

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

+ **RFA No. 28/2019**

% **16th January, 2019**

RAMNATH YADAV & ANR. Appellants

Through: Sh. Praveen Agarwal, Advocate
(M. No.9811702850) & Sh.
Ravinder Tyagi, Advocate (M.
No.9873324300).

versus

VANDANA GARG Respondent

Through:

CORAM:

HON'BLE SH. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

Caveat No. 34/2019

1. No one appears for the caveator. Caveat accordingly
stands discharged.

C.M. No. 1664/2019(exemption)

2. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

**RFA No. 28/2019 and C.M. Nos. 1663/2019 (stay) & 1665/2019
(under Order XLI Rule 27 CPC)**

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant nos.1 and 2 in the suit impugning the Judgment of the trial court dated 12.10.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff for possession and *mesne* profits pertaining to the suit property admeasuring 100 sq. yds. situated in Khasra no. 753/2, 768 and 769 bearing plot no. 468, Gali no.12-C, I-Block, Hari Nagar Extension, Jaitpur, Badarpur, Delhi.

4. The facts of the case are that the respondent/plaintiff pleaded that she purchased the suit property by way of usual Documentation dated 13.05.1997, being Agreement to Sell, Power of Attorney from one Sh. Niranjana Singh for a consideration of Rs. 1,20,000/-. These documents being the Agreement to Sell, Affidavit, Receipt etc. have been proved on record as Ex. PW-1/3 to Ex. PW-1/6. The earlier title documents in favour of the seller Sh. Niranjana Singh were proved as Ex. PW-1/2 (colly). It is further pleaded that on purchase of the suit property, the respondent/plaintiff was put in possession of the suit property. The respondent's/plaintiff's husband was working with the Airports Authority of India, and also was

transferred to Babatpur, Varanasi, and therefore, the respondent/plaintiff with his family members shifted to Babatpur, Varanasi and remained there from 24.11.2003 to 06.07.2006. On the husband of the respondent/plaintiff being transferred back to Delhi, the respondent/plaintiff and her husband visited the suit property on 29.10.2006, where it was found that the appellant no.1/defendant no.1 was in illegal possession of 50 sq. yds. out of the suit property admeasuring 100 sq. yds. and the balance 50 sq. yds. was in the possession of appellant no. 2/defendant no. 2. The appellants/defendant nos. 1 and 2 claimed that they had purchased the suit property from defendant no. 3/Sh. Arvind Kumar Goswami but the appellants/defendants no. 1 and 2 did not show any title documents in their favour. The defendant no. 3/Sh. Arvind Kumar Goswami is a property dealer in the area who on being confronted by the respondent/plaintiff denied that he had sold the suit property to the appellants/defendants nos. 1 and 2. The subject suit was therefore filed *inter alia* claiming possession and *mesne* profits with respect to the suit property.

5. The appellants/defendants nos. 1 and 2 contested the suit and pleaded that they were the owners of the suit property but the suit property was not bearing no. 468 but it was bearing nos. 478 and 478A. It was also pleaded that the suit property was situated in Gali no. 12-B and not in Gali no. 12-C. It was therefore pleaded that the possession which was with the appellants/defendant nos.1 and 2 was a separate property and not the property being plot no. 468 of which ownership was claimed by the respondent/plaintiff. As per the written statement, the appellants/defendant nos.1 and 2 claimed to have purchased the vacant land, and which was a plot which was full of marsh and dirty water. It may be noted at this stage that surprisingly the date of documentation by which the appellants/defendant nos.1 and 2 purchased the suit plot was not stated in the written statement. It may also be relevant to mention that in the written statement there is no categorical assertion as to from which person the appellants/defendant nos.1 and 2 had purchased the alleged plot nos. 478 and 478A and in para 4 of the written statement all that is stated is that appellants/defendant nos.1 and 2 purchased the vacant land which

was full of marsh and dirty water. The suit was accordingly prayed for being dismissed.

