



2024:DHC:2128



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

+ **RSA 44/2024 and CM APPL. 12422-424/2024**

**LAL CHAND DECEASED THROUGH HIS
LEGAL HEIR & ORS.**

..... Appellants

Through: **Mr. Rajesh Gupta, Advocate**

versus

RAM UJAGAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

12.03.2024

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1. This is a second appeal under Section 100 of the Code of Civil Procedure, 1908 ("the CPC") assailing judgment dated 7 October 2023 passed by the learned Additional District Judge ("learned ADJ") in RCA DJ 43/2022 (*Lal Chand and Anr. v. Ram Ujagar*).

2. By the impugned judgment, the learned ADJ has dismissed the appeal of the appellant and has, consequently, confirmed the judgment and decree dated 22 July 2022, passed by the learned Administrative Civil Judge ("learned ACJ") in CS SCJ 841/2018 (*Ram Ujagar v. Lal Chand*).

3. CS SCJ 841/2018 was instituted by the respondent Ram Ujagar against Appellant Lal Chand. Ram Ujagar claimed to have purchased the suit property admeasuring 200 sq. yds. situated in Khasra No.14/25 from Lal Chand on 11 October 1999 *vide* registered GPA

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dated 11 October 1999, registered Will, Agreement to Sell, affidavit, receipt and letter of possession, duly notarized by the Notary Public. Ram Ujagar claimed, therefore, to be the absolute owner and in physical possession of the suit property.

4. The plaint further averred that, owing to illness, Ram Ujagar who was staying separately, could not be always present at the plot. On being informed, on 23 May 2018, that certain labourers were working on the plot, he rushed to the property where he met a lady, who claimed to be the owner of the portion of the suit property where the construction was going on. The allegation in the plaint was that the said lady was colluding with Appellant Lal Chand in trying to take the possession of the plot, even though Lal Chand had himself sold the plot to Ram Ujagar.

5. It was in these circumstances that Ram Ujagar instituted CS SCJ 841/2018 against Appellant Lal Chand, seeking a decree of permanent injunction, restraining Lal Chand from interfering with Ram Ujagar's possession of the suit property.

6. In support of his claim, Ram Ujagar filed, *inter alia*,
(i) copy of the GPA dated 11 October 1999, exhibited as Ex. PW-1/1,
(ii) copy of the Will dated 11 October 1999, exhibited as Ex. PW-1/2,
(iii) copies of the receipt, possession letter, affidavit, agreement to sell and purchase, all dated 11 October 1999, collectively exhibited as Ex. PW-1/3, and

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(iv) the site plan of the suit property, exhibited as Ex. PW-1/5.

7. Despite service of summons in the suit, the defendant failed to file any written statement. The right of the defendant to file the written statement was closed by the learned ACJ vide order dated 24 September 2018. The said order was never challenged and therefore became final.

8. Ram Ujagar led the evidence of two witnesses. PW-1 was Ram Ujagar himself and PW-2 was Banwari Lal, who had allegedly informed Ram Ujagar that construction activities were underway on the suit property.

9. Ram Ujagar tendered his affidavit by way of evidence, which was exhibited as PW-1/A. Paras 3 to 11 of the affidavit in evidence of Ram Ujagar may be reproduced thus:

“3. That the deponent says that the deponent had purchased a plot area measuring 200 sq yds out of the total land measuring 500 sq yds out the Khasra no 14/25 with following direction i.e. East-road 25 ft, West-road 8 ft, North-road 18 ft and South-other plot situated in estate of village Mubarikpur Dabas Delhi-81 from defendant on 11 Oct 1999 through vide registered general power of attorney bearing no 53938 book no ii vol no 2672 page no 185 to 186 dated 11 Oct 1999, registered Will vide no 48281 book no iii, volume no 1094 page no 85, and agreement to sell, affidavit, receipt, letter of possession which are duly notarized with notary public.

4. That the deponent says that the deponent being absolute owner is in physical possession of the plot and after purchasing the plot, he bounded the plot upto 3 feet with bricks and enjoying the peaceful possession of the plot since 11 Oct 1999.

5. That the deponent says that the deponent has been regularly

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visiting to his plot but due to old age and illness, he could not visit to his plot for some time. On 23 May 2018 one Sh. Banwari informed to the deponent that some labour are working in the north east corner of his plot and after getting the information, the deponent immediately rushed to his plot where he found that the labour is working in the north east portion measuring 8' X 8' of his plot and when the deponent asked to stop the work and said to them to call the person who is getting the construction work on the plot.

