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Pawan Kumar vs.sushila & Ors

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SooperKanoon Citation : sooperkanoon.com/1225326

Court : Delhi

Decided On : Sep-16-2019

Appellant : Pawan Kumar

Respondent : Sushila & Ors

Advocate for Pet/Ap. : Mr. S.S. Jain, Mr. R.K. Sharma, Mr. Manuj Aggarwal, Ms. Arunima Gupta, Mr. Ayush Saxena, Ms. Arunima

Judgement :

$~4 & 32 to 39 * + 32 + 33 + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

16. h September, 2019 CM(M) 425/2017 & CM APPLs. 14661/2017, 34790/2018, 34791/2018 PAWAN KUMAR .....

... Petitioner
Through: Mr. S.S. Jain & Mr. R.K. Sharma, Advocates (M-9891043078) versus DESH RAJ (NOW DECEASED) NOW REPRESENTED BY HIS LRS ..... Respondent Through: Mr. Manuj Aggarwal, Ms. Arunima Gupta & Mr. Ayush Saxena, Advocates (M- 9818094931) for R-2 & 3 WITH CM(M) 212/2017 & CM APPLs. 6991/2017, 34782/2018, 34783/2018 PAWAN KUMAR .....

... Petitioner
Through: Mr. S.S. Jain & Mr. R.K. Sharma, Advocates versus SATNAM SINGH ..... Respondent Through: Mr. Manuj Aggarwal, Ms. Arunima Gupta & Mr. Ayush

Saxena, Advocates WITH CM(M) 396/2017 & CM APPL. 13903/2017 PAWAN KUMAR .....

... Petitioner
Through: Mr. S.S. Jain & Mr. R.K. Sharma, Advocates versus SHAKUNTAL DEVI (SINCE DECEASED) REPRESENTED BY HER LRS ..... Respondent CM(M) 425/17, 212/17, 396/17, 398/17, 399/17, 401/17, 402/17, 406/17, 4
Page 1 of 8 34 + 35 + 36 + Through: Mr. Manuj Aggarwal, Ms. Arunima Gupta & Mr. Ayush Saxena, Advocates WITH CM(M) 398/2017 & CM APPLs. 13921/2017, 34785/2018 PAWAN KUMAR347842018, ...

... Petitioner
Through: Mr. S.S. Jain & Mr. R.K. Sharma, Advocates versus SUSHILA & ORS ..... Respondent Through: Mr. Manuj Aggarwal, Ms. Arunima Gupta & Mr. Ayush Saxena, Advocates CM(M) 399/2017 & CM APPL. 13923/2017 WITH PAWAN KUMAR .....

... Petitioner
Through: Mr. S.S. Jain & Mr. R.K. Sharma, Advocates versus RAM LAL ..... Respondent Through: Mr. Manuj Aggarwal, Ms. Arunima G upta & Mr. Ayush Saxena, Advocates WITH CM(M) 401/2017 & CM APPLs. 13933/2017, 34788/2018, 34789/2018 PAWAN KUMAR .....

... Petitioner
Through: Mr. S.S. Jain & Mr. R.K. Sharma, Advocates versus RAMWATI Through: Mr. Manuj Aggarwal, Ms. Arunima Gupta & Mr. Ayush Saxena, Advocates ..... Respondent CM(M) 425/17, 212/17, 396/17, 398/17, 399/17, 401/17, 402/17, 406/17, 4
Page 2 of 8 37 + 38 + 39 + WITH CM(M) 402/2017 & CM APPLs. 13935/2017, 34786/2018 34787/2018 PAWAN KUMAR .....

... Petitioner
, Through: Mr. S.S. Jain & Mr. R.K. Sharma, Advocates versus NANHI DEVI (SINCE DECEASED) NOW REPRESENTED BY GOMTI Through: Mr. Manuj Aggarwal, Ms. Arunima Gupta & Mr. Ayush Saxena, Advocates ..... Respondent

CM(M) 406/2017 & CM APPL. 14046/2017 WITH PAWAN KUMAR .....

