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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 14.08.2019

\+ RFA 569/2019 & C.M. No.28037/2019 (for stay)

DALIP KUMAR GUPTA ..... Appellant

Through Mr.Shesh Datt Sharma with Ms.Shruti Sharma, Advs.

versus

KUSHAL CHAND GARG & ORS ..... Respondent

Through Mr.J.P.Gupta with Mr.Rikky Gupta, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

<u>REKHA PALLI, J (ORAL)</u>

1. The present appeal under Section 96 of the Code of Civil Procedure, 1908 has been preferred assailing the judgment and decree dated 24.04.2019 passed by the learned Additional District Judge, East District, Karkardooma Courts, Delhi decreeing the suit for possession filed by the respondent/plaintiff being Civil Suit No.1634/2016.

2. Under the impugned judgment, the appellant/defendant has been directed to hand over the vacant and peaceful possession of the suit premises situated at the property bearing no.3/130, Lalita Park, Laxmi Nagar, New Delhi comprising of Shop no.4 on the ground floor along with a small portion of the first floor consisting of four rooms, toilets, etc. admeasuring 110 sq. yards. The learned Trial Court has further directed the appellant to pay mesne profits at the rate

of Rs.8,000/- per month w.e.f. 01.08.2015 to 31.07.2016 with 15% annual enhancement thereon till vacant possession of the property is handed over to the respondent.

3. The appellant while working as a caretaker of M/s Jyoti Music Pvt Ltd. being run by one Mr.Puran Singh Kainth who was the erstwhile owner of the suit premises, was initially permitted to stay in a portion of the same without payment of any amount to the owner. Subsequently, when M/s Jyoti Music Pvt. Ltd. came to be wound up, the appellant requested Mr.Kainth to permit him to occupy the suit premises as a tenant and, accordingly, at the appellant's request the suit premises was leased out to him for a period of 11 months vide lease deed dated 02.03.2010 at a monthly rent of Rs.3,600/-. The appellant accordingly paid rent to Mr.Kainth for a few months, whereafter he stopped paying any rent.

4. In these circumstances Mr.Kainth, vide a registered sale deed executed on 20.11.2014, sold the aforesaid property bearing no. 3/130, Lalita Park, Laxmi Nagar, New Delhi to a private charitable trust namely Shiv Shakti Sansthan (Regd.) for a consideration of Rs.48 lakh and an additional sum of Rs.10 lakh was paid towards furnitures, fixtures and fittings. At the time of the execution of the sale deed, the Trust was handed over the actual physical possession of the entire property, except the portion which was in the possession of the appellant pursuant to the lease deed dated 02.03.2010, even though he had stopped paying rent after July, 2010.

5. The Trust therefore requested the appellant to vacate the tenanted premises, which he refused to do and instead started claiming

ownership of the suit premises. Faced with the situation where the appellant was not only continuing to stay in the suit premises without paying rent but had also started misbehaving with the trustees, the Trust on 05.03.2015, instituted the subject suit seeking a decree of possession and mesne profits against the appellant.

6. Soon after filing of the suit, the Trust passed a resolution on 25.03.2015 to the effect that all court cases, as also all documents to be submitted in respect of the Trust, would be signed and filed in the name of its President, Vice President and General Secretary. Based on this resolution, the respondents sought amendment of the plaint by substituting the aforesaid three office bearers as plaintiffs instead of the Trust, which application came to be allowed by the trial Court vide its order dated 27.03.2015.

7. Before the trial Court, the appellant filed his written statement claiming therein that the suit was not properly valued and that the market value of the same was more than Rs.1 crore. It was further claimed that pursuant to an oral agreement to sell entered into with the erstwhile owner Mr.Kainth on 15.01.2000, the appellant was now holding the suit premises as its rightful owner. It was further claimed that the appellant had paid a sum of Rs.8 lakh as part sale consideration to Mr.Kainth in cash by way of instalments. It was further claimed that though Mr.Kainth had assured the appellant that he will execute the sale deed in his favour, his intention had become dishonest and, therefore, he had asked the appellant to sign some papers in the office of the Sub-Registrar, Shashtri Nagar which he later learnt was a lease deed. It was, thus, contended that the lease

deed was the outcome of fraud played upon him and, therefore, was not enforceable.

