

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

% **Date of decision: 7<sup>th</sup> September, 2018**

+ **RSA 21/2018, CM No.5119/2018(stay) & CM No.5120/2018(u/O.41 R-27 CPC)**

**PARMILA SINGH & ANR**

**..... Appellants**

Through: Mr. K. Sunil with Mr. G.S. Singh &  
Mr. Mani Shankar, Advs.

Versus

**ASHOK SALUJA**

**..... Respondent**

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 19<sup>th</sup> December, 2017 in RCA No.137/2017 of the Court of Additional District Judge-04, South-West] of dismissal of First Appeal under Section 96 of the CPC preferred by the appellants/defendants against the judgment and decree [dated 29<sup>th</sup> August, 2017 in M No. 67/2016 of the Court of Additional Senior Civil Judge, South-West, Dwarka Courts] allowing the suit filed by the respondent/plaintiff for recovery of possession of property no. C-11, Second Floor, Jeevan Park, Pankha Road, New Delhi from the appellants/defendants.

2. This appeal came up before this Court first on 9<sup>th</sup> February, 2018 and has thereafter been adjourned from time to time without the aspect of admissibility thereof being considered.

3. The *sine qua non* for entertaining a Second Appeal being that it should raise a substantial question of law, the counsel for the appellants/defendants

has been heard and the copies of the Suit Court Record and the First Appellate Court record annexed to the memorandum of appeal perused.

4. The counsel for the appellants/defendants has argued (i) that the respondent/plaintiff sued for possession on the basis of title i.e. a registered sale deed in his favour; (ii) however, the respondent/plaintiff did not prove any sale deed; (iii) attention in this regard is invited to para 4.1 of the judgment of the Suit Court recording that the respondent/plaintiff, along with his affidavit by way of examination-in-chief, tendered as Ex.PW1/A the photocopy of the sale deed but which was de-exhibited and marked as Mark-A; and (iv) that without the respondent/plaintiff having proved title, the suit for recovery of possession could not have been allowed.

5. Attention of the counsel for the appellants/defendants has been drawn to para 4.2 of the judgment of the Suit Court where it is recorded that the respondent/plaintiff, besides examining himself, had also examined as PW-2, official from the office of Sub-Registrar-II with whom the sale deed was registered and who had proved photocopy of the sale deed as Ex.PW2/1 and the original sale deed had been seen and returned.

6. Attention of the counsel for the appellants/defendants is also invited to para 5 of the judgment of the Suit Court recording that the appellants/defendants, in spite of a number of opportunities granted by the Suit Court, failed to cross-examine any of the witnesses of the respondent/plaintiff and the appellants/defendants also failed to lead any evidence of their own.

7. I have enquired from the counsel for the appellants/defendants, that in the face of aforesaid, how is it open to the appellants/defendants to contend that the sale deed, vide which the respondent/plaintiff claimed title, was not proved.

8. The counsel for the appellants/defendants invites attention to the evidence recorded on 4<sup>th</sup> July, 2017 of the official of the office of the Sub-Registrar-II and contends that the said witness had not brought the copy of the registered sale deed on the record of the Sub-Registrar-II and had only brought the register containing the entries of registration of sale deed.

9. There is no merit in the aforesaid contention also. The testimony of the official of the office of the Sub-Registrar-II examined as PW-2 by the respondent/plaintiff recorded on 4<sup>th</sup> July, 2017 by the Suit Court and photocopy of which has been filed by the appellants/defendants themselves at page 299 of the Paper Book, is as under:-

*“I say that I am a summoned witness. I have brought the summoned record i.e. sale deed register which contains the record of sale deed registered with us vide registration no.9210 in additional book no.1, volume no.14733 on pages 14 to 21 on dated 09/05/2007 which is earlier marked as Mark A in the testimony of PW1 on 25/05/2017 and now the same is exhibited as Ex.PW2/1 (OSR).*

*xxxxxxx by Ms. Meenakshi Kumari learned proxy counsel for defendant.*

*The cross examination of this witness cannot be allowed to the defendant as on 30.11.2016 it was ordered by the court that the same shall be allowed only after the payment of previous cost and the same has not been paid yet.”*

10. The counsel for the appellants/defendants, on being asked to show the document on which Ex.PW2/1 was endorsed, has drawn attention to pages 300 to 310 of the Paper Book being a photocopy of the sale deed.