... Petitioner
Through: Mr. S.S. Jain & Mr. R.K. Sharma, Advocates versus KANSHI RAM (SINCE DECEASED) NOW REPRESENTED BY HEIRS & LEGAL REPRESENTATIVES ..... Respondent Through: Mr. Manuj Aggarwal, Ms. Arunima Gupta & Mr. Ayush Saxena, Advocates for R-1 to 5 & 9 to 10. AND CM(M) 407/2017 & CM APPL. 14048/2017 PAWAN KUMAR .....

... Petitioner
Through: Mr. S.S. Jain & Mr. R.K. Sharma, Advocates versus CHAMELI & ORS .....

... RESPONDENTS
Through: Mr. Manuj Aggarwal, Ms. Arunima Gupta & Mr. Ayush Saxena, Advocates for R-3 & 4. CM(M) 425/17, 212/17, 396/17, 398/17, 399/17, 401/17, 402/17, 406/17, 4
Page 3 of 8 CORAM: JUSTICE PRATHIBA M. SINGH Prathiba M. Singh, J.(Oral)
1. The present petitions arise out of the impugned order dated 31st August, 2016 by which the Trial Court has directed impounding of the documents i.e. the GPA, the Agreement to Sell and the accompanying documents and has also directed payment of the stamp duty. The question that arises is as to the nature of transaction as per the GPA and the agreement to sell. The pleaded case is that the Plaintiff/Petitioner (hereinafter Plaintiff) has acquired ownership of the suit property on the basis of these documents. These documents are admittedly executed on 24th September, 2009 prior to the decision of the Supreme Court in Suraj Lamp and Industries Private Limited v. State of Haryana and Anr., (2012) 1 SCC656 2. The submission that is made by Mr. Jain, ld. counsel for the Plaintiff is that the question as to whether the possession was symbolic or physical and whether the documents required registration or not, is a question of fact which is to be adjudicated by the Trial Court at the final stage. Specific reliance is placed on Clause 1, 2 and 11 of the Agreement to Sell. He further submits that as per the decision of the Supreme Court in Om Prakash v. Laxmi Narayan, (2014) 1 SCC618 the question as to whether possession has in fact been given or not is a

question of fact which cannot be decided prior to the stage of evidence being led before the Trial Court.

3. On the other hand, ld. counsel for the Respondent/Defendant (hereinafter Defendant) submits that a perusal of the Agreement to Sell CM(M) 425/17, 212/17, 396/17, 398/17, 399/17, 401/17, 402/17, 406/17, 4
Page 4 of 8 shows that the entire sale consideration stands paid. Secondly, though the word symbolic is used in clause 1, all the rents are to be realised by the Plaintiff. Further, in the plaint itself, the Plaintiff pleads that he is the owner of the property.

4. One of the issues that is framed in the suit is in respect of the claims of ownership of the Defendant and of the Plaintiff. The relevant issues - issues no.1, 6 and 7 are set out hereinbelow: 1. Whether the Defendant is owner of the plot bearing No.54
measuring about 200 sq. yards situated in Khasra No.459-60, Patti Jahanuma, Nai Basti, Kishan Ganj, Delhi?. OPP6 Whether the plaintiff is landlord of plot No.540/3, measuring 200 sq. yds. Situated in Khasra No.459-60 Patti Jahanuma, Nai Basti, Kishan Ganj, Delhi?. OPP7 Whether the plaintiff is entitled to recovery of possession of plot No.540/3, measuring 200 sq. yds. Situated in Khasra No.459-60 Patti Jahanuma, Nai Basti, Kishan Ganj, Delhi?. OPP 5. Ld. counsels for the parties submit that the evidence in this suit is going on currently and the Plaintiffs evidence is being recorded. The Trial Court has, in the impugned order held that the Agreement to Sell and the GPA show that the transaction is irrevocable in nature and that there was a conveyance of the suit property by the alleged previous owner. Under these circumstances, the Trial Court has directed that the documents are liable to be impounded and proper stamp duty is to be paid.

