

Maina Devi Vs. Rati Ram and Anr.

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SooperKanoon Citation : sooperkanoon.com/26526

Court : Delhi

Decided On : Jan-08-2015

Judge : G.P. Mittal

Appellant : Maina Devi

Respondent : Rati Ram and Anr.

Advocate for Def. : Ms. Neha Kapoor

Advocate for Pet/Ap. : Ms. Anu Bagai

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Pronounced on:

8. h January, 2015 + CS(OS) 1705/2003 MAINA DEVI Through: Plaintiff Ms. Anu Bagai, Advocate versus RATI RAM AND ANR. Through:Defendants Ms. Neha Kapoor, Advocate CORAM: HON'BLE MR. JUSTICE G.P. MITTAL IA NO.13109/2014 (O.XIV Rule 5 CPC) in CS(OS) 1705/2003 1. This application for deletion of issues no.1,2 and 3 in view of the judgment dated 23.12.2013 in CS(OS) No.509/1991 and the judgment dated 10.08.2005 in RCA No.8/2004 (passed by the learned Additional District Judge) is filed by the Plaintiff.

2. Before coming to the instant application, it will be appropriate to narrate a few facts necessary for disposal of the application.

3. This suit for possession under Section 5 of the Specific Relief Act, 1963, damages and mesne profits has been filed by the Plaintiff against the Defendants on the ground that the suit property consisting of a plot of land measuring 213.5 sq. yds., out of Khasra No.256/1, situated in the abadi of village Ghonda Gujran Khadar colony known as Bhajanpura, Illaqa Shahdara, Delhi-110053 was purchased by the Plaintiff from Defendants no.1 and 2 vide Agreement to Sell, General Power of Attorney, Affidavit, Will, etc. all dated 01.10.1987 for a consideration of Rs.11,000/-. It is the case of the Plaintiff (applicant) that at the time of execution of the said documents and receipt of payment, the Defendants also handed over vacant and peaceful possession of the suit property to the Plaintiff. It is averred that on the intervening night of 11-12.10.1991, Defendants no.1 and 2 with an intention to get the suit property, demolished the boundary wall and occupied the vacant plot which was adjacent to the plot of the Defendants. A police report was lodged by the Plaintiff on 12.10.1991 and the boundary wall was reconstructed.

4. It is pleaded that the Defendants again demolished the boundary wall on the intervening night of 22-23.10.1991 and at the same time, Defendant no.1 also filed a false and frivolous suit against Mr. H.L. Gola, husband of the Plaintiff and Rajinder Kumar, son of the Plaintiff.

5. It is averred that in the earlier Suit No.509/1991, the learned Civil Judge had held that Defendants No.1 and 2 therein were in possession of the suit property, title being with Smt. Maina Devi and thus, the injunction sought was declined and the suit filed by Defendant no.1 herein was dismissed. The relevant portion of the judgment relied upon by the Plaintiff in para 6 of the application is extracted as under:

In the light of the aforesaid discussion and careful perusal of all oral as well as documentary evidence, I am of the opinion that defendants No.1 and 2 were in possession of half portion of the suit property as claimed by them being husband and son of Smt. Maina Devi and plaintiff has failed to create doubt in their version. On the other hand, case of the plaintiff has weakened to a fatal extent by the establishment of above facts regarding possession of the defendants. I am

satisfied that the plaintiff has other efficacious remedy available and he has not come with clean hands before this court and there has been a significant concealment of facts on the part of the plaintiff.

6. The Regular Civil Appeal (RCA) against the same was dismissed by the learned Additional District Judge by judgment dated 10.08.2005 holding that the Defendants therein were in possession of the suit property on the basis of the Agreement to Sell, Power of Attorney, etc. etc. Referring to *Kuldip Singh Suri v. Surinder Singh* 1999 RLR20 the learned Additional District Judge also observed that sales vide Power of Attorney in Delhi is a common mode for sale of immoveable properties to get over the legislative restrictions upon transfer of properties.

7. The Regular Second Appeal (RSA) against the same was also dismissed as withdrawn and thus, the Plaintiff prays for deletion of the following three issues:-

1. Whether the suit of the Plaintiff is not maintainable in the absence of the documents of the property?. OPD.

2. Whether the suit of the plaintiff is barred by limitation?. OPD.

3. Whether the agreement to sell dated 01.10.1987 is void ab initio or is liable to be declared as void ab initio by the defendants?. OPD.

8. The application has been opposed by the Defendants by way of filing a written reply. It has been stated that similar application under Section 11 of the Code of Civil Procedure, 1908 (CPC) preferred by the Plaintiff was dismissed as withdrawn by an order dated 21.04.2014. It is urged that the averments made in the earlier application and the present application are the same and there is just change of nomenclature. It is urged that the application is thus, misconceived and is therefore, liable to be dismissed.

9. As per the case of the Plaintiff, she came into possession of the suit property on the basis of the Agreement to Sell, Power of Attorney, receipt, etc. all dated 01.10.1987. Receipt for a sum of Rs.11,000/executed by Defendant no.1 is a registered document.

10. In Suraj Lamp and Industries Private Limited v. State of Haryana, & Anr. 2012 (1) SCC656 the Supreme Court reiterated the proposition of law that transactions in the nature of GPA sales or SA/GPA/Will will not confer any title upon the purchaser nor transfer any interest in immoveable property. At the same time, it will have to be seen whether the Plaintiff is entitled to protect her possession on the basis of the earlier said documents under Section 53-A of the Transfer of Property Act, 1882.

11. It may be noticed that in the earlier suit, the Plaintiff was not a party. In the application under Section 11 CPC (IA No.17746/2013), the sum and substance for decreeing the suit was the same, that is, the finding in the earlier Suit No.509/1991 is res judicata between the parties and thus, in the earlier application, the Plaintiff wanted the suit to be decreed whereas by this application, the Plaintiff wants issues no.1,2 and 3 to be deleted.

12. In my view, giving a finding at this stage that the decision in the earlier suit is binding upon the Plaintiff in respect of issues no.1,2 and 3 will amount to holding a mini trial when admittedly, the Plaintiff herein was not a party in the earlier suit.

13. The case is at the advance stage and evidence of the Defendants is being recorded. Thus, it will not be appropriate to entertain the application and to delete issues no.1,2 and 3. After the evidence of the Defendants is over and at the time of hearing of the suit the Plaintiff shall be at liberty to urge that the finding in the earlier suit is binding on the Defendants, which will be appropriately dealt with by the Court including the objections taken by Defendant no.1 herein that the findings in the earlier suit are not binding or that the same were mere observations and not findings on the issue directly before the Court.

14. The application is accordingly disposed of with liberty to the Plaintiff to raise appropriate plea at the time of final arguments. CS(OS) 1705/2003 List before the Joint Registrar for fixing a date for evidence on 10.02.2015. (G.P. MITTAL) JUDGE JANUARY08, 2015 vk