

(2014) 05 DEL CK 0388

In the Delhi High Court

Case No : Regular Second Appeal No. 131 Of 2014

Bidhan Chand Biswas (Since Deceased) Through Lrs.

APPELLANT

Vs

Prakash Chand Bansal & Ors

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100
Transfer Of Property Act, 1882 — Section 48, 53A, 54
Indian Contract Act, 1872 — Section 202
Land Acquisition Act, 1894 — Section 16

Citation : (2014) 05 DEL CK 0388

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : K.P.S. Chauhan, Nasimuddin

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J

Caveat No.447/2014

1. No one appears for the caveators. Caveat stands discharged.

C.M. No.8871/2014 (exemption)

2. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+ RSA No.131/2014 and C.M. No.8870/2014 (stay)

3. This second appeal is filed under Section 100 of Code of Civil Procedure, 1908 (CPC) impugning the judgment of the first appellate court dated 21.1.2014. The first appellate court by the impugned judgment set aside the judgment of the trial court dismissing the suit and the suit was decreed so far as the relief of declaration is concerned holding that the respondent nos.1 and 2/plaintiffs are

the owners of the suit property admeasuring 50 sq yds falling in khasra no.610, bearing no.D-1, Ashok Nagar (near Hanuman Mandir) Railway crossing, Delhi 110093. The suit property essentially consisted of two shops and one room.

4. The respondent nos.1 and 2/plaintiffs are husband and wife. Respondent no.1/plaintiff no.1 purchased the suit property from one Smt. Dharamwati Shukla on 22.10.1997. The rights in the suit property were purchased by means of the usual documents being the agreement to sell, power of attorney, Will, receipt etc, and which documents have been proved and exhibited before the trial court as Ex.PW2/1 (general power of attorney), Ex.PW2/3 (agreement to sell), Ex.PW2/4 (affidavit), Ex.PW2/6 (Will) and Ex.PW2/2 (money receipt). The agreement to sell and the power of attorney are the registered documents i.e they are registered before the sub-Registrar. Respondent no.1/plaintiff no.1 after purchase of the property transferred the same in the name of his wife/respondent no.2/plaintiff no.2. Smt. Dharamwati Shukla from whom the respondent no.1 purchased the property 'cancelled' the documentation executed in favour of respondent no.1/plaintiff no.1 by a Cancellation Deed dated 4.5.2001 and whereafter Smt. Dharamwati Shukla executed the usual documents being the general power of attorney, agreement to sell etc on 9.5.2001 in favour of the defendant no.1/appellants who are legal heirs of the defendant no.1 with respect to the suit property. Suit was thus filed to questions the Cancellation Deed dated 4.5.2001 and for declaration of respondents/plaintiffs as owners of the suit property.

5. The issue which was urged before the court below on behalf of the appellants/defendant no.1 was that the defendant no.1 was the owner of the suit property because Smt. Dharamwati Shukla had cancelled the documents executed in favour of the respondent no.1/plaintiff no.1 by the Cancellation Deed dated 4.5.2001. This Cancellation Deed has been proved before the trial court as Ex.PW4/1 on behalf of the respondent nos.1 and 2/plaintiffs inasmuch as in the plaint declaration was sought with respect to invalidity of this registered Cancellation Deed dated 4.5.2001 executed by Smt. Dharamwati Shukla. The defendant no.1 is said to have purchased rights in the suit property thereafter by means of the usual documents which were proved and exhibited as Ex.DW1/2 and Ex.DW1/3.

6. The first appellate court, in my opinion, has rightly held that once the registered documents dated 22.10.1997 were executed by Smt. Dharamwati Shukla in favour of the respondent no.1/plaintiff no.1, Smt. Dharamwati Shukla could not have thereafter unilaterally cancelled the documents by means of the Cancellation Deed dated 4.5.2001. Once cancellation of the document by Smt. Dharamwati Shukla is held not to be valid, she hence could not have transferred title of the suit property to the appellants/defendant no.1 allegedly because she once again could not become the owner of the suit property on the supposed ground of the validity of the Cancellation Deed dated 4.5.2001. The first appellate court has also rightly overruled the conclusion of the trial court that the

documents in question dated 22.10.1997 executed by Smt. Dharamwati Shukla in favour of the respondent no.1/plaintiff no.1 do not confer rights and this aspect has been dealt with in paras 38 to 40 of the impugned judgment of the first appellate court and which read as under:-