11. The aforesaid witness claimed to have brought to the Court the summoned records i.e. sale deed register which contains the record of the registered sale deed and has proved the photocopy of the sale deed as Ex.PW2/1. From the Alphabets “OSR” (i.e. Original Seen and Returned) mentioned against Ex.PW2/1, it is clear that the original of the photocopy of the sale deed was seen.

12. The counsel for the appellants/defendants has, however, contended that the sale deed has to be proved in accordance with law by identifying the signatures thereon. Reliance is placed on my judgments in ***Prem Chandra Jain Vs. Sri Ram*** (2009) 113 DRJ 617 and ***Sanyogta Prakash Vs. Dhira Bala Malhotra*** (2010) 115 DRJ 109.

13. There is no merit in the aforesaid contention also.

14. As far as the judgments cited are concerned, what was for adjudication therein was, whether a party seeking to prove a document by secondary evidence, instead of by primary evidence, is required to make an application to the Court and seek permission of the Court therefor. It was

held that no such application and permission is required and it is open to the parties to a *lis* to prove a document either by primary or by secondary evidence.

15. It is well settled that a judgment is a precedent on what is for adjudication before the Court and not on what may be inferred therefrom and courts should be careful in applying the precedents inasmuch as judgments only declare the law in the facts of the case. Reference in this regard may be made to *Punjab National Bank Vs. R.I. Vaid* (2004) 7 SCC 698, *Natural Resources Allocation, In Ref. Special Reference No.1 of 2012* (2012) 10 SCC 1, *Sudhir Malhotra Vs. NCT of Delhi* 2008 SCC OnLine Del 605 (SLP (Crl.) No.6983/2008 preferred whereagainst was dismissed vide order dated 3<sup>rd</sup> October, 2008) and *Rahul Oberoi Vs. Sheela Oberoi* MANU/DE/1849/2018.

16. The respondent/plaintiff in the present case has examined the witness from the office of the Sub-Registrar-II, with whom the sale deed vide which the respondent/plaintiff claimed title, was registered. The said witness brought the sale deed registered with the office of the Sub-Registrar-II and which was seen by the counsel for the appellants/defendants and exhibit mark was put on the photocopy before the Court in token of admission thereof in evidence. The counsel for the appellants/defendants at that stage did not raise any objection to the admission into evidence of the photocopy of the sale deed. Not only so, the counsel for the appellants/defendants did not even lead any evidence on behalf of the appellants/defendants. Further, a perusal of the written statement of the appellants/defendants to the suit also shows the plea of the appellants/defendants being that the sale deed pleaded

by the respondent/plaintiff in the plaint was a forged and fabricated document. The appellants/defendants themselves claimed to be an agreement-purchaser from another person (not a party to the suit), in possession of the property. On the pleadings of the parties, the following issues were framed in the suit on 30<sup>th</sup> November, 2016 :-

*“i) Whether the plaintiff is entitled to possession of the suit property as prayed for? OPP.*

*ii) Whether the documents relied upon by the plaintiff are forged and fabricated? OPD.”*

17. It would, thus be clear that the onus of proving that the documents vide which the respondent/plaintiff claimed title i.e. sale deed aforesaid was forged and fabricated, was on the appellants/defendants. The appellants/defendants did not dispute the existence of the sale deed. Rather, the plea of the appellants/defendants was, that the sale deed was forged and fabricated and which plea admits existence of the sale deed.

18. In the aforesaid state of pleadings and when the appellants/defendants chose not to cross-examine the respondent/plaintiff or his witnesses or lead their own evidence, the appellants/defendants in this Second Appeal cannot be permitted to urge that the sale deed has not been proved in accordance with law. The challenge to proof of sale deed has to be judged in the context of the pleadings and not in vacuum. The purpose of framing of issues is that the parties know what they are required to prove. A party to a suit, as the appellants/defendants, who admits the existence of the document and only challenges the same on the ground of being forged and fabricated, cannot at

a later stage be heard to argue that existence of the documents was not proved and spring a surprise, that too at the stage of Second Appeal.

19. No other argument was urged by the counsel for the appellants/defendants. However, counsel for the appellants/defendants, during the dictation was interrupting and was asked to wait till the completion of the dictation. He has now been heard.

20. The counsel contends i) that since there was no original sale deed, the notation of 'OSR' is obviously wrong; ii) that the appellants/defendants were not allowed to cross-examine the respondent/plaintiff and were not allowed to lead the evidence; iii) reliance is placed on ***Roman Catholic Mission Vs. State of Madras*** 1966 (3) SCR 283 holding that a photocopy is not admissible in evidence; and, iv) that the First Appellate Court did not decide the issues mandated in Order 41 Rule 31; reliance is placed on ***H. Siddiqui Vs. A. Ramalingam*** (2011) 4 SCC 240.

