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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **RSA 35/2022**

Between: -

SHANTI DEVI (SINCE DECEASED)
THROUGH HER HUSBAND
SH. BHIM SINGH
SON OF LATE SH. PIYARE LAL
RESIDENTS OF H. NO. F-61,
MAHIPALPUR, NEW DELHI-110037)

.....APPELLANT

(Through: Mr. Yogesh Sharma, Adv. Mr. Bhim Singh and Mr. Narender Kumar Verma, Adv. for LRs.)

AND

SH. PREM CHAND
S/O SH. CHHOTU RAM
R/O VILLAGE 55/13,
SAMALKA MANDI, PANIPAT, HARYANA

.....RESPONDENT NO.1

SH. JAI BHAGWAN
S/O SH. JAI RAM
R/O VILLAGE ALIPUR
DELHI-110084

.....RESPONDENT NO.2

*(Through: Mr. V. P. Rana and Ms. Bhawana, Adv.
Mr. Jyoti Nambiar, Adv.)*

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Reserved on: 11.11.2024

Pronounced on: 09.12.2024

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KUMAR KAURAV

J U D G M E N T

The present appeal is preferred against the judgment dated 07.04.2021, in Regular Civil Appeal no. 60936/2016, passed by the Additional District Judge (West), Tis Hazari Courts, New Delhi, whereby, the judgment and decree dated 05.09.2011, passed in civil suit no. 26/2005, by the Trial Court dismissing the suit for possession and permanent injunction, has been affirmed.

2. The facts of the instant case demonstrate that the appellant/plaintiff had instituted a suit for possession and permanent injunction against the respondents/defendants for property bearing Khasra no. 136/12/2/2, village Burari, Sant Nagar measuring 130 sq. yards (*hereinafter "suit property"*). The case of the appellant/plaintiff is that she contacted defendant No. 2 (now deceased) through property dealers to purchase a property for investment purposes. Upon negotiation, the terms and conditions were settled between the parties, and a full and final payment of Rs. 60,000/- and title documents i.e. GPA, Agreement to Sell, Receipt and Affidavit dated 09.07.1991, were executed in favour of the appellant/plaintiff by defendant no.2 (now deceased), following which the appellant/plaintiff claimed to have raised a boundary wall of three feet over the property. The appellant/plaintiff did not raise any further construction and used to visit the property from time to time with her family.

3. On 23.03.2004, the appellant/plaintiff found some construction material, respondent no. 1/defendant no. 1 and the labourers at the spot objected to the construction being raised at the suit property. Defendant no. 1/respondent no. 1 claimed to be the owner of the suit property. The appellant/plaintiff filed a police complaint and,

4. Defendant no. 2 , by way of a written statement, admitted to have sold the suit property to the appellant/plaintiff. He further admitted that he owned a plot measuring 230 sq. yds and the rest 100 sq. yds was sold by him to one Lakhmi.

5. Defendant no. 3/respondent no. 2 filed a written statement stating that the appellant/plaintiff had never been in possession of the Suit property and was not the owner, thereof. He further stated that defendant no. 2 was incompetent to have executed any document in favour of the appellant/plaintiff as he himself never acquired any right of ownership over the suit property. He gave a detailed description of the transfer of the suit property starting from the first owner to defendant no. 1/respondent no. 1 on 05.03.2004.

6. Respondent no. 1/defendant no. 1 was proceeded *ex-parte* on 19.03.2005, and defendant Nos. 4, 5, 6 and 7 were deleted from the array of parties *vide* order dated 19.03.2005 and 28.04.2005.

7. The Trial Court framed the following issues *vide* order dated 04.08.2005 and an additional issue was framed on 22.02.2007 which read as under: -

- (i) “Whether the suit is bad for misjoinder of parties?
- (ii) Whether the plaintiff has suppressed material facts from this Court?
- (iii) Whether the plaintiff is entitled to the relief of possession as prayed for in the plaint?
- (iv) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for in the plaint?
- (v) Relief, if any.
- (vi) Whether the suit of the plaintiff is barred under order 2 rule 2 of the CPC?”