6. That the deponent says that the labour called the person at whose instance the construction was being done and after some time, the defendant along with one lady came to the plot and lady claimed herself to be owner of the aforesaid portion where the construction was going on. The deponent shocked and surprised to know that the defendant in collusion with the lady are trying to encroach on the aforesaid portion of the plot and on enquiry from the defendant, he kept mum and asked to talk later on.

7. That the deponent says that the deponent tried to make them understand and said to them that the defendant himself sold the plot in question to the deponent on 11.10.1999 and handed over the possession of the plot and since then he has been in possession of the plot and having all the original documents related to the plot and When the deponent asked the lady to show the documents of the aforesaid portion of plot, the defendant and lady instead of showing the documents extended the threat to the deponent to implicate him in the criminal cases and also kill him.

8. That the deponent says that thereafter deponent dialed 100 no and after about one hours PCR van came at the plot and got the construction work stopped and the deponent took the possession of the aforesaid portion of the plot where the construction was going on and police asked the deponent, defendant and lady to show their documents but neither the defendant nor lady who known to the defendant shown any document to the deponent or police officials of PS Aman Vihar till date.

9. That the deponent says that the deponent being absolute owner of the plot is in the physical possession of the entire plot and after selling the plot, the defendant had/ has no right and interest to create any sort of interest and documents in favour of any person but deponent has apprehension that the defendant in collusion with the lady who known to him can illegally encroach the aforesaid portion of the plot and create third party interest in the plot as the defendant has relation with the muscle man and gunda of the area and having good relation with the higher police official of area.

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10. That the deponent says that the deponent has no other remedy except to file the present suit against the defendant. In case the direction as prayed for is not passed against the defendant then the deponent shall suffer irreparable loss and injury which cannot be compensated in any manner later on.

11. That the deponent says that the cause of action to file the present suit arose on 23 May 2018 when the deponent visited to his plot and found that the construction work is being done at the instance of defendant and the lady who were trying to encroach on the north east portion of the plot and further arose on 24.5.18 when the defendant and lady known to him call the police station to shown the document of the portion of plot but the defendant did not visit to the police station and the cause of action is still continuing and subsisting one as the defendant is extending the threat to the deponent of grabbing the plot in question forcibly and by adopting any other illegal means.”

10. Ram Ujagar was subjected to cross-examination on his affidavit by learned counsel for the appellant, Lal Chand. The entire record of cross-examination deserves to be reproduced thus:

“I tender my evidence by way of affidavit which is Ex. PW1/A which bears my signatures at point A & B. I rely upon the documents Ex. PW1/1 to Ex. PW1/6. Copy of the power of attorney dated 11.10.1999 is Ex. PW1/1 (OSR), copy of the deed of WILL dated 11.10.1999 is Ex. PW1/2 (OSR), copies of the receipt, possession letter, affidavit, agreement to sell and purchase, all dated 11.10.1999 are Ex. PW1/3 (Colly, OSR), copies of three photographs are Mark A (Colly), copy of my aadhar card is Ex. PW1/4 (OSR), site plan is Ex. PW1/5 and copies of affidavit and receipt dated 19.03.1999 are marked as mark B (Colly).

The documents mentioned as Ex. PW1/4, Ex. PW1/6 and Ex. PW1/7 in the affidavit are de-exhibited as the original of the same are not available. The same are now marked as Mark A (Colly, Mark B (Colly).

XXXX by B.S. Solanki, learned counsel for the defendant.

I had not checked the record of Patwari concerned to ascertain the original owner, khasra number as well as area of the suit property. I did not ask the names and addresses of the persons who were

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working at the suit property. I had not made any complaint against the said persons, who were working at the suit property. (Vol. I had made the police complaint against the defendant). I have not inquired about the name, parentage and address of the lady, who came on the suit property as she told that she is going to meet Lal Chand and will again come with him. Since, I have no concern with her, therefore, I have not made any further inquiries. The suit property is not having an independent and unique number as the same is part and parcel of a chunk of 500 Sq. yards out of which, I have purchased 200 Sq. yards. I am not aware about its exact khasra number. It is correct that in Ex. PW1/1, Ex. PW1/2, Ex. PW1/3, Ex. PW1/5 and Mark B (Colly), the space meant for mentioning the plot number of the suit property has been left blank. (Vol. When the suit property was purchased there was no number of the plots). The block numbers and plot numbers were later on given by the concerned authority.

