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

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Judgment delivered on: 15.05.2018

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EX.F.A. 4/2018 & CM APPL. 5439/2018

RADHEY SHYAM

..... Appellant

Through: Mr. C. P. Vig, Advocate.

Versus

PARVEEN KUMAR JAIN & ORS.

..... Respondents

Through: Mr. Anil Goel and Mr. Rajeev
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The appellant-Decree Holder had sought execution of a decree of possession of the suit property i.e. WZ No.535, Sri Nagar, Shakur Basti, Delhi, which was granted to him by judgment dated 22.09.2009 but the objections of the respondents were subsequently allowed by an order dated 03.11.2017 and they were ordered to be put back in possession of the same. This subsequent order has been impugned on the ground that the respondents' predecessor-in-interest-Mr. Jaswant Singh, through whom they have claimed the property, had ample opportunity to contest the same. He chose not to do so. The respondents, however, have claimed to be the *bona fide* purchaser of the suit property, without notice and that it has been so held by the impugned order.

2. It is the appellant's case that Mr. Rampat, the owner of the suit property, had executed a Power of Attorney in favour of Mr. Ram Kumar, who by a document of transfer dated 26.08.1991 had transferred the property in favour of the appellant. Mr. Ram Kumar is the father-in-law of the appellant. He had proven his case before the Trial Court. Hence, the decree of possession was granted. During the course of the trial of the suit, Mr. Jaswant Singh in his Written Statement had stated that the property had been purchased by him by way of a Sale Deed dated 20.08.1991 registered on 15.10.1991. However, the appellant-plaintiff had set up a case that their document of transfer, although executed six days later on 26.08.1991 was registered on the same date i.e. 15.10.1991. Therefore, their document of transfer being registered earlier, and validly so, would empower them with all right, title and interest in the property, hence their claim should have been and was allowed.

3. The learned counsel for the appellant submits that Mr. Jaswant Singh did not prove his document of transfer; he did not lead evidence that his document had been registered; it was only an averment in the Written Statement; the bald averment not supported by any evidence would be of no evidentiary value and would, therefore, have to be disregarded. However, the learned counsel for the respondents submits that that would not be the correct position in law, because the suit must stand on its own legs i.e. the appellant should prove that the document of transfer on which they have based their case was on the basis of the abiding power in the Attorney to have effected the purported transfer in favour of the appellant. In their objection before the First Appellate Court, the respondents had claimed that Mr. Rampat, the owner of the suit property had, prior to the execution of the

document dated 26.08.1991, revoked the Power of Attorney; had sent a legal notice to Mr. Ram Kumar, therefore, Mr. Ram Kumar was divested of all such rights apropos the suit property. In effect, the document of transfer dated 26.08.1991 was executed by a person who had no right, title or interest or authority in the same, therefore, and of no consequence in law, it would be a dead document.

4. The learned counsel for the respondents submits that these documents have been duly considered in the impugned order as under:-

“15)..... PW-1 also admitted that he has no proof that he had paid any amount as a sale consideration to Shri Ram Pat, and also, that at the time of revocation of sale deed in his favour, Shri Ram Pat was not present.

16) PW-1 did not prove the poof attorney executed in favour of Shri Ram Kumar but he also could not admit or deny tire suggestion that Ram Pat had withdrawn his attorney executed in favour of Ram Kumar. During his cross-examination, Id. Counsel for the objectors put certain documents to the PW-1/DH Shri Radhey Sham as under:

(i) certified copy of the affidavit of Ram Pat i.e. Ex.PO-1,

(ii) certified copy of the notice by Ram Pat to Ram Kumar as i.e. Ex.PO-2,

(iii) certified copy of the report of the postal authority i.e. Ex.PO-3, and the

(iv) certified copy of the deed of revocation of the attorney of Ram Kumar by Ram Pat i.e. Ex.PO-4.

PW-1 could not say anything on proving of these documents which establishes that GPA dated 07.08.1998 was executed by the original owner Shri Ram Pat in favour of Shri Ram Kumar and thereafter, the said GPA dated 07.08.1998 was revoked by Shri Ram Pat on 03.10,1988.