6. The findings in paragraphs 4 and 5 of the impugned order clearly would amount to pre-deciding some of the aspects on the issues which have been framed in the matter. The Defendant himself having claimed ownership CM(M) 425/17, 212/17, 396/17, 398/17, 399/17, 401/17, 402/17, 406/17, 4
Page 5 of 8 rights in the suit property and an issue having been framed to this effect, the question as to whether the Plaintiff has acquired ownership and

possession was actually delivered to him and if so, to what extent, is to be adjudicated by the Trial Court. A perusal of clauses 1, 2, 3 and 11 shows that there could be some debate as to the nature of possession handed over to the Plaintiff. The said clauses are extracted hereinbelow: 1. That the first party hand over the previous documents and also delivered the symbolic/propritor possession of the above said property/land to the second party.

2. That the second party shall realize all the rent or other benefits in respect of said property/land from the date of execution to this agreement and the first party shall not demand any amount from the second party after the execution of this agreement.

3. That the first party shall get no claim, title or interest in the said property and the second party has become its sole and absolute owner, and at his liberty to utilize the same in any manner, as he/she/they likes in futher.

11. That the first party or his appointed attorney hereof shall execute the sale deed/documents of the said property in favour of the second party or his nominee after getting the permission from the appropriate authority without any objection or interruption of the first party or his nominee or any third person. 7. The above clauses show that further documents were to be executed between the parties, to seal the transaction. In Om Prakash (supra) the Supreme Court has observed: CM(M) 425/17, 212/17, 396/17, 398/17, 399/17, 401/17, 402/17, 406/17, 4
Page 6 of 8 10. In view of the rival submissions, the question which falls for our determination is as to whether the admissibility of a document produced by the party would depend upon the recitals in the document or the plea of the adversary in the suit and whether the document in question is conveyance as defined under the Act and is duly stamped. for determination of 11. As stated earlier, the plaintiffs filed a suit for specific performance of contract and their case is founded on the agreement to sell executed on 27-12- 2000. The agreement to sell acknowledges payment of the part of consideration money and further giving actual physical possession to the purchaser by the seller. Though the defendants dispute that, but in our opinion, the question of admissibility of a document, it is the recital therein which shall be decisive. Whether the possession in fact was given or not in terms

of the agreement to sell is a question of fact which requires adjudication. But, at the time of considering the question of admissibility of document, it is the recital therein which shall govern the issue. It does not mean that the recital in the document shall be conclusive but for the purpose of admissibility terms and conditions incorporated therein which shall hold the field. Having said that, we proceed to consider as to whether the document in question is conveyance within the meaning of Section 2(10) of the Act. the it is In the light of the above clauses and the legal position laid down in Om Prakash (supra) issues of ownership would require to be determined by the Trial Court and adjudicated especially issues no.1, 6 and 7. Upon the Trial Court coming to the conclusion, if any, that ownership and possession was transferred to the Plaintiff, the entire stamp duty as directed in the impugned order would be liable to be paid by the Plaintiff at that stage. Needless to CM(M) 425/17, 212/17, 396/17, 398/17, 399/17, 401/17, 402/17, 406/17, 4
 add that the findings in the impugned order would not come in the way of the independent adjudication of the ownership rights and possessary rights of the Plaintiff in the final stage.

8. The documents relied upon by the Plaintiff, at this stage, shall be exhibited and shall be considered in evidence subject to the direction in respect of stamping being passed at the final stage. Ld. Counsel for the Plaintiff has undertaken that if the trial court directs that the stamp duty is payable, at the final stage, his client undertakes to pay the requisite stamp duty along with the penalty.

9. Upon the final adjudication, the stamping as per the impugned order if held by the Trial Court shall be done once only, which shall be considered in all the suits. The trial court shall also ensure that once the issues are determined the requisite stamp duty is deposited by the Plaintiff, prior to the decree being drawn up.

10. With these observations, all the petitions are disposed of. All pending applications are also disposed of. It is made clear that this Court has not ruled on the merits of the dispute and the issues which are to be adjudicated by the trial court independently. PRATHIBA M. SINGH JUDGE SEPTEMBER16 2019 Rahul

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