I purchased the material for raising the boundary over the suit property from the dealer of the same locality, however, I am unable to recall the name and address of the said dealer. I was not aware about the name and address of the said lady, who came at the suit property that is why she was not made a party in the present suit. The aforesaid documents regarding the suit property were executed on 11.10.1999. On 11.10.1999, I had purchased the suit property from the defendant herein. It is wrong to suggest that title documents of the suit property were not signed by the defendant Lal Chand. (Vol. Sh. Lal Chand had signed all the documents in my presence). It is wrong to suggest that the defendant had neither sold any property to me nor signed any documents. It is wrong to suggest that I am deposing falsely at the instance of some other persons.”

11. PW-2, Banwari Lal, also filed his affidavit in evidence, which read thus:

“3. That the deponent says that the plaintiff had purchased a plot area measuring 200 sq yds out of the total land measuring 500 sq yds out the Khasra no 14/25 with following direction i.e. East-road 25 ft, West – road 8 ft, North- road 18 ft and South – other plot situated in estate of village Mubarikpur Dabas Delhi-81 from defendant on 11 Oct 1999 through vide registered general power of attorney bearing no 53938 book no ii vol no 2672 page no 185 to 186 dated 11 Oct 1999, registered Will vide no 48281 book no iii volume no 1094 page no 85, and agreement to sell, affidavit,

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receipt, letter of possession which are duly notarized with notary public and deponent further says that the defendant had signed the aforesaid documents in his presence and also given his photograph to paste on the documents.

4. That the deponent says that the plaintiff being absolute owner is in physical possession of the plot and after purchasing the plot, he bounded the plot upto 3 feet with bricks and enjoying the peaceful possession of the plot since 11 Oct 1999.

5. That the deponent says that on 23 may 2018 he informed to the plaintiff that some labour are working at his plot and thereafter the plaintiff reached at the plot.”

12. PW-2 was also subjected to cross-examination by learned counsel for the appellant. The record of his cross-examination which took place on 2 November 2021 is as under:

“I tender my evidence by way of affidavit Ex.PW2/A which bears my signatures at point A and B. The document mentioned in my affidavit as Ex. PW2/1 i.e. Adhar Card be de-exhibited as the copy of same is not on record.

XXXXXX by Sh. B. S. Solanki, Ld. Counsel for defendant.

The transaction with regard to the plot (sauda) took place in my presence. Vol. Even the documents were also executed in my presence. I do not remember the amount for which the sauda/ deal took place. The payment was made in my presence but I do not remember the quantum. I had seen the documents of the plot available with Lal Chand.

I am not literate but I can sign my name. I had not inquired about the documents of Lal Chand before signing as a witness. I do not know whether any lady was also working amongst the labour. I had informed about the labour working on plot to the plaintiff. Vol. I had been informed by someone. I do not know whether I have mentioned this fact in my affidavit.

I had informed Ram Ujagar in the afternoon. I do not remember the phone number on which I informed Ram Ujagar. Vol. I write it in

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diary. I am aware of the contents of my affidavit as my counsel wrote what I told him. It is wrong to suggest that no deal/ sauda took place in my presence or that no documents were executed in my presence. It is wrong to suggest that I am deposing falsely.”

13. The learned ACJ, in these circumstances, proceeded, in her judgment dated 22 July 2022 to note as under:

“13. At the very outset, it is pertinent to mention, that in the case in hand, the defence of defendant was struck off and, accordingly, the onus was upon the plaintiff to prove his case, whereby he was required to prove, that he is entitled to decree of permanent injunction in his favour and against the defendant, thereby restraining the defendant, his family members, associates, representatives from transferring, alienating, assigning, sub-letting, damaging or creating any kind of third party interest over the suit property and from carrying out any kind of constructions over the plot area measuring 200 sq. yards, out of total land measuring 500 sq. yards, out of khasra No. 14/25, situated in estate of village Mubarikpur Dabas, Delhi-110041 and also the aforesaid portion of the plot which has been shown in red colour in site plan.

14. In support of his contentions, the plaintiff examined two witnesses i.e. himself as PW-1 and Banwari Lal as PW-2. The plaintiff has relied upon the documents i.e. Ex. PW1/1 to Ex. PW1/3 in support of his ownership and possession comprising of GPA, Deed of Will, Receipt, Letter of possession, Affidavit, Agreement to Sell pertaining to the suit property. Bare perusal of these documents show, that these documents were executed by Lal Chand i.e. the defendant herein in favour of Ram Ujagar i.e. the plaintiff herein.

