

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA No.165/2018**

Judgment reserved on : 16.11. 2018
Date of decision : 20.01.2020

SMT.JULLI SINGH PRADHAN & ANR. Petitioners
Through: Mr. R Krishnamorthi, Mr.Kedar
Nath Tripathi, Ms Rashmi Rani,
Advocates

versus

SMT.VEENA THANDANI Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellants vide the present Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908, as amended, assail the impugned judgment dated 9.7.2018 of the First Appellate Court of the Additional District Judge, South West, Dwarka Courts in RCA No. 19/2018 as also the judgment dated 25.1.2018 of the Court of the SCJ-cum-RC, Dwarka Courts, New Delhi in Suit No. 26702/16 (original suit No. 76/13). Inter alia, the appellants vide the appeal seeking a restraint against the respondents from dispossessing them from their peaceful possession over the property in question, i.e., flat No. 7 & 7A, Third Floor, A-86, Gali No. 16, Chanakya Place, Part-I, Pankha

Road, Delhi had sought that the respondent be directed to execute the sale deed in favour of the appellant in question qua the suit property.

2. At the outset, it is essential to observe that on 16.11.2018 in view of the CM No. 47644/2018 filed on behalf of the appellant seeking a stay of the operation of the impugned judgments and the CM No. 47645/18 seeking restoration of the physical possession of the suit property with the prayers made in both of them being diametrically opposite, in reply to a specific Court query, the learned counsel for the appellant submitted that the possession of the suit premises had already been taken over by the respondent pursuant to the execution proceedings two days prior to the date of hearing 16.11.2018 and it was thus observed vide order dated 16.11.2018 in the present proceedings that the said applications presently call for no action.

3. The appellants vide the present appeal seek to urge that the following substantial questions of law be formulated:

“(A) Whether the first appellate Court and Ld. Trial court erroneously relied upon Xerox copy of the rent agreement dated 01.01. 2011(Exhibit P-10)?

(B) Whether the first appellate Court has erroneously affirmed the order of Ld. Trial Court whereby Ld. Trial Court disbelieved on the authenticity of the General Power of Attorney (Irrevocable), Agreement to Sale executed by the respondent along with Affidavit, Money Receipt, Possession Letter, will etc. dated 01.10.2010 in favour of Appellant no. 1 in presence of witness in accordance with law?

(C) Whether the Ld. Trial Court erred in passing a decree dated 25.01.2018 in the favour of respondent despite making observation that the

alleged rent agreement dated 01.01.2011 (Exhibit P-10) that it is very much apparent on record that neither the rent agreement has been notarized or registered and even except the husband of the plaintiff, the name of no other person has been mentioned as witness to the said rent agreement and infact the rent agreement is executed on a plain paper instead of a stamp paper and this important aspect of the case completely ignored and overlooked by the Trial Court as well as Ld. First Appellate Court?

(D). Whether the Ld. Trial Court erred in passing decree dated 25.01.2018 without formulating issue that whether the alleged rent agreement dated 01.1.2011 is genuine or not rather than the appellant challenge the same stating that signature of appellant on rent agreement was found to be forged and thereafter he moved application seeking opinion of handwriting expert but the same prayer was denied because the only Xerox copy of above said rent agreement was produced as evidence but same was not proved by the respondent/plaintiff in the original suit.

(E) Whether the court below erred in not considering the General Power of Attorney dated 01.10.2010 executed by respondent in the favour of Appellant no.1 is a genuine document and such an important document is ignored and overlooked by the Ld. Trial court as well as 1st Appellate Court. Both the Court failed to consider that SHO, PS-Dabri vide Status Report dated 12.12.2012 confirmed that General Power of Attorney dated 01.10.2010 verified from the Collector of Stamps, Sub Registrar, Rajouri Garden, Old Middle School, Rampura, Delhi as per record same documents are genuine in supported with statement of Tilomani Bhatt Son of

Ram Dutt Bhatt, Smt Shymla wife T.N.Dasu and Smt. Numtan Chaudhary.

F) Whether there was failure of justice on the part of the learned lower appellate court by deciding the appeal without following mandatory provision of law said down in Order XLI Rule 31 of the Code of CPC, 1908?

G) Whether the failure of justice on the part of First Appellate Authority for reasonable opportunity of hearing not granting to the appellants without application of mind?

H) Whether the failure of justice on the part of First Appeal Authority for not allowed application dated 09.07.2018 filed by the appellants u/s 151 CPC for engagement of advocate for filing of written submission pursuant to order dated 28.05.2018?"

