

J.C. Mehra Vs. Kusum Gupta

J.C. Mehra Vs. Kusum Gupta

SooperKanoon Citation : sooperkanoon.com/706721

Court : Delhi

Decided On : May-26-2003

Reported in : 117(2005)DLT506

Judge : C.K. Mahajan, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(6)

Appeal No. : C.R. 470 of 2003 and C.M. 1010 of 2003

Appellant : J.C. Mehra

Respondent : Kusum Gupta

Advocate for Def. : Arun Mohan, Sr. Adv. and ; B.B. Gupta, Adv.

Advocate for Pet/Ap. : Malvika Rajkotia, Adv

Disposition : Petition dismissed

Judgement :

C.K. Mahajan, J.

1. One Pushpawati acquired the lessee-rights of plot No. 50, Sukhdev Vihar, Near Okhla Bus Depot, New Delhi-110025. A small house was constructed on the said plot. The same was let out to the petitioner. The property was sold to the respondent on power of attorney sale basis on 12th August, 1993 for a

consideration of Rs. 7,75,000/-. Customary set of documents were executed. Thereafter a formal conveyance deed was executed on 10th March, 1995 in favor of the respondent. On 31st May, 1999, an eviction petition was filed by the respondent against the petitioner. The petitioner sought leave to contest. Leave to contest was rejected on 3rd November, 1999 and order for eviction was passed. The petitioner assailed the order in CR 449/2000, which was allowed and leave to contest was granted to the petitioner. The matter was remanded to the Controller. By order dated 18th February, 2003, the learned ARC ordered eviction. Six months' time was granted to the petitioner for vacating the premises.

2. The petitioner assails the order of learned ARC dated 18th February, 2003 on the ground that learned ARC failed to appreciate the provisions of Sub-section (6) of Section 14 of the Delhi Rent Control Act. His sole plea is that sale by way of power of attorney in 1993 could not amount to handing over symbolic possession of the property. His further contention is that he did not attorn to the landlady. Rent was paid till 1996 to the erstwhile owner. He came to know about selling of the premises in question only in 1995.

3. The main thrust of the petitioner is that 5 years period is to be calculated from the date when the conveyance deed was executed in favor of the respondent and not from the date when power of attorney sale was made. The property was thus acquired in 1995 and eviction petition was filed before the expiry of the 5 years period as envisaged in Section 14(6) of the Delhi Rent Control Act. The petition was thus premature.

4. In support of his contentions, the petitioner relied on Section 54 of the Transfer of Property Act, 1982 which provides that every sale of an immovable property of a value exceeding Rs. 100 /- must be made by a registered instrument and in the present case agreement to sell was not registered.

5. Heard Counsel for the parties. Perused documents on record. It cannot be in dispute that the property was sold to the respondent in 1993 by way of power of attorney. The Government recognised the power of attorney transactions as a sale in 1995 and introduced freehold conversion scheme to enable the power of attorney purchaser to have a direct conveyance in their favor. Such conveyance

operates to convey two things- (a) reversionary rights which were with the Government and (b) the vestige of rights, if any, which may have been in the previous owner.

There are two separate concepts of ownership in England namely legal owner and equitable owner. Legal owner is a person with whom the title vests in an immovable property by virtue of title deeds. Equitable owner is an owner inequity on account of various reasons including of having paid money but not having a specific registered title deed in his name. In India there is only one concept and is that of legal owner. There was no concept of equitable owner apart from a legal owner. The sale of immovable property is dealt with under Section 54 of the Transfer of property Act. Section 53A of Transfer of Property Act was introduced in 1929 by way of an amending Act. Once necessary ingredients of Section 53A are complied with and possession of the property is delivered to the proposed transferee then neither the actual owner nor his successor-in-interest had any right to enforce against the proposed transferee any right in respect of the immovable property except those specified by the agreement to sell itself. Added to the protection given to an incomplete owner under Section 53A, who is not having registered sale deed but only has an agreement to sell with possession, protection was given by virtue of provisions of Section 202 of Contract Act and in terms whereof a person, who executed power of attorney for consideration, the same could not be revoked. Thus, on a conjoint reading of Section 53A of Transfer of Property Act and Section 202 of the Contract Act, the effect is that transferor of a property, who has executed an agreement to sell and a power of attorney, though continued to be the legal owner of the property as per title deed yet all his powers were taken away and such power vested were vested in the person in whose favor the agreement to sell and power of attorney was executed.

