

(2010) 11 DEL CK 0151

In the Delhi High Court

Case No : Regular Second Appeal No. 15 of 1993 and C.M. Application 187 of 1993 (for Stay)

Smt. Amaravati and Sh. Ram Briksh Pandey (since deceased) APPELLANT
through LRs

Vs

Sh. Dharamraj and Others RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 146
Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(6), 146

Citation : (2010) 11 DEL CK 0151

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Richa Kapoor, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 28.08.1992 which had endorsed the finding of the Trial Court, wherein, the suit of the plaintiff Smt. Amrawati seeking possession of the suit property i.e. the disputed land shown in the site plan Ex-PW-2/1 was dismissed.

2. The plaintiff Smt. Amrawati Devi had entered into a sale transaction in April, 1965 with Defendants No. 5 to 8. It was for the purchase of land measuring 244 square yards bearing No. 62 out of Khasra No. 566/520, Shastri Nagar. On 11.05.1965 a sale deed Ex-PW-1/1 was executed for 200 square yards of the said land. This was for the reason that the plaintiff did not have the finances for full payment. It was agreed between the parties that the balance amount i.e. for the remaining portion of 44 square yards would be paid by the plaintiff to the Defendants within a period of two months. Possession of 244 square yards of land was accordingly delivered to the plaintiff. This was on 11.05.1965. On 03.07.1965, vide Ex-PW-1/3, the plaintiff paid the balance consideration qua 44 square yards to Defendant No. 7. Sale deed Ex-PW-1/2 was, however, executed

on 26.10.1970. It was further alleged that on 12.07.1965, the Defendants No. 1 to 4 had purchased 125 square yards out of Khasra No. 566/520, Shastri Nagar which was west of the suit land. On 28.11.1970, the said Defendants No. 1 to 4 had tress-passed over the land of the plaintiff. In spite of requests, they failed to vacate the suit property. Suit was filed on 08.04.1975.

3. Trial Court had framed the five issues which inter alia reads as follows:

1. Whether the plaintiff is the owner of the land marked red in the site plan (disputed land)? OPP

2. Whether the decision dated 28.02.1975 u/s 146 Cr.P.C between the parties operate as res judicata against the plaintiff? OPD

3. Whether the plaint is properly valued for purposes of court fees and jurisdiction? OPP

4. Whether the Defendant is owner of the land in dispute? To what effect? OPD

5. Relief.

4. The oral and documentary evidence was examined. It was held that the sale deed Ex-PW-1/1 was admittedly executed for 200 square yards of land in favour of the plaintiff; it was a registered document; the subsequent sale deed Ex-PW-1/2 executed after a lapse of more than five years i.e. on 26.10.1970 was an after- thought; Ex-PW-1/3 dated 03.07.1965 was ante-dated; right of the plaintiff over the suit property was dis-believed. The disputed land was held to be owned by the Defendants No. 1 to 4. The suit of the plaintiff was dismissed.

5. On 28.08.1992, the appeal was dismissed; the finding of the Trial Judge was re-affirmed.

6. This is a second appeal. It was admitted and on 25.05.2010, the following substantial questions of law were formulated which inter alia reads as follows:

1. Whether the Courts below had misconstrued the documents of title?

2. What is the effect of findings u/s 146 of the Code of Criminal Procedure on the question of title of the plaintiffs in respect of the land in dispute?

7. Attention has been drawn to the version of PW-1, PW-2 & PW-3 as also the testimony of the witnesses of the Defendants namely DW-1, DW-2 & DW-3. It is pointed out that PW-2 has admitted that plot No. 63 already stood constructed in the year 1965; PW-3 in his cross-examination has stated that he had made construction on 244 square yards of land; this submission has illegally been ignored. DW-1 has admitted that he was not present at the time of the measurement of the plot; so also is the version of DW-2 who was a property broker and has admitted that he was not present at the time of the measurements. DW-3 (the Defendant himself) has admitted that the suit land is a corner plot which is also evident from the layout plan. The finding of the Trial Judge on Issue No. 4 that there was no land between plot No. 61 and 62 is again

a misconception of the lay-out plan. Ex.PW1/2 also could not have been ignored; it is a registered document. It is pointed out that in view of this evidence adduced the findings in the impugned judgment that the plaintiff has no title over the suit land are perverse and call for an interference. Learned Counsel for the Appellant has place reliance upon a judgment of the Supreme Court reported in Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd., , Advocate General for the State of Maharashtra Intervener v. Century Spinning and Manufacturing Company Limited . It is submitted that mis-construction of a document raises a substantial question of law which calls for interference u/s 100 of the Code of Civil Procedure. The finding in the impugned judgment while disposing of Issue No. 2 is a perverse finding; proceedings u/s 146 of the CPC are only police orders; they cannot go into the question of title; finding of the Trial Judge which has been upheld in the impugned judgment holding that such a finding will operate as res judicata is an illegality which is liable to be set-aside.

