

Savitri Devi Vs. Lal Chand

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Court : Delhi

Decided On : Jan-23-2014

Judge : Valmiki J. Mehta

Appellant : Savitri Devi

Respondent : Lal Chand

Advocate for Pet/Ap. : Mr. Sonal Sinha

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + RSA2012012 & CM No.21220/2012 (stay) % 23rd January, 2014 SAVITRI DEVI Through:Appellant Mr. Sonal Sinha, Advocate. VERSUS LAL CHAND Respondent Through: CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. The regular second appeal impugns the concurrent judgments of the courts below; of the trial court dated 12.10.2010 and the appellate court dated 11.9.2012; by which the suit of the present appellant(plaintiff in the trial court) for mandatory injunction and damages has been dismissed.

2. Dispute in the present case is with respect to the property no.C-1/33, admeasuring 50 sq. yds. situated on Kasara No.305, New Ashok Nagar, Village Chilla, Saronda Bangar, Shahdara, Delhi. The case of the appellantplaintiff is that she transferred rights in the suit property to the defendant by means of the

documentation dated 4.10.93 being the Agreement to Sell, Power of Attorney etc against valuable consideration and possession was also delivered to the respondent-defendant, however, appellant-plaintiff claims that within two hours of the transfer of the rights in the suit property to the respondent-defendant, the respondent-defendant executed similar documents being the Agreement to Sell, Power of Attorney etc by retransferring the property in favour of the appellant-plaintiff. The subject suit therefore came to be filed claiming rights in the suit property by seeking mandatory injunction and damages. 3(i) Learned counsel for the appellant is correct in arguing that the appellate court has fallen into an error in only examining the issue that the husband of the appellant-plaintiff was not competent to appear as an attorney inasmuch as the appellant-plaintiff could have appeared through an attorney who had knowledge of the facts. It is argued that appellate court only on this single basis has dismissed the appeal, although, the trial court had framed and decided various issues and had pronounced upon the same. (ii) However, even if, I accept the argument urged on behalf of the appellant, I need not remand the case since I can exercise my powers under Order 41 Rule 24 CPC read with Order 42 Rule 1 CPC which states that procedure in a second appeal is the same as the procedure in the first appeal. Order 41 Rule 24 provides that once evidence on record is sufficient, it is not necessary that the case be remanded back and the appellate court is entitled to dispose of the suit and appeal on merits. In the present case, since the trial court has pronounced upon all issues, I, in exercise of powers under Order 41 Rule 24 read with Order 42 Rule 1 CPC, am proceeding to hear the present second appeal on merits.

4. Before I advert to the arguments urged on behalf of the appellant- plaintiff, it is necessary to refer to the conclusions which have been arrived at by the trial court that the alleged reverse documentation executed after 2 hours of the first set of documentation in favour of the appellant-plaintiff to claim that property has been re-transferred back to her is a false case of the appellant/plaintiff. These conclusions are:(i) If really, the appellant-plaintiff had been re-conveyed the suit property within 2 hours of having transferred the same to the respondent-defendant on 4.10.1993, the appellant-plaintiff would not have waited for 10 years to file the subject suit. The case of license as set up by the appellant-plaintiff has

been disbelieved. Trial court also notes in this regard that within this period, the respondent-defendant obtained electricity and water connection in his name and also paid the bills with respect to the same. (ii) If the first set of documentation dated 4.10.1993 in favour of respondent-defendant is not to operate then, actually it is a cancellation deed of the first set of documents which would have been executed and not that fresh set of documents would have been executed transferring rights in the suit property to the appellant-plaintiff. (iii) It was curious that the serial number of the stamp papers by which the appellant-plaintiff claims re-transfer of property back to her are continuous serial numbers of the stamp papers by which those documents were executed by which rights in the suit property were first transferred to the respondentdefendant taken with the fact that it was not conceivable that the same stamp vendor in the meanwhile would have done no business of selling of further stamp papers except those sold for the appellant-plaintiff by which rights in the suit property were transferred to the respondent-defendant. (iv) Signatures of the respondent-defendant on the alleged documentation dated 4.10.1993 in favour of the appellant-plaintiff have been concluded to be not of the respondent-defendant and these documents executed by respondent-defendant in favour of the appellant-plaintiff have been found to be forged and fabricated documents. The appellant-plaintiff did not lead evidence of any handwriting expert to show that the signatures on the documentation dated 4.10.1993 relied upon by the appellant-plaintiff are the same as those appearing on the admitted documentation of the same date by which rights in the suit property were transferred in favour of the respondent-defendant by the appellantplaintiff.

5. Learned counsel for the appellant very strenuously argued the following points before this Court:(i) Trial court has committed an illegality inasmuch it is illogical for the trial court to hold that the documentation in favour of the appellant-plaintiff by the respondent-defendant are not valid because it is only the respondentdefendant who has signed the subsequent set of documentation and that even the appellant-plaintiff ought to have signed these documents if they were to be genuine. It is argued that to transfer rights it was enough if the documents executed in favour of the appellant/plaintiff were signed only by the respondent/defendant. (ii) There is no cross-examination of the appellant-plaintiff

nor any suggestion given that the subsequent documentation dated 4.10.1993 executed in favour of appellant/plaintiff were forged and fabricated documents. 6(i) In my opinion, both the arguments urged on behalf of the appellants are incorrect. Re-appreciation of evidence and re-appreciation of findings of facts when two conclusions are possible, cannot be said to be a substantial question of law. Even assuming that I am re-apprising the findings and conclusions of the trial court and which I am doing, I still am of the opinion and hold that there is absolutely no illegality or perversity in the findings and conclusions of the trial court by which it is held that the rights in the suit property were not re-transferred to the appellant-plaintiff as claimed by her. I have already reproduced above the relevant conclusions of the trial court, and though some of the conclusions reproduced above may not be so categorically stated with that much clarity by the trial Court, reading of the trial courts judgment does show that these conclusions which have been stated above, do emerge against the appellant-plaintiff from the record of the trial court. (ii) Even if I take the fact that trial court has wrongly arrived at a conclusion that subsequent set of documentation must fail because they are not signed by the appellant-plaintiff, yet, even ignoring that finding, I cannot agree that the other conclusions of the trial court still will not arise from the record of the trial court and by which the suit rightly stands dismissed. In addition to the conclusion no.(ii), which I have given above, the trial court has also held that there is no reason for the appellant-plaintiff to have filed a suit after 10 years, and allow the respondent-defendant to continue in possession for 10 years, I note that if the appellant-plaintiff could have continued as the owner, then, the appellant-plaintiff would have continued to pay property taxes of the suit property for this period of 10 years from execution of the documents in 1993 till the suit was filed in the year 2004 and would have accordingly filed receipts of payment of property taxes, but admittedly the appellant/plaintiff has not done so. (iii) Also the second argument urged on behalf of the appellant does not merit acceptance because not putting of a suggestion to a witness or not cross-examining the witness is only one of the aspects which is to be taken in totality alongwith the entire evidence which is led in the case and once conclusion which emerge from the entire evidence led in the case shows that the alleged documents in favour of the appellant-plaintiff are forged and fabricated as was the case of the respondent-defendant, merely

because no cross examination was done at this aspect and no such suggestion to the husband of the plaintiff who appeared as witness, in my opinion is not in itself sufficient in the facts of the present case to set aside the other conclusions and the judgments of the courts below.

7. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs. JANUARY23 2014 ib RSA2012012

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