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

Reserved on : 24th May, 2018

Date of Decision: 13th July, 2018

+ **RFA 212/2017 & CM APPL. 7091/2017**

MAINA DEVI

..... Appellant

Through: Mr. Apurb Lal, Mr. Daleep Singh &
Mr. S.N. Gautam, Advocates (M-
93137801627).

versus

RATI RAM & ANR

..... Respondents

Through: Ms. Neha Kapoor & Ms. Alka
Sharma, Advocates for R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH
JUDGMENT

Prathiba M. Singh, J.

1. The Appellant/Plaintiff (*hereinafter 'Plaintiff'*)- Smt. Maina Devi entered into a transaction for purchase of property bearing No.(old) 624/29 (new no. B3) area measuring 213.5 sq. yds. out of Khasra No.256/1 situated in the abadi village Ghonda Gujran Khadar colony known as Bhajan Pura Illaqa Shahdara, Delhi-110053 (*hereinafter 'suit property'*) from her brother Sh. Rati Ram and his wife Smt. Jai Rani the Respondents/Defendants (*hereinafter 'Defendants'*). Agreement to Sell dated 1st October, 1987, GPA, Affidavit in support and lease were executed. She claimed that vacant and peaceful possession of the property was handed over on the same day and she constructed a boundary wall.

2. It is her case that on the night of 11th/12th October, 1991, the

Defendants demolished the boundary wall and occupied the same illegally and forcefully. Immediately, a complaint was lodged with the police in PS Bhajan Pura and under the security provide by the DCP, the boundary wall was constructed again. However, on 22nd/23rd, October, 1991 in the night, the boundary wall was again demolished. On the very same day i.e., 23rd October, 1991, her husband and son Sh. H.R. Gola and Sh. Rajender Kumar were served with summons in a suit filed by her brother-Defendant No.1, Sh. Rati Ram. Police protection was again sought. Since the suit was pending in court, the Plaintiff was unable to erect the boundary wall again. Under these circumstances, she filed the subject suit seeking possession and damages in the following terms:

“(a) pass a decree of possession in favour of the plaintiff and against the defendants thereby directing the defendants to hand over the peaceful possession of the said property bearing No.(old) 624/29 and New B-3, area measuring 213.5 sq. yards out of Khasra No.256/1, situate in the abadi of Village Ghonda Gujran Khader colony known as Bhajanpura, Iliqa Shahdra Delhi-110053 as shown red in the site plan annexed with the plaint.

b) pass a decree for Rs.7,20,000/-(Rupees Seven Lacs Twenty Thousand Only) alongwith the pendentelite and future mesne profit @ Rs.20,000/- per month from the date of the filing of the suit till the possession of the suit property is restored to the plaintiff, in favour of the plaintiff and against the defendants, in addition to the aforesaid relief of possession as prayed in clauses (a) above;”

3. The Defendants in their Written Statement claimed that the Agreement to Sell dated 1st October, 1987 is forged and fabricated and that they never sold the property to the Plaintiff. They claimed that they were the

owner of the entire property bearing 427 sq. yds. which was purchased from Sh. Jumma Mal who had executed the Agreement to Sell, Will, Power of Attorney, etc. in their favour. The Defendants claimed that the Will of Sh. Jumma Mal has been probated and hence they are the full owners of the property. The Plaintiffs, in replication averred that the Will executed by Sh. Jumma Mal in favour of the Defendants was forged and fabricated as the Agreement to Sell and Power of Attorney alone were executed. The Trial Court, on the basis of pleadings framed the following issues:

“(i) Whether the suit of the plaintiff is not maintainable in the absence of title documents of the property? OPD

(ii) Whether the suit of the plaintiff is barred by limitation? OPD

(iii) Whether the agreement to sell dated 01.10.87 is void ab initio or is liable to be declared as void as claimed by the defendants? OPD

(iv) Whether the plaintiff is entitled to decree of possession of the property in question as prayed for? OPP

(v) Whether the plaintiff is entitled for decree of recovery of Rs.7,20,000/- alongwith pendente lite and future mesne profits @ Rs.20,000 p.m. or of any other amount as damages/mesne profits, as prayed for? OPP

(vi) Relief.”

4. Plaintiff-Smt. Maina Devi appeared as PW-1 and her husband, Sh. H.L. Gola appeared as PW-2. A statement was also recorded of the counsel for the Plaintiff to the following effect:

**“STATEMENT OF SH. DINESH K. BHARDWAJ,
COUNSEL FOR PLAINTIFF**

Without oath,

Sh. H.L. Gola, husband of the plaintiff has informed me that he had applied for status report of the

complaint made by him to the DCP, Silampur, Shahdra and PS Bhajanpura with regard to the demolition of compound wall of House No. B-3, Bhajanpura, Gali no.1, Shahdra, Delhi-53, under the Right to information.

