

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

% **Date of decision: 8th February, 2019.**

+ **CS(OS) 99/2018 & IA No.3229/2018 (u/O XXXIX R-1&2 CPC)**

VED PRAKASH GUPTA & SONS (HUF) Plaintiff
Through: Seema Tiwari, Adv.

Versus

PREM LATA Defendant
Through: Mr. Sanjay Sehgal & Mr. Tarun
Narang, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 29th January, 2019, the following order was passed in the suit:

- “1. None appears for the defendant.*
- 2. The suit is ripe for framing of issues.*
- 3. The pleadings have been perused.*
- 4. the plaintiffs have instituted this suit for (i) recovery of possession of semi-built up property bearing No.11, ad-measuring 325 sq. mtrs. in Block and Pocket C-4, Sector-28, situated in the layout plan of Rohini Residential Scheme, Delhi and for recovery of mesne profits / damages for use and occupation thereof with effect from 15th September, 2017; (ii) mandatory injunction directing the defendant to clear all electricity and water charges with respect to the said property; and, (iii) permanent injunction restraining the defendant from dealing with the property.*
- 5. It is inter alia the case of the plaintiffs that though the defendant vide registered Sale Deed sold the said property to the plaintiffs and recorded therein that the vacant, peaceful, physical possession of the property had been delivered in pursuance to the same but in fact requested the plaintiffs to allow the defendant to continue in possession of the property*

which the plaintiffs allowed in view of past relationship but the defendant is now refusing to vacate the property.

6. *The suit was entertained and summons issued to the defendant. The defendant has filed a written statement admitting the execution of the sale deed but pleading that the husband of the defendant is carrying on his business from the said property and the transaction between the parties was a loan transaction and on the promise that upon the loan being repaid, the plaintiffs will re-convey the property to the defendant; though the loan has been repaid but the plaintiffs are now reneging from conveying the property.*

7. *A perusal of the sale deed which is not disputed shows the transaction to be of sale and not having any agreement to reconvey and possession having been delivered by the defendant to the plaintiffs.*

8. *The defence of the defendant is within the mischief discussed in **Karan Madaan Vs. Nageshwar Pandey** 2014 SCC OnLine Del 1277 (appeal whereagainst was dismissed vide judgment reported in 2016 SCC OnLine Del 816) and on such defence no trial is to be ordered.*

9. *It thus appears that the plaintiffs are entitled to a decree for ejectment forthwith.*

10. *However, since none has appeared for the defendant and the counsel for the defendant is otherwise found to have been appearing on earlier dates, it is deemed appropriate to defer adverse orders.*

11. *List on 8th February, 2019."*

2. Though the counsel for the defendant, who was absent on 29th January, 2019, has appeared today but today none appears for the plaintiff.

3. However, since the counsel for the defendant states that if the matter is passed over, he will not be available, it is deemed appropriate to proceed in

the absence of the plaintiff since in any case on 29th January, 2019, the counsel for the plaintiff was present.

4. The counsel for the defendant, having gone through the order dated 29th January, 2019, has argued that (i) it is the case of the defendant that the defendant is not in possession of the property and one Gupta Properties is in possession of the property; and, (ii) since the defendant is not in possession of the property, the plaintiff cannot seek a decree for possession or for *mesne profits* and / or for permanent injunction against the defendant.

5. On enquiry, as to what is Gupta Properties, the counsel for the defendant states that it is a proprietary of the husband of the defendant.

6. The counsel for the defendant has further contended that the defendant has already in the written statement also pleaded that the transaction was a loan transaction between the husband of the defendant and the plaintiff no.1.

7. This plea of the defendant has already been dealt with in paras no.6 and 7 of the order dated 29th January, 2019 and no merit was found therein. The argument urged by the counsel for the defendant today does not come in the way of a decree being passed as observed in the order dated 29th January, 2019. Moreover, the defendant, who does not claim possession, ought to have no objection to a decree for possession being passed. If anyone in claiming independent title and possession has any objection, can file objections in execution.