8. Based on the pleadings of the parties, the following issues were framed by the trial Court on 04.11.2015:-

> *"(i). Whether the present suit has been filed by the plaintiff without any cause of action ? OPD*
> *(ii) Whether the suit is beyond the pecuniary jurisdiction of this court? OPD*
> *(iii) Whether the plaintiff has not valued the suit property as per the market valuation and has malafidely assessed the value of the suit ? OPD*
> *(iv). Whether the plaintiff is entitled for recovery of possession ? OPP*
> *(v). Whether the plaintiff is entitled for mesne profits and damages as claimed in the suit ? OPP*
> *(vi). Whether the defendant is owner of the suit property as claimed by the defendant ? OPD*
> *(vii). Relief."*

9. Before the trial Court, respondent no.1 stepped into the witness box and tendered the copies of the sale deed dated 20.11.2014, rent deed dated 02.03.2010 as also the site plan and photographs. The appellant on the other hand examined himself and his brother as his witnesses and tendered interalia copies of his voter I.D card, ration card and MCD receipts.

10. Based on the pleadings of the parties and the evidence led before it, the learned trial Court decreed the respondent's suit by holding that the plea raised by the appellant regarding the oral agreement to sell with the erstwhile owner on 15.01.2000 was palpably false and an afterthought. It was further held that the

appellant having not denied his signatures on the rent deed, it was evident that he had been inducted as tenant by Mr.Kainth and the Trust, having purchased the property from Mr.Kainth by way of a registered sale deed, had acquired all his rights in accordance with section 109 of the Transfer of Property Act, 1882. Upon finding that the monthly rate of rent for the suit premises was Rs.3,600/-, the trial Court also rejected the appellant's claim that the suit was barred under section 50 of the Delhi Rent Control Act,1958. The Court also rejected the plea that the suit was not maintainable on account of non-issuance of legal notice by relying on the decision of this Court in ***M/s Jeevan Diesel Electrical Limited v. M/s Jasbir Singh Chaddha (HUF) & Anr.*** *[RFA No.179/2011]*, reiterating the settled legal position that even if a legal notice terminating the tenancy is not issued, filing of a suit and service of summons of the suit amounts to termination of tenancy.

11. The trial Court also held that in view of the appellant's admitted stand that he has been initially given permission to reside in the suit premise as a licensee, his status continued to be that of the licensee, even subsequent to the purchase of the property by the Trust. The rightful owner was therefore held to be entitled to recover possession of the property from the appellant. The learned trial Court also rejected the appellant's submissions that the suit was hit by section 53 of the Indian Trusts Act, 1882 or by Section 11 and 18 of the Religious Endowments Act, 1863. The Court also came to a conclusion that the bar of Section 92 CPC and Order I Rule 8 was not applicable to the facts of the present case and accordingly decreed the

suit for possession in favour of the respondents along with mesne profits @ Rs.8,000/- per month from 01.08.2015 to 31.07.2016 with 15% increase every year till the appellant delivers vacant possession of the suit property.

12. Aggrieved by the impugned judgment the present appeal has ben filed by the appellant/defendant. In support of the appeal, Mr.Shesh Datta Sharma, learned counsel for the appellant has raised various contentions including some which were not even raised before the learned trial Court. His first and foremost contention being that the appellant is entitled to continue residing in the suit premises despite the termination of his license as he has been uninterruptedly staying in the said premises for the last 15 years as its owner having entered into an oral agreement to sell with Mr. Kainth in respect of the said premises. He submits that the appellant has already filed a suit for specific performance in respect of the oral agreement to sell in his favour, which suit is pending adjudication and, therefore, contends that the learned Trial Court has erroneously decreed the respondents' suit for possession without appreciating the fact that both suits ought to have been de4cided together. Without prejudice to his aforesaid submission that the appellant is entitled to retain possession of the suit premises by virtue of an oral agreement to sell entered into with Mr.Kainth, learned counsel for the appellant submits that the possession of the appellant has been open and hostile and he has, also therefore, become owner of the suit premises by way of adverse possession especially in the light of the admitted fact that he has not paid any rent for the last more than 14 years.

