the DH vide RCA no. 51/2002 were genuine and based upon sound grounds. Otherwise also, these two FIR shows that Sh. Majid Ali Khan was only occupying one room in the suit property and not the entire property. DH cannot be held liable for any concealment of fact of tenancy of Sh. Majid Ali Khan by filing execution against JD only as it is not proved on record that Sh. Majid Ali Khan was also the tenant at the time when suit property was in possession of the DH prior to year 2000.

All the above mentioned fact clearly establishes on record that DH was not in possession of the suit property on 9-12-2003 when the alleged transaction took place in favour of Sh. Hakikat Ali vide documents Ex. OW1/10 to 14 as stated by the respondent. The contents of the sale documents in favour of Sh. Hakikat Ali that DH himself had handed over possession of the suit property to him are totally false averment. DH could not do so when he himself was not 16 in possession of the suit property. In such situation also, when DH was not using the suit property and was not occupying the same, there was no obligation upon him to pay the house tax or to pay any electricity or water charges. Non lodging of any complaint by the DH against MCD or DJB or Electricity Department for mutating property or giving connections in the name of Sh. Margoob Ahmed is not sufficient to reject the execution. The findings given by the Id. Executing court in this regard are not correct and liable to be set aside accordingly.”

(underlining added)

15. I am aware that reproducing of extensively the relevant portions of the judgment of the first appellate court has made this judgment prolix, however, in view of the thorough manner in which the first appellate court has dealt with the issues, I have thought it fit that instead of changing the language of the first appellate court into my language and adopting such reasoning with my language, it would be better if the entire relevant discussion on the relevant aspects of the first appellate court are reproduced by this Court. I therefore adopt and accept the complete reasoning given hereinabove of the first appellate court whereby it has been held that the documentation dated 9.12.2003 is invalid and forged/fabricated for the reason that Sh. Margoob Ahmed could never have been handed over possession of the suit property on 9.12.2003 because Sh. Hakikat Ali himself was not in possession so as to transfer the same to Sh. Margoob Ahmed.

16. So far as the aspect of entitlement of Sh. Hakikat Ali and/or Sh. Margoob Ahmed and/or the appellant/Sh. Sunil Jain not being entitled to receive valid rights because of the bar of Section 52 of the Transfer of Property Act, in my opinion, findings in this regard of the first appellate court are not correct because the applicability of Section 52 of the Transfer of Property Act would only arise only if transfer of property is by a defendant in a suit or by a person who

claims through defendant in the suit. The rights in the suit property are claimed by the appellant/Sh. Sunil Jain through Sh. Margoob Ahmed and Sh. Hakikat Ali i.e not through the judgment debtor/Shanu Mohd. who was the defendant in the counter-claim which was decreed by the impugned judgment dated 28.9.2004, and therefore, the respondent/decreed holder can take no benefit of Section 52 of Transfer of Property Act. Nothing however turns on this aspect because it has been held that the documentation by Sh. Hakikat Ali in favor of Sh. Magroob Ahmed are forged and fabricated.

17. I may note that it is a fact found on record that when DDA transferred the suit property in the name of Sh. Margoob Ahmed by executing a conveyance deed, the said conveyance deed was executed without any notice to the respondent/decreed holder, and therefore such documentation executed in favour of Sh. Margoob Ahmed by DDA are void documents for all intents and purposes, and therefore neither Sh. Margoob Ahmed nor the present appellant can derive any title from void documentation. Once the documentation in favour of Sh. Hakikat Ali allegedly executed by the respondent/decreed holder are forged and fabricated documents then on the basis of such forged and fabricated documents there could not have been transfer of the suit property by DDA, much less *ex-parte*, in favour of Sh. Margoob Ahmed. I

therefore hold that any documentation including a conveyance deed executed by the DDA in favour of Sh. Margoob Ahmed or the present appellant are illegal and void *ab initio* for all intents and purposes.