8. After examining the evidence adduced by the parties, the Trial Court arrived at issue-wise findings whereby, the issue nos. 1, 2, 3 and 4 were decided against the appellant/plaintiff and the suit of the appellant/plaintiff was dismissed in answer to issue no. 5. The

additional issue, however, was decided in favour of the appellant/plaintiff and against respondent no. 2/defendant no.3

9. The Trial Court dismissed the suit of the appellant/plaintiff on the ground that she had no knowledge about the title of defendant no. 2 from whom she had purchased the suit property and the person from whom defendant no. 2 had delivered the title of the suit property. The Trial Court relied upon the legal maxims '*Nemo Dat Quod Non-Habet*' which translates as, 'no person can transfer a better title than he himself has' and *Caveat Emptor* translating to 'buyer should beware' in order to advance its reasoning. Further, the Trial Court held that the appellant/plaintiff could not have taken the benefit of lapses on the part of the respondent/defendant as, according to the settled law, the case of the appellant/plaintiff must stand on its own feet. It further observed that the appellant/plaintiff did not file any document on record to show her possession of the suit property or even in support of the fact that she had raised any construction over the suit property.

10. The appellant/plaintiff subsequently challenged the judgment and decree dated 05.09.2011, passed by the Trial Court before the first Appellate Court, which affirmed the decision of the Trial Court by reinforcing its findings. The first Appellate Court proceeded to examine the onus of ownership as per Section 101 of the Indian Evidence Act, 1872, and found that the same was not discharged by the appellant/plaintiff. Further, the Court examined the case of the appellant/plaintiff on the settled principle of preponderance of probabilities and found that the appellant/plaintiff could not prove her title/ownership of the property in accordance with the law. Aggrieved by the same, the appellant/plaintiff has preferred the present appeal.

11. Learned Counsel appearing on behalf of the appellant/plaintiff submits that the Trial Court erred in deciding the issue as to whether the appellant/plaintiff had title over the suit property or not. However, the issue framed for adjudication was whether the appellant/plaintiff was entitled to relief of possession. Further, the suit was initially filed for seeking relief of declaration, whereas the issue framed was that of possession. He further submits that the Courts below have erred in appreciating the evidence presented by the appellant/plaintiff as to his possession and dispossession.

12. I have considered the submissions made by the learned counsel appearing for the appellant/plaintiff and have also scrutinized the impugned order and judgment.

13. Significantly, the Trial Court as well as the first Appellate Court have arrived at concurrent findings of the fact regarding the controversy involved herein, by holding that the appellant/plaintiff lacked ownership of the suit property and was not entitled to the reliefs of possession and permanent injunction. The seller from whom the property was bought by the appellant/plaintiff had no title or ownership in the first place, and therefore, he could not have transferred any title/ownership to the appellant/plaintiff. The documents relied upon by the appellant/plaintiff i.e. GPA, Agreement to Sell, Receipt, and Affidavit did not support her case as regards the element of ownership and the onus to prove ownership, as per Section 110 of the Indian Evidence Act, 1872 rested upon the appellant/plaintiff who eventually failed to discharge the same.

14. With respect to the submission of the appellant/plaintiff that the suit was filed for adjudicating the issue of possession of the suit property and the Courts below have erred in adjudicating the issue of

judgment that the issue of possession has been notably dealt with and decided against the appellant/plaintiff. The findings, thereto, are extracted below: -

Whether the plaintiff is entitled to the relief of possession as prayed for in the plaint?

