

(2011) 03 DEL CK 0284

In the Delhi High Court

Case No : Regular Second Appeal No. 125 of 2007 and CM No. 6548 of 2007

Shri Ramdhari

APPELLANT

Vs

Shri Vinod Kumar Sharma

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 4
Delhi Rent Control Act, 1958 — Section 50
Evidence Act, 1872 — Section 47, 67, 75, 79
Transfer of Property Act, 1882 — Section 106

Citation : (2011) 03 DEL CK 0284

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Madan Lal Sharma and Varun Nischal, for the Appellant; P.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 26.2.2007 which had endorsed the finding of the trial judge dated 06.2.2006 wherein the suit filed by the Plaintiff Vinod Kumar Sharma seeking possession and mesne profits qua suit premises bearing No. WZ-1087, Gali No. 11, Sadh Nagar, Palam Colony, New Delhi (hereinafter referred to as "the suit property") had been decreed in his favour.

2. Case of the Plaintiff is that the suit property was originally owned by Kamla Devi; she had died on 02.9.1979; she was survived by three sons and five daughters. Her daughter namely Rekha on behalf of the other legal heirs of her deceased mother had executed a registered deed of relinquishment dated 31.12.1981(Ex.PW-3/2) in favour of their brother Narinder Kumar qua the suit property. Narinder Kumar thereafter vide registered sale deed dated 15.4.1983 Ex.PW-3/1 had sold this property to the Plaintiff namely Vinod Kumar Sharma. Defendant had been inducted as a tenant at monthly rental of `30/- by the erstwhile owner Smt. Kamla Devi; Defendant had attorned in favour of the

Plaintiff and recognized him as a landlord. The Plaintiff had terminated the tenancy of the Defendant vide two notices, one dated 01.12.1982 and the subsequent notice dated 05.5.1983 u/s 106 of the Transfer of Property Act. These notices are not in dispute.

3. The Defendants had contested the suit on various grounds including the averment that the relinquishment deed Ex.PW-3/2 was not validly executed and the subsequent sale deed Ex.PW-3/1 executed by Narinder Kumar in favour of the Plaintiff is also not binding upon the Defendant.

4. Trial Judge had framed the following 12 issues.

1. Whether the suit is not maintainable in the present form? OPD

2. Whether the suit has not been valued properly for the purpose of court fee and jurisdiction? OPD

3. Whether the remaining LRs of Smt. Kamla Devi had executed a deed of relinquishment in respect of the house in suit in favour of Sh. Narinder Kumar on 31.12.81? If so, its effect? OPP

4. Whether Sh. Narinder Kumar has no right to execute the sale deed in favour of the Plaintiff without maintaining letters of Administration in respect of the premises in suit? OPD

5. What is the rate of rent of the room in question? OPP

6. Whether the tenancy premises of the Defendants consists also of the one shed in front of the room in question? If so, its effect? OPD

7. Whether the Defendant attorned the Plaintiff and paid him rent till July 1982? If so, its effect? OPP

8. Whether the tenancy of the Defendant was duly terminated by means of a valid notice? If so, its effect? OPP

9. Whether the Plaintiff is entitled to recover possession of the premises in suit? OPP

10. Whether the Plaintiff is entitled to recover mesne profits? If so, at what rate and how much?

11. Whether suit is barred u/s 50 of the DRC Act? OPD

12. Relief.

5. Issues No. 3 and 4 are relevant for the controversy before this Court. Evidence was led both oral and documentary. In view thereof the suit of the Plaintiff stood decreed. The impugned judgment had affirmed the finding of the trial judge holding that the relinquishment deed dated 31.12.1981 Ex.PW-3/2 is a registered document and has been duly proved through the testimony of PW-3; vide this document all the legal heirs of Kamla Devi had relinquished their shares in favour

of Narinder Kumar. There is no dispute interse between any of the siblings. Narinder Kumar had thereafter vide a registered sale deed Ex.PW-3/1 sold this property to the Plaintiff which was again a valid transfer. On other counts also the suit of the Plaintiff had been decreed. Those are not being detailed as the only bone of contention before this Court is the validity of the relinquishment deed and sale deed.

6. This is a second appeal. It has been admitted on 17.11.2008 and the following substantial question of law was formulated:

Whether any reliance can be placed in law on the contents of relinquishment deed Ex.DW3/2 and sale deed Ex.DW3/1 while determining ownership of the suit property?

7. The arguments of the Appellant are as aforementioned. Attention has been drawn to the Section 67 of the Indian Evidence Act. It is pointed out that the mode of proof of a document cannot be dispensed with; a document in law can be proved either if the executant comes into witness box or if the said document is required in law to be proved by a attesting witness, by summoning the said witness. This has not been adhered to. Merely producing a certified copy of a registered document does not dispense with the mode of proof. It is pointed that the Defendant being a tenant had the locus standi to challenge the sale deed. For this proposition reliance has been placed of a judgment reported in *Devi Dass Vs. Mohan Lal*, . Reliance has also been place upon *C.H. Shah Vs. S.S. Malpathak and Others*, *Muddasani Sarojana Vs. Muddasani Venkat Narsaiah and Others*, . and *AIR 1968 Bombay 112 Sir Mohammed Yusuf v. D* to support his submission that the mandate of Section 67 of the Evidence Act cannot be dispensed with. Ex.PW-3/1 and Ex.PW-3/2 could have only been proved either by executant of the document or through the attesting witness or any other person who had seen executant writing or signing the said document. For the same proposition reliance has been placed upon *Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others*, . as also *Ram Jawai and Others Vs. Shakuntala Devi and Others*, It is submitted that the executant of the document has to be summoned in order that opportunity is granted to the other side to cross-examine the witness; this rule is also in conformity with the principles of natural justice.