It is not out of place to mention here, that in the instant case, though the defendant got an opportunity to cross-examine the plaintiff's witnesses, however, nothing substantial has come out from the cross- examination of the witnesses, which can discredit the version of the plaintiff.

It is a matter of record, that Ld. Counsel for defendant has not put even a single suggestion to the plaintiff with regard to the property not belonging to the plaintiff or with regard to the plaintiff not having possession over the suit property. No suggestion has been given by Ld. Counsel for defendant qua the denial of the plaintiff with regard to having his right over the suit property nor any such

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document has been placed on record. The only point on which the cross-examination has been done, is with regard to the property not being numbered, but that perse does not negate the prima facie right of the plaintiff over the suit property, established vide the documents placed on record.

In addition to this, PW-2 categorically stated in his cross-examination, that the transaction with regard to the plot (suit property) took place in his presence and not only this, he further went on to depose that the documents were also executed in his presence and he had seen the documents of the plot available with the defendant.

15. It is categorically established from the documents placed on record, that the plaintiff had purchased the suit property measuring 200 sq. yards, out of 500 sq. yards, out of khasra No. 14/25, situated in estate of village Mubarikpur Dabas, Delhi-110041 from the defendant and the factum regarding purchase of the suit property and possession of the plaintiff over the suit property is not questioned by the defendant at all. Hence, the onus as casted upon the plaintiff has been discharged by the plaintiff.

16. Relief: In view of above mentioned observations, I am of the considered view that the plaintiff has successfully discharged the burden of proving his case. Accordingly, the suit of the plaintiff is, thus, decreed in favour of the plaintiff and against the defendant and following reliefs are awarded:

- a) Decree of permanent injunction in favour of the plaintiff and against the defendant and the defendant, his family members, associates, representatives etc. are hereby restrained from transferring, alienating, assigning, sub-letting, damaging or creating any kind of third party interest and further from carrying out any kind of constructions over the plot area measuring 200 sq. yards, out of total land measuring 500 sq. yards, out of khasra No. 14/25, situated in estate of village Mubarikpur Dabas, Delhi-110041, without due process of law.
- b) Costs of the suit are also awarded in favour of the plaintiff and against the defendants."

14. Even though placing the onus to prove the assertions in the plaint on the plaintiff, the learned ACJ has observed that the plaintiff had proved the fact that he had titular as well as possessory right over



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the suit property, through the documents exhibited as Ex. PW-1/1, PW-1/3 as well as through his affidavit in evidence read with his cross-examination. It was noted that there was no attempt in the cross-examination of Ram Ujagar to question either his titular or his possessory right over the suit property. In these circumstances, the learned ACJ held that Ram Ujagar had successfully discharged the onus to prove his case and accordingly decreed the suit.

15. The appellant appealed against the said judgment and decree to the learned ADJ vide RCA DJ 43/2022.

16. Though the appellant sought to place certain documents on record in the aforementioned first appeal, they were not accompanied by any application under Order XLI Rule 27 of the CPC for taking the documents on record. As such, they were not taken on record.

17. The learned ADJ, for his part, observed thus:

“4. Before the trial Court, the defendant had not filed W/S and the Trial Court had closed the opportunity to file W/S vide order dated 24.09.2018. However, the Trial Court chosen to put the matter for evidence. During the evidence, the plaintiff side examined two witnesses namely Sh. Ram Ujagar and Sh. Banwari Lal. These witnesses were cross-examined on behalf of defendant, Naturally, the Court is entitled to ask a plaintiff to establish the case through evidence even if, no W/S was filed to contest the suit. The Trial Court appears to have taken proper steps when it directed the plaintiff to lead evidence. Whenever a party examines a witness, the opposite party gets a right to cross-examine such witness irrespective of whether he has filed a W/S or not. Apparently, the Trial Court had allowed the defendant to cross-examine the witnesses. Since there was no W/S on the part of defendant, the Trial Court did not allow him to lead any type of evidence in defence, After hearing all the sides, the Trial Court decreed the suit in favour of the plaintiff.

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6. On perusal of the record of Trial Court, I am of the opinion that the view of the Trial Court is clearly justified. There is nothing in the cross-examination of the witnesses, which can suggest that they have been impeached or discredited. The reasoning of Trial Court is proper and has to be accepted on the available facts and circumstances of the case.

7. However, the appellant i.e. LR of the deceased defendant is challenging the decree on the premise that in terms of the judgment of Hon'ble Supreme Court in "Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr". SLP No.13917 of 2009, the plaintiff could not have become owner of the property in the absence of any Sale Deed and therefore, he could not have maintained a suit for permanent injunction. I have gone through the said judgment and I am of the view that the same has no applicability at all to the factual dispute raised in the present case.