13. The second contention of Mr.Sharma is that Shiv Shakti Sansthan (regd.) is a private trust which claims to be the owner of the suit premises, based on a sale deed dated 20.11.2014 executed by the erstwhile owner in its favour for a sum of Rs.48 lakh and, therefore, contends that the suit, if any, could be instituted only in the name of the Trust. He submits that the respondents, who are office bearers of the said Trust being the President, General Secretary and Vice President of Shiv Shakti Sansthan (regd.), were not entitled to institute the suit or maintain the suit in their individual names and, therefore, contends that the suit was not only hit by the provisions of Order I Rule 8, but also by Section 92 of the CPC. He further submits that the trial Court has erroneously rejected the appellant's plea that the suit was barred by Section 53 of the Indian Trusts Act, 1882 as also by Sections 11 and 18 of the Religious Endowments Act, 1863 as the Trust could not have purchased the property without seeking permission of the civil Court under Section 53 of the Indian Trusts Act.

14. The third contention of Mr.Sharma is that even though the lease deed dated 02.03.2010 is itself assailed by the appellant, the monthly rent of the suit premises was in fact only Rs.3,500/- for which purpose he relied on the testimony of the respondent no.1 in the suit for specific performance filed by the appellant. He, thus, contends that the tenancy was a protected tenancy under the Delhi Rent Control Act, 1958 and a suit for possession, therefore, was not maintainable. He further submits that, even otherwise, once the very title of the Trust to the suit property itself was disputed by the appellant, the suit could

not be adjudicated without impleading the erstwhile owner of the suit premises namely Mr.Puran Singh Kainth.

15. Mr.Sharma futher contends that the very sale of the property to the Trust was illegal and *non-est,* as the same was purchased during the pendency of the injunction suit filed by the appellant against the erstwhile owner of the property in respect of the suit property and was, therefore, hit by Sections 52 and 53 of the Transfer of Property Act.

16. Mr.Sharma finally submits that the suit filed by three individual persons, who were the office bearers of the Shiv Shakti Sansthan Trust, which is a registered charitable Trust was not maintainable as it is the Trust, which is claimed to be owner of the suit property and not its office bearers. He further submits that even though the appellant had not raised any objection in this regard before the learned trial Court, he is entitled to raise this objection before this Court as it is a pure legal question. In the light of his aforesaid submissions, Mr.Sharma submits that there is no relationship of landlord and tenant between the appellant and the respondents and, therefore, prays that the appeal be allowed.

17. On the other hand, Mr.Gupta, learned counsel for the respondents submits that the present appeal is a gross abuse of the process of law. He submits that the appellant is a rank trespasser who is trying to grab the property rightfully owned by the Trust by taking all kinds of false pleas which have been rightly rejected by the trial Court. He submits that, in fact, most of the contentions raised before this Court were not raised by the appellant either in his written

statement or during arguments before the trial Court and, therefore, contends that he ought not to be permitted to raise the same for the first time before this Court.

18. Without prejudice to his aforesaid submissions, Mr.Gupta submits that the reliance sought to be placed by the learned counsel for the appellant on Section 53 of the Indian Trusts Act, 1882 as also on Sections 11 and 18 of the Religious Endowments Act, 1863 is wholly misplaced. He submits that Section 53 of the Indian Trusts Act, 1882 would not be applicable to the facts of the present case as it is not a case where any of the trustees of Shiv Shakti Sansthan were seeking to buy any interest in the Trust property or any part thereof. He further submits that even Sections 11 and 18 of the Religious Endowments Act, 1863 are not applicable to the facts of the case as the said provisions would come into play only when a person interested in a religious endowment or in the performance of worship therein seeks to sue the trustees/any other office bearers of the said Trust before a Civil Court. It is only in such an eventuality that prior permission of the Civil Court is required to be obtained, in accordance with Section 18 of the Religious Endowments Act, 1863. Mr.Gupta further submits that even Section 92 of the C.P.C is inapplicable to the facts of the present case as the said provision comes into play only when a suit is sought to be instituted against a Trust or its Trustees in a situation whwere the Trust is created for a public purpose of charitable or religious nature.