21. Though such conduct of raising these arguments after dictation was commenced when the counsel for the appellants/defendants had concluded his arguments is not to be accepted, but I have considered the aforesaid contentions and do not find any merit therein as well.

22. The argument with respect to proof of the sale deed is in ignorance of the provisions of the Registration Act, 1908 and the Delhi Registration Rules, 1976 prescribing the procedure for registration of documents. Per Section 32 of the Registration Act, presentation of a document for registration has to be by the person executing the document or by representative or assign or agent of such person. Section 32A requires the

photographs and finger print of the person/s presenting the document for registration to be affixed thereon. Section 34 requires the Registrar to enquire from the persons presenting the documents, whether the document was executed by them or by the person by whom it purports to be executed and to satisfy himself about the identity of the persons presenting the document and in the event of presentation by an agent, the authority of such agent. Section 51 prescribes the register books to be maintained by the Registrar with Book I being prescribed for entering or filing all documents or memorandums registered under Sections 17, 18 & 89 of the Act and which relate to immoveable property and are not Wills. Section 52 requires the Registrar to have endorsed before himself the signature of every person presenting the document for registration at the time of presentation thereof. Section 58 prescribes the particulars to be endorsed on documents admitted for registration and again provides for signatures to be endorsed on every document admitted for registration, not only of the persons presenting the same but also of persons examined by the Registrar in reference to such document. Section 59 requires the Registrar to affix his own signature to all the endorsement aforesaid. Rule 29 of the Delhi Registration Rules requires the Registrar to paste in Book I carbon copy of the original after comparing the same with the original.

23. From the aforesaid procedure, it is clear that what was brought before the Court by the witness from the office of the Sub-Registrar of documents was the carbon copy of the sale deed in Book I required to be maintained by the Sub-Registrar.



24. Supreme Court in ***Prithi Chand Vs. State of Himachal Pradesh*** (1989) 1 SCC 432 has held the carbon copy to be primary evidence within the meaning of Explanation 2 to Section 62 of the Evidence Act, 1872. The sale deed was thus admitted into evidence after the primary evidence had been brought before the Court and was seen by the Court and by the counsel for the appellant/defendant.

25. Rule 31 of Order 41 of the CPC requires the judgment of the First Appellate Court to state points for determination, decision thereon, the reasons for the decision and if the Court disagrees and the judgment is reversed, relief to which appellant is entitled. There are number of pronouncements of the Courts with respect to the said rule and reference may be made to ***Santosh Hazari Vs. Purushottam Tiwari*** (2001) 3 SCC 179 which *inter alia* holds that if the First Appellate Court is in agreement with the findings of the Suit Court, then expressing the general agreement suffices. ***Santosh Hazari*** supra was cited with approval in ***H. Siddiqui*** supra cited by the counsel for the appellant. In ***H. Siddiqui*** supra, the First Appellate Court, without addressing the controversy raised in the first instance had proceeded to deal with the subsequent arguments. It was owing thereto that the First Appellate Court was directed to determine afresh. On the contrary the First Appellate Court in the present case has reproduced/recorded the issues framed in the suit, the witnesses examined in the suit, the evidence led and thereafter observed that no illegality, irregularity or impropriety was found in the judgment appealed against. It has been held in ***Santosh Hazari*** supra that it is not essential for the First Appellate Court when it agrees with the Suit Court, to reproduce each and every reason given by the Suit Court.

26. There is no difference in the appellants/defendants not choosing to cross-examine and lead any evidence and being prevented from doing so. It is not as if the appellants/defendants were prevented from cross-examining or leading their own evidence by illegal means. The appellants/defendants were so prevented because they had failed to comply with the conditions, subject to which such a right was vested. The said argument before this Bench is even otherwise misconceived. It is borne out from the record that CM(M)912/2012 preferred by the appellants/defendants against the order in the suit closing their said rights was dismissed.

27. Thus, the additional arguments also do not entitle the appellants/defendant to entertainment of this Second Appeal, which is not found to raise any substantial question of law and no merit is found therein.

28. Dismissed.

**SEPTEMBER 07, 2018**

‘ak/bs’..

**RAJIV SAHAI ENDLAW, J.**