

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

% **Date of decision: 12<sup>th</sup> September, 2018.**

+ **RSA 212/2016 & CM No.28685/2016 (for stay)**

**YOGENDER KUMAR & ANR** ..... Appellants

Through: Mr. S.S. Tomar, Adv.

Versus

**RAJENDER KUMAR & ORS** ..... Respondents

Through: Mr. Somdutt Kaushik and Mr.  
Avanish Kumar, Advs. for R-1.

**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 10<sup>th</sup> March, 2016 in RCA No.02/2015 of the Court of Additional District Judge-2 (North)] in a First Appeal under Section 96 of the CPC preferred by the respondent No.1/plaintiff against the judgment and decree [dated 29<sup>th</sup> January, 2015 in Suit No.419/2014 Unique ID No.02401C0006251991 of the Court of Civil Judge-06 (Central)] in a suit filed by the respondent No.1/plaintiff.

2. This appeal came up first before this Court on 9<sup>th</sup> August, 2016, when though notice thereof was ordered to be issued and stay of proceedings before the Suit Court granted, but without expressing any satisfaction that this Regular Second Appeal entails any substantial question of law and, without framing any substantial question of law. Vide subsequent order dated 25<sup>th</sup> October, 2016, Trial Court record was requisitioned. Only the

counsel for the respondent No.1/plaintiff has appeared and none of the respondents No.2 to 6/defendants have appeared.

3. On the last date of hearing i.e. 31<sup>st</sup> August, 2018, the counsels were partly heard and the remaining hearing adjourned to today, recording the consent of the counsels that on completion of hearing, the appeal can be decided by framing the substantial question of law, if any in the judgment deciding the appeal itself.

4. The counsel for the two appellants/defendants namely Yogender Kumar and Krishan Kumar and the counsel for the respondent No.1/plaintiff have been heard and the records perused.

5. The respondent No.1/plaintiff instituted the suit, from which this Regular Second Appeal arises, for recovery of possession of plot No.47, Village Badli, Delhi and for permanent injunction against the two appellants/defendants and the respondents No.2 to 6/defendants from creating any further charge or encumbrance on the said plot.

6. It was *inter alia* the case of the respondent No.1/plaintiff in the plaint (i) that the father of the respondent No.1/plaintiff namely Ganga Ram was allotted the aforesaid plot No.47 by the Village Panchayat and a certificate of allotment dated 11<sup>th</sup> January, 1977 issued in the name of the father of the respondent No.1/plaintiff; (ii) that on demise of the father of the respondent No.1/plaintiff, the respondent No.1/plaintiff, being the only heir, succeeded to the said plot No.47; (iii) that the brother namely Pehlad Singh of the father of the respondent No.1/plaintiff (who was impleaded as defendant No.1 in the suit) was allotted adjoining plot No.46; (iv) that a common boundary wall was constructed around the two plots; (v) that the said Pehlad Singh had

however sold both the plots to one Dambar (impleaded as defendant No.2 in the suit); (vi) that the respondent No.1/plaintiff though instituted a suit immediately on learning of the said sale, but Pehlad Singh persuaded the respondent No.1/plaintiff to withdraw the suit, promising that plot No.47 would be gotten released from Dambar; and, (vii) that Pehlad Singh however failed to do so.

7. The two appellants/defendants are the sons of Dambar aforesaid.

8. The Suit Court dismissed the suit of the respondent No.1/plaintiff.

9. However, on First Appeal being preferred by the respondent No.1/plaintiff against the judgment and decree of dismissal of the suit, the First Appellate Court, vide the impugned judgment has set aside the judgment and decree of dismissal of the suit and remanded the suit to the Suit Court for impleading the Gaon Sabha, Gram Pradhan and Block Development Officer and to decide the suit afresh, after recording fresh evidence, to determine whether plot No.47 was allotted in the name of father of the respondent No.1/plaintiff.

10. The counsel for the appellants/defendants, on enquiry as to the substantial question of law arising in this appeal, contends that the First Appellate Court has erred in remanding the suit when the respondent No.1/plaintiff did not disclose any title to the plot, for recovery of possession of which, on the basis of the title, the suit was filed. It is argued that the First Appellate Court has misconstrued paras 4,5&6 of preliminary objections in the written statement dated 12<sup>th</sup> November, 2001 of the appellants/defendants filed as written statement of defendants No.4&5.

11. The appellants/defendants, in paras 4,5&6 of preliminary objections in their written statement pleaded as under:

*“4. That even otherwise, as per the claim of the plaintiff, Gram Panchayat allotted agricultural land measuring 100 sq. yds. out of khasra No. 27/31/3 in Village Badli, Delhi. It is further submitted that Khasra Number is not mentioned in the plaint by the plaintiff. This allotment was for 9 years only expiring in the year 1986. The allotment was in the name of Shri Ganga Ram, father of the plaintiff, who has already died before expiring of the said date and in the meanwhile, the answering defendants came into possession of the suit land on 04.02.1980.*

*5. Right, title and interest of Shri Ganga Ram in the said plot were that of a Licensee and that license stood terminated with the expiry of time in the year 1986. This line of argument is advanced on the assumption that plaintiff's case is cent percent true as per the plaint, though the contents of the plaint and the claim of the plaintiff is denied altogether by the answering defendants herein.*

