

Pyarelal Vs. Sheela Devi and Ors.

Pyarelal Vs. Sheela Devi and Ors.

SooperKanoon Citation : sooperkanoon.com/11139

Court : Delhi

Decided On : Dec-03-2014

Judge : A. K. Pathak

Appellant : Pyarelal

Respondent : Sheela Devi and Ors.

Advocate for Pet/Ap. : Mr. Ramesh Kumar

Judgement :

\$~17 * IN THE HIGH COURT OF DELHI AT NEW DELHI + RFA822013 Decided on 3rd December, 2014 PYARELAL Through: Appellant Mr. Ramesh Kumar, Adv. versus SHEELA DEVI & ORS. Through: Respondents None. CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K.PATHAK, J.

(ORAL) 1. Appellant-plaintiff filed a suit for declaration, possession and permanent injunction against the respondent nos. 1 to 3. After service of summons, respondent nos. 1 and 2 appeared before the trial court and filed their separate written statement; however, subsequently they stopped appearing and were proceeded against ex-parte on 29th March, 2012. They did not lead any evidence. Respondent No.3 did not appear in court despite service and was proceeded against ex-parte.

2. Vide ex-parte judgment and decree dated 3rd December, 2012 trial court has dismissed the suit. Trial court has held that appellant had failed to prove his

ownership rights in the suit property, that is, House No.50-C consisting of one room, one kitchen and one bathroom being part of khasra No.716 situated at Hari Nagar Extension, Badarpur, New Delhi more particularly shown in red colour in site plan Ex. PW1/2, on the basis of General Power of Attorney, Agreement to Sell, Receipt etc. all dated 2nd February, 1989 executed by erstwhile owner, that is, respondent no.1.

3. Aggrieved by the judgment and decree dated 3 rd December, 2012 of the trial court, appellant has preferred this appeal.

4. Appellant alleged in the plaint that he had purchased the suit property from respondent no.1 vide General Power of Attorney, Agreement to Sell, Receipt all dated 2nd February, 1989, thus, was owner thereof. At the time of execution of aforesaid documents respondent no.1 had handed over the possession of suit property to appellant. After purchasing the suit property, appellant raised construction thereon and started living therein. Mother of respondent no.2, namely, Ms. Rekha had also purchased a plot adjoining to the suit property. Appellant and Ms. Rekha were having cordial relations, thus, no partition wall was made between both the properties. In the year 2005 appellant met with an accident and started living at his native village in Himachal Pradesh, however, he used to visit Delhi often. He requested Ms. Rekha to take care of the suit property, in his absence. Ms. Rekha died in the year 2011 and thereafter, respondent no.2 became owner of the adjoining property. On 3rd September, 2011 appellant visited Delhi and found that someone had put his lock after removing the lock of appellant. On enquiries appellant came to know that respondent No.3 had put his lock on the instructions of respondent no.2. Despite requests of appellant, respondent No.3 did not remove his lock. Original documents were kept in the suit property by the appellant. The same were also not given to him. Appellant prayed that he be declared lawful owner of the suit property; respondents be directed to hand over the possession of suit property and they be also restrained from creating any third party interest in the suit property.

5. In her written statement, respondent no.1 did not deny that suit property was sold by her to the appellant, however, she alleged that appellant had sold the suit

property to Ms. Rekha by an oral agreement in the month of December, 2003 for `2.25 lacs and handed over the possession thereof to her along with original documents. Subsequently, he declined to execute the title deeds in favour of Ms. Rekha. Respondent No.2, in her written statement, alleged that appellant had no right, title or interest in the suit property. She claimed that appellant had sold the suit property to Ms. Rekha in the month of December, 2003 vide an oral Agreement to Sell for `2.25 lacs and handed over possession to her along with original documents. Subsequently, appellant declined to execute the title deeds in favour of Ms. Rekha. It was further alleged that attorney of appellant, namely, Sh. Chandu Lal tried to trespass the suit property whereupon a complaint was lodged with the police and before the police Sh. Chandu Lal agreed not to disturb the possession of Ms. Rekha. Respondent no.2 alleged that Ms. Rekha was the owner of suit property, therefore, suit be dismissed.

6. It may be noted that respondent No.3 appeared in this Court on 24th September, 2014 and made a statement that he has no right, title or interest in the suit property and has nothing to do with it. As regards respondent nos. 1 and 2, they have not appeared at the time of hearing of appeal. At the cost of repetition, it may be noted here that respondent nos. 1 and 2 had remained ex-parte during the trial. They did not lead any evidence, thus, defence taken by them in their written statement has remained unproved. They even did not cross-examine PW1, therefore, his testimony has remained unchallenged.

7. During the hearing learned counsel has pressed the relief of possession only, therefore, the appeal has been considered and disposed of only on the question of entitlement of appellant to the possession of the suit property from the respondent No.2, as respondent nos. 1 and 3 have not claimed any right in the suit property.