19. Mr.Gupta further submits that even though the suit had been initially filed in the name of the Trust, but subsequently based on a

resolution passed by the Trust itself, the respondents who are its office bearers were substituted as plaintiffs by filing an application seeking amendment of the plaint, which application was allowed by the learned trial Court vide its order dated 27.03.2015. He further submits that the said order has not been challenged by the appellant at any stage and has attained finality.

20. Mr.Gupta submits that the appellant's plea that the suit is bad for non-joinder of parties is also misconceived as after the execution of the sale deed in favour of the trust Mr. Kainth, the erstwhile owner had no subsisting interest in the property. He further submits that the appellant in an attempt to continue his illegal possession of the suit property had even raised objections before the Sub-Registrar, East Delhi at the time of the registration of the sale deed in favour of the Trust, which objections were dismissed. He further submits that though the appellant had instituted two successive suits seeking injunction against Mr.Puran Singh Kainth from selling the property to the respondents or to any other person, both these suits came to be dismissed as withdrawn.

21. Mr.Gupta submits that it is only on 05.01.2016 that the appellant has filed a suit for specific performance and declaration seeking performance of the oral agreement to sell dated 15.01.2000 claiming to have been entered into by him with the erstwhile owner of the property. He submits that the filing of the suit after 16 years of the alleged date of agreement to sell in itself shows that the said plea of an oral agreement is a sham and an afterthought. He, therefore, prays that the appeal be dismissed with exemplary costs.

22. I have heard the learned counsel for the parties at great length and, with their assistance, perused the records.

23. In my view, the present appeal is a gross abuse of the process of law and shows how a licensee, once permitted by his employer to reside in the premises as a caretaker, is taking all kinds of contradictory and frivolous pleas to somehow hold on to the property without having any title or interest thereto.

24. The facts as set out hereinabove clearly show that the appellant, while working as a caretaker in M/s Jyoti Music Pvt Ltd. owned by the erstwhile owner Mr.Puran Singh Kainth, was initially permitted to stay in the suit premises as a licensee in the year 1997. After the closure of the aforesaid business concern, the appellant was still permitted to continue staying in the suit premises by the erstwhile owner, upon his executing a rent agreement on 02.03.2010 with the owner and undertaking to pay him a monthly rent of Rs. 3,600/-. The appellant paid the said rent for only about 3 months, whereafter his intention became dishonest when he started claiming that he was the owner of the suit property by virtue having entered into an oral agreement to sell with Mr.Puran Singh Kainth on 15.01.2000 itself.

25. The execution of aforesaid rent agreement has not been denied by the appellant and, therefore, I am unable to appreciate as to why the appellant, who claims to be in possession of the property pursuant to an oral agreement to sell on 15.01.2000 itself, would ever enter into a rent agreement with the same person for the same premises after more than 10 years. In my view, the learned trial Court has rightly come to the conclusion that the appellant's plea of having entered into

an oral agreement to sell with the erstwhile owner was palpably false.

26. I have also considered the submissions of learned counsel for the appellant that once a suit for specific performance filed by the appellant was pending, the learned trial Court ought not to have proceeded with the adjudication of the suit for possession filed by the respondent. This plea of the appellant is in the teeth of the various decisions of this Court including the decision in ***Abbot India Ltd. v. Rajinder Mohindra & Anr.*** *[RFA No. 207/2013]*, wherein it has been categorically held that a tenant whose tenancy stands terminated, cannot be permitted to continue in the tenanted premises, merely on account of his having filed a suit for specific performance in respect of the said tenanted premises. The aforesaid decision is squarely applicable to the facts of the present case i.e. specially in the light of the appellant's own plea that though he had entered into an oral agreement to sell with the erstwhile owner in January, 2000, but still he chose to file a suit seeking specific performance in January, 2016 i.e. exactly after 16 years and that too almost 1 year after the suit for possession was filed by the respondents. This, in itself, shows that the plea of an oral agreement to sell raised by the appellant is sham and wholly dishonest. However, I refrain from making any further observations on the appellant's conduct and the alleged agreement to sell in his favour, lest it affects his pending suit for specific performance.