8. Arguments have been countered. Learned Counsel for the Respondent has also placed reliance upon a judgment of the Apex Court reported in 2003 (TLS) 38532 R.V. E. Venkatachala Gounder v. Arulmigu Viswesarawarni. Attention has been drawn to the provisions of Order 13 Rule 4 of the CPC (hereinafter referred to as "the Code"); it is pointed out that an objection to the admissibility of the document could be raised before the document is exhibited and cannot be raised later.

9. Record has been perused. The disputed documents are; Ex.PW-3/2 dated 31.12.1981 i.e. the relinquishment deed purported to have been executed by Rekha one of the legal heir of deceased Kamla Devi in favour of her other

siblings; this is a registered document; it is not disputed that none of the other siblings have challenged this document. The second document is the sale deed dated 15.4.1983 Ex.PW-3/1 executed by Narinder Kumar in favour of the Plaintiff. This is also a registered document and has not been challenged inter se by any of the legal heirs of Kamla Devi. PW-3 had come into witness box to prove these documents; he was summoned from the office of the Sub-Registrar. His deposition is to the effect that the said two documents had been registered in the office of the Registrar and were accordingly proved as Ex.PW-3/2 and Ex.PW-3/1. In his cross-examination PW-3 had admitted that he has no personal knowledge about the case; so he had been summoned in his official capacity. No suggestion had been given to this witness that the record which he had brought is not correct record or that the aforementioned documents had not been registered in the office of the Sub-Registrar. Absence of this cross-examination leads to only one inference, that being, that Ex.PW-3/2 and Ex.PW-3/1 had been duly registered in the office of the Registrar. PW-3 had produced the original documents from his department. He had not been cross-examined on the veracity or the authenticity of the said documents; it was never the case of the Defendant (as is evident from the written statement) that these transaction i.e. the relinquishment deed and the sale deed were in fact not genuine. Only objection is about admissibility and mode of proof; objection being that the admissibility and the mode of proof are two different factors.

10. Under the Indian Evidence Act, evidences are of two kinds; oral and documentary. Chapter-IV deals with oral evidence; Chapter-V deals with documentary evidence. Documentary evidence is also of two kinds; primary and secondary evidence. u/s 79 there is a presumption as to the genuineness of the certified copy of a document; the court shall presume to be genuine every document which is purported to be a certificate or certified copy of the original. Ex.PW-3/2 and Ex. PW-3/1 had created a presumption in favour of the Plaintiff. This was a rebuttable presumption; it was open to the Defendant to have rebutted this presumption but he had failed to do so. Even at the time when the aforementioned documents were proved through the version of PW-3 there was no suggestion that they did not fulfill the mode of proof as required under law. These documents had been tendered in evidence and evaluated by the courts below without any demur.

Order 13 Rule 4 of the Code provides that every document admitted in evidence in a suit being endorsed by or on behalf of the court which endorsement is signed or initialled by the judge amounts to an admission of the document in evidence. An objection to the admissibility of the document should be raised before this endorsement is made whereupon the court is obliged to form its opinion on the question of its admissibility and express the same upon which depends whether the document would be admitted or not admitted in evidence. In *R.V. E. Venkatachala Gounder* (supra) the Apex court had detailed the two classes of objections about the admissibility of the documents and classified them into two classes:

(i) an objection that the document which is sought to be provides itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed words the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit" an objection as to its admissibility is not excluded and is available to be raised even at later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.

The Constitution Bench of the Supreme in a judgment reported in 2004 (5) ALLMR (SC) Cement Corporation of India Ltd. v. Purya in the context of the mode of proof of a sale deed had noted inter alia as follows:

22. In the ordinary course a deed of sale is the evidence of a transaction by reason whereof for a consideration mentioned therein the title and interest in an immovable property specified therein is transferred by the vendor to the vendee. Genuineness of such transaction may be in question. In a given situation the quantum of consideration or the adequacy thereof may also fall for adjudication. The Courts, more often than not, are called upon to consider the nature of the transaction. Whenever a transaction evidenced by a sale deed is required to be brought on record, the execution thereof has to be proved in accordance with law. For proving such transaction, the original sale deed is required to be brought on record by way of primary evidence. Only when primary evidence it not

available, a certified copy of the sale deed can be taken on record. Such certified copies evidencing any transaction are admissible in evidence, if the conditions precedent therefore in terms of Section 75 of the Indian Evidence Act are fulfilled. The transaction evidenced by the sale deed must be proved in accordance with law.

11. Ex.PW-3/2 and Ex.PW-3/1 had been admitted in evidence; they were relied and adjudicated upon by both the court below; it was never the defence of the Defendant that these documents were not genuine or authentic. There was a presumption of the genuineness of the certified copies of these documents i.e. Ex.PW-3/2 and Ex.PW-3/1; this presumption was never rebutted. The documents had been duly proved and were rightly relied upon by both the courts below. The judgments relied upon by learned Counsel for the Appellant have no application and are all distinct.

12. The judgment of C.H. Shah (supra) lays down the proposition that Section 79 raises a rebuttal presumption with regard to the genuineness of certified copies and has no application to original documents. The judgment of Muddasani Sarojana (supra) was in the context of proof of the recitals in a sale deed to the effect that where possession had been delivered which was substantiated by the factum of delivery of possession; in this context it was said that the examination of the executant of the document would be necessary. The judgment of Sir Mohammed Yusuf (supra) related to the provisions of Section 47 of Evidence Act which are not in controversy before this Court.

13. There is no perversity in the impugned judgment. Substantial question of law is answered accordingly. There is no merit in the appeal. Appeal as also pending application is dismissed.