6. After completion of pleadings, the trial court framed the following issues:-

- “1. Whether plaintiff is the owner of the suit property bearing no. 468, Block No.1, Hari Nagar Extension, Jaitpur, Badarpur, Delhi.
2. Whether plaintiff is entitled to a decree of declaration and possession in respect of the suit property.
3. Whether plaintiff is entitled to a decree of permanent injunction and damages against the defendant.
4. Whether the documents of defendant no. 1 and 3 are forged/fabricated and liable to be declared void.
5. Relief.”

7. Evidence which is recorded by the parties is referred to in paras 9 and 10 of the impugned judgment and these paras read as under:-

“9. In plaintiff’s evidence, the following witnesses were examined:

PW1 Vandana Garg (plaintiff herself). She deposed along the same lines as averred in the plaint. She exhibited the GPA Sale Documents in her favour as Ex. PW1/3 to Ex. PW1/6 and the site plan as Ex. PW1/1. She was not cross-examined despite repeated opportunities.

PW2 P.K. Garg (plaintiff’s husband). He deposed along the same lines as averred in the plaint.

PW3 Tarun Kumar Garg (plaintiff’s brother-in-law). He deposed that plaintiff purchased the suit property from Niranjan Singh in his presence. He also deposed that he had purchased an adjacent plot that

was subsequently sold out. Rest of his deposition is along the same lines as set out in the plaint. This witness was not cross-examined despite repeated opportunities.

10. In defendants' evidence, following witnesses were examined:

DW1- Ram Nath Yadav (defendant no.1).

D2W1- Devi Prasad Tripathi (defendant no. 2).

D1 & 2-W3/DW3- K. Sadanandan (stating himself to be neighbour of plot no. 478-A of defendant no.1 and plot no. 478-B for defendant no.2). It is pertinent to mention that this witness in his cross-examination deposed that he had purchased his own plot from Niranjan Singh.”

8(i). The trial court, in my opinion, has rightly decreed the suit for possession and *mesne* profits because the respondent/plaintiff proved her ownership in terms of the Documentation Ex.PW1/3 to PW1/6 dated 13.05.1997 executed in her favour by Sh. Niranjan Singh. These documents are executed prior to amendment of Section 53A of the Transfer of Property Act, 1882 by Act 48 of 2001 which became operative from 24.09.2001, and therefore, the documentation in favour of the respondent/plaintiff need not have been stamped and registered, and this is held by this Court in the judgment in the case of ***Ramesh Chand v. Suresh Chand and Anr., 188 (2012) DLT 538*** and this judgment has been relied upon by the trial court. In the judgment in the case of ***Ramesh Chand (supra)***, this Court has referred to various paras of the judgment of the Hon'ble Supreme Court in the

case of *Suraj Lamps & Industries Pvt. Ltd. v. State of Haryana*, (2012) 1 SCC 656, and as per these paras there was no bar to the documents which were in accordance with Section 53A of the Transfer of Property Act and Section 202 of the Contract Act (an irrevocable power of attorney for consideration), and the documents in favour of respondent/plaintiff are of a date prior to 24.09.2001.

8(ii). It is also required to be noted that respondent/plaintiff has proved the chain of title documents being the title documents in favour of the seller, Sh. Niranjana Singh, and those documents were proved and exhibited as Ex. PW-1/2 (colly.). In fact, the trial court notes the position that the respondent/plaintiff who deposed as PW1 was not cross-examined despite repeated opportunities, and once that is so, the deposition of the respondent/plaintiff is deemed to be admitted and hence, the respondent/plaintiff becomes the owner of the suit property.

8(iii). In my opinion, the trial court has also rightly rejected the claim of the appellants/defendant nos.1 and 2 to be owners of the suit property because before the trial court appellants/defendant nos.1 and 2 have filed no documents whatsoever to show and prove that they had purchased the suit property, and if so, from whom.