8. The plaintiff has produced several documents including Agreement to Sell and GPA. He is also in possession of the property. Since the events occurred in the year 1999, even for part performance U/s 53A of Transfer of Property Act, there was no requirement of any registered document. The Agreement to Sell alongwith possession of property was sufficient for the plaintiff to claim that no one can disturb his possession. There was no necessity of any Sale Deed to protect a possession U/s 53A of Transfer of Property Act. Whether the plaintiff would have become owner of the property or not is not an issue in the present case. Till the time Agreement to Sell coupled with delivery of possession exists, Section 53A of Transfer of Property Act will remain applicable and will protect the plaintiff from any kind of hindrance in enjoyment of the possession.

9. Having heard the Ld. Counsels on both the sides, I am of the view that there is no merit in the appeal. The Ld. Trial Court has taken a reasonable view of the entire matter and has decreed the suit in favour of the plaintiff. The appeal is dismissed. Judgment and decree dated 22.07.2022 passed by the Trial Court in the case titled as "Ram Ujagar Vs. Lal Chand" CS SCJ No.841/2018 is upheld. No costs."

18. Aggrieved by the aforesaid decision, appellant is before this Court in second appeal.

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19. The second appeal lies only on a substantial question of law. Concurrent findings of fact can ordinarily not be interfered with, in a second appeal. The circumstances in which concurrent finding of fact can form subject matter of interference in second appeal is set out by the Supreme Court in para 24(iii) of *Hero Vinoth v. Seshammal*¹:

“(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

20. Mr. Rajesh Gupta, learned counsel for the appellant, initially sought to submit that the respondent had no titular right over the suit property and sought to cite, in that regard, the judgment of the Supreme Court in *Suraj Lamp & Industries Pvt Ltd v. State of Haryana*². The reliance is misplaced. *Suraj Lamps*, as well as the recent decision of the Supreme Court in *Shakeel Ahmed v. Syed Akhlaq Hussain*³, clearly hold that no title entrusted to immovable property can pass on the basis of *unregistered documents*. However, there is no dispute that the documents under which the appellant Lal Chand had transferred the title in the suit property to the respondent Ram Ujagar were in fact registered documents. The principle in *Suraj Lamps*, reiterated in *Shakeel Ahmed*, that no title can pass under unregistered documents has, therefore, no application in the present

¹ (2006) 5 SCC 545

² (2012) 1 SCC 656

³ 2023 SCC OnLine SC 1526



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case.

21. Mr. Rajesh Gupta sought to contend that, even if the titular rights of Ram Ujagar over the suit property could not be questioned, he had not discharged the onus to prove that he was in possession of the suit property. Mr. Gupta submits that, in a case in which the defendant is *ex parte* or where the defendant fails to file a written statement, the Court is required to be doubly careful in ensuring that the plaintiff has conclusively proved his case. In the present case, submits Mr. Gupta, no conclusive proof was adduced by the respondent, of his having been in possession of the suit property.

22. Mr. Gupta has, *inter alia*, drawn my attention to the documents under which his client had purchased the suit property from Arun Kumar Sharma, which was later than the date on which Ram Ujagar claimed to have come in possession of the suit property.

23. The aforementioned documents do not form any part of the record of the Court below. The appellant did not choose to file any written statement before the learned ACJ. The order dated 24 September 2018, closing the right of the appellant to file written statement was also never assailed. The averments in the plaint thereby remained untraversed.

24. What is worse, the appellant did not even choose, while cross-examining either Ram Ujagar or Banwari Lal (PW-2), to question either the titular or possessory right of Ram Ujagar over the suit property.

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25. It was only at the stage of the first appeal that the appellant sought to introduce certain additional documents. That, too was not done in the manner known to the CPC by filing an application under Order XLI Rule 27⁴ of the CPC. No opportunity was, therefore, available to the respondent to question the taking of the said documents on record. The said documents have therefore correctly not been adverted to by the learned ADJ.

26. In these circumstances, it cannot be said that the present appeal raises any substantial question of law within the meaning of the expression as defined by the Supreme Court in *Chandra Bhan v. Saraswati*⁵.

27. The appeal is accordingly dismissed *in limine*.

C.HARI SHANKAR, J

MARCH 12, 2024

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Click here to check corrigendum, if any

⁴ 27. **Production of additional evidence in Appellate Court. –**

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

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