He has further informed me that the record has already been destroyed by the police concerned. In these circumstances plaintiff does not wish to lead any other evidence, thus I close evidence on behalf of plaintiff in affirmative.”

On behalf of the Defendants, Sh. Rati Ram appeared as DW-1.

5. The Agreement to Sell, General Power of Attorney, Affidavit, Receipts and Will all dated 1st October, 1987 are duly exhibited (Ex.P1 to P6). The complaints filed with the police dated 12th October, 1991, 15th October, 1991, 4th July, 2001, 6th July, 2001 are also on record and are duly exhibited. Certified copy of the judgment in ***Sh. Rati Ram v. Hira Lal RCA No.8/2004, dated 10th August, 2005*** and the deposition of witness, Sh. Mohan Lal- DW-3, Smt. Koyal Devi- DW-5, Sh. Radhey Shyam-DW-2 recorded in the said suit have also been placed on record. The Defendants have also filed a copy of the Will of the Sh. Jumma Mal dated 23rd November, 1981, MCD Assessment dated 1st April, 1992, 19th September, 1994 carrying out mutation and other electricity documents have also been placed.

6. There are two connected proceedings which are relevant for the present purpose. The first being the suit filed by Sh. Rati Ram against the Plaintiff's husband and son for injunction and the second being the challenge by the Plaintiff to the letters of administration issued in favour of the Defendant by judgment dated 21st April, 1994.

Rati Ram v. Hira Lal Suit No 509/91 dated 23rd December, 2003 suit for permanent injunction.

7. The Trial Court has dismissed the suit no. 509/91. The findings in the said suit are as under:

“In the light of aforesaid discussion and careful perusal of all oral as well as documentary evidence, I am of the opinion that defts. 1 and 2 were in possession of half portion of suit property as claimed by them being husband and son of Smt. Maina Devi and pltf. has failed to create doubt in their version. On the other hand case of the pltf. has weaken to a fatal extent by the establishment of above facts regarding possession of defts. I am satisfied that pltf. has other efficacious remedy available and he has not come with clean hands before this court and there has been a significant concealment of facts on the part of the pltf. Injunction is a discretionary and equitable relief and conduct of parties is also very important. A party seeking the relief of injunction must come before the court with clean hands and one who seeks equity must do equity.”

In the appeal the Additional District Judge in RCA NO.8/2004 held as under:

“In view of the above facts and the above judgements, I am of the considered opinion that there is no illegality in the judgement passed by the Ld. Trial court. Accordingly, the appeal is dismissed. Decree sheet be prepared accordingly. A copy of the judgement alongwith the trial court record be sent to the Ld. Trial court and thereafter be consigned to record room.”

8. Interestingly, the witness who had appeared in the said suit i.e. DW-3, Sh. Mohan Lal confirms that the site plan of the suit property was prepared

showing the division of the property and the wall was constructed in his presence. His deposition is set out herein below:

“I was with Rati Ram at the time of transfer of property in 1987, to Lal quarters. I did not sign any paper as witness on 1.10.87. After the documents we came at the suit property. In my presence site plan was prepared showing the division of the property. The wall and the room were constructed in my presence. The construction was started on the next date and it was completed within 5/7 days.

Ques. From where the material was brought on 2.10.87 by the deft.

Question disallowed.

I did not see any bill of the building material brought at the site. When I was passing through I noticed that some portion of the wall has been demolished. I noticed this fact at about 10 a.m. But I do not remember the date but it was in Oct.1991 Navratra days I came to know from persons present there that my sister has lodged a report with the police, i.e. Radhey Shyam, my sister etc. I was not present when the wall was demolished.

When the compromise was recorded on 12.10.91 I was not present. The wall was reconstructed after 15/20 days of that compromise. It is wrong to sugg. that there was no compromise in the meeting of Prajapati Samaj. It is wrong to sugg. that I am deposing falsely. It is wrong to sugg. that on 2.10.87 and thereafter in 1991 no construction of wall or room was raised on suit property.”

Another sister, Smt. Koyal Devi who appeared as Defendant No.5 in the said suit also confirmed the sale that had taken place between Sh. Rati Ram and Smt. Maina Devi. Sh. Radhey Shyam another brother of the parties confirmed that he accompanied Smt. Maina Devi to the Police Station on 12th October, 1991.