6. The issue is as to whether a person who purchases a property by means of an agreement to sell for consideration along with possession (or the right to recover rents) and power of attorney can seek to evict the person after five years of his having got the agreement to sell and power of attorney in his favor. The issue no longer is rest Integra.

7. A Single Bench of this Court in *Kuldeep Singh Suri v. Surinder Singh Kalra*, 76 (1998) DLT 236 = 1999 RLR 20 had an occasion to deal with the matter relating to sale on power of attorney. The Court observed as under :

'Thus it is clear that doctrine of public policy is a variable concept which must be fine tuned with demands of time and changing concerns for public good and public interest. Whether in the instant case the above said policy had achieved its desired goal is a question to be considered. The answer is not far to seek. Despite the incorporation of the restrictive clauses in the perpetual sub-leases executed by and between the DDA or L & DO on the one hand and the sub-lessees on the other properties have been changing hands through, what are known as, power of attorney sales. This has deprived the state of the stamp duty and registration fee chargeable on the sale deeds. Restrictions have created a situation where there is no incentive for observing honesty. Rather the policy has given boost to dishonesty- If such restrictive clauses did not exist, the sellers and buyers would have entered into straight and regular sale transactions resulting in generation of revenue for the State inasmuch as the buyers would have been liable to pay the stamp duty and registration fee. In practice the restrictive clauses have worked to the detriment of the State. In order to get over the restrictions a method of sale of the property through execution of power of attorneys, Wills, affidavits and agreements to sell has been devised. It may be mentioned that the Government of India on February 14, 1992 has introduced a Scheme whereby lease hold properties acquired from the Government can be converted into free hold. This decision also provides for regularisation of power of attorney sales on payment of penalty. The Scheme originally applied to the DDA and the L & DO plots measuring 500 sq. metres. However, by a subsequent office order No. V. 11-6/92 dated June 2, 1994 the Notification dated February 14, 1992 has been made applicable to plots up to 505 sq. metres. therefore, by virtue of the office order plots measuring up to 505 sq. metres are to be treated as falling under the Scheme dated February 14, 1992. This policy decision of the Government is an eloquent testimony of the fact that the requirements of public interest change with the times and are not static. A time had come where in keeping with ground realities the Government had to introduce a Scheme for regularising the sales on the basis of power of attorneys. Experience shows that unnecessary restrictions

leads to deceitfulness in arranging ones affairs. The Government had rightly recognised the need for removal of such restrictions.'

8. The aforesaid decision was affirmed by a Division Bench of this Court in *Asha M. Jain v. The Canara Bank* : 94(2001)DLT841 . It was held that when an interest is created by an Agreement to Sell and a Power of Attorney by virtue of provisions of Section 53 of Transfer of Property Act and Section 202 of the Contract Act, then, once such rights have been created, a subsequent transferee of property cannot claim a better right than the first transferee and the first transferee in whose favor power of attorney/agreement to sell has been executed has better right than the person who claims right by virtue of subsequent charge on the property.

9. This Court in *Shikha Properties (P) Limited v. S. Bhagwant Singh and Ors.* : 74(1998)DLT113 observed as under:

'8...The Agreement to sell and irrevocable power of attorneys executed, for consideration for sale received by the defendants, in favor of the plaintiff company were meant not only to get the sale deeds executed, but also conferred rights on the plaintiff to manage the properties and deal with the tenants. Create leases or sub-leases. Pursuant to their execution, the properties being in occupation of tenants/occupants, constructive possession of the properties appears as handed over to the plaintiff, since the plaintiff has been dealing with the tenants, recovering rent and virtually exercising ownership rights all this while.....,'

10. This Court in *Ajit Narain v. Shri Arti Singh and Ors.* : 81(1999)DLT355 observed as under:

'14.....Furthermore the documents executed i.e. (a) Power of Attorney, (b) Agreement to Sell, (c) Will, (d) The power of attorneys to deal with local authorities such as NDMC etc., clearly leads to the prima facie conclusion that the plaintiff had gone through a transaction of sale. These documents are the routine documents executed when a sale of immovable property takes place in Delhi and the execution and further registration of the documents thus prima facie indicates that what was intended was a sale of the property and not the loan as alleged by the plaintiff.'