8. This is the second Appellate Court. The substantial questions of law had been formulated on 25.05.2010 and have been afore-noted.

9. The first document of title relied upon by the plaintiff is Ex-PW-1/1. It is dated 11.05.1965. This is a sale deed executed by Defendants No. 5 to 8 in favour of the vendees Ram Briksh Pandey and Smt. Amravati Devi. It categorically recites that the vendors are the exclusive owners and in possession of land measuring 4 Biswas, 200 square yards in Khasra No. 566/520 situated in area of Chowkri Mubarakabad, Aabadi Nimbri, Delhi State. It is bounded as follows:

North - Road 20 ft. South - Lane 10 ft. wide East - Plot No. 63 West - Plot No. 61

This plot of 200 square yards were sold by the vendor to the vendee for a consideration of Rs. 2,000/-. It further states that the vendors have delivered the possession of the above- mentioned property under sale to the vendees.

10. The next document of title in the chronology of dates is Ex-DW-2/1. This is dated 12.07.1965. It is a sale deed executed by Defendants No. 5 to 8 in favour of the Defendant Dharm Raj and there other persons. It states that the vendors are the exclusive owner of land measuring two and a half Biswas in Khasra No. 566/520 situated in Village Chowkri Mubarakabad, Aabadi Nimbri, Delhi State and is bounded as follows:

North - Passage 25 ft. wide South - Passage 10 ft. East - Portion of Ahta No. 62 West - Others property

It recites that the vendors have delivered possession of the afore-noted property on the spot to the vendee.

11. The third document of title is Ex-PW-1/2. This document is dated 26.10.1970. It is a sale deed executed by Defendants No. 7 Sh. Ram Bhaj in favour of the plaintiffs Smt. Amravati Devi and Ram Briksh Pandey. For the first

time in this sale deed, plot No. 62 finds mention. It states that the land measuring 44 square yards i.e. 1 Biswas approximately of Khasra No. 566/520 situated at Village Chowkri Mubarakabad, Aabadi Nimbri now known as Shastri Nagar, Delhi is sold to the vendee for a consideration of Rs. 500/-; the consideration amount has already been received in advance on 03.07.1965; the vendor conveys and assigns the said land with all its right, title and interest to the vendee; vendor has delivered physical possession of the said land to the vendee on the spot.

12. Even as per this document 44 square yards of land had been transferred and physical possession of this 44 square yards of land had been assigned by the vendor to the vendee on 26.10.1970.

13. The vehement contention of the learned Counsel for the Appellants that the impugned judgment has misconstrued the boundaries is not borne out. The sale deed 11.5.1965 Ex-PW-1/1 executed in favour of the plaintiff and the sale deed 12.7.1965 Ex-DW-2/1 executed in favour of Defendants No. 1 to 4 have recited the boundaries hereinabove. Ex-PW-1/1 which is prior in time clearly states that on the eastern side is plot No. 63 and on the western side is plot No. 61 property of others. Plot No. 61 as per the case of the Defendants No. 1 to 4 is the suit land which they had purchased vide Ex-DW-2/1. The boundaries as reflected in Ex-DW-2/1 support this submission. Ex-DW-2/1 recites that on the eastern side is portion of Ahta No. 62 and on the western side is "others property". The impugned judgment has rightly and correctly appreciated that at the time when Ex-PW-1/1 was executed i.e. on 11.05.1965, plot No. 62 was a vacant land; on subsequent date i.e. 2 months later on 12.07.1965 when the Defendants No. 1 to 4 had purchased plot No. 61 vide Ex-DW-2/1, the eastern side was bounded by Ahta No. 62; (Ahta means a courtyard) between May to July, Plot No. 62 had been constructed thereby Ahta of Plot No. 62 found mention in Ex-DW-2/1 which was executed in July 1965.