8. As is evident from the facts narrated hereinabove respondent no.1 had not disputed the fact that she had sold the suit property to appellant vide General Power of Attorney, Agreement to Sell, Receipt, Affidavit etc. all dated 2nd February, 1989. Only plea taken by her is that appellant had further sold the suit property to Ms. Rekha vide an oral Agreement for `2.25 lacs, in the month of December, 2003. However, this plea taken by the respondent no.1 has remained

unproved, inasmuch as, no evidence has been led during the trial to substantiate this plea. Respondent no.2 has also not disputed the title of appellant in the suit property, inasmuch as, she has claimed the title through him since defense set up by her in the written statement is that appellant had sold the suit property to Ms. Rekha for `2.25 lacs in the month of December, 2003 vide an oral Agreement to Sell, inasmuch as, he had handed over the possession thereof to Ms. Rekha along with original documents. This plea of respondent no.2 that appellant had sold the suit property to Smt. Rekha for `2.25 lacs vide an oral Agreement to Sell has remained unproved, inasmuch as, same is not sufficient to vest any right, title or interest in the suit property in favour of Ms. Rekha. Section 54 of the Transfer of Property Act, 1882 (the Act, for short) provides that sale of tangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument. The ownership of an immovable property, thus, can be transferred to the buyer only on the execution of sale deed by the seller.

9. The alleged plea of sale by an oral agreement, which otherwise has remained unproved, is not of any use to respondent no.2 even to protect her possession by taking aid of Section 53-A of the Act. First of all, a written instrument is necessary to seek protection under Section 53-A. Secondly, after 25th September, 2001 such Agreement to Sell is required to be mandatorily registered after paying the stamp duty, in order to avail protection under Section 53-A of the Act. In absence of any such document, respondent No.2 cannot protect her possession from the appellant who has better title than her on the basis of above-referred documents.

10. From the evidence adduced by the appellant coupled with the admissions made by the respondent nos.1 and 2 in their respective written statements it is clear that appellant was put in possession of the suit property by respondent no.1 vide General Power of Attorney, Agreement to Sell, Receipt, etc. all dated 2nd February, 1989, against valid consideration. Respondent No.2 has further admitted in the written statement that originals of such documents were in her possession since original documents were handed over by the appellant to Ms. Rekha. Indubitably, in view of *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana and Anr.* 183 AIR 2012 SC206 title of the appellant is also not perfect on the basis of documents mentioned hereinabove, but for the purpose of relief of

possession, said documents are material so as to disclose a better title in his favour than that of respondent no.2.

11. In Ramesh Chand vs. Suresh Chand and Anr. 188 (2012) DLT538 a Single Judge of this Court has held thus:

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. In O.P. Aggarwal & Anr. vs. Akshay Lal & Ors. 188 (2012) Delhi Law Times 525, a Single Judge of this Court has held thus:

No doubt, documents such as Agreement to Sell, Power of Attorney, Will etc. do not strictly confer ownership rights as a sale deed, however, such documents create certain rights in an immovable property, though which are strictly not ownership rights but definitely the same can be construed as entitling the persons who have such documents to claim possession of the suit property inasmuch as at least the right to the suit property would stand transferred to the person in whose favour such documents have been executed.

12. In Suresh Kumar & Anr. vs. Saroj Atal 2012 III AD (Delhi) 718, it has been held thus:

In a suit for possession a plaintiff has to show better title i.e. entitlement than that of the defendant and in the present case, besides the fact that respondent/plaintiff has shown a better entitlement to possession by virtue of the documents dated 25.9.2001 executed in her favour, the appellants/defendants themselves do not have any equities in their favour inasmuch as qua both the flats purchased by them rights have been exercised. Thus, even if the respondent/plaintiff fails to prove the ownership rights *stricto sensu* to the extent of entitlement of possession, the appellants/defendants cannot defend the suit for possession once no title or interest in the suit property is claimed by them.

13. To succeed in a suit for possession, appellant has to show better title than the person from whom possession is claimed, that is, respondent no.2. Even though

appellant has failed to prove complete ownership right in the suit property in view of the Suraj Lamp (Supra), however, appellant has established better title in his favour in view of the documents all dated 2 nd February, 1989, which have not been disputed by respondent nos. 1 and 2. As regards respondent No.3, he has already made a statement that he has no right, title or interest in the suit property. He has also not claimed that he is in possession of the suit property.

14. For the foregoing reasons, impugned decree is set aside and appellate decree of possession is passed in favour of appellant in respect of the suit property bearing No.50-C, Hari Nagar Extension, Badarpur, New Delhi - 110044 more particularly shown in red colour in site plan Ex. PW1/2. Decree sheet be drawn accordingly.

15. Appeal is disposed of in the above terms. Miscellaneous application is disposed of as infructuous. A.K. PATHAK, J.

DECEMBER03 2014 ga

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com