18. The present case may appear to bring a harsh result against the appellant, but the fact of the matter is that the appellant has been completely duped by Sh. Margoob Ahmed and Sh. Hakikat Ali and hence the remedy of the appellant is really against Sh. Margoob Ahmed and Sh. Hakikat Ali who have defrauded him and not against the respondent/decreed holder. There cannot be misplaced sympathy in favour of the appellant because the appellant seems to have paid consideration to Sh. Margoob Ahmed and hence effectively to Sh. Hakikat Ali, because, this Court cannot extinguish vital ownership rights of the respondent/decreed holder in the suit property simply because the appellant has been defrauded by Sh. Margoob Ahmed and Sh. Hakikat Ali. If the objections filed by the appellant would be allowed, then, the respondent/decreed holder for no fault of his would be deprived of ownership rights of the suit property because of a fraud being perpetuated upon him by Sh. Hakikat Ali and Sh. Margoob Ahmed.

19.(i) Learned counsel for the appellant very vehemently argued that the judgment and decree passed by the first appellate court on

28.9.2004 decreeing the counter-claim of the respondent/decreed holder against Shanu Mohd. is void as a decree for possession under Section 6 of the Specific Relief Act, 1963 because the first appellate court had no power to pass a decree inasmuch as if a suit is filed under Section 6 of the Specific Relief Act no appeal lies against such a decree in such a suit and that the first appellate court when it passed the subject judgment and decree dated 28.9.2004 did so in exercise of powers under Section 6 of the Specific Relief Act.

(ii) In my opinion this argument urged on behalf of the appellant is misconceived inasmuch as mere using of a wrong provision of law to decree the suit would not mean that decree passed would be by a court lacking inherent jurisdiction. The suit for possession was decreed by the first appellate court vide its judgment dated 28.9.2004 on the basis of ownership of the respondent/decreed holder of the suit property. I may note that there is a misconception that a suit for possession merely because it is titled as a suit under Section 6 of the Specific Relief Act really becomes one under Section 6 of the Specific Relief Act inasmuch as in a suit under Section 6 of the Specific Relief Act, the plaintiff does not have to prove title and the proceedings are summary in nature whereas in the present case the counter-claim for possession was decreed not on account of prior possession of the

respondent/decreed holder against Shanu Mohd. but on the ground of the respondent/decreed holder being owner of the suit property. The law in this regard is well settled in view of the judgment of the Supreme Court in the case of *Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others AIR 1968 SC 1165*. In this judgment the Supreme Court has held that a suit which is filed under Section 6 of the Specific Relief Act actually can be treated as a suit for possession on the basis of title once the suit is found to have been filed beyond the period of six months of alleged dispossession and only during which period a suit under Section 6 of the Specific Relief Act could have been filed to reclaim possession. Therefore, I do not find any inherent lack of jurisdiction of the first appellate court when it decreed the counter-claim by the judgment dated 28.9.2004. In any case the appellant not only has no *locus standi* to question the judgment and decree of the first appellate court dated 28.9.2004, the objection raised is not an objection as to inherent lack of jurisdiction of the Additional Senior Judge who decreed the counter-claim by the judgment dated 28.9.2004. This argument of the appellant is therefore rejected.

20.(i) I would also like to note that the appellant finally argued as regards the invalidity of the judgment and decree dated 28.9.2004 on

the ground that the suit which was filed for mandatory injunction was not filed by real Shanu Mohd., and in which counter-claim was filed by the respondent/decreed holder, and therefore the counter-claim which has been decreed against Shanu Mohd. is without jurisdiction.

(ii) Once again this objection does not go to the lack of jurisdiction of the court which passed the judgment and decree dated 28.9.2004. Also and in any case the argument of the appellant is with respect to the suit filed by Shanu Mohd. whereas the issue decided by the court below as also being decided by this Court is with respect to the decreeing of the counter-claim filed by the respondent/decreed holder against Shanu Mohd., and in these proceedings there is no dispute as to the identity of Shanu Mohd. and that it was Shanu Mohd. who was sued as a defendant in the counter-claim and against whom possession was decreed in terms of the judgment and decree of the first appellate court dated 28.9.2004. This argument of the appellant is also therefore rejected.

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

MAY 18, 2017
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VALMIKI J. MEHTA, J