27. I have also considered the provisions of Section 53 of the Indian Trusts Act, Sections 11 and 18 of the Religious Endowments Act as also Section 92 of the CPC and I find that the same are not at

all applicable to the facts of the present case. As held by the trial Court Section 53 of the Indian Trusts Act would not be applicable herein, when a suit for possession has been filed by its office bearers for the welfare of the Trust and that too with the express consent of the trust itself. Similarly, neither Section 11 nor Section 18 of the Religious Endowments Act are applicable to the present case as the said provisions would be applicable only when a suit is sought to be instituted against the trustee, manager or superintendent of the Trust for any misfeasance, breach of trust or neglect of duty committed by him in respect of the Trust. Similarly, Section 92 of the CPC is also wholly inapplicable to the facts of the case as the said provision is attracted would be applicable only when a suit is sought to be filed on the ground of an alleged breach of any express or constructive Trust created for public purposes of a charitable or religious nature, or where a direction of the Court is sought for proper administration of any such Trust. In this regard reference may be made to the decision of the Hon'ble Supreme Court in ***Vidyodaya Trust v. Mohan Prasad & Ors*** *[(2008) 4 SCC 115]*, wherein it was held that Section 92 of the CPC would apply only when a suit is sought to be instituted against a public Trust and the relief claimed therein is in a representative capacity and is for vindication of public rights.

28. I also do not find any merit in the appellant's submission that he had become owner of the suit premises by way of adverse possession. This plea is contrary to the appellant's own plea that though he had been inducted as a licensee, he had subsequently become entitled to retain the possession of the suit premises on the

basis of an oral agreement to sell entered into with the erstwhile owner of the suit property, who was admittedly not even examined as a witness by the appellant. Similarly, I do not find any merit in the appellant's submission that the suit was barred under Section 50 of the Delhi Rent Control Act as the monthly rent of the property was only Rs.3,500/-. In the light of the agreed monthly rent being set out as Rs.3,600/- in the rent agreement dated 02.03.2010, the execution whereof has not been denied by the appellant, his plea that the monthly rent of the premises was Rs.3,500/- cannot be accepted and has been rightly rejected by the trial Court.

29. I also do not find any merit in the appellant's submission that the suit is in any manner, hit by Sections 52 and 53 of the Transfer of Property Act. The mere filing of successive injunction suits by the appellant against the erstwhile owner, which suits admittedly stand dismissed as withdrawn, do not attract the provisions of Section 52 for the same reasons, the sale of the property in favour of the trust cannot by any stretch of imagination be treated as a fraudulent transfer under Section 53 of the Transfer of Property Act.

30. There is also no merit in the appellant's final submission that the suit filed by the office bearers of the Shiv Shakti Sansthan, a registered Trust in their individual names was not maintainable or was liable to be rejected on the ground of mis-joinder of parties. The record shows that the suit was, no doubt, initially filed in the name of the Trust, but upon a subsequent resolution passed by the Trust, a decision was taken to seek impleadement of its office bearers as plaintiffs, which prayer of the Trust was acceded to by the learned

trial Court vide its order dated 27.03.2015. Not only has this order passed by the trial Court attained finality, but even in his written statement filed by the appellant before the trial Court on 29.09.2015, no such objection was ever taken by him and, therefore, the appellant cannot be permitted to raise this objection for the first time before this Court. In any event, a perusal of the impugned judgment shows that the resolutions passed by the Trust authorising its office bearers to seek a decree of possession on its behalf were duly exhibited before the trial Court. Reliance in this regard may be placed on a decision of the Gujarat High Court in ***Vasant Nature Cure Hospital & Pratibha Maternity Hosp. Trust & Ors. v. Ukaji Kamaji & Ors.*** *[AIR 2013 Gujarat 58],* wherein it was held that when the property is owned by a Trust, a suit for recovery of property filed by the trustees, in the interest of the Trust, cannot be said to be barred by non-joinder of parties.

31. For the aforesaid reasons, I find absolutely no infirmity in the impugned judgment and decree passed by the learned trial Court. The appeal, being meritless, is dismissed along with the pending application with costs of Rs.50,000/- payable to the respondents.

REKHA PALLI, J

AUGUST 14, 2019/sr