8. I have enquired from the counsel for the defendant, since when Gupta Properties is in possession of the property i.e. whether from before the Sale Deed or from after the Sale Deed.

9. The counsel for the defendant conveniently states, that he will have to enquire the said fact.

10. The collusion between the defendant and her husband is writ large.

11. On enquiry, whether they are residing together, it is stated that while the husband is residing at Dera Bassi, Chandigarh, the plaintiff is residing in Delhi. However, on enquiry whether they have been divorced, the answer is in the negative.

12. The same further proves collusion. If the husband of the defendant is residing at Dera Bassi, Chandigarh, it is not understandable as to how he is stated to be in possession of the property.

13. The defence of the defendant in the written statement is thus in the teeth of *Karan Madaan Vs. Nageshwar Pandey* 2014 SCC OnLine Del 1277 (appeal preferred whereagainst was dismissed vide judgment reported in 2016 SCC OnLine Del 816) as already observed in the order dated 29th January, 2019 and in view thereof, no material issue of fact or law arises for adjudication in this suit for recovery of possession. Reference may also be made to the dicta of this Court in *Om Prakash Vs. IOCL Officers Welfare Society* 2019 SCC OnLine Del 6719.

14. It is contended by the counsel for defendant, that it is the admission of the plaintiff themselves in the plaint that the Gupta Properties is in possession of the property.

15. No merit is found in the aforesaid pleas. The defence of the defendant to the suit is that the transaction was something other than what the registered document records. The said plea does not require any adjudication

in view of **Karan Madaan** supra. The defendant, under the Sale Deed, delivered “actual physical vacant possession” of the property to the defendant and it is not the plea of the defendant that the occupation of Gupta Properties under the defendant is otherwise than permissive. The contention of the counsel for the defendant, of the plaintiff having admitted the possession of Gupta Properties, is thus of no avail. In terms of registered Sale Deed, the possession of the property should have been with the plaintiff. Admittedly, it is not with the plaintiff but is with the husband of defendant. According to the defendant, possession was never delivered to the plaintiff. In identical facts, findings were rendered in **Karan Madaan** and **Om Prakash** supra.

16. The counsel for the plaintiff, who appears at this stage, on enquiry states that since a decree for possession is being passed, the plaintiff will not press for *mesne profits* unless there are any further delays.

17. The counsel for the plaintiff however states that the plaintiff has also sought a decree for mandatory injunction directing the defendant to hand over to the plaintiff the previous original title deeds with respect to the property.

18. The counsel for the defendant states that the earlier title deeds are in possession and custody of the defendant and were not handed over to the plaintiff since the transaction was a loan transaction.

19. I have already hereinabove dealt with the plea of the defendant of the transaction being not of sale but of loan. It is significant that the defendant has not taken any legal steps also in this regard. It may also be added that though the Sale Deed admittedly executed by the defendant in favour of the

plaintiff contains a clause that the defendant has delivered all relevant original documents of the subject property to the plaintiff at the time of execution of the Sale Deed but also contains an undertaking of the defendant to deliver to the plaintiff any other documents with respect to the property. The defendant, in terms of the said undertaking also is liable to deliver the said documents, particularly when the defendant has admitted the custody and possession thereof. The plaintiff is thus entitled to a decree for mandatory injunction as well.

20. A decree is thus passed, in favour of the plaintiff and against the defendant, of (i) recovery of possession of property No.11 in Block & Pocket C-4, Rohini Residential Scheme, Rohini, Delhi; and, (ii) mandatory injunction directing and commanding the defendant to within 15 days hereof deliver to the plaintiff all original title deeds with respect of the aforesaid property in custody and possession of the defendant.

21. The plaintiff shall also be entitled to costs of the suit from the defendant with professional fee assessed at Rs.1 lac.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 08, 2019

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