

(2014) 05 DEL CK 0212

In the Delhi High Court

Case No : RSA No. 277/2007 & CM No. 15151/2007

Surjit Singh

APPELLANT

Vs

Kishori Lal

RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Evidence Act, 1872 — Section 165

Transfer of Property Act, 1882 — Section 53A

Citation : (2014) 05 DEL CK 0212

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Ajay Kumar Sejwal, Advocate for the Appellant; Pawan Kumar Behl, Advocate for R-3, Advocate for the Respondent

Judgement

Valmiki J Mehta, J.—This second appeal is filed by the plaintiff No. 2 impugning the concurrent judgments of the courts below; of the trial court dated 5.2.2005 and the first appellate court dated 4.5.2007; by which the suit for possession and damages has been dismissed. It may be noted that the present appellant, who is the plaintiff No. 2 in the suit, purchased the suit property from plaintiff No. 1 and accordingly was added as a plaintiff No. 2 in the subject suit. Effectively, therefore, it is the plaintiff No. 2 who is claiming the reliefs in the suit for possession and damages.

2. The case of the plaintiffs was that the suit property being plot No. 1, situated in Bapu Park, Kotla Mubarakpur, New Delhi admeasuring 220 sq. yds forming part of K.No. 36/2 was sold to the plaintiff No. 1-Sh. Madhukar Sharma by the then owner M/s Leela Ram & sons (a partnership firm) by a registered sale deed dated 17.4.1981. It was claimed that the defendant in the suit property namely Kishori Lal (who died during the pendency of the proceedings and was substituted by his legal heirs) trespassed into the suit property and forcibly occupied the same in February 1984.

3. The case of the defendant-Kishori Lal in his written statement was that M/s Leela Ram and sons was not the owner of the suit property. It was also the defence of the defendant Kishori Lal that he had become the owner as he was in adverse possession of the suit plot for over 40 years.

4. The following issues were framed in the suit:-

1. Whether the plaintiffs are the owner of the suit property? O.P.P.

2. Whether the defendants have become the owner of the suit property by adverse possession? O.P.D

3. Whether the suit has been properly valued for the purpose of court fees and jurisdiction?

4. Whether the plaintiff is entitled to the relief claimed?

5. Relief.

5. Both the parties led evidence and ultimately the suit was dismissed by the trial court. Trial court held that plaintiffs failed to prove ownership of the suit property of M/s Leela Ram & sons. Trial court also holds that if the suit property was owned by M/s Leela Ram & sons, then, plaintiff has failed to prove that the suit property is the property which formed the subject matter of the sale deed dated 17.4.1981 and forming part of K.No. 36/2. Trial court also holds that the documents being the agreement to sell, registered power of attorney, receipt etc dated 22.2.1989 executed by the plaintiff No. 1 Sh. Madhukar Sharma in favour of the plaintiff No. 2 do not create any rights in favour of plaintiff No. 2 because such documents do not transfer title in the property and for which a sale deed is required. Trial court has further held that the defendant failed to prove that he was in adverse possession of the suit plot for 40 years as claimed i.e even the defendant failed to prove his claim/right to the suit property. The first appellate court has upheld the findings of the trial court.

6. A curious position emerges in this case for the reason that though defendants (i.e legal representatives of the original defendant Kishori Lal) failed to prove that they were in adverse possession, the suit for possession and damages was yet dismissed because plaintiff could not properly prove his case. Once the defendant in a suit for possession fails to prove his title to the suit land and also fails to prove adverse possession, ordinarily the suit for possession should be decreed. However, in the present case, there is an issue as to whether the suit property is located in K.No. 36/2 as stated in the registered sale deed dated 17.4.1981 because plaintiff No. 2 failed to lead evidence that the suit property is situated in K.No. 36/2. The original jamabandi in Urdu has been proved by appellant/plaintiff No. 2 as Ex.P-1 and Ex.P-2, however, there is no official translation and the trial court has simply relied upon the Hindi translation filed by the appellant-plaintiff No. 2, and which translation has only created confusion because the translation seems not to contain reference to ownership of M/s Leela Ram and sons in K.No. 36/2.

7. Therefore, on one hand the defendant has failed to prove his entitlement to continue with possession of the suit plot, plaintiff's suit for possession and damages has however been dismissed on account of lapses in not leading sufficient evidence.

8. However, in my opinion, there ought not to arise a position that no one is an owner of the suit plot. Consequently, the facts of the present case persuade me to exercise my suo moto powers under Order 41 Rule 27 CPC read with Section 165 of the Evidence Act, 1872. Both these provisions, de hors the aspect of any default committed by the parties of leading sufficient evidence, allows a court to bring evidence on record so as to do complete justice. In this case, complete justice is required to be done because once the defendant failed to prove the adverse possession, there has to be some definite ownership of the suit plot and if ownership of the suit plot was of M/s Leela Ram and Sons and thereafter of plaintiff No. 2, a suit for possession must reach its logical conclusion.

9. Finally I may add that the finding of the trial court that the set of documents dated 22.2.1989 being the agreement to sell, registered power of attorney, receipt, affidavit etc do not transfer rights in the suit plot to the plaintiff No. 2/appellant is not a correct conclusion and is therefore set aside because the documents in question are prior to Act 48 of 2001 which amended Section 53A of the Transfer of Property Act. This aspect has been dealt with and clarified by me in the judgment in the case of Shri Ramesh Chand Vs. Suresh Chand and Another, . Appellant-plaintiff No. 2 will thus get rights in the suit plot by virtue of these documents dated 22.2.1989.

10. In view of the above, I remand the matter to the trial court and allow the appellant-plaintiff No. 2 to lead evidence by calling the revenue officials for demarcation of the suit plot to determine whether or not the same falls in K.No. 36/2 of Village Kotla Mubarakpur. I may note that there is some confusion that the suit property is situated in K.Nos. 36/2 or 36/22 inasmuch as plaintiff in his cross-examination stated that the suit property is situated in K.No. 36/22. Therefore, appellant-plaintiff will also be allowed to lead additional evidence to clarify the position that the suit property of which possession is sought is the suit property forming part of K.No. 36/2 which is a subject matter of the sale deed dated 17.4.1981. Trial court will get official translation done of the Urdu documents Ex.P-1 and Ex.P-2 before arriving at any conclusion as to the ownership of M/s Leela Ram and sons and thereafter of plaintiff No. 1-Mr. Madhukar Sharma and thereafter of plaintiff No. 2/appellant in the suit property.

11. In view of the above, this appeal is remanded to the trial court for leading of evidence by the appellant-plaintiff as to ownership of the appellant-plaintiff No. 2 of the suit plot and which originally belonged to M/s Leela Ram and sons. Appellant-plaintiff No. 2 will also get demarcation done from the revenue authorities as to the location of the suit plot as to whether the same falls in K.No. 36/2. The trial court will also get official translation done of the Urdu documents Ex.P-1 and Ex.P-2 before arriving at findings of facts and conclusions. Nothing

contained in the existing impugned judgment will in any manner affect findings and conclusions to be arrived at in the fresh judgment which has now to be rendered by the trial court after allowing appellant-plaintiff No. 2 to lead evidence in terms of the present judgment.

12. Parties are directed to appear before the District and Sessions Judge, Tis Hazari Courts, Delhi on 22nd July, 2014 and the District and Sessions Judge will mark the suit for disposal to a competent court in accordance with law.