9. Before this Court, an application under Order XLI Rule 27 CPC has been filed by the appellants/defendants no. 1 and 2 being ***C.M. No. 1665/2019***, for taking on record additional documents as per which the appellants/defendant nos.1 and 2 seek to prove their title, and these documents are the usual set of documentation being Agreement to Sell, Power of Attorney, Will etc. dated 14.06.2005, 21.06.2005 and 18.11.2004, however, this application under Order XLI Rule 27 CPC cannot be allowed as Order XLI Rule 27 CPC cannot be invoked to reopen an entire case which has been decided at the stage of trial after a complete opportunity has been given to the appellants/defendant nos.1 and 2 to lead evidence and prove their case. This application under Order XLI Rule 27 CPC is therefore dismissed, and even if the same would have been allowed, and the aforesaid documentation was taken into account by this Court, it is seen that even these documents would not help the appellants/defendant nos.1 and 2 because these documents only show that the appellants/defendant nos.1 and 2 purchased the suit property from one defendant no. 3/Sh. Arvind Kumar Goswami, however, in these documents, it is not mentioned as to how the defendant no. 3/Sh.

Arvind Kumar Goswami became the owner of the suit property. Obviously, the defendant no.3/Sh. Arvind Kumar Goswami being a property dealer fabricated documents in favour of the appellants/defendant nos.1 and 2 so that the appellants/defendant nos.1 and 2 can claim title to the property to the prejudice of the respondent/plaintiff. However, once the documents failed to show as to how the defendant no. 3/Sh. Arvind Kumar Goswami became owner of the suit property, even if the appellants/defendant nos.1 and 2 claim to have purchased the suit property, appellants/defendant nos.1 and 2 cannot become owners of the suit property once defendant no.3/Sh. Arvind Kumar Goswami was not the owner as there is no title traced of the suit property in favour of Sh. Arvind Kumar Goswami in the documents executed by him in favour of appellants/defendants nos. 1 and 2.

10. I would also like to note that appellants/defendant nos.1 and 2 sought to create confusion by stating that the plot in possession of the appellants/defendant nos. 1 and 2 being plot no. 478 and 478A were situated in Gali no.12-C and not Gali no. 12-B in which plot no. 468 was alleged by the appellants/defendant nos. 1 and 2 to be

situated, however, there is no evidence at all led by the appellants/defendant nos. 1 and 2 that the plot in their possession is situated in Gali no. 12-C and that plot no. 468 is situated in Gali no. 12-B.

11. I also note that the documentation in favour of the respondent/plaintiff and her predecessor-in-interest, Sh. Niranjana Singh, showed that the property which is claimed by the respondent/plaintiff as that situated in Gali no. 12-C, and even DW-3 who appeared on behalf of the appellants/defendant nos.1 and 2 has conceded that the appellants/defendant nos.1 and 2 were on a plot situated in Gali no. 12-C, and therefore, so far as plot of which possession is claimed by respondent/plaintiff is the plot in Gali no. 12-C, and it is the plot in Gali no. 12-C which the respondent/plaintiff had purchased in terms of the documents executed by Sh. Niranjana Singh, which are proved as Ex. PW-1/3 to PW-1/6, and also the earlier set of documents in favour of Sh. Niranjana Singh have been proved as Ex. PW-1/2 (colly), hence, the same shows that the plot which is claimed by the respondent/plaintiff is situated in Gali no. 12-C. This plot no.

468 thus is not situated in Gali No. 12-B as is contended by the appellants/defendants nos. 1 and 2.

12. It has become rampant in cities these days that plots which are lying unattended to, are taken illegal possession of, and the owner is thus harassed by having to file a suit for taking back the possession of property which is owned by him. The present issue is one such classic case where the appellants/defendant nos.1 and 2 alongwith the property dealer (defendant no. 3) created title documents in favour of the appellants/defendant nos.1 and 2, which though were not filed and proved before the trial court, but copies of which have been filed in this Court along with the application under Order XLI Rule 27 CPC, and these documents in fact have let the cat out of the bag because these documents by which the appellants/defendant nos.1 and 2 claim to be the owners from defendant no.3/Sh. Arvind Kumar Goswami do not at all show as to how Sh. Arvind Kumar Goswami became the owner of the property/plot of which ownership and possession is claimed by the appellants/defendant nos. 1 and 2.

13. No other issue is argued before this court except as discussed above.

14. In view of the aforesaid discussion, this appeal as also the defence of the appellants/defendant nos.1 and 2 being completely false and frivolous is dismissed with costs of Rs. 50,000/- in favour of the respondent/plaintiff. All Pending applications are hereby disposed of.

JANUARY 16, 2019
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VALMIKI J. MEHTA, J