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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Delivered on: 14th August, 2019

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RSA 229/2017 & CM APPL No.34206/2017

UNION OF INDIA

..... Appellant

Through : Mr.Rajesh Kumar, Advocate

versus

TARUN KUMAR KAKAR

..... Respondent

Through : Mr.J.S.Garkal, Advocate

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This second appeal is against the judgment dated 03.05.2017 passed in RCA 8/17 by learned ADJ-01 (South), New Delhi vide which the learned ADJ had dismissed the appeal against the judgment and decree in CS No.276/11 dated 18.04.2016 passed by learned SCJ-cum-RC(South)/Saket Courts, New Delhi.

2. Before coming to this appeal it would be appropriate to state few facts on record.

(i) The father of the plaintiff/respondent namely late Ram Chand Kakar migrated from Pakistan and was a displaced person. He was granted a claim by Ministry of Rehabilitation in lieu of property which he had left in Pakistan;

- (ii) since he did not have sufficient funds, hence per Section 76A and 76B of the erstwhile Displaced Persons Act, the plaintiff/respondent father had associated his net verified claim on 30.10.1959 with one Mr.Ganga Ram, who was a non-claimant, but occupant of property No.H-18/7, Malviya Nagar, New Delhi admeasuring 100 sq.yds. An amount of ₹ 635.80 i.e. 1/5th cost of the land was deposited by Ganga Ram. The balance amount (viz. 4/5th) was deposited Mr. Ram Chand Kakar;
- (iii) allottee Ganga Ram agreed to transfer his share to the plaintiff's father vide irrevocable agreement to sell dated 30.10.1959 and he had also executed a General Power of Attorney in the name of one Bihari Lal Vij but with a condition Sh.Bihari would execute the sale deed only in favour of Mr. Ram Chand Kakar;
- (iv) the entire consideration for 1/5th share passed on from Mr. Ram Chand Kakar to Mr.Ganga Ram and it is not in dispute;
- (v) it is also an admitted fact the suit property was got mutated in the record of MCD in the name of Mr. Ram Chand Kakar and he was paying the house tax till he died. Electricity and water connection was also taken by the father of the respondent and he had exclusive possession of the subject property w.e.f. 30.10.1959 till he expired on 28.12.1995;
- (vi) the father of the plaintiff executed a Will dated 02.04.1993 whereby bequeathed the entire property in favour of the

plaintiff/respondent. Letter of administration of the Will was also obtained by the respondent;

(vii) after obtaining the letter of administration, the respondent had approached the appellant to get mutation of the property in his name but it was denied on the ground since the conveyance deed of the entire plot was not executed exclusively in favour of Ram Chand Kakar, the mutation cannot be allowed. Admittedly the ground rent for the whole plot area was also deposited by the respondent herein for the entire property, hence a suit for declaration was filed by the respondent and against the appellant for setting aside letter dated 11.03.2010 denying mutation. Mandatory injunction was also prayed.

3. The appellant herein in its written statement alleged the suit was bad on account of non-joinder of parties but this objection was dealt with by the learned trial court saying since Ganga Ram was left with no interest/right in the suit property hence was not a necessary and proper party in the present litigation and thus the issue was decided in favour of the respondent and rightly so. Admittedly, Ganga Ram or his descendant never raised any claim since 1959 in the subject property.

4. Qua the objection that the Agreement to Sell or GPA is not a transfer, the learned trial court held as follows :

"9.3.7 At the outset, it has been admitted by the defendant that the department was informed through GPA deposited by Sh. Ganga Ram that he had already sold his 1/5th share to Sh. Ram Chand and had received the sale consideration and also transferred the physical possession thereof. The relevant portion of his cross examination as conducted on 11.08.2015 is as under:

'It is correct that In GPA copy of which is our (sic) record since the execution of Ex.P-1 and Ex.P-2, the

department was informed through GPA by Sh. Ganga Ram that he had already sold his 1/5th share to Sh. Ram Chand and has received the sale consideration also.'

9.3.8 Perusal of Para 4 and 5 of the said GPA reflects that the executor Sh. Ganga Ram had authorized the GPA holder to execute a proper sale deed of his 1/5th sale of the suit property for the completion of the sale of the property and also to present for registration a duly executed sale deed in favour of Sh. Ram Chand or to admit the execution thereof. In addition, agreement to sell dated 20.10.1959 also reflects that Sh.Ganga Ram, co-lessee had received the entire consideration from Sh. Ram Chand and possession was also handed over to the latter.

9.3.9 Furthermore, Ex.PW-1/3 to Ex.PW-1/9 reflects that father of the plaintiff was having electricity and water connection in his name of the entire suit property and was also paying MCD property tax upon the same and was in physical possession of the suit property.

9.3.10 Ld. Counsel for the defendant has heavily relied upon Suraj Lamp & Industries Pvt. Ltd. case (supra), and has argued that power of attorney sales have not been recognized by the Hon'ble Apex Court, hence mutation /conversion deeds cannot be executed in plaintiff's favour. I am not convinced with his argument, on account of two reasons. Firstly, as the said judgment is not intended to have retrospective effect upon bona fide transactions. Secondly, as it has been categorically observed that any transactions entered on agreement to sell, CPA, Will may be relied upon to apply for regularization of allotments/leases by DDA. Paras 18 and 19 of Suraj Lamp & Industries Pvt. Ltd.'s case (supra) are being reproduced as under:

"18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPAA/VIII transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/VIII transactions' may also be used to obtain specific performance or to defend possession under section 53A of TP Act. If they are entered before this day they may be relied upon—to—apply for regularisation of allotments/leases by Development Authorities. We make It clear that if the documents relating to 'SA/GPA/Will transactions' has been accepted acted upon by DDA—or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.

19. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transaction. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and power of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such bonafide genuine transactions."

9.3.11 Furthermore, in cross-examination of DW-1, conducted on 04.09.2015, the official from L&DO has admitted that co-lessees were allowed to transfer their share between themselves and that it did not amount to sale of the property. Office order bearing No. 24 (6)/76-CDN (Pt)-82 dated 20.06.1984 i.e. Ex.DW1/PX4 has been admitted by the DW-1, and it is admitted that the same is still in force. EX.DW-1/PX4) reads as under:

"The matter has been reconsidered by the Land and Development Officer in consultation with Assistant Legal Adviser and it has been decided that the existing practice that transfer of share of one co-lessee to another co-lessee will not be treated as 'Sale' should be continued to be followed. However, if subsequently in future a permission for sale of a part of the property is issued it will have to be made clear in the sale permission letter that any future sale of the rest of the part to the same person will be treated as sale and will not be covered under the existing office orders."

9.3.12 In view of the aforesaid admissions/ documents, in the light of the office order Ex DW1/PX4, I am satisfied that the instant transfer between the co-transferees does not amount to sale, and therefore, registered sale deed is not a sine qua non for transfer of mutation rights.

9.3.13 As far as conversion of property from leasehold to freehold is concerned, it has been admitted by the witness DW-1 that as per Ex.DW-1/PX-7 i.e. Compendium Of Information under Right to Information Act 2005, issued by L&DO, General Guidelines as mentioned on page 84 and 85 at Sl. No. 39 for conversion of property are as under:

"39. GENERAL GUIDELINES:-

39.1 In cases, where the attorney and applicant (purchaser) are the same person, conveyance deed can be granted in favour of the attorney provided all terms and conditions viz. Linkage between the lessee and evidence of possession as prescribed in case of General Power of Attorney are fulfilled.

39.2 In cases, where the lessee enters into sale agreement and also execute General Power of Attorney even after 14.2.1992 such applications should be entertained and conversion allowed in favour of the purchaser by levying conversion charge and surcharge.

39.3 In cases where the applicant is a General Power of Attorney holder and the GPA empowers the applicant to execute Sale Deed/Sale Agreement but he prefers to get the Conveyance Deed executed in the name of the recorded lessee, he shall furnish an affidavit duly sworn before a Magistrate of 1st Class to the effect that no Sale Deed/Sale Agreement has been executed in respect of the property either by the lessee or through the attorney(s) and that the recorded lessee has not parted with possession of the property."

9.3.14 Additionally, P-3 has been admitted by the defendant as having been sent for payment of damages/ground rent to the plaintiff for the entire suit property thereby the plaintiff had been admitted to be the owner of the suit property by levy of damages and defendant could not have raised such an objection at the time of conversion of the suit property from leasehold to freehold.

9.3.15 In view of the guidelines as given by the L&DO in the light of facts and circumstances of the present case, I am satisfied that though the sale deed had not been executed in favour of the plaintiff's father by the GPA holder, keeping in view that the transfer between co-allottees was not considered as a 'sale' stricto sensu and as plaintiff has been able to show his settled possession in the suit property since 1959 and defendant has also charged him damages/ground rent for the whole plot, I am of the opinion that the plaintiff is entitled to issuance of conveyance deed of entire suit plot in his favour."

5. There is nothing which can be said to be illegal or perverse in the order passed by the learned trial court and I agree to its findings.

6. Now I come to the impugned judgment dated 03.05.2017. By the said judgment an application under Order 41 Rule 3A CPC filed by the

appellant herein for condonation of 231 days' delay in filing RCA No.8/17 was dismissed. A bare perusal of the application under Order 41 Rule 3A CPC would reveal no sufficient ground for delay was ever alleged. Rather the said application was most casually drafted alleging a certified copy of the judgment was received on 28.04.2016 and thereafter the file went through many officers before a decision to file appeal could be taken

7. The said application did not mention any date(s) showing movement of the file as alleged, muchless any sufficient ground/cause for delay was alleged. The judgment of CS No.276/2011 was dated 18.04.2016 but its certified copy was applied after about 126 days of the judgment i.e. on 09.08.2016. The certified copy of judgment was though received on 28.04.2016, but even then the appeal was filed on 19.01.2017 i.e., after an unexplained delay of more than four months, hence there was no other recourse before the learned ADJ but to dismiss such application.

8. Though the learned counsel for the appellant relied upon *State of Haryana Vs. Chandra Mani & Ors.* (1996) 3 SCC 132 to say the delay, where the Government agency is involved be condoned liberally but in *Postmaster General & Ors. v. Living Media India Limited & Anr.* (2012) 3 SCC 563 the Court held:

"28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern

technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

9. Considering the above I agree with the learned ADJ to hold no sufficient cause for delay was ever explained in application under Order 41 Rule 3A CPC dated Nil filed by the appellant herein and hence was rightly rejected by the impugned order. I see no reason to interfere. No substantial question of law arises in this appeal, hence is dismissed. No order as to costs. Pending application, if any, also stands dismissed.

YOGESH KHANNA, J.

AUGUST 14, 2019

VL D/M