11. There is a recent decision of this Court in Veer Bala Gulati v. Municipal Corporation of Delhi and Anr. : 104(2003)DLT787 =(CWP No. 1999/2003) decided on 7th April, 2003 where the Court observed as under :

9. The transaction, in the present case, is one of sale and an agreement to sell had been executed, though admittedly the sale deed has not been executed. In terms of the agreement to sell, all rights, title and interest in the land and the structure had been conveyed and full consideration has been received. Vacant possession has also been handed over to the petitioner. It is further stated that the vendor has been left with no right, title, interest, claim or concern of any nature with the said property and that the purchaser has become the absolute owner of the property. The relevant Clauses 1 and 2 are as under:

(1) That the Vendor hereby agrees to sell, convey and assign and the Purchaser shall purchase the whole of the property bearing No. K 644, Sainik Farms, New Delhi, built on land measuring 700 sq. yds., including all the rights, titles and interest in the land beneath it and buildings, furnitures, furnishings and fittings therein, for a total consideration of Rs. 24,00,000/- (Rs. twenty four lakhs only).

(2) That the Vendor hereby covenant with the Purchaser that this Agreement for Sale is executed in all its entirety and the Vendor has received all and full consideration of the sale price from the Purchaser; and has delivered the vacant, peaceful and constructive possession of the said property into the Purchaser. Now the Vendor has been left with NO right, title, interest, claim or concern of any nature with the said property. The Purchaser has become the absolute owner of the said property, fully entitled to sell and transfer the same in any manner, to construct, expand and alter as she deems fit, and the Vendor, her heirs, successors, and assigns shall have no claim, title, interest etc. whatsoever with the said property.'

Clause 5 of the said agreement also provides that all expenses of transfer documentation, stamp and registration of the sale deed shall be paid by the purchaser and that in terms of Clause 7 thereof, the vendor has appointed the purchaser's nominee as General and Special Attorney regarding the said property for carrying out the necessary documentation for registration. Clause 9 of the said

agreement further states that the purchaser will not do any act, deed and thing to cancel or revoke the General Power of Attorney, Special Power of Attorney and other documents, Clause 19 of the said agreement also provides as under :

'19. That whenever and wherever the presence of the Vendor will be required by the Purchaser, later on at any stage, for the completion of this transaction then the Vendor shall come forward and execute all the necessary relevant documents, sale deed or any other deed in respect of the said property and to get the same registered with the office of the registered authority, at the cost and expenses of the Purchaser, without demanding any further monetary consideration for appearance for the same.'

10. A reading of the agreement to sell, especially the aforesaid clauses, makes it clear that there is a complete sale of the property coupled with possession handed over and the execution of an irrevocable power of attorney. These clauses read together create an interest on the property in favor of the petitioner read with irrevocable power of attorney as held by a Division Bench of this Court in *Asha M. Jain v. The Canara Bank and Ors.* : 94(2001)DLT841 , as under :

15. The power of attorney sales and their effect has been considered in *Kuldip Singh v. Surinder Singh*, 76 (1998) DLT 236=1999 RLR 20. The learned Single Judge of this Court has observed that power of attorney sales in Delhi is the common mode of sale of immovable property to get over the legislative restrictions of transfer of properties. The power of attorney is for consideration and the bargain is followed by delivery of possession to complete the transaction. Further to prevent arbitrary cancellation, Will and affidavit about renouncing rights are taken.

16. We have considered this aspect into consideration these judgments and we are in agreement with the view that the concept of power sales have been recognised as mode of transaction. These transactions are different from mere agreement to sell since such transactions are accompanied with other documents including General Power of Attorney, Special Power of Attorney and Will and affidavits and full consideration is paid. This is what also has happened in the present case. These are two General Power of Attorney, Special Power of Attorney and the Will apart from the agreement to sell. One of the General Power

of Attorney is registered. Further the Will is also registered. Thus these are two contemporaneous documents which are registered and they lend authenticity to the date of execution documents. The power of attorneys are for consideration within the meaning of Section 202 of the Contract Act, 1872. Thus, there is no doubt that interest has been created in the property in favor of the appellant. Possession has also been handed over. Thus the provisions of Section 53A of the Transfer of Property Act would also come into play.....'

12. This Court had an occasion to deal with Section 14(6) of the Delhi Rent Control Act in Jagdish Chander Gulati v. Ram Chand Lukram : 45(1991)DLT660 . The Court held as under :

'The legislative intention underlying Section 14(6) is that a landlord who is himself unable to evict a tenant for some reason should be deprived of the temptation of transferring the premises to another person who would not be prevented. Section 14(6) applies only when the person becomes the landlord of the premises in question by virtue of transfer itself. The words used under Section 14(6) are 'has acquired' any premises by transfer. The petitioners have acquired the possession of these premises on 13th January, 1978 in part performance of the agreement of sale and since then for all intents and purposes the petitioners are in physical possession of the ground floor and Barsati and in notional possession of the first floor, which has continued to be in possession of the respondent as a tenant. The language of Section 14(6) shows that the person must become landlord by acquisition of the premises before this Sub-section can be attracted. It cannot be said that the petitioner became landlord by acquisition of the premises by transfer on 29.12.1986 when the sale deed was executed. He became landlord on 13.1.1978 when the agreement of sale was executed and he got symbolic possession of the suit premises. In this case there is no escape from the conclusion that Section 14(6) will not stand in the way of the petitioners landlord from asking for recovery of the premises in dispute under Section 14(1)(e) of the Delhi Rent Control Act. Even otherwise, now more than five years have passed when the decree for specific performance and execution of the sale deed was passed on 29.9.1983.'