Maina Devi v. Rati Ram PP 156/1992 dated 18th February, 2009 Suit challenging the letters of administration

9. Sh. Rati Ram filed a petition under Section 276 and 278 seeking grant of letters of administration in respect of the registered Will dated 23rd November, 1981 executed by Sh. Jumma Mal. Sh. Jumma Mal had passed away on 30th December, 1984. The petition was registered as probate case no.156/1992 and the Will was probated. After disputes had arisen between Sh. Rati Ram and Smt. Maina Devi, the grant of letters of administration was challenged by Smt. Maina Devi, on 5th April, 2004. The said challenge was dismissed primarily on the ground that since Smt. Maina Devi had herself purchased the property on 1st October, 1987 i.e. after the Will of Sh. Jumma Mal, the probate is liable to be granted. The allegation that there were various discrepancies in the Will dated 23rd November, 1981 of Sh. Jumma Mal was also rejected. The appeal preferred against the said grant of probate was dismissed on 30th November, 2015 in FAO 225/2009. Counsel for the parties have submitted that the SLP against the said judgment is now pending in the Supreme Court.

Present suit for Possession

10. Insofar as the present litigation is concerned, the Will executed by Sh. Jumma Mal in favour of Sh. Rati Ram is not to be gone into, however, what is to be adjudicated is the validity of the documents executed by Sh. Rati Ram in favour of Smt. Maina Devi. The first and the most important fact is that Sh. Rati Ram admits his signatures in the Agreement to Sell, (Ex.P-1), Power of Attorney, (Ex.P-2), Affidavit, (EX.P-3), Receipt, (Ex.P-4) and Will (Ex.P-5 & 6) in favour of Smt. Maina Devi. He however claims that the

signatures were obtained fraudulently. The relevant portion of his cross-examination is set out herein below:

“It is wrong to suggest that I had sold a portion of the suit property measuring 213.5 sq. yds to the plaintiff. It is wrong suggest that I had executed Agreement to Sell EX.P1, Power of Attorney EX.P2, Affidavit EX.P3, Receipt EX.P4, Will EX.P5 & P6 in favour of plaintiff. It is correct that all these documents bear my signature. My signatures were obtained on the said documents fraudulently. I have no knowledge about the witnesses of the said documents. I came to know about the said documents in 1991 when this fact was told to me by the plaintiff. I did not take any action against the plaintiff as the documents were not shown to me. I saw the documents first time in 2003 when the present suit was filed against me. I did not lodge any complaint with the Police even thereafter. I did not file any separate suit against the plaintiff for seeking cancellation of the said documents, but I filed the counter claim. It is correct that I went to office of Sub-Registrar and signed the receipt of Rs.11,000/- before him. It is wrong to suggest that I had received Rs.11,000/- through the said receipt as the sale consideration of the property in question. I was accompanied with my wife. Plaintiff and her husband also accompanied us. Again said plaintiff was not there. It is wrong to suggest that my two brothers were also there.”

From a perusal of the above testimony, it is clear that the execution of the documents is not disputed. Both Smt. Maina Devi and Sh. Rati Ram are illiterate persons. However, that by itself does not mean that the transaction did not take place. The documents having been admitted and there being nothing on record to show or establish that any fraud was committed, they have to be treated as genuine. What is the effect of these documents? The

Trial Court has held that in view of the decision in ***Suraj Lamp and Industries Pvt Ltd v. State of Haryana and Anr (2012) 1 SCC 656*** (*hereinafter Suraj Lamps*), no title passes to Smt. Maina Devi. The Trial Court is clearly in error on this aspect. The judgment of ***Suraj Lamps*** (*Supra*) is clear that it would apply prospectively and that the said set of documents can be used for getting deeds of conveyance registered to complete their title. Genuine and bona fide transactions have also been protected. Moreover, in ***Maya Devi v. Lalta Prasad (2015) 5 SCC 588*** it has been further clarified by the Supreme Court that the decision applies only to transactions prospectively. The relevant portion of the said judgment is set out below:

“12...Furthermore, a reading of the order of the executing court as well as of the High Court makes it palpably clear that both the courts had applied the disqualification and illegality imposed upon GPAs by Suraj Lamp without keeping in mind that the operation of that judgement was pointedly and poignantly prospective...”