"38. The learned Trial Court has held that the set of documents dated 22.10.1997 which are GPA, SPA etc. would not confer any title in favour of the plaintiff No.2 in respect of the suit property. Reliance was placed by the learned Trial Court on the judgments of Hon'ble High Court of Delhi on the cases of G Ram Versus Delhi Development Authority reported in AIR 2003 (Delhi) 120 and ML Aggarwal Versus Oriental Bank of Commerce & Others reported in 128 (2006) DLT 407 (DB). In both these cases, it was held that the documents such as GPA, SPA, Will etc. would not convey any title to immovable property.

39. In the case of Asha M Jain versus Canara Bank reported in 94 (2001) DLT 841 the Hon'ble High Court of Delhi had held that such documents do create an interest in immovable property. In the case of Suraj Lamps & Industries Pvt Ltd versus State of Haryana & Another reported in AIR 2009 SC 3077, the Hon'ble Supreme Court was pleased to hold that the impugned judgment in the case of Asha M Jain (supra) was not good law and that such kind of documents i.e. GPA, SPA, Receipt, Will etc. would not create any title to immovable property. The judgment of the Hon'ble Supreme Court in the case of Suraj Lamp & Industries Pvt Ltd (supra) was considered by the Hon'ble High Court of Delhi in the case of Ramesh Chand Versus Suresh Chand reported in 188 (2012) DLT 538. It was held by the Hon'ble High Court in paras 3,4 and 12 as under:-

3. A reference to the aforesaid paras shows that unless there is a proper registered sale deed, title of an immovable property does not pass. The Supreme Court has however reiterated that rights which are created pursuant to Section 53A of the Transfer of Property Act, 1882 dealing with the doctrine of part performance (para 12), an irrevocable right of a person holding a power of attorney given for consideration coupled with interest as per Section 202 of the Contract Act, 1872 (para 13) and devolution of interest pursuant to a Will (para 14). Therefore, no doubt, a person strictly may not have complete ownership rights unless there is a duly registered sale deed, however, certain rights can exist in an immovable property pursuant to the provisions of Section 53A of the Transfer of Property Act, 1882, Section 202 of the Contract Act, 1872. There also takes place devolution of interest after the death of the testator in terms of a Will.

4. There is also one other aspect which needs to be clarified before proceeding ahead and which is whether a power of attorney given for consideration would stand extinguished on the death of the executant of the power of attorney. The answer to this is contained in illustration given to Section 202 of the Contract Act, 1872, and the said provision with its illustration reads as under:-

"Section 202. Termination of agency, where agent has an interest in subject matter.-Where the agent has himself an interest in the property which forms the

subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations

(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death."

The object of giving validity to a power of attorney given for consideration even after death of the executants is to ensure that entitlement under such power of attorney remains because the same is not a regular or a routine power of attorney but the same had elements of a commercial transaction which cannot be allowed to be frustrated on account of death of the executant of the power of attorney.

12. In view of the aforesaid facts and the validity of the documents, being the power of attorney and the Will dated 16.5.1996, the respondent No.1/plaintiff would though not be the classical owner of the suit property as would an owner be under a duly registered sale deed, but surely he would have better rights/entitlement of possession of the suit property than the appellant/defendant No.1. In fact, I would go to the extent saying that by virtue of para 14 of the judgment of the Supreme Court in the case of Suraj Lamps & Industries Pvt. Ltd. (supra) taken with the fact that Sh. Kundan Lal has already died, the respondent No.1/plaintiff becomes an owner of the property by virtue of the registered Will dated 16.5.1996. A right to possession of an immovable property arises not only from a complete ownership right in the property but having a better title or a better entitlement/right to the possession of the property than qua the person who is in actual physical possession thereof. The facts of the present case show that the respondent No.1/plaintiff has undoubtedly better entitlement/title/rights in the suit property so as to claim possession from the appellant/defendant No.1/brother. I have already held above that the appellant/defendant No.1 miserably failed to prove that there was any partition as alleged of the year 1973 whereby the suit property allegedly fell to the share of the appellant/defendant No.1. In fact, the second reason for holding the appellant to be unsuccessful in establishing his plea of partition is that the appellant failed to lead any evidence as to the other two properties being the property No.290, Ambedkar Basti, Delhi and the second property being the property adjoining the property No.290, Ambedkar Basti, Delhi as having belonged to the father-Sh. Kundan Lal."