13. The Court dealt with the question as to when the period of 5 years commences - on execution of agreement to sell/power of attorney and possession or when sale was registered/conveyance executed. The Court held that even agreement to sell/power of attorney was executed, it was transferred for purposes of Section 14(6) that sale deed was executed much later. Court clearly held that 5 years period for purposes of Section 14(6) of Delhi Rent Control Act commences when the person gets the agreement to sell/power of attorney executed in his favor along with possession and which in that case was in 1978 and not from the execution of the sale deed in 1986. It was held that eviction petition filed in 1987 was not hit by bar of Section 14(6) of Delhi Rent Control Act.

14. This Court in *Rajeshwar Narain (deceased) Through LRs v. Sarla Sarin* : 46(1992)DLT70 , had dealt with the word 'owner' in respect of Delhi Rent Control Act. No definition has been defined in the Delhi Rent Control Act in respect of the word 'owner'. It was held that for the purpose of Section 14(1)(e) of the Act a person may not be absolute owner of the property. The relevant portion is extracted as under :

'I cannot make myself agreeable with the contention raised by the learned Counsel for the petitioners. For the purpose of Section 14(1)(e) of the Act a person may not be absolute owner of the property. Delhi High Court while interpreting the word 'owner' occurring in Section 14(1)(e) of the Delhi Rent Control Act in *T.C. Rekhi v. Usha Gujral*, 1971 RCJ 322, observed as under :

'The word 'owner' as used in this clause has to be construed in the background of the purpose and object enacting it. The use of the word owner in this clause seems to me to have been inspired by the definition of the word landlord as contained in Section 2(e) of the Act which is wide enough to include a person receiving or entitled to receive the rent of any premises on account of or on behalf of or for the benefit of any other person....'

7. This interpretation of the word 'owner' has been accepted by Hon'ble Supreme Court in *Smt. Shanti Sharma and Ors. v. Smt. Ved Parbha and Ors.* : [1987]3SCR1075 . Under the Delhi Rent Control Act, the word 'owner' occurring in Clause (e) of the proviso to Section 14(1) is not used in the sense of absolute

owner. It is only used in contradistinction with a landlord as defined, who is not an owner but who holds the property for himself and for his own benefit and not for the benefit of another person is certainly the owner/landlord. This is the view which has already been taken by this Court in *Kanwal Kishore Chopra v. O.P. Dwivedi and Ors.*, AIR 1978 Del 53.'

15. This Court also in *Sushil Kanta Chakravorty v. Rajeshwar Kumar*, 85 (2000) DLT 197, dealt with the expression 'owner' in Section 14(1)(e) of the Delhi Rent Control Act. The relevant portion of the judgment may be read as under:

'Interesting question involved in this matter for adjudication is as to the use of word 'owner' in Section 14(1)(e) of the Delhi Rent Control Act (hereafter referred to as 'Act'). Mr. Ahluwalia has contended that Section 54 of the Transfer of Property Act in specific terms provides that a contract for sale does not by itself create any interest in or charge on such property and agreement to sell is merely a document creating a right to obtain another document in the form of sale deed to be registered in accordance with law.

'9. In the light of the aforesaid authorities of this Court as well as Supreme Court cannot be said that for invoking the aid of Section 14(1)(e) of the Act in order to maintain a petition the owner has to be an absolute owner. What the Legislature intended in incorporating the word 'owner' in Section 14(1)(e) of the Act is not to use the same in the sense of absolute owner but it was used in contradistinction with a landlord as defined who is not an owner but who holds the property for the benefit of another person. The word 'owner' occurring in Section 14(1)(e) of the Act means something more than a tenant. Let us take an example, in Delhi it is of common knowledge that property is transferred and re-transferred on the basis of a power of attorney and, therefore, if the word 'owner' has to be construed in the strictest sense then a transferee on the basis of a second power of attorney of a residential house cannot seek eviction of a tenant which property has been construed by the previous transferee and who has inducted the tenant on the basis of second power of attorney. That will negate the whole object of incorporating Sub-clause (e) in Section 14(1) of the Act. In the case before me it has not been pleaded that there was any fraud in executing the agreement to sell

between one brother in favor of other brother or that the power of attorney was executed in order to get rid of the tenant.'