17) Further, on perusal of the cross-examination of PW-1 is evident that he or Ram Kumar never remained in possession of the suit property..... as per para-2 of the said registered sale deed the possession of the suit property was handed over to Mr. Jaswant Singh by Shri Ram Pat at the time of execution of the sale deed. Here I find force in the contention of Id. Counsel for the objectors that on 20.08.1991 when the principal/registered owner Shri Ram Pat had left his right, title or interest in the suit property alongwith its possession, there is no question of his attorney Shri Ram Kumar executing another sale deed in favour of the DH as per law. Besides that, DH has not placed on record any document to show that he or Shri Ram Kumar paid any sale consideration to the original owner Shri Ram Pat. Id. Counsel for the objectors relied upon the recent case titled as Principal Secretary, Government of Karnataka & Another v. Ragini Narayan & Another, 2016 (9) JT 304 wherein it has been held that-

14. Section 47 of the Registration Act, 1908 reads as under:

"47.that the document registered on a subsequent date, operates from the date of execution, not from the date of registration.

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19)..... Apart from the above, the objectors alleged that the DH had filed four separate suits against the objectors and the JD for the recovery of possession of the property in question and for the recovery of damages which were suppressed and concealed from this court and out of the said four suits filed by the DH against the objectors, three were dismissed for non-prosecution and one suit against Shri Parveen Kumar was withdrawn by the DH. Id. Counsel for the JD put certified of the said four suits as Ex.PW1/OX (colly) to the DH/PW-1 Shri Radhey Sham on which also PW-1 could not comment upon and thus, filing of the those suits and their dismissal also stood proved on record. Further, I find substance in the contention of Id. Counsel for the objectors that the decisions of the said

four suits shall operate as res-judicata on the present objections as the said four suits were pending between the same parties in respect of the same property and on the same issue and hence, DH is stopped under the law from challenging the decisions of the said four suits in these proceedings.”

5. Refuting the said arguments, the learned counsel for the appellant contends that the impugned order has erred in accepting the four documents mentioned in para 16 thereof because the said documents were never proved either by Mr. Rampat or Mr. Jaswant Singh, who had referred to them; therefore, they could not be accepted to have revoked the Power of Attorney; that many other points raised by them, in particular, in the Written Statement has not been considered in the impugned order. Lastly, he argues that under Order XXI Rule 102 of the Code of Civil Procedure, the appellant is protected from anybody claiming a right, title or interest in the suit property, after the execution of the decree.

6. The question of law in issue is: Whether a document of transfer of property executed earlier in time by the property-owner himself would be valid or a later document executed by his Power of Attorney Holder; especially when there is a doubt about the existence of such power when the later document was created.

7. The learned counsel for the respondents submits that the appellant's suit was filed on 16.10.1992 and *status quo* order was passed on 21.09.1992; the suit was decreed about 17 years later on 22.09.2000. However, prior to the *status quo* order, the suit property admeasuring 200 square yards already stood transferred by Mr. Jaswant Singh [who had become the owner of the

same by way of a Sale Deed dated 20.08.1991 registered in his favour on 15.10.1991] as under:-

- *100 square yards was transferred to one Mr. Laxman Dass on 27.04.1992 .*
- *the remaining 100 square yards was transferred to one Mr. Sarnam Singh on 04.09.1992.*

8. Neither Mr. Laxman Dass nor Mr. Sarnam Singh were made a party to the suit although they had become owners of the suit property much earlier before the suit was filed. According to the appellant the plaintiff was very well aware of the sale of the suit property by Mr. Jaswant Singh to the aforesaid two persons. Yet he chose not to implead them, in the suit filed by him many months later. Logically, therefore, the status quo order, which was passed much later, in a suit to which they were not a party, would not be applicable to them and the subsequent transfer to other bonafide purchasers without notice would not be effected by it. The appellant also submits that because of the facts of the case, reference to Order XXI Rule 102 CPC is misplaced.

9. The learned counsel also submits that since the GPA in favour of Mr. Ram Kumar was revoked by a Revocation Deed dated 03.10.1998, the said Mr. Ram Kumar had no right to sell the suit property to the appellant.

10. What emanates from the preceding discussion is that the order of status quo was sought to be made applicable to a party who had divested his rights therein to other persons much earlier in time. Therefore, the orders would be of no consequence to Mr. Jaswant Singh or to the persons to whom the property stood already transferred. Non-impleadment of the latter,

despite the knowledge of the same by the appellant/plaintiff, would suffer a consequence of his own choosing. The Power of Attorney having been revoked by Mr. Rampat, the document of sale dated 26.08.1991 would be redundant, because the attorney Mr. Ram Kumar was rendered bereft of all authority to transfer any right, title or interest to any party. The documents of transfer executed by the property owner himself on 20.08.1991 would be the only valid document of transfer to be taken cognizance of. For the aforesaid reasons, impugned order calls for no interference. The appeal, along with the pending applications, being without merit, is dismissed.

MAY 15, 2018
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NAJMI WAZIRI, J.



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