40. The Hon'ble High Court in the case of Ramesh Chand (supra) has been pleased to hold that right to possess immovable property arises not only from a complete ownership right in the property but also by having a better title or

better entitlement to possession of the property as against the person who is in actual physical possession of the same. In the present matter, both the plaintiffs and the defendant No.1 trace their title from the same person i.e. Smt. Dharamwati Shukla. Further, the nature of documents of both the parties is the same i.e. GPA, SPA, Will, Receipt affidavit etc. Neither of the parties has any registered deed of conveyance within the meaning of Section 54 of the Transfer of Property Act 1882 in their favour. Both the parties therefore sail in the same boat."

7. The first appellate court has thereafter held that since the Cancellation Deed dated 4.5.2001 is not valid, the defendant no.1/appellants could not derive any title to the property and which aspect is dealt with in paras 41 to 45 of the impugned judgment and which read as under:-

"41. The question which arises is whether once having executed the set of documents dated 22.10.1997 in favour of the plaintiff No. 2, it was open for Smt. Dharamwati Shukla to cancel the same by way of cancellation deeds dated 4.5.2001.

42. In the case of Shikha Properties Pvt Ltd versus S Bhagwant Singh & Others reported in 74 (1998) DLT 113 and Harbans Singh versus Smt. Shanti Devi reported in 1997 RLR 487, it has been held by the Hon'ble High Court of Delhi that Section 202 of the contract Act would make a power of attorney executed for consideration irrevocable. It cannot be cancelled. In the case of Ramesh Chand (supra), the Hon'ble High Court was pleased to reiterate that by virtue of the provisions of Section 202 of the Contract Act, a power of attorney executed for consideration would remain valid even after the death of the executants because the same had elements of a commercial transaction which cannot be allowed to be frustrated on account of death of the executants. Section 202 of the Contract Act provides that such an agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

43. After the execution of the set of documents dated 22.10.1997, there was no further contract entered into between the plaintiff No.2 and Smt. Dharamwati Shukla within the meaning of Section 202 of the Contract Act so as to enable her to have cancelled the power of attorney executed by her in favour of plaintiff No.2. The cancellation deeds dated 9.5.2001 executed by Smt. Dharamwati Shukla cannot be considered to be a contract within the meaning of Section 202 of the Contract Act as the plaintiff No. 2 was not a party to the same.

44. Thus in the opinion of this court, the cancellation deeds Ex.PW4/1 dated 4.5.2001 and Ex.PW4/3 dated 09.05.2001 would have no effect on the set of documents executed by Smt. Dharamwati Shukla in favour of the plaintiff No.2. The rights created in favour of the plaintiff no. 2 in respect of the suit property would remain unaffected.

45. Section 48 of the Transfer of Property Act provides that where a person purports to create by transfer at different times rights in respect of the same

immovable property, each later created right shall be subject to the rights previously created. The set of documents executed by Smt. Dharamwati Shukla in favour of plaintiff No. 2 are dated 22.10.1997 whereas the set of documents executed by her in favour of defendant No.1 are dated 9.5.2001. Hence by virtue of principle enunciated in Section 48 of the said Act, the documents executed in favour of plaintiff No. 2 being prior in time would prevail over the documents executed in favour of defendant No.1 in respect of the suit property."

8. I completely agree with the aforesaid conclusions of the first appellate court including for the reason that documents by which rights in the suit property are transferred are contractual documents and contractual documents can only be nullified by means of contractual documents i.e it is not open to one party unilaterally to cancel the contractual documents by which rights are created in an immovable property in favour of the other party.