11. The documents having been admitted and the documents clearly confirming the sale to Smt. Maina Devi, the question is whether she is entitled to relief of possession. In ***Anathula Sudhakar v. P. Buchi Reddy (2008) 4 SCC 594***, the Supreme Court held as under:

“14.We may, however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the

other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.”

As per the dictum above, if there is no cloud on the title of the Plaintiff then filing of a suit for possession is sufficient. The Plaintiff in the present case has sought the relief of possession and damages/mesne profits. The evidence clearly points to the fact that though Smt. Maina Devi never lived in the suit property, she had possession of the same by the construction of the boundary wall. The various police complaints, the testimony of the witnesses in the civil suit filed by Sh. Rati Ram as also the findings therein clearly establish this. Smt. Maina Devi has not concocted a story of having been in possession. In fact the Trial Court has gone drastically wrong by interpreting her testimony, that she never lived in the suit property, to mean that she never had possession of the suit property. These are two distinct facts. It is completely possible for a person to have possession of the property without

actually living there. Smt. Maina Devi merely stated in her evidence that she never lived in the house of Bhajan Pura. In her testimony, she also clearly stated that she purchased the disputed property from her sister-in-law i.e. Defendant No.2, nineteen years ago which is an accurate statement. She states that her husband assisted her brother in construction of B-3, Bhajan Pura and had attended the *Grah Pravesh* also. She also deposed that a boundary wall which was put up was demolished by her brother and a complaint was made to the police. Her testimony clearly shows that she is speaking truthfully.

12. The testimony of Sh. H.L. Gola, PW-2 shows that he was an architect and that the property was purchased by his wife. He also stated that prior to 1991, the relationship with the Defendants was very cordial. He confirms that Sh. Jumma Mal was the owner of the suit property measuring 427 sq. yds. and was purchased by Sh. Jumma Mal. He even recalled the name of the lawyer who had drafted the documents for the sale transaction Sh. Y.L. Sachdeva. He believed that there was no Will executed by Sh. Jumma Mal in favour of Sh. Rati Ram, but the property was purchased by Sh. Rati Ram's wife Smt. Jai Rani, which is also evident from the fact that female gender is used all through the Will. He also confirmed that he used to visit the suit property till 1999.

13. The Plaintiff also attempted to obtain documents from the PS, Bhajan Pura under RTI, however, they were informed that the police records have been destroyed. Sh. Rati Ram admitted his signatures on the documents and he also confirmed that he never took any action despite acquiring knowledge of the documents relied upon by the Plaintiffs. On the first date of cross-examination, he admitted his signatures and on the next date he attempted to

resile by stating that he was not sure of the exact number of documents have been signed. He confirmed that he had visited the Sub-Registrar's office to sign the Receipt in front of the Sub-Registrar. He admitted the signatures of both his wife and himself on the various exhibits. He confirmed that Sh. Sachdeva, Advocate who was the lawyer had signed the documents in favour of Smt. Maina Devi as a witness. The relevant portion of his cross-examination is set out herein below:

"...Plaintiff got the signatures of myself and my wife on various documents on 1st October and on either 4th/5th October. Number of documents signed by me might be 6/7 but I do not remember the exact number of documents they got signed from me and my wife on the pretext of getting power connection. Some of the documents at the time were got signed by me were blank and some of them were typed and handwritten; in the year 1987. I have seen the documents filed by the plaintiff though I am illiterate but I sign in English only. Copy of the same were supplied to me and I was told by my counsel that these are Ex. P-1 is GPA, Ex. PW-1/1 Agreement to Sell, affidavit, Will and Receipt i.e. documents exhibited as Ex. P-1 to P-6. I am not aware besides myself and my wife how many witnesses, and who were the witnesses who had signed those documents. I do not remember whether these documents were signed by any witnesses."

14. Thereafter, the court questioned DW-1 as to how he went to the Sub-Registrar's Office for the execution of Ex.P4 i.e. the receipt dated 1st October, 1987 which acknowledges the consideration from Smt. Maina Devi. In response, he testified that the Plaintiff's husband took him to the Sub-Registrar's Office. On being confronted that the said Ex.P4 contains the signatures of lawyer Mr. Y.L. Sachdeva, the witness said *"I do not know*

when these two signatures were appended, however, he admits that he affixed the signatures on the Revenue Stamp and my wife also signed the same. Myself and my wife put the signatures on Revenue Stamp as well as thumb impressions on Ex P-4. After coming to know that plaintiff has got registered Ex P-4 and got executed certain other documents from me fraudulently alter filing of the present suit, I did not lodge any complaint with the police regarding forgery committed by the plaintiff since the present suit stood filed". He completely expressed ignorance as to when the lawyer Mr. Y.L. Sachdeva had appended his signatures on the documents Ex.P-1 to P-6. He confirms that the suit property was mutated in his favour. He expressed ignorance as to who had deposited the house tax for the property from 1981-84. He stated that the settlement which he had entered into as per DW-1/X2 was under the pressure of the Police.