14. Defendants No. 5 to 7 were colonizers. They had executed both Ex-PW-1/1 (in favour of the plaintiff) and Ex-DW-2/1 (in favour of the Defendants). Recitals in Ex-PW-1/1 are clear and categorical. It clearly and specifically states that a plot of land measuring 200 square yards had been sold to the vendee. If as per the case of the Appellant, 244 square yards had been actually sold and only 200 square yards found mention in Ex-PW-1/1 (as plaintiff contends that he did not have the funds to pay the balance amount for the remaining 44 square yards) nothing prevented the parties from making this recital in Ex-PW-1/1. The Court below had rightly held that they cannot read lines into the document which are clearly absent. The intention of the parties has to be gathered from the document; conjectures and surmises cannot be substantiated. The glaring fact being the glaring recital in Ex-PW-1/1 speaking of sale of land of 200 square yards only. The sale deed Ex-DW-2/1 was for land measuring two and a half Biswas i.e. about 125 square yards i.e. Ahta No. 61. The boundaries of Ex-PW-1/1 and Ex-DW-2/1 are clearly in conformity showing that Plot No. 61 was on

the West of Plot No. 62. This was also a corner plot as has been spelt out in the version of the DW-3 and depicted in the layout plan.

15. The impugned judgment had rightly held that the subsequent document i.e. document Ex-PW-1/2 dated 26.10.1970 executed by Defendant No. 7 in favour of the plaintiff for a land measuring 44 square yards was an afterthought. The contention of the learned Counsel for the Appellant that this was a registered sale deed and was illegally ignored has no merit. For the plaintiff to succeed in the present suit, it was incumbent upon the plaintiff to show that the land which was sold to her vide Ex-PW-1/2 was the same land which was in possession of the Defendant. plaintiff had to show that the disputed portion shown in the site plan Ex-PW-2/1 was the portion owned by her in terms of Ex-PW-1/2. This onus had not been discharged by her. The relevant extract qua this issue was dealt with the impugned judgment while disposing of Issue No. 1 and Issue No. 4. The said findings inter alia reads as follows:

ISSUE No. 1:

1. Whether the plaintiff is the owner of the land marked red in the site plan (disputed land)? OPP...

iii. plaintiff's case that plot No. 62 was measuring 242 sq. yards is belied from the sale deed dated 11.6.65 itself, certified copy of which is Ex.PW1/1. This sale deed, mentions that plot No. 62 was measuring 200 sq.yds and the vendee i.e. plaintiffs had agreed to purchase the same for a sum of Rs. 2000/-. This document further contains a Clause that possession of the said plot had been delivered to the plaintiffs. This document nowhere provides that plot No. 62 was of 244 sq. yards or that vendors had agreed to execute the sale deed in respect of the remaining areas of 44 sq. yards later on as the vendees had not sufficient funds, at that time to pay the plaintiffs as sale consideration, as has been claimed by the plaintiff in the present suit. It is highly improbable that any person of even ordinary prudence would deliver the possession of some property without receiving the sale consideration more particularly when there is no relationship between vendor and the vendee. Had there been any such agreement between the plaintiffs and Defendants 5 to 8, same would have been mentioned either in the aforesaid sale deed itself or in any separate document. plaintiff's case that they had been put in possession of 244 sq. yards is also belied from the fact that subsequent sale deed dated 26.10.70, Ex. PW1/2, which purports to be in respect of 44 sq. yards of land out of the plot No. 62 mentions that possession thereof had been delivered to the plaintiffs on the spot. It, nowhere, provides that the possession had been handed over in 1965. Had this fact been agreed, same must have been written in the said document, itself.

iv. There are certain other facts also which go to prove that Ex. PW1/2 does not pertain to land in suit or in any case failed to have been established by the plaintiff. One such fact is that the plaintiffs, themselves, admitted during his cross examination that he had raised construction over the entire piece of land

