

Tarun Singhal Vs. Devender Kumar and ors

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Court : Delhi

Decided On : Jan-06-2014

Judge : Mukta Gupta

Appellant : Tarun Singhal

Respondent : Devender Kumar and ors

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI I.A. No.14157/2013 in CS (OS) 1722/2013 Reserved on:

26. h November, 2013 Decided on:

6. h January, 2014 % TARUN SINGHAL Through: Versus DEVENDER KUMAR & ORS Through: Plaintiff Mr. N.S. Dalal, Advocate. Defendants Mr. D.K. Rustagi and Mr. B.S. Bagga, Advocates for Defendant Nos. 3 and 4. None for Defendant Nos. 1 and 2. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA¹ By this application the Plaintiff seeks interim injunction against the Defendants restraining them from dispossessing the Plaintiff from the portion measuring 200 sq. yards as shown in red colour in the site plan of the suit property and also restraining the Defendants, their agents etc. from raising any further construction over a portion measuring 100 sq. yards as shown in colour yellow in the site plan forming part of the suit property till the disposal of the suit.

2. It is contended by the learned counsel for the Plaintiff that the Defendant No.1 Devender Singh in his complaint dated 16th June, 2009 has himself admitted that he had sold the suit property to Shri Jagjit Singh from whom the Plaintiff had purchased the same. He also admitted in the complaint that he would be filing proceedings for cancellation of the documents however, no such proceedings have been filed. In view of the admission of Defendant No.1 Devender Kumar in the complaint dated 16 th June, 2009 the Plaintiff being in possession of the property, the Defendants are required to be restrained from dispossessing the Plaintiff from 200 sq. yards in the possession of the Plaintiff and further restrained from constructing on 100 sq. yards possession of which they have forcibly taken from the plaintiff. Admittedly the boundary wall on the said property was got constructed by the Plaintiff as there is an admission in the complaint dated 16th June, 2009 that there was no boundary wall. Hence it is sufficient to prove that the Plaintiff was in possession of the suit property. Further in the complaint it is also admitted that in April, 2007 one Shri Mahabir Singhal, that is, the father of the Plaintiff started putting building material.

3. Learned counsel for Defendant Nos. 3 and 4 submits that admittedly no Sale Deed was executed by the Defendant No.1 in favour of Shri Jagjit Singh and in the absence thereof the Plaintiff who is the subsequent purchaser from Shri Jagjit Singh cannot claim the right of ownership or possession in the suit property. Further the Sale Deed in favour of Defendant No.4 by Defendant No.1 with regard to the suit property is a Registered Sale Deed. The Defendant No.1 had sold the suit property for consideration in favour of Defendant No.4 vide documents dated 1st January, 1999 which includes the power of attorney, special power of attorney, agreement to sell, receipts, bills etc. while delivering the peaceful possession of the entire vacant land. The Defendant No.1 was never in possession of the suit property since January, 1999. The Defendant No.1 was working as cook in the restaurant owned by Shri Jagjit Singh since 1995. Thus the documents relied by the Plaintiff are sham and manipulated. The transaction of Sale Deed dated 1st January, 1999 was further acted upon when the Defendant No.4 further sold the suit property in favour of Defendant No.2 on 15th July, 2003 by executing the Registered General Power of Attorney and Agreement to Sell against valuable consideration. The Defendant No.4 also delivered the peaceful vacant possession

of the entire property. The Defendant No.2 further assigned her rights under the Agreement to Sell dated 15th July, 2003 in favour of Defendant No.3 by executing similar documents dated 16th July, 2009. The Defendant No.3 thereafter divided the suit property in three portions of 100 sq. yards each and after retaining one portion sold the middle portion to Shri Dharmender Dabas, and the third portion to Shri Mahavir Singhal vide documents dated 6th February, 2012. Relying upon Suraj Lamp and Industries Private Limited (2) vs. State of Haryana and another, 2012 (1) SCC656 it is contended that any contract of sale which is not by a registered deed of conveyance would fall short of the requirements of Sections 54 and 55 of the Transfer of Property Act (in short TP Act) and will not confer any title or interest nor transfer an immovable property, except to the limited right granted under Section 53-A of the TP Act. Thus under the TP Act, an agreement to sell, whether with possession or without possession, is not a conveyance. It is thus contended that even assuming the contention of the plaintiff to be correct the plaintiff cannot file a suit on the basis of the documents executed in his favour and at best the same can be used as defence. Further even the Agreement to Sell, on the basis of which the Plaintiff claims right, has not been filed before this Court and thus the Plaintiff cannot claim possessory rights as well. Reliance is also placed on Thimmaiah vs. Shabira and others, 2008 (4) SCC182 to contend that if a person is not in possession he cannot claim injunction.

