

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

+ **RFA No. 672/2018 & CM Nos. 32946-47/2018**

% **17th August, 2018**

RAJPAL SINGH TANWAR Appellant

Through: Mr. Jayant Mehta, Ms. Nupur
Goswami and Mr. Sajal Jain,
Advocates (9899016945)

versus

KAMAL NANDA Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the Trial Court dated 5.5.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff with respect to possession of the suit property being a plot bearing no.E-8, Kanwar Singh Colony Village Ranhaula, Nangloi, Delhi-110041 as shown in red colour in the site plan Ex.PW1/1.

2. The subject suit for possession, permanent injunction and mandatory injunction was filed by the respondent/plaintiff pleading ownership of the suit property in terms of the usual documentation being the Agreement to Sell, Power of Attorney, Will, Receipt etc dated 3.12.1996. The original owners of the suit property were four persons namely Smt. Bhan Devi, Sh. Hukum Chand, Sh. Lakhi Ram and Sri Ram. The suit property was sold by these four persons to Smt. Savitri Devi by a registered Sale Deed dated 14.6.1974. Smt. Savitri Devi sold the suit property to Sh. Bhagirath Singh by means of the usual documentation being the Agreement to Sell, Power of Attorney, Will etc dated 20.1.1987. Sh. Bhagirath Singh is the father of Sh. Vikram Singh and from which Sh. Vikram Singh the respondent/plaintiff purchased the suit property. The respondent/plaintiff pleaded that on the death of Sh. Bhagirath Singh the other legal heirs of Sh. Bhagirath Singh executed a Power of Attorney dated 2.11.1996 in favour of one legal heir Sh. Vikram Singh and who sold the suit property to the respondent/plaintiff. Respondent/plaintiff on purchase was put in possession of the suit property, and which was a vacant land at that point of time. On

12.5.2007 when the respondent/plaintiff visited the suit property he found that construction was going on and there was a name plate of the appellant/defendant on the newly constructed wall. There was thus filed an earlier suit for injunction by the respondent/plaintiff, but since respondent/plaintiff was dispossessed during the pendency of the earlier injunction suit, and the appellant/defendant had claimed ownership on the basis of forged and fabricated documents, hence the earlier suit was withdrawn on 26.9.2011 and thereafter the subject suit came to be filed.

3. Appellant/defendant contested the suit and claimed ownership of the suit property by means of usual set of documents dated 21.2.1991 being the Agreement to Sell, Power of Attorney, Will Receipt etc. Appellant/defendant claimed to have purchased the suit property from Sh. Bhagirath Singh i.e the father of Sh. Vikram Singh. The appellant/defendant claimed to have been put in possession of the suit property by Sh. Bhagirath Singh on 21.2.1991. Appellant/defendant pleaded that the documents in favour of the respondent/plaintiff were forged and fabricated documents. The suit was therefore prayed to be dismissed.

4. After pleadings were complete the trial court framed issues and parties led evidence, and these aspects are recorded in paras 9 to 12 of the impugned judgment and these paras read as under:-

“9. After completion of pleadings, vide order dated on 20.02.2014, the following issues were framed:-

(i) Whether the plaintiff, on 03.12.1996, had acquired rights with respect to the suit property and was in pursuance of the documents claimed to have been executed in favour of the plaintiff on 03.12.1996 put into vacant physical possession of the property? OPP.

(ii) Whether the plaintiff was from 03.12.1996 till August, 2006 in possession of the suit property? OPP.

(iii) Whether the plaintiff, in August, 2006, was dispossessed from the suit property?OPP.

(iv) Whether the defendant had acquired rights in the suit property from Sh. Bhagirath Singh on 21.02.1991 and the defendant is in possession of the suit property since 21.02.1991?OPD.

(v) Whether the son of Sh. Bhagirath Singh through whom the plaintiff claims title to the property was not entitled to transfer any rights in the property owing to Sh. Bhagirath Singh in his lifetime having transferred rights in the property in favour of the defendant? OPD.

(vi) Whether the suit has been correctly valued for the purpose of court fees and jurisdiction? OPD.

(vii) Relief.

PLAINTIFF'S EVIDENCE:-

10. The plaintiff has examined 2 witnesses in evidence. PW-1 is plaintiff himself, who filed his affidavit in evidence reiterating and reaffirming the same facts as stated by him in his plaint. He has relied upon the following documents:-

(i) Ex. PW-1/1 - site plan of the suit property;

(ii) Ex. P-1 to Ex. P-6 - original chain of documents in favour of erstwhile owners.