16. The Court held that in order to evict a tenant under Section 14(1)(e) the period of five years begins from the date when the person makes an agreement to sell and power of attorney (purchase) in his favor. The expression owner has not been defined in the DRC Act and by reference to judicial pronouncements including judgments of the Supreme Court, it has held that the expression 'owner' is not an owner in an absolute sense but the expression refers only to a person who has a right/title more than the tenant.

17. Section 14(6) of the Delhi Rent Control Act was enacted to ensure that an owner, who cannot evict a tenant should not be allowed to transfer the property so that now owner can evict the tenant. New owner may be genuinely needing the premises for his bona fide needs but the Legislature thought that the mischief by transfer of property to a new owner is greater than the restriction placed on the new owner and a five years ban was imposed on the new owner from evicting the tenant.

18. It is clear from the aforesaid that the concept of power of attorney sale has been recognised as a mode of transaction. These transactions are different from mere agreement to sell since such transactions are accompanied by other documents including General Power of Attorney, Wills, affidavits and payment of full consideration and transfer of possession. On a perusal of documents shows that power attorney was for consideration within a meaning of Section 202 of the Contract Act. Interest was thus created in the property in favor of the respondent in the year 1993. Possession was also handed over so was the right to recover rent. Thus the respondent acquired the premises by transfer in part performance of agreement to sell and got notional possession of the premises, which continued to be in possession of the tenant, for all intents and purposes. Execution of conveyance deed is a subsequent event after the acquisition of the premises by the respondent by virtue of power of attorney sale. The respondent thus became a landlord on the date when agreement to sell was executed and he got symbolic possession of the suit premises. Section 14(6) of Delhi Rent Control Act will not

stand in the way of the respondent in asking of recovery of possession on the basis of power of attorney sale. Because the period has to be reckoned not from the date of the conveyance but from the date the power of attorney sale was made.

19. It is not right to say that it needs a tenant's consent to attornment before delivery of possession takes place. Once possession - or right to recover rent - has been handed over, it is sufficient delivery of possession. Delivery of possession does not have to be physical. In these circumstances, that is for power of attorney sales, so long as the right to recover rent has been handed over, it is sufficient. The question is transfer of that right. Whether consequent to such transfer the transferee exercises these rights or not is not germane because it is transfer of that right and not exercise of it that is relevant or matters. Provisions of Order 21 Rule 35 have been so worded because of Court proceedings and third parties; but when two persons enter into an agreement they may decide upon whatever mode of delivery they deem proper.

The Law Lexicon by P. Ramanatha Aiyer, 2nd edition 1997 (page 1848) defines symbolical delivery as under :

'Symbolical delivery is a substitute for actual delivery, when the latter is impracticable, and leaves the real delivery to be made afterwards. As between the parties, the whole title passes by such delivery, when that is their intention.'

20. If the decision in Sushil Kanta Chakravorty's case (supra), is read in its entirety, this was the precise question which was answered by the Court. The only attempt to distinguishing it is made by the fact that in that case the property was vacant and in the present case it was tenanted. If a property is tenanted, the sale thereof by any accepted mode does not have to be dependent or await attornment by the tenant. It depends on the agreement to sell, full payment and transfer of right to recover the rent as distinct from sending a letter of attornment to the tenant. The contention of the petitioner that asking the tenant to attorn is imperative, may now be tested. If attornment letter is not sent by the purchaser would it mean that only on giving information the power of attorney sale would be complete, or that the statutory authorities would assess the previous owner and

not the purchaser as the owner. The answer to each is in negative. To my mind omission to ask the tenant to attorn cannot be fatal or postpone the actual sale till that is done. The petitioner in his written submissions filed in this Court conceded that in 1993 in the Petition No. 9/96 titled J.C. Mehra v. Pushpawti, filed by the petitioner, he was informed that property in question had been bought by the respondent herein. The date of the proceedings is more than 5 years prior to filing of the eviction petition. I am fortified in this regard by a judgment of this Court Jagdish Chancier Gulati (supra), which has been dealt with above.

21. In light of the aforesaid discussion, I do not find any merit in the petition.

22. However, the petitioner is granted time till 31.12.2003 to vacate the premises on his filing the usual undertaking in this Court within two weeks.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com