*6. That even otherwise, from the allotment letter as relied upon by the plaintiff, forgery is apparent in the alleged allotment. There are material differences in the signatures of Pradhan of Gram Panchayat, who has allegedly allotted the land to the plaintiff. The signature on allotment letter dated 11.01.1977 and L.R. Form No.37 dated 11.01.1976 are differing to each other. Seal is also different. This suggest the act of forgery and manipulation on the part of the plaintiff. It is further submitted that such allotment was subject to approval by the Director of Panchayat/Dy. Commissioner as per the Rules framed under Delhi Panchayat Raj Act and Rules 176 and 178 are very clear on this point. Since Director of Panchayat or the Dy. Commissioner has not sanctioned the allotment, the alleged allotment is null and void and carries no meaning whatsoever. In any case, village Pradhan has no right to allot any piece of land which belongs to Gaon Sabha without sanction from the aforesaid Authorities. In any case, letter of*

*allotment as relied upon by the plaintiff is an act of forgery which he has secured from some interested person and cannot be taken into consideration at all.”*

12. Per contra, the counsel for the respondent No.1/plaintiff draws attention to page 557 of the Suit Court record, being the “Praman Patra” issued by Delhi Administration (Panchayat Vibhag) with respect to plot No.47 admeasuring 100 sq. yds. in favour of the father of the respondent No.1/plaintiff.

13. The counsel for the appellants/defendants, on enquiry as to why the ‘Praman Patra’ does not constitute a document of title, contends that the said certificate has been issued only by the Pradhan of the Gaon Sabha but under Rule 176 of the Delhi Panchayat Raj Rules, 1959 the said action of the Pradhan of the Gaon Sabha has to be approved by Director of Panchayat/Sub-Divisional Magistrate and which did not happen.

14. The Suit Court dismissed the suit finding merit in the contention aforesaid of the counsel for appellants/defendants and holding, (i) that the respondent No.1/plaintiff had not shown that allotment was approved by designated authority or that the Pradhan was authorised to allot the plots; and, (ii) merely because the appellants/defendants had not denied the allotment and the ‘Praman Patra’, that alone cannot constitute proof thereof. Accordingly, the suit was dismissed.

15. I have enquired from the counsel for the appellants/defendants, how the question of the action of the Pradhan having not been approved by the requisite authority, if any is relevant in a suit by the respondent No.1/plaintiff on the basis of the ‘Praman Patra’ aforesaid, for recovery of

possession from those in unauthorised occupation of the said plot. It has further been enquired, whether not the question of irregularity or illegality in the allotment if any in favour of the father of the respondent No.1/plaintiff, would be of relevance only in the dispute, if any between Gaon Sabha and the respondent No.1/plaintiff.

16. I have further enquired from the counsel for the appellants/defendants, how plot No.46 was allotted in the name of Pehlad Singh. It is not in dispute that the appellants/defendants claim purchase of both the plots from Pehlad Singh.

17. The counsel for the appellants/defendants states that there are no documents to show the title of Pehlad Singh to plot No.46 or even to plot No.47 and the only documents in possession of the appellants/defendants are Agreement to Sell, Power of Attorney etc. executed by Pehlad Singh in favour of the appellants/defendants. It is also stated that Khasra Girdawaris also record the names of the appellants/defendants. It is stated that the appellants/defendants believed the claim of Pehlad Singh, of being entitled to both the plots.

18. I may however record, that the Suit Court, in its judgment, in para 24 has recorded that defendant No.1 Pehlad Singh in his written statement admitted that he was allotted plot No.46.

19. In my view, the appellants/defendants, who claim title to both plots by purchase thereof from Pehlad Singh who had same title to plot No.46 as the father of respondent No.1/plaintiff had to plot No.47, are estopped from challenging title of father of respondent No.1/plaintiff to plot No.47.

20. I may, at this stage, record that the appellants/defendants, during the hearing on the last date, had also raised the argument of adverse possession. However today, when it has been enquired from the appellants/defendants as to how the appellants/defendants can at the same time claim lawful title as well as adverse possession, the counsel for the appellants/defendants states that the appellants/defendants are not claiming adverse possession.

21. The counsel for the appellants/defendants however states that the appellants/defendants have taken the plea of being *bona fide* purchasers.

22. The plea of being a *bona fide* purchaser is available only in defence to a suit for specific performance of agreement to sell and against a prior agreement purchaser and not against the real owner of the property. If it is ultimately decided in the suit that the respondent No.1/plaintiff is the owner of plot No.47, howsoever *bona fide* may have been the purchase by the appellants/defendants of the said plot from Pehlad Singh, will still not entitle the appellants/defendants to defend the claim of the respondent No.1/plaintiff as owner, for recovery of possession. A person who himself has no title cannot convey title to transferee. Reference if any required can be made to ***Rajesh Kumar Gupta Vs. Pratap Builders & Contractors (P) Ltd.*** 2013 SCC OnLine Del 2892.

23. Coming back to the aspect of title, what emerges is that there were reasons enough for the first Appellate Court for remand of the suit as directed.

24. The counsel for the appellants/defendants has been unable to show that any substantial question of law arises with respect to jurisdiction exercised by the First Appellate Court of setting aside of the judgment and

decree of dismissal of suit and remanding the suit for decision afresh after impleading necessary parties and after recording fresh evidence.

25. Resultantly, the appeal fails and is dismissed.

26. The Trial Court record requisitioned in this Court be sent back forthwith.

27. The counsel for the respondent No.1/plaintiff, on enquiry, states that there is a date of hearing before the Suit Court.

28. The parties to appear before the Suit Court on the said date.

**SEPTEMBER 12, 2018**

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**RAJIV SAHAI ENDLAW, J.**



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