9. On behalf of the appellants/defendant no.1 it was also argued before the courts below that the Union of India had acquired the property and consequently suit was bound to fail, and this aspect has been rightly rejected by the first appellate court by making the following observations in the impugned judgment:-

"46. In the impugned order, the learned Trial Court while placing reliance on the evidence of DW-3, DW-6 has held that since Government of India was shown to be the recorded owner of the land falling in khasra No. 790/610 where the suit property was situated, Smt. Dharamwati Shukla had no right to execute any document of title in favour of the plaintiff No.2. While going through the written statement of the defendant no. 1, I could not find any averment made in the same to the effect that the suit property stood on acquired land belonging to the Government and as such Smt. Dharamwati Shukla not being the owner thereof had no right to execute any document of title in favour of the plaintiff No.2. This was thus never the case of the defendant no.1 set up in his written statement. The evidence led by the defendant no.1 in this regard, i.e. the land in question belonging to the State, was beyond his pleadings. In the case of Kattinokkula Murali Krishna V. Veeramalla Koteswara Rao, reported in (2010) 1 SCC 466 the Hon'ble Supreme Court was pleased to hold that it was a settled principle of law that evidence beyond the pleadings can neither be permitted to be adduced nor can such evidence be taken into consideration. Thus the evidence led by the defendant no.1 regarding the suit property standing on government land being beyond pleadings cannot and could not have been taken into consideration.

47. Even if the defendant no.1 had pleaded these facts, the question which arises is whether by virtue of the same, it could be held that the plaintiff would not be entitled to any relief. In the case of Swadesh Ranjan Sinha versus Haraded Banerjee reported In (1991) 4 SCC 572, the Hon'ble Supreme Court was pleased to hold that all that the plaintiff needs to prove is that he has a better title than the defendant. He has no burden to show that he has the best of all possible titles. His ownership is good against all the world except the true owner. It was further held that the rights of an owner are seldom absolute and the question is

whether he has a superior right or interest vis-a-vis the person challenging it. The same principle of law has been reiterated by the Hon'ble High Court in the case of Ramesh Chand (supra). Hence in the opinion of this Court, the question that any person apart from Smt. Dharamwati Shukla was owner of the suit property was immaterial as both the parties had claimed title to the suit property from her. Even otherwise, since the defendant no.1 was admittedly a tenant under Smt. Dharamwati Shukla and had claimed to have purchased the suit property from her, he as stopped from denying her title to the suit property.

48. The plaintiff having a superior right than the defendant No.1 was entitled to the relief of declaration of title in respect of the suit property qua the defendant No. 1. This declaration would not bind the Union of India or any other true owner of the property as it was not a party to the suit. If the Union of India or any other true owner of the property has a better title than the plaintiff no.2, the documents of title relied upon by plaintiff no.2 would not come in its come in its way to seek any relief in respect of the suit property."

10. In addition to the aforesaid conclusions of the first appellate court, and with which I agree, it also needs to be stated that the Union of India does not become owner of an acquired property unless possession is taken by the Union of India under Section 16 of the Land Acquisition Act, 1894. In the present case, it is not proved on behalf of the appellants/defendant no.1 that the Union of India had taken possession of the suit property under Section 16 of the Land Acquisition Act. Once that is so, Smt. Dharamwati Shukla and thereafter the respondent no.1/plaintiff no.1 and thereafter the respondent no.2/plaintiff no.2 accordingly continued to remain owner of the suit property.

11. I may note that trial court has not decreed the relief of possession in favour of the respondents/plaintiffs because the appellants/defendant no.1 has been held to be a tenant in the suit property at a rent of less than Rs.3,500/- per month and consequently having protection against the eviction in view of the Delhi Rent Control Act,1958. The only relief granted by the first appellate court is a declaration of ownership of the respondent nos.1 and 2/plaintiff nos.1 and 2 of the suit property.

12. Therefore, as nothing could be argued on behalf of the appellants before me to upset any of the conclusions which have been given by the first appellate court, consequently, no substantial question of law arises under Section 100 CPC for this appeal to be entertained. The second appeal is accordingly dismissed, leaving the parties to bear their own costs.