4. I have heard learned counsel for the parties.

5. The case of the Plaintiff in the present suit is that one Shri Jagjit Singh was the owner in possession of Plot bearing No.143/1012 measuring 300 sq. yards situated in the revenue estate of Village Kanjhawala, Delhi (hereinafter referred to as Suit Property). The said Shri Jagjit Singh had purchased the plot from Shri Devender Kumar, Defendant No.1 by way of Registered General Power of Attorney, Possession Letter, registered Will, Affidavit, Receipt etc. on 21st September, 2006. On the same date, Smt. Savitri Devi, w/o Shri Jagjit Singh purchased land measuring 1 Bighas and 16 Biswas out of Khasra No.144/7 min and 8 min (1-14) and plot bearing No.142/147 min all situated at Village Kanjhawala, Delhi through a registered Sale Deed. Both these plots, that is, the suit property being the industrial plot and the land sold to the wife of Shri Jagjit

Singh were stated to be allotted under the 20 point program. However, the present suit only relates to the industrial plot which was in the name Shri Devender Kumar and sold to Shri Jagjit Singh on 15th July, 2002 and to the Plaintiff vide documents dated 21 st September, 2006. It may be noted that no sale deed was executed in favour of Jagjit Singh by Defendant No.1 in respect of the suit property. The Plaintiff further purchased the property from Jagjit Singh vide the Registered Sale Deed dated 21st September, 2006. Thus the Plaintiff claims to be the owner and in possession of the suit property by virtue of the Registered Sale Deed executed by Jagjit Singh in favour of the Plaintiff on 21 st September, 2006 and claim of Shri Jagjit Singh was based on the Registered General Power of Attorney, Possession Letter, Registered Will and receipt.

6. The Plaintiff claims that he raised boundary wall over the plot way back in the year 2007 to protect the suit property as the Defendant No.1 tried to trespass into the suit property in the year 2007 despite having sold the same to Shri Jagjit Singh in the year 2002 and Shri Jagjit Singh in turn sold the same to the Plaintiff on 21st September, 2006. On 14th April, 2013 the Plaintiff visited the suit property along with his father and uncle and found some building material lying there. On inquiry it was found that the said building material had been brought by Defendant No.1. Thus he made complaint to the Authorities. On 20th August, 2013, when the Plaintiff was at the suit property the Defendant No.1 along with his accomplice and associates came at the spot and threatened the Plaintiff to leave the spot or otherwise he would be eliminated. The Plaintiff was informed by Defendant No.1 and his associates that they had a decree regarding the said plot and thus the Defendant No.1 and his accomplice started the construction forcibly at the site within the portion of 100 sq. yards of the Plot and the rest of the area is still in the possession of the Plaintiff. The Plaintiff inspected the file of the said case wherein the decree was passed in favour of the accomplice of Defendant No.1 and found that a big fraud had been played.

7. Thus in the present suit the plaintiff seeks a declaration that the decree dated 13th January, 2010 passed in CS (OS) No.1413/2009 titled as Joginder Singh and another vs. Devender Kumar and others is null and void and an act of fraud and collusion. The plaintiff also prays for a decree of possession and injunction.

8. Thus the documents in favour of Jagjit Singh from the defendant No.1 on the basis of which the Plaintiff claims title and possession are a Registered Power of Attorney dated 15th July, 2002, a receipt for a sum of Rs. 80,000/- in cash in advance from Shri Jagjit Singh towards the sale price of the suit property as full and final sale price executed on 15 th July, 2002, a possession letter and a Registered Deed of Will executed on 15th July, 2002.

9. A perusal of the possession letter dated 15th July, 2002 relied upon by the Plaintiff states that Defendant No.1, Devender Kumar has handed over peaceful actual vacant possession of the suit property to Jagjit Singh as per the terms and conditions of the Agreement to Sell dated 15th July, 2002. However, this Agreement to Sell has not been placed on record by the Plaintiff. Even as per the plaintiff no sale deed of the suit property was executed by defendant No.1 in favour of Jagjit Singh. Thus Jagjit Singh could not have conveyed the title in the suit property to the plaintiff since he himself was not given the same. Thus the Plaintiff does not get the right of title in the suit property.

