

Ranjit Singh Vs. Sopan Properties Pvt. Ltd. and Another

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Court : Delhi

Decided On : Feb-23-2001

Reported in : 2001IIIAD(Delhi)713

Judge : Mr. K.S. Gupta, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 39, Rules 1 and 2; [Transfer of Property Act, 1882](#) - Sections 54

Appeal No. : I.A. No. 9943/95 in S.No. 2432/95

Appellant : Ranjit Singh

Respondent : Sopan Properties Pvt. Ltd. and Another

Advocate for Def. : Sh. M. Verma, Adv.

Advocate for Pet/Ap. : Sh. Sandeep Sethi, Adv

Judgement :

ORDER

K.S. Gupta, J.

1. This order will govern the disposal of I.A.9943/95 under Order 39 Rules 1 & 2 read with section 151 CPC filed by the plaintiff.

2. Suit was filed alleging that the plaintiff Along with Chottu is the owner of 3/4th share of land, ad-measuring 4 bighas 1 biswa and built up structure thereon comprised in Mustkil No.37, Kila No.13 in Village Samalka, New Delhi. Remaining 1/4th share initially belonged to Jamna Das, Tej Ram, Shim Singh, Ballu and Ram Kumar who sold it to one Suresh Chand and defendant No.1. There are certain disputes between Suresh Chand and defendant No.1. It is further alleged that Suresh Chand and defendant No.1 'sold their 1/4th share to the plaintiff in January 1995. Amount of Rs.3 lakhs toward sale consideration stood paid in the past by the plaintiff to defendant No.1. Towards part performance of contract of sale the plaintiff was handed over original documents of title and suresh Chand and defendant No.1 agreed to execute the sale deed at a later stage. It is claimed that plaintiff is in settled possession of the entire suit property for last over 8 years. Suit property is enclosed by brick boundary walls of 7 ft high. It is also pleaded that on 24th September 1995 around 10.00 AM Naresh Kumar, Vinod Kumar, Sheesh Pal Singh and Ramesh Chand Along with 50 labourers forcibly entered into the suit property and started demolishing front boundary wall and iron gate. However, on being resisted, they went back and a report regarding this incident was lodged by the plaintiff with police. Plaintiff has learnt that said persons were sent by the defendants with instruction to dispossess him from suit property. Decree of permanent injunction is sought to be passed restraining the defendants from dispossessing the plaintiff or otherwise affecting his use, occupation and enjoyment thereof.

3. In the suit aforesaid I.A.9943/95 was filed for grant of (SIC) interim injunction for the said reliefs claimed in the plaint and by the order dated 20th October 1995 parties were directed to maintain status quo in regard to suit property up to 22nd March, 1996.

4. Defendant No.2 is alleged to be the director of defendant No.1 company and both of them have contested the suit by filing a joint written statement. It is alleged that answering defendants are the owners of 1/4th share of agricultural land, measuring 4 bighas 16 bids was in Mustkil No.37, Kila No.13, situated in Village Samalka, New Delhi, as having purchased it from Ballu, Ram Kanwar, Bhim Singh, Tej Ram and Jamna Das under a registered sale deed executed sometime

in June 1988. Ballu and four others subsequently sold the said land to one Suresh chand before it could be got mutated in the name of answering defendants. It is emphatically denied that in January 1995 suit land was sold by the answering defendants to the plaintiff or that any amount was received by them towards sale consideration as alleged. It is alleged that answering defendants entrusted all relevant documents including the sale deed of suit land to their counsel Dilbagh Singh Sherawat for mutation of suit property in their favor. Manohar Lal who had been attending to court cases, collected the original sale deed from the clerk of Dilbagh Singh Sherawat on the pretext that the same was wanted by answering defendants and thereafter he fled away with the sale deed. It is now believed that Manoharlal handed over the sale deed to the plaintiff. It is denied that original sale deed was handed over to the plaintiff towards part performance of the contract of sale as alleged. It is denied that plaintiff is in settled possession of 1/4th share of suit property owned by answering defendants. It is stated that plaintiff has no title over 1/4th share in suit property and if any boundary wall encloses the share of answering defendants they would be well within their right to have the same demolished. It is denied that the plaintiff is entitled to decree prayed for.

5. Although no reply to said I.A. was filed by defendants but they have contested it on the pleas similar to those taken in the joint written statement.

6. From the averments made in plaint it may be noticed that it is admitted by the plaintiff that 1/4th share in suit property which was owned by Jamna Das, Tej Ram, Bhim Singh, Ram Kishan, Ballu and Ram Kumar, was purchased by Suresh Chand, who has not been arrayed as a party to the suit, and defendant No.1. Plaintiff's case further is that he purchased the share of defendants No.1 in January 1995, paid Rs.3 lakhs in lieu of sale consideration, original document of title of the said share of suit property is with him. Defendants in their written statement have emphatically denied of having sold 1/4th share in suit property to the plaintiff or having received Rs.3 lakhs from him toward sale consideration in January 1995 as alleged. The way the plaintiff came to obtain original document of title has further been explained by them. Amount of Rs.3 lakhs which is alleged to have been paid to defendant No.1, is a substantial amount and plaintiff in ordinary course of human conduct, should have paid it only against receipt(s) to defendant

No.1. However, the plaintiff has not filed the original or photostat copy of receipt(s) evidencing payment of said amount to defendant No.1. Further, under section 54 of the [Transfer of Property Act, 1882](#) sale of immoveable property of the value of Rs.100/- and above can be made only by way of registered instrument. Admittedly, defendant No.1 has not executed any sale deed with respect to said share in the suit property in favor of plaintiff till date. A co-owner has an interest in the whole property and also in every parcel of it and possession of the joint property by one co-owner is in the eye of law possession of all even if all but one are actually out of possession. In this view of mine I am supported by a Division Bench decision in Sant Ram Nagina Ram vs . Daya Ram Nagina Ram, . Relying n decisions in Munshi Ram and others vs. Delhi Administration, AIR 1968 SC 702: Puran Singh and others vs . The State of Punjab : AIR 1975 SC1674 and Krishna Ram Mahale (dead) by his LRs vs . Mrs.Shobha Venkat Rao : AIR 1989 SC2097 the submission advanced by Sh.Sandeep Sethi for plaintiff was that as plaintiff is in settled possession of entire suit property for over 8 years he cannot be dispossessed by defendants except by recourse to law. The defendant No.1 being prima facie co-owner of suit property Along with plaintiff the concept of settled possession has no applicability to this case. Yet another decision in Ashwin Kumar K.Patel vs . Upendra J.Patel and others : AIR 1999 SC1125 relied on behalf of plaintiff, too is distinguishable as in that (SIC) plaintiff had entered into an agreement of sale dated 14th October 1980 with defendants 1 to 14, the owners of suit land and the later admitted having received full (SIC of 7 lakhs and delivered possession of suit (SIC)lan to plaintiff which is not the case here. In my opinion, plaintiff has miserably failed to make out a (SIC) facie case for grant of the ad interim injunction placed for aforesaid status quo order dated 20th October 1995 which continues to operate till date to the detriment of defendants needs to be vacated now.

7. Consequently, the application is dismissed and said status quo order is hereby vacated.