The plaintiff has filed the present suit seeking possession of the suit property submitting that she had purchased the suit property from defendant No. 2. So far as the transaction between the plaintiff and defendant No. 2 is concerned, there is no dispute that defendant No. 2 had executed sale in favour of the plaintiff. But the question which arises at this juncture is as to whether defendant no. 2 was indeed competent to execute plaintiff in her cross examination had sale documents in favour of the plaintiff stated that "I had asked Sh. Om Parkash about his title documents but he had not supplied the same. I asked for the same at the time of purchase but the defendant No. 2 kept on assuring so that he would give the same to me. It is correct that Sh. Om Parkash is not given his title documents to me till date have not filed any other case except the present case against Sh. Om Parkash Thus from the cross regarding none handing over his title documents examination of PW-1. It is clear that she had no knowledge about the title of defendant No. 2 qua the suit property and the person from whom defendant No 2 had derived the title of the suit property. Ex. PW-1/2 to Ex PW-1/5 are also silent on this aspect and they make no whisper whatsoever about the predecessor in interest of defendant No. 2. It is a settled law that no person can transfer a better title than he himself has which is a proposition well crystallized in the legal maxim "NEMO DAT QUOD NON HABET". Furthermore, there is another maxim of "Caveat Emptor" i.e Buyer should beware which is applicable to the present case. The plaintiff ought to have inspected the title of defendant no, 2 qua the suit property before entering into any transaction with the defendant no. 2. Since plaintiff admits that she has not Whatsoever seen the title documents of defendant no. 2 before entering into the sale transaction. Therefore, it is the plaintiff who shall suffer consequences against plaintiff defendant No. 3 had produced the entire chain of documents and the details of the predecessor in interest of the suit property. One of the objections raised by plaintiff to the documents of defendant No 3 is that in the earlier documents, boundaries of the property have been shown as East-Road 12 ft, West-Road 18 ft, North-other land, South-other land whereas in the later documents i.e. Ex. DW-3/11. the property has been shown as East-Road 8 ft. West-Road 20 ft, North-Other land and South-Other land, Plaintiff submits that the said documents do not mention correct boundaries of the suit property and could not be said to be genuine documents A perusal of the documents Ex. DW-3/1 to Ex. DW3/16 show that the location of the property has been correctly reflected in the

the documents. In all the documents there is a property of other persons in the North & South and Road / gali on the Eas:2West side. Mere change in the width of the road would not suffice for the plaintiff to say that the documents are forged and fabricated. Another objection raised by the plaintiff is with regard Section 17 (1A) of the Registration Act which requires the Agreement to Selbe registered. However, in the present suit it is not the of the defendants qua the suit property but the..... of the plaintiff which forms the subject matter of the present suit Plaintiff cannot take benefit of the lapses on the part of the defendant since it is a settled law that the case of the plaintiff has to stand on its own feet. Further. plaintiff has not filed on record any document to show her possession over the suit property. Apart from the documents Ex. PW-1/2 to Ex. PW-1/4 there are no documents to show that the plaintiff had indeed raised construction over the suit property as alleged. No other witness has been examined by the plaintiff to corroborate her version. Even name of the neighbour who had informed the plaintiff about defendant No. 1 has not been maintained by the plaintiff. Further in the plaint, plaintiff has stated that she had received information from her neighbour that somebody was raising construction over the suit property and on reaching the suit property she found defendant No. 1 at the spot. But in the cross examination, PW-1 has stated that the neighbour had called her regarding the forcible possession of the suit property by defendant No. 3. This is a material contradiction in the case of the plaintiff in as much as plaintiff is herself controverting the factum of the

construction being raised by defendant No. 1 or defendant No. 3. Further PW-1 has also admitted in her cross examination that in the suit property defendant No. 3 has installed a gate and constructed boundary wall and toilet and has put a tin shed on the back side of the wall of the suit property. Thus, while plaintiff admits that defendant No. 3 has raised construction over the suit property, there is no evidence for the plaintiff to fortify her stand that she had relief any construction whatsoever on the suit property.

