

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

+ **RFA No. 442/2018**

% **10th January, 2019**

SANJAY SINGH Appellant

Through: Mr. Rajeev Sharma, Advocate
(9910844633)

versus

SUNITA @ SHOBHA & ANR. Respondents

Through: Mr. N.P.Balaraman, Mr.
Ramesh Chahal, Mr. Gaurav
Sawhney and Mr. Prateek
Mehta, Advocates for R-2.
(7291842431)

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 plaintiff in the suit impugning the Judgment of the trial court dated 23.01.2018 by which the trial court has dismissed the suit for possession, damages and permanent injunction filed by the appellant/plaintiff with respect to the

suit property bearing No. 15/100-A, (Block no.15 Quarter no.100A), 2nd Floor, Geeta Colony, Delhi-110031.

2. The facts of the case are that the appellant/plaintiff pleaded that he purchased the suit property from the previous owner Smt. Rajrani @ Brij Mohini in terms of a registered Agreement to Sell and registered Power of Attorney dated 15.04.2015. The appellant/plaintiff also got executed in his favour the other usual documents being the Receipt, Possession Letter, Affidavit etc. It was pleaded by the appellant/plaintiff that the original owner of the suit property Smt. Rajrani @ Brij Mohini had got the property constructed from a builder namely, Sh. Jagmohan @ Jagga, who constructed upto the third floor of the property and the respondent no.1/defendant no.1 namely, Smt. Sunita @ Shobha, was inducted in the suit property at the second floor by the contractor on the ground that the respondent no.1/defendant no.1 needed the suit premises to reside temporarily as her house was under construction and would be completed very shortly. Respondent no.1/Defendant no.1, however, failed to vacate the suit property despite requests of the appellant/plaintiff, and therefore, the subject suit was filed after serving Legal Notice dated

24.08.2015. The appellant/plaintiff also claimed damages/*mesne* profits of Rs. 10,000/- per month.

3. At this stage, it is noted that originally there was only one defendant in the suit namely Smt. Sunita @ Shobha, however, when the right of the defendant Smt. Sunita @ Shobha was closed as written statement was not filed in spite of repeated opportunities, on that very day an application was filed under Order I Rule 10 CPC by a person who again called herself Sunita but she was the wife of Sh. Rajinder Kumar to get herself impleaded. This impleadment application was allowed and Smt. Sunita, wife of Sh. Rajinder Kumar, was impleaded as defendant no.2. However, defendant no. 2/Smt. Sunita, wife of Sh. Rajinder Kumar, although filed a written statement, ultimately her written statement was struck off vide Order dated 08.12.2017 for non-payment of costs. This order striking off the defence of defendant no. 2 in the suit has become final.

4. The appellant/plaintiff thereafter led evidence and proved his case and documents.

5. The following issues were framed in this suit.

“1) Whether plaintiff is entitled for decree of possession in respect of suit property i.e. 15/100-A (Block no.15, Quarter no.100A), 2nd floor, Geeta Colony, Delhi: 110 031, as shown in red colour in site plan? OPP

2) Whether plaintiff is entitled for decree of damages @ Rs.10000/- p.m. for unauthorized use of suit property w.e.f 1.9.15 till the delivery of actual physical possession of the suit property? OPP

3) Whether plaintiff is entitled for the decree of permanent injunction restraining the defendants etc. from creating third party interest of selling out, parting with possession in the suit property i.e 15/100-A (Block no.15, Quarter no.100A), 2nd floor, Geeta Colony, Delhi-110 031? OPP

4) Whether plaintiff has suppressed true and material facts and has not come to the court with clean hands? OPD

5) Relief.”

6. The trial court has dismissed the suit by firstly observing that whereas in the documents executed in favour of the appellant/plaintiff it is mentioned that possession was handed over, however, actual physical possession was never handed over to the appellant/plaintiff. The trial court has also held that the documents dated 15.04.2015 executed in favour of the appellant/plaintiff by the owner Smt. Rajrani @ Brij Mohini would not confer any rights in view of the judgment of the Supreme Court in the case of ***Suraj Lamps and Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656.***

7. In my opinion, the trial court has clearly fallen into an error in placing reliance upon the judgment of the Supreme Court in the case of *Suraj Lamps (supra)* because the judgment of the Supreme Court in the case of *Suraj Lamps (supra)* only bars looking into the agreement to sell and power of attorney which are not registered whereas the agreement to sell and power of attorney in favour of the appellant/plaintiff are registered documents. Also, there is no requirement that the physical possession is delivered to the beneficiary of a document being an agreement to sell under Section 53A of the Transfer of Property Act, 1882 and the beneficiary, such as the appellant/plaintiff, could always have received symbolic possession, and which was received in this case because one Smt. Sunita was in possession of the suit property. In any case, there is a registered power of attorney in favour of the appellant/plaintiff and therefore, the appellant/plaintiff can be said to represent the original owner Smt. Rajrani @ Brij Mohini for taking possession of the property from any person who does not have any title to stay in the suit property.

8. As already stated above, respondent nos. 1 and 2/defendant nos. 1 and 2, both being Smt. Sunita, have led no evidence

whereas the appellant/plaintiff has led evidence, and therefore, once the respondent nos. 1 and 2/defendant nos. 1 and 2 do not have any title in the suit property the appellant/plaintiff is bound to succeed either by virtue of his rights under the registered Agreement to Sell dated 15.04.2015 or as a power of attorney holder of the original plaintiff, Smt. Rajrani @ Brij Mohini, as against the respondent nos. 1 and 2/defendant nos. 1 and 2, who do not have any better right or title or entitlement to remain in possession of the suit property.

9. Though the ld. counsel for the respondent no. 2/defendant no. 2 sought to argue that respondent no. 2/defendant no. 2 was the owner by virtue of various documents from the original owner Smt. Rajrani @ Brij Mohini, however admittedly no evidence was led by the respondent no.2/defendant no.2 in the trial court, and therefore, this argument of the respondent no.2/defendant no.2 has no merit and is accordingly rejected.

10. The ld. counsel for the appellant/plaintiff does not press the relief of *mesne* profits.

11. In view of the aforesaid discussion, this appeal is allowed. The impugned judgment of the trial court dated 23.01.2018

is set aside. The suit of the appellant/plaintiff is decreed as against the respondent nos. 1 and 2/defendant nos. 1 and 2 for possession of the property bearing No. 15/100-A, (Block no.15 Quarter no.100A), 2nd Floor, Geeta Colony, Delhi-110031 as shown in red colour in the site plan Ex.PW1/1. Parties are left to bear their own costs.

JANUARY 10, 2019/ib

VALMIKI J. MEHTA, J