4. A bare perusal of the judgments dated 25.1.2018 of the learned Senior Civil Judge, South West, Dwarka in CS No. 26702/16, a suit filed by the respondent herein as the plaintiff thereof against the appellants herein arrayed as the defendants No.1 and 2 therein vide which the respondent herein, i.e., the plaintiff of the suit, sought ejectment/possession, of the defendants, i.e., the appellants herein from Flat No. 7 & 7A, Third Floor A-86A, Gali no. 16, Chanakya Place, Part-I, Pankha Road, Delhi 59 and also sought the recovery of rent and damages, *pendente lite* and future and *mesne* profits and a permanent injunction on the premise that the defendants No. 1 and 2, i.e., the appellants herein were in wrongful possession of the suit premises in which the defendant No.2 i.e., the appellant No.2 was inducted as a tenant in June 2005 and were wholly irregular in the payment of the rent, despite the expiry of their tenancy on 30.11.2011

in view of a written rent agreement dated 1.1.2011 having been executed between the plaintiff i.e., the respondent and the defendant No.2 i.e., the appellant No.2 herein for a monthly rent of Rs.5,000/- per month.

5. The defendants i.e., the appellants herein having not made payment of a single penny towards the said tenancy and having failed to vacate the premises despite the demand of the plaintiff/ respondent, the respondent herein, i.e., the plaintiff, issued a legal notice dated 26.2.2013 to the defendants therein, i.e., the appellants herein to vacate the suit premises and despite the same they did not vacate the same, which suit vide judgment dated 25.1.2018 of the learned SCJ-cum-RC, South-West, Dwarka Courts was decreed in the manner that a decree of possession was passed in favour of the plaintiff i.e., the respondent herein and against the defendants, i.e., the appellants herein whereby they were directed to hand over the peaceful, vacant physical possession of the suit property as per the site plan Ex.P-3 to the plaintiff i.e., the respondent herein with a permanent injunction having been granted to the plaintiff i.e., the respondent herein against the appellants, i.e., the defendants therein from creating any third party interest in the suit property with arrears of damages @ Rs.5,000/- per month from the date of the institution of the suit till handing over of the possession of the suit property having also been granted in favour of the plaintiff therein, i.e., the respondent herein against the defendants, i.e., the appellants herein.

6. The learned Trial Court however, held that the execution of the rent agreement was not established and thus held that the plaintiff i.e. the respondent herein was not entitled to recover the arrears of rent.

7. The contention that had been raised by the defendants, i.e., the appellants before the learned Trial Court was to the effect that they had in fact purchased the property in suit vide various title documents dated 1.10.2010 including the agreement to sell but as observed by the learned Trial Court, none of the said documents were proved on the record and were only marked by production of the copies of the same.

8. The First Appellate Court vide its impugned judgment dated 9.7.2018 held that the award of Rs.5,000/- per month as arrears of damages from the date of filing of the suit till handing over of the possession of the suit property was erroneous in as much as, the learned Trial Court disbelieved the rent agreement with there being no evidence produced by the plaintiff, i.e., the respondent herein to the effect that the suit property would not fetch Rs.5,000/- per month as, in the absence of any affirmative evidence in this regard, the plaintiff, i.e., the respondent herein could not be awarded to receive Rs.5,000/- per month as damages and the judgment of the Trial Court dated 21.5.2018 to the extent that it granted damages of Rs.5000/- per month to the plaintiff, i.e., the respondent herein was set aside.

9. However, the judgment dated 25.1.2018 of the learned Trial Court granting possession to the respondent, herein, i.e., the plaintiff was re-affirmed and the First Appellate Court categorically observed to the effect that the defendants i.e., the appellants herein had not disputed the ownership of the plaintiff i.e., the respondent herein as

they have themselves claimed that the plaintiff had sold the suit property in the year 2005 in favour of the defendant No.1 i.e. the appellant No.1 herein by virtue of GPA, Agreement to Sell, Affidavit, Possession letter, money receipts all dated 1.10.2010 which were marked A to F but that though the defendants i.e. the appellants herein had claimed to have purchased the suit property from the plaintiff i.e. the respondent in the year 2005 for a sum of Rs.5,10,000/- and the delivery of possession of the suit property on payment of the first installment and that they had paid all payments subsequently the defendant,i.e., the appellants herein had failed to plead and prove the source of the alleged consideration to have been paid to the plaintiff,i.e., the respondent herein. It was inter alia observed by the First Appellate Court that the defendants, i.e, the appellants herein had even not given the details of the amount of the instalment settled between the parties or paid by them. It was also observed vide the impugned judgment dated 9.7.2018 in RCA No. 19/18 of the First Appellate Court that the plaintiff, i.e., the respondent also proved on record that she had sold other flats in relation to the same property to the purchaser by way of a registered document therefore it cannot be believed that the plaintiff, i.e., the respondent herein would have sold the suit property to the defendants i.e. the appellants herein by way of an oral agreement in the year 2005 as claimed by virtue of an unregistered GPA, Agreement to Sell, Receipts all dated 1.10.2010. It has also been categorically observed vide the imugned judgment dated 9.7.2018 in RCA No.19/18 that in her cross-examination recorded on 2.6.2016, the defendant No.1, examined as PW-2 i.e.,the appellant