Another thing to be seen is that the defendants have disputed the Site Plan filed by the plaintiff, but the plaintiff has not proved the Site Plan on record by examining the Draftsman of the site plan. Furthermore, plaintiff has raised objection that Ex. DW-3/7 & Ex. DW-3/8 are forged and fabricated documents since the same do not bear the signatures of defendant No. 1 nor does it bear the name of seller and purchaser and number of property, A perusal of the Ex.DW-3/7 shows that the same is a GPA executed by defendant No. 4 in favour of defendant No. 1 and bears the signatures of executant i.e. defendant No. 4. Since the document bears the signatures of executant which has not been disputed by the executant himself, therefore. it cannot be said that Ex. DW-3/7 is a forged document. Another objection raised by ld. Counsel for plaintiff is that the name of seller

purchaser and property no. has not been mentioned in Ex. DW-3/7. However, the contention raised by plaintiff is misconceived since the GPA clearly mentions the name of the executant and the attorney in whose favour the same has been executed, When the name of the executant and attorney has been clearly mentioned in the document then it is immaterial and irrelevant that the name of seller and purchaser has not been mentioned So far as the property number is concerned. The same finds mention at page 2 & 3 of Ex. DW-3/7 and there is no need for repeating the same on last page of the document Ex. DW-3/7. Similarly. an objection has been raised with regard to Ex. DW-3/8 and it is stated that page No. 1,2 & 3 of the documents do not bear the signature of the purchaser, and the property measurement and sale consideration is not mentioned on last page. The objection raised by plaintiff is also unfounded since a document has to be read as a whole. A perusal of Ex. DW-3/8 shows the signature of purchaser as well as seller on the last page of the document and description of the property and sale consideration finds mention is in the first few pages. Moreover. the seller and purchaser had not disputed the examination of the documents; therefore, plaintiff has no locus standi to dispute the same. Thus, it is clear that the documents on the basis of which plaintiff has sought possession of the suit property do not aid the plaintiff anyway since the tide of the defendant No. 2 is not ascertainable from the said documents. Defendant no. 2 was also a party to the present suit but in his written statement as well, defendant No. 2 had made no mention as to the person from whom he had derived title qua the suit property. Thus. it cannot be said that defendant no. 2 had any right/title in his favour qua the suit property so as to further transfer right title or interest in the suit property in favour of the plaintiff, In view of the observations made above, the issues are decided against the plaintiff.

Issue No. 4 Whether the plaintiff is entitled for the relief of permanent injunction as prayed for in the plaint?

Since, issue No. 2 and 3 have been decided against the plaintiff and the relief of permanent injunction was consequential to the relief of possession which has not been established by the plaintiff, therefore, the present issue stands decided against the plaintiff.

15. The first Appellate Court while affirming the findings of the Trial court has held as under: -

36. In her evidence, plaintiff had examined herself only as Pw1. She did not remove aforesaid shortcomings in her case which made her examination-in-chief untrustworthy. In her cross-examination plaintiff deposed that she had no complaint against defendant no.2. If that is so, then I failed to understand as to

why she had arrayed defendant no.2 in this case and had sought relief against him which created doubt regarding bonafides of plaintiff in moving the Court.

37. Moving further, in her cross-examination plaintiff deposed that defendant no.2 had not supplied title documents of suit plot in question and kept on assuring plaintiff that he would provide the same to her. The said deposition indicated that plaintiff simply kept on believing her version of defendant no.2 without any basis which was highly improbable and reasonable.

38. Further, plaintiff had deposed that defendant no.3 had forcibly taken possession of suit plot in question in March but she did not remember the other details which improbably the fact that defendant no.2 had taken possession of suit plot in question illegally. Coupled with the same, she deposed that defendant no.3 had not collected the building material in her presence in suit plot in question and she had not found anybody including defendant no.3 at suit plot in question when she reached at suit plot in question after receiving telephonic call from his

neighbour. Her whole story regarding defendant no.3 taking. Illegal possession of suit plot in question was thus based on hearsay fact which I did not find it probable. There is no evidence on record which linked defendant no.3 with illegally possession of suit plot in question as was claimed by plaintiff. Coupled with the same, plaintiff had claimed that defendant no.3 had installed a gate and constructed boundary wall, toilet and constructed a tin shed on the backside wall of suit plot in question but no documentary proof was filed in this regard. As such said construction was allegedly made at the night when plaintiff received a telephonic call from her neighbour. The said deposition was highly improbable. Ordinarily, such kind of construction cannot be constructed in such a short period. Plaintiff as such failed to probablise her case based on said claim.