(iii) Ex. P7- GPA in favour of Sh. Vikram Singh by LRs of Sh. Bhagirath Singh;

(iv) Ex. P-8 to Ex. P-14 - GPA, Will, receipt, SPA, agreement to sell, indemnity bond and affidavit, all dated 03.12.1996 in favour of plaintiff executed by Sh. Vikram Singh;

(v) Ex. PW-1/9 to Ex. PW-1/16 - Certified copy of order dated 26.08.2006, two applications u/O 39 Rule 2 (A) CPC, application u/O 1 Rule 10 CPC, written statement, application u/O 23 Rule 1 CPC and copy of order dated 26.09.2011;

(vi) Mark "A" - Police Complaint dated 22.08.2006, made by the plaintiff;

11. PW-2 is Sh. Vikram Singh from whom the plaintiff has purchased the property. He deposed in his chief examination that the suit property was owned by his father late Sh. Bhagirath Singh who expired on 01.12.1994. After the death of his father, all his LRs executed a GPA dated 02.11.1996 (Ex. P-7) in favour of this witness authorizing him to sell the suit property on their behalf also. He has further deposed that the suit property was sold by him to the plaintiff. He has stated that he handed over the entire chain of documents to the plaintiff at the time of sale of the property.

DEFENDANT'S EVIDENCE

12. The defendant has examined only himself as DW-1 in his evidence. He filed his affidavit in evidence reiterating and reaffirming the same facts as stated by him in his written statement. Defendant has relied upon the following documents:-

(i) Ex. DW-1/1 to Ex. DW-1/5 - GPA, agreement to sell, Will, receipt, affidavit in favour of defendant;

(ii) Ex. DW-1/12 & Ex. DW-1/13 - Two receipts dated 07.05.2007 and 03.09.2010;

(iii) Ex. DW-1/15 & Ex. DW-1/19 - electricity bill dated 18.05.2010 and water bill dated 23.03.2011;

(iv) Ex. DW-1/20 - Application u/O 39 Rule 2 (A) CPC;

(v) Ex. DW-1/21 - Application u/O 1 Rule 10 CPC;

- (vi) Ex. DW-1/22 - Certified copy of written statement;
- (vii) Ex. DW-1/23 - Rent agreement;
- (viii) Ex. DW-1/24 - Electricity bills (colly);
- (ix) Ex. DW-1/25 - Water bill.

Witnesses of both the parties were cross examined by each others' counsels.”

5. The only issue to be determined by this Court, and which was the main issue before the trial court, was as to whether the appellant/defendant had in his favour the genuine and valid set of documentation dated 21.2.1991 executed by Sh. Bhagirath Singh or that the documentation dated 3.12.1996 in favour of the respondent/plaintiff conferred ownership rights of the suit property upon him. Trial court has held against the appellant/defendant, and in my opinion rightly, by holding firstly that if the appellant/defendant was the owner of the suit property in terms of the documentation dated 21.2.1991, then the appellant/defendant would have in his possession the entire earlier chain of title documents from the erstwhile four owners through various persons and ultimately through Sh. Bhagirath Singh, but this earlier chain of title documents are admittedly in possession of the respondent/plaintiff and not the appellant/defendant. Trial court has also held that the documents dated 21.2.1991 in favour

of the appellant/defendant are not valid and genuine set of documents, because Sh. Vikram Singh who is alleged to be witness in the documentation dated 21.2.1991 has denied his signatures on the documents, and the appellant/defendant has taken no steps to lead evidence to show what were the other admitted signatures of Sh. Vikram Singh and Sh. Bhagirath Singh (and also thereafter file an handwriting expert's report) that the signatures of Sh. Bhagirath Singh and Sh. Vikram Singh appearing on the documentation dated 21.2.1991 in favour of the appellant/defendant were the valid signatures of Sh. Vikram Singh and Sh. Bhagirath Singh. The relevant observations of the trial court in this regard read as under:-

“22. Both these issues are interconnected, therefore, taken up together for consideration. The onus to prove both these issues was upon the defendant. The defendant has stated that he purchased the suit property from Late Sh. Bhagirath by virtue of GPA, agreement to sell, affidavit, Will, receipt etc., all dated 21.02.1991 (Ex. DW-1/1 to Ex. DW-1/5). As per the defendant, all the said documents were witnessed by PW-2 Sh. Vikram Singh son of Bhagirath Singh, as an attesting witness. The defendant has miserably failed to prove the execution of all the title documents in his favour qua the suit property. As per section 202 of Contract Act, any GPA for creation of right in an immovable property must be executed for consideration. It is only a GPA which is supported by consideration has effect of being irrevocable and conferring rights in an immovable property. Keeping in mind the mandate of Section 202 of Contract Act, even if, assuming that the title documents relied upon by the defendant were executed by late Sh. Bhagirath in his favour then also defendant fails to prove that the GPA

(Ex. DW-1/1) was executed by Sh. Bhagirath Singh for consideration. Hence, here three documents gets more significance to be discussed while deciding whether the title documents in favour of the defendant confers any right, title and interest in his favour in the suit property. The said three documents are GPA & receipt both dated 21.02.1991 and the third document is one undated receipt of the year 1986 (Ex. DW-1/P-1). As per defendant, he made the part payment of sale consideration amount for purchasing the suit property vide this receipt of 1986 (Ex. DW-1/P-1).