No.1 herein had admitted that *“It is correct that the factum of the stolen of the cheques is not mentioned in the abovesaid FIR. It is incorrect that I had not given any list of stolen articles to the police. It is correct that I have not placed the said list of stolen articles on record.”*

10. It was thus held by the First Appellate Court that there was no infirmity in the findings of the Trial Court that the plaintiff, i.e., the respondent herein was the owner of the suit property and that the status of the defendants i.e., the appellant could not be more than that of tenants and that the defendants i.e. the appellants herein had thus admitted by the testimony of DW-2 i.e., the defendant No.1, i.e., the appellant no.1 herein that a suit for specific performance against the plaintiff i.e., the respondent herein had been filed in September, 2013 and that the defendant, i.e., the appellants herein had no right title or interest in the suit property.

11. The First Appellate Court also made reference inter alia to the verdict of ***Suraj Lamp & Industries Pvt. Ltd. V. State of Haryana & Anr.***; 2012 (1) SCC 656 as it held that the immovable property can be legally and lawfully transferred /conveyed only by a registered deed of conveyance and not through GPA, Will etc. and that in the instant case the defendant i.e. the appellants herein had not even produced the original documents of claim i.e., the unregistered GPA, Agreement to Sell, Possession Letter, Receipts etc.

12. Taking into account the factum that the First Appellate Court vide the impugned judgment dated 9.7.2018 in RCA no. 19/18 has already held that the Trial Court had disbelieved the rent agreement

and had not granted damages @ Rs.5,000/- per month as claimed by the plaintiff, i.e., the respondent herein coupled with the factum that even vide the judgment dated 25.1.2018 in CS No. 26702/2016 the Court of the Senior Civil Judge-cum-Rent Controller, South-West, Dwarka Courts had not held the plaintiff, i.e., the respondent herein entitled for recovery of arrears of rent and vide paragraph 8.10. of the impugned verdict dated 25.1.2018 in CS No. 26702/2016 has held that in view of the whole facts of the case it was apparent that under an oral understanding and previous good relations of the parties, the defendants, i.e. the appellants herein were in possession of the suit property for a limited period only and in the absence of any title document, proved by the defendants i.e., the appellants herein, the plaintiff, i.e., the respondent herein was entitled to the recovery of possession of the suit property and as held by the First Appellate Court vide paragraph 17 of its impugned judgment dated 9.7.2018 that the defendants i.e, the appellants herein having failed to prove any right, title or interest in the suit property, their status in the suit property was not more than that of a licensee which licence was revoked by the plaintiff, i.e., the respondent herein by way of a legal notice dated 26.2.2013, it is apparent that the questions of law as at A, C, D which relate to the alleged rent agreement dated 1.1.2011 do not even remotely arise.

13. As regards the question of law sought to be framed at Sr. no. B & E, referred to herein above, it is apparent that the documents i.e., the GPA, Agreement to Sell, Affidavit, Money Receipt, Possession Letter, Will dated 1.10.2010 allegedly executed in favour of the appellant

No.1 by the defendant i.e., the respondent herein were not produced in original by the appellants and as observed by the learned First Appellate Court vide the impugned judgment dated 9.7.2018, the defendant No.1 i.e., the appellant No.1 had admitted that even in FIR No. 234/12 registered in relation to the theft alleged to have committed by the respondent in the premises in question, the appellant No.1 has admitted that the list of stolen cheques was not mentioned in the FIR and the list of stolen articles had not been placed on the record, in the circumstances, the analysis drawn by the learned Trial Court and the learned First Appellate Court in relation to the said documents dated 1.10.2010 and they have not been proved to be genuine cannot be faulted with. No substantial questions of law thus as claimed even vide the proposed questions F, G & H nor as A to E arise, in the circumstances.

14. As the existence of a substantial question of law is a *sine qua non* for the exercise of jurisdiction under the provisions of Section 100 of the Code as laid down by the Hon'ble Supreme Court in ***Union of India Vs. Ibrahim Uddin & Anr.***; (2012) 8 SCC 148 which does not lie on the ground of contended erroneous findings of facts based on an appreciation of the relevant evidence, the appeal is thus dismissed.

ANU MALHOTRA, J.

JANUARY 20, 2020/SV