39. The net result is that testimony of plaintiff did not help her cause as her testimony was untrustworthy and improbable

40. This brings to the documents which plaintiff had filed.

41. Plaintiff had filed site plan Ex PW1/1 which was bereft of specific details of length and breadth of suit plot in question and location of said plot. No executable decree can be passed on the said site plan which made the said site plan inconsequential. Therefore, I discarded it accordingly.

42. Plaintiff had relied upon her complaint Ex PW1/D3/1 which he referred a Mark A In the said complaint she referred plot in question being situated in khasra no. 136/12/2 which was contrary to the site plan Ex PW1 wherein said plot was located in khasra no. 136/12/2/2. The specific details in the said

complaint as such did not mention in pleadings and evidence of the plaintiff which improbable the case of plaintiff.

43. Plaintiff relied upon her complaint Mark B in which she referred suit plot E! question measuring 130 sq. meter. Again, as per pleadings of plaintiff said plot was admeasuring 130 sq. yds. The said discrepancy regarding non uniform measurement of suit plot in question, improbablised the case of plaintiff. It made the case of plaintiff untrustworthy; I discarded the said complaint accordingly.

44. Plaintiff relied upon GPA Ex PW1/2 allegedly executed by defendant no.3 in her favour. The said GPA was undated. It was witnessed by a person namely Ram Singh S/o Budh Singh. The signature of said witness did not match the signature as made in ExPW1/3 and receipt Ex PW1/5. Infact, I failed to understand as to why signatures of the said witness were made with faded blue ink whereas lineage and address of said witness were made with dark blue ink. The said doubt was never cleared by plaintiff in her testimony. Further, receipt Lx PW1/5 was undated as a specific date July 1991 was missing. Coupled with the same I find from my bare eyes that signature of defendant no,3 made in GPA Ex PW1/2, agreement to sell Ex PW1/3, Affidavit Ex PW1/4 and receipt Ex PW1/5 were not uniformly made. There was evident discrepancy in the manner line was drawn over the name of defendant no. 3 and the manner in which alphabet in Hindi language were made. So, I conclude that those documents were not executed by defendant no.3 in ordinary course of business and were forged in nature

45. The net result is that plaintiff did not get any right, title or interest based on documents Ex PW1/2 to Ex Pw1/5. More so where, defendant no.3 did not disclose in those documents as to on what basis he declared himself to be owner of suit plot in question.

46. In the light of aforesaid appreciation, I find that as such plaintiff lacked right, title or interest over suit plot in question. If that is so, then she was not entitled to the reliefs of possession and permanent injunction is prayed by her, as those reliefs emanates from the title of plaintiff over suit plot in question.

16. Thus, it is notable that the Courts below have arrived at concurrent findings based on due examination of the facts of the case as well as material adduced on record. The case of the appellant/plaintiff has fallen not only on the grounds of lack of ownership but also on account of her failure to prove possession of the

imperative to have the knowledge regarding title/ownership of the property, specifically when the foundation of the claim of possession is ownership. Therefore, the Court finds no error in the decision of dismissing the appellant/plaintiff's claim by the Courts below.

17. At this juncture, it is pertinent to note that a second appeal under Section 100 of the Code of Civil Procedure, 1908 can only be entertained when non-consideration of conspicuous facts has given rise to a substantial question of law which, if not adjudicated upon, would result in gross miscarriage of justice. However, it has been reiterated time and again by the Supreme Court that such jurisdiction has to be exercised only on essential grounds and sparingly, with due consideration to the controversy at hand, that too, only when a substantial question of law has been formulated for its consideration. Reference in this regard may be had to the decision in *Gurdev Kaur v Kaki*¹.

18. In the present case, no substantial question of law arises for the consideration of this Court. The questions formulated by the appellants/plaintiffs are essentially grounded in the manner in which evidence has been appreciated by the Courts below to render the factual findings, and as observed above, no infirmity is found in the same. Therefore, in the absence of any substantial question of law to be adjudicated upon, the present appeal stands dismissed along with the pending application(s), if any. No costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

DECEMBER 09, 2024/p/dp

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¹ (2007) 1 SCC 546.

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