23. As per the defendant, he purchased the suit property from late Sh. Bhagirath for total sale consideration amount of Rs. 30,000/-. Regarding which late Sh. Bhagirath executed a receipt (Ex. DW-1/4) in favour of defendant. During cross examination, the defendant (DW-1) has stated that the said amount of Rs. 30,000/- was given by him to late Sh. Bhagirath in two installments. The first installment was paid by him in the year 1986 by way of a cheque of Rs. 20,000/- regarding which late Sh. Bhagirath Singh executed a receipt (Ex. DW-1/P-1) and the balance payment of Rs. 10,000/- was made in cash. Perusal of the receipt (Ex. DW-1/P-1) shows that one cheque of Rs. 20,000/- was given by the defendant to late Sh. Bhagirath somewhere in 1986. During cross examination, defendant has admitted that on the said receipt, numbers/particulars of any property are not mentioned. The reading of Ex. DW-1/P-1 shows that it is written on it that "Agar Koi Plot Uplabdh Hua To". It is clear from the said receipt that same was not executed by Sh. Bhagirath Singh for selling the suit property to the defendant. The defendant has also not placed on record his Bank statement in order to prove that the amount of Rs. 20,000/- was debited from his bank account and credited in the account of Sh. Bhagirath Singh. The defendant has also failed to prove the cash payment of Rs. 10,000/- to Sh. Bhagirath Singh. During cross examination, he admitted that he is not aware when the said payment was made by him. From the material on record, it is evident that defendant has failed to prove that the suit property was purchased by him by payment of sale consideration amount.

24. So far as, the question of execution of title documents of the suit property in favour of the defendant is concerned, for that the case of the defendant is that the title documents in his favour purported

to be executed by late Sh. Bhagirath in the year 1991 were witnessed by PW-2 Vikram Singh (son of late Bhagirath Singh). During the cross examination of PW-2 Vikram Singh, the title documents of the defendant (Ex. DW-1/1 to Ex. DW-1/5) were put to him but he denied his signatures on all the said documents. Similarly, during cross examination, PW-2 has stated that he can identify the signatures of his father late Sh. Bhagirath Singh. As per defendant, the title documents in his favour (Ex. DW-1/1 to Ex. DW-1/5) bears the signatures of late Sh. Bhagirath Singh at point Y of the said documents. During cross examination of PW-2, the point Y of Ex. DW-1/1 to Ex. DW-1/5 was specifically put to him and after seeing the same, he said that he cannot identify the signatures at point Y on the said documents. In this scenario, it was incumbent upon the defendant either to examine the hand writing expert to prove the signatures of Vikram Singh and Bhagirath Singh or to bring any other evidence to show that Ex. DW-1/1 to Ex. DW-1/5 bears their signatures, which admittedly has not been done by the defendant. Hence, the defendant has failed to prove that the title documents relied upon by him were executed by late Sh. Bhagirath Singh during his lifetime and were witnessed by PW-2. Hence, the defendant has failed to prove that he acquired any right, title or interest in the suit property vide documents Ex. DW-1/1 to Ex. DW-1/5, therefore, after the death of late Sh. Bhagirath Singh the suit property was acquired by his LRs being his class-I legal heirs who validly executed the GPA dated 02.11.1996 (Ex. P-7) in favour of Sh. Vkkram Singh son of late Sh. Bhagirath Singh to sell the suit property on their behalf too. These issues are accordingly decided in favour of the plaintiff and against the defendant.”

6. Learned counsel for the appellant/defendant could not dispute that the appellant/defendant does not have with him the entire earlier chain of title documents, and which are with the respondent/plaintiff. Counsel for the appellant/defendant could also not dispute that admittedly Sh. Vikram Singh, appeared as a witness i.e PW-2 on behalf of the respondent/plaintiff, and he deposed by

denying his signatures on the alleged documentation dated 21.2.1991 said to have been executed in favour of the appellant/defendant and that the appellant/defendant has led no evidence to show that what were the admitted signatures of Sh. Vikram Singh and thereafter also to file a handwriting expert's report that the signatures of Sh. Vikram Singh appearing in the documentation dated 21.2.1991 are that of Sh. Vikram Singh.

7. For the sake of completion of narration I would note that the documentation dated 3.12.1996 executed in favour of the respondent/plaintiff are valid in law as they are executed prior to 24.9.2001 when by Act 48 of 2001 the statues of Transfer of Property Act, 1882 ,Registration Act,1908 and Stamp Act,1899 were awarded for requiring registration and stamping of the documents being Agreement to Sell etc. This aspect has been dealt with by this Court in the judgment in the case of ***Ramesh Chand vs. Suresh Chand and Anr. 188 (2012) DLT 538.***

8. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

AUGUST 17, 2018/ib

VALMIKI J. MEHTA, J