measuring 244 sq. yards and if that be so, there is no question of 37 sq. yards of land being left vacant in possession of the plaintiff, as claimed by him in the suit. Second such fact is that size of the plot as mentioned by the plaintiff in para No. 3 of the plaint interestingly does not find mention in his original sale deed, Ex. PW 1/1 or even the subsequent sale deed, Ex. PW1/2. Third such fact which goes against the case of the plaintiffs is that one of the original owners i.e. Defendant No. 7 when he appeared as PW1 stated altogether a new case that after execution of the original sale deed, Ex. PW1/1; it was brought to his knowledge that infact, plot No. 62 was measuring 244 sq. yards, although sale deed was executed for 200 sq. yards and that possession of 244 sq. yards had also been given to the plaintiff, at that time and hence the second sale deed, Ex. PW1/ 2 for 44 sq. yards was executed. plaintiff's case, as already observed, in this case is that right from the beginning the agreement between them and the owners was in respect of 244 sq. yds. but sale deed was executed for 200 sq. yards only as the plaintiffs did not have sufficient funds in April, 1965. Thus the story of the plaintiffs and the original owners is totally contrary. Another important fact which goes against the plaintiffs' case is that they have not even made any attempt to prove even by any oral evidence that sale deed Ex. PW1/2 was in respect of land in suit, inasmuch as PW 2 who was one of the sellers also did not make any statement to the effect that sale deed Ex. PW1/2 was in respect of the land in suit. plaintiffs have also not examined the Munshi of the original owners who is alleged to have informed them that the area which had been handed over to the plaintiff originally was more than what was mentioned in the sale deed as was stated by PW 1 during his cross examination.

C. Learned Counsel for the Appellant, drew my attention to the sale deed executed in favour of Respondents 1 to 4 i.e. Ex. DW 2/1 which mentions that on the eastern side of the plot of Defendants 1 to 4 was a portion of "ahata" No. 62. In my view, this fact also does not help the plaintiffs in any manner, inasmuch as even in their sale deed Ex. PW 1/1, it is mentioned that on the west side of their plot, was plot No. 61. i.e. plot. Defendants 1 to 4 and obviously in the sale deed of Defendants 1 to 4, it had to be mentioned that on the eastern side of their plot was "ahata" of plot No. 62. According to the plaintiffs' counsel also "ahata" means enclosure and which in common parlance means boundary. Since Ex. DW 2/1 was executed in July 1965 and Ex. PW 1/1 was executed in April 1965, naturally at that time only boundary of plot No. 62 must have been in existence.

vi. From the aforesaid discussion, I am of the considered view that the Learned trial court has rightly decided issue No. 1 against the plaintiffs and I find no illegality in the said findings and are hereby confirmed.

ISSUE No. 4

Whether the Defendant is owner of the land in dispute? To what effect? OPD

11. As already observed above, it is clearly mentioned in the sale deed Ex. PW1/1 which pertains to plot No. 62 that on the west side of this plot, was plot No. 61

i.e. plot owned by Defendants 1 to 4 and since the land in suit as shown in the site plan Ex.PW2/1 is also adjoining to the plot No. 62 and towards this its western side, the same belongs to Defendants 1 to 4 being part of the plot of 125 sq.yds. purchased by them vide Ex.DW2/1. As such I do not find any illegality in the findings of the trial court and the same are confirmed. Even if it were to be held that the land in suit did not belong to Defendants 1 to 4, plaintiffs cannot be awarded a decree in respect thereof, as it already having been held that they are not owners of the land in suit

16. This finding in no manner is perverse. Document of title had been correctly appreciated and understood in the impugned judgment. The plaintiff in order to succeed had to establish that the disputed portion of which he was claiming possession was his land. The finding in the impugned judgment while disposing of Issue No. 4 that

even if suit land did not belong to Defendants No. 1 to 4. The plaintiff cannot be given a decree for possession as they were held not to be the owners of this suit land.

does not suffer from any infirmity.

17. While disposing of Issue No. 2, the impugned judgment had endorsed the finding of the Trial Judge. The Trial Judge had held that the proceedings u/s 146 of the Cr.P.C have a limited jurisdiction; it had further held that the question of possession which is a finding of fact had been decided by the said Court holding thereby the Defendants No. 1 to 4 were in possession of the disputed land two months prior to 28.11.1970; this operates as res judicata qua this fact i.e. possession on the said date. There is no fault in this finding of the impugned judgment.

18. Proceedings u/s 145 & 146 of the Cr.P.C are admittedly of a limited jurisdiction; such proceedings cannot go into the question of a parties' title or right to possession of the land. This has been reiterated by the Supreme Court in Bhinka and Others Vs. Charan Singh, . Relevant extract of the judgment reads as under:

In passing an order u/s 145(6), Criminal Procedure Code, the Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is an apprehension of the breach of the peace, and, with that object, he makes a temporary order irrespective of the rights of the parties which will have to be agitated and disposed of in the said manner provided by law. The life of the said order is coterminous with the passing of a decree by a civil court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court. The orders are thus merely police orders and decide no question of title.

19. There is no fault in the impugned judgment. It does not call for any

interference. Substantial questions of law are answered accordingly. There is no merit in the appeal. The appeal as also the application is dismissed.