15. DW-1 also admits that he is running an automobile shop from the front portion of the suit property and he also let out two shops in the suit property @ Rs.10,000/- and Rs.14,000/- per month. He confirmed that he is the owner of other half of the property apart from the suit property. He also confirmed the decision in the suit filed by him for injunction against the Plaintiff's husband and her son. He confirmed that a settlement was entered into by him, EX.DW1/2 and the matter was compromised at the police station. He also confirmed that the order dated 23rd April, 2015 i.e. EX.DW1/X1 passed by the Delhi High Court is correct. The said order passed in FAO 225/2009 reads as under:

"Both the parties are present in Court with their respective counsels.

The appellant is the sister of the respondent. The respondent has offered to give an alternative plot of

land to the appellant valuing approximately Rs.1 crore near Rohini. Let the respondent supply the particulars of the plot to appellant's counsel within two days whereupon the appellant shall inspect the said plot of land and submit her response on the next date of hearing.

Let the matter remain on Board.”

Thus, the Defendant had made a settlement offer to the Plaintiff which was recorded by the Court, but thereafter the said Appeal was dismissed.

16. A perusal of all the documentary and oral evidence clearly shows that the testimony of DW-1 is not credible and believable since DW-1 has admitted the signatures in all the documents i.e. the Agreement to Sell, General Power of Attorney, affidavit, receipt and Will and he also recognized the signatures of his wife on all the exhibits. The receipt being a registered document, there is no doubt that the suit property was sold to Smt. Maina Devi. Moreover, the evidence given by the independent witnesses in the suit for injunction filed by Sh. Rati Ram also goes in favour of Smt. Maina Devi inasmuch as both the witnesses, namely, Sh. Mohan Lal and Smt. Koyal Devi confirm the factum of sale. Even erection of the wall was confirmed and the demolition of the same was also confirmed.

17. As per the judgment in ***Suraj Lamps (Supra)***, the Plaintiff has the right to get a conveyance deed executed in her favour. The relevant portion of the judgement is extracted herein below.

“26. We have merely drawn attention to and reiterate the well-settled legal position that SA/GPA/will transactions are not “transfers” or “sales” and that such transaction cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents the affected parties from getting registered deeds of

conveyance to complete their title. The said "SA/GPA/WILL transactions" may also be used to obtain specific performance or to defend possession under section 53-A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by development authorities. We make it clear that if the documents relating to "SA/GPA/WILL transactions" have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they need not be disturbed, merely on account of this decision."

Thus, it cannot be said that the Plaintiff has no rights in the suit property.

18. The Trial Court has simply rejected the title of the Plaintiff on the ground that the execution of the documents has not been proved in accordance with law since, there is no registered sale deed. This finding is not sustainable. The Plaintiff is entitled to a decree of possession as also the *mesne profits*. The Plaintiff has claimed Rs.20,000/- per month as *mesne profits*. From the evidence on record, it is seen that the Defendant- Sh. Rati Ram has been utilizing the entire property for his own benefit. He is also earning rental income from the two shops in the suit property of Rs.10,000/- and Rs.14,000/- per month. Considering this, a sum of Rs.15,000/- is fixed as the *mesne profits* per month.

19. A decree of possession and *mesne profits* is granted in favour of the Plaintiff against the Defendant in respect of the suit property bearing No. (old) 624/29 (new no. B3) area measuring 213.5 sq. yds. out of Khasra No.256/1 situated in the abadi village Ghonda Gujran Khadar colony known as Bhajan Pura Illaqa Shahdara, Delhi-110053. A decree of *mesne profits* is also granted at the rate of Rs. 15,000/- per month to be paid by the

Defendant to the Plaintiff from the date of filing of the suit i.e. 3rd September, 2003 till the possession is handed over to the Plaintiff. The Defendant is directed to handover vacant and peaceful possession of the suit property within a period of four weeks from today, failing which, interest @ 12% per annum shall liable to be paid to the Plaintiff, on the decretal amount, upon the expiry of four weeks.

20. The appeal is allowed in the above term. All pending applications are disposed of.

JULY 13, 2018

Rahul

**PRATHIBA M. SINGH
JUDGE**