10. In Suraj Lamp and Industries Private Limited (supra) the Honble Supreme Court made it clear that unless a party does not have a valid sale deed in its favour no title is conferred on it. Section 54 of the TP Act makes it clear that a contract of sale, that is an agreement of sale does not, of itself, create any interest in or charge on such property. It was held:

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter. Scope of power of attorney 20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do

the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

11. As regards the possession also as noted above the same is subject to the terms of the Agreement to Sell dated 15th July, 2002 which has not been filed. The Plaintiff further seeks to rely upon the complaint of Devender Kumar, the Defendant No.1 dated 16th June, 2009 wherein he has admitted having sold the property to Jagjit Singh. The contention that the Defendant No.1 has admitted the possession of the Plaintiff on the basis of complaint dated 16th June, 2009 is also unfounded. In the complaint dated 16th June, 2009 the Defendant No.1 had stated that he was working in the hotel of Jagjit Singh and he used to drink. Thus Jagjit Singh by administering liquor to the Defendant No.1 got signed the blank papers and stamped papers for misuse. The Defendant No.1 made lot of efforts to find out the records from the office of the Patwari however, could not get it. He alleges Smt. Savitri and Shri Jagjit Singh committed fraud on the Defendant No.1. He further stated that in April, 2007 when Shri Mahabir Singhal came to the suit property of Defendant No.1 and poured building material he made a complaint to the police however, he did not get a satisfactory reply. Thus from the complaint dated 16th June, 2009 the only admission is that signatures on blank papers and the blank stamp papers were taken by Shri Jagjit Singh from the Defendant No.1 and that Shri Mahavir Singhal, father of the Complainant had in April, 2007 put some building material. There is no admission of the possession of the Plaintiff nor that the Defendant No.1 handed over vacant peaceful possession to Jagjit Singh or the Plaintiff, nor that the Plaintiff constructed boundary wall in April, 2007.

12. The case of the defendant No.1 is that he sold the suit property to the Defendant No.4 on 1st January, 1999 who further sold the suit property in favour of Defendant No.2 on 15th July, 2003 who further assigned her rights to Defendant No.3 by executing documents dated 16th July, 2009 whereafter the Defendant No.3 has further sold two parts of the said property.

13. Coming to the third contention of the Plaintiff that the suit being CS (OS) No.1413/2009 was a collusive suit between the Defendants has no relevance at this stage. It may be noted that CS (OS) No.1413/2009 was filed by Defendant Nos. 3 and 4 against the Defendant Nos. 1 and 2 seeking a decree of permanent injunction from interfering in the peaceful possession of the suit property and to execute Conveyance Deed for the said suit property. The suit came up before this Court on 7 th August, 2009. While issuing notice this Court granted an ad-interim ex-parte injunction directing the Defendants to maintain status quo with regard to the suit property. On 16th November, 2009 when the suit came up before this Court, the parties stated that they were negotiating a settlement and sought for an adjournment. On 2nd December, 2009 an application was filed seeking reference to mediation which order was passed by this Court. Vide order dated 13 th January, 2010 this Court disposed of the suit in terms of the settlement arrived at between the parties wherein the Defendants therein, that is, the Defendant Nos. 1 and 2 herein agreed that they would not interfere in the peaceful possession of Defendant No.3 herein in the suit property and would also complete all the documents like Registry, Conveyance Deed, Sale Deed on receiving NOC from the competent authority. It was also noted that an amount of Rs. 1 lakh had already been paid by the Plaintiffs therein to the Defendants therein. Thus a decree was passed.

14. Whether the suit CS(OS) No.1413/2009 had been filed in collusion or not would be decided after the parties lead their respective evidence. However, at this stage besides the title it has to be seen whether the Plaintiff has made out a prima facie case showing himself to be in possession of 200 sq. yards of the suit property so that restraint order from dispossession and further construction on 100 sq. yards can be passed in favour of the Plaintiff and against the Defendants. The claim of the Plaintiff in the present suit is that he is in possession of 200 sq. yards and construction is going on only in 100 sq. yards. The Plaintiff has placed on record no material to show that the Plaintiff is in possession of the 200 sq. yards except a photograph and receipt of material. During the course of arguments this Court also suggested for appointment of Local Commissioner to visit the site so as to ascertain the position which was also not accepted by the learned counsel for the Plaintiff. Against this the Defendants have placed on record the documents

which show that at least on part property construction has already been made and on part property the construction is in progress. It is not the case of the plaintiff that he has been dispossessed from the entire suit property. In view of the documents on record, I find that the Plaintiff has neither shown any prima facie case in his favour nor the balance of convenience lies in his favour so as to be entitled to grant of ad interim injunction. The Defendant No.3 has already created third party interest in two portions of the suit property and those parties are not before the Court. Hence I find no reason to grant any interim injunction in favour of the Plaintiff and against the Defendants at this stage.

15. Application is dismissed. (MUKTA GUPTA) JUDGE JANUARY06 2014 vn

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