Moortie Devi and ors Vs. Sat Prakash

Moortie Devi and ors Vs. Sat Prakash

SooperKanoon Citation : sooperkanoon.com/924405

Court : Delhi

Decided On : Feb-10-2012

Appellant : Moortie Devi and ors

Respondent : Sat Prakash

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on : February 07, 2012 Judgment Pronounced on: February 10, 2012 + RFA(OS) 105/1998 MOORTIE DEVI and ORS. ..... Appellants Through: Mr.Lal Singh Thakur, Advocate. versus SAT PRAKASH ....Respondent Through: Mr.Akshay Makhija, Advocate. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRADEEP NANDRAJOG, J..

1. We shall be referring to the parties by their nomenclature in the suit. The appellants are the legal heirs of the deceased defendant and the respondent is the plaintiff. Thus, the expression plaintiff used by us hereinafter would be referring to the respondent and the expression defendant would be referring to the appellants..

2. Plaintiff filed a suit seeking declaration that the sale deed dated July 20, 1983 executed by his father in favour of the defendant was null and void; decree for possession in respect of the property conveyed being plot no.13, Krishan Nagar, ad-measuring 66.23 sq. yds. was prayed for and, lastly mesne profits against the defendant was sought in respect of the unauthorized possession of the defendant..

3. As per the plaint, the plaintiff stated that he acquired title to the suit property by virtue of a registered sale deed dated April, 29, 1955 executed by the owner Sh.Om Prakash Goela, who in turn had acquired title to the plot by RFA (OS) 105/1998 *Page 1 of 9* virtue of a registered sale deed executed by the developer of the colony i.e. DLF Company in his favour which was registered on March 4, 1950. Claiming to have obtained mutation in his name in the records of the Municipal Corporation of Delhi and that in the year 1968 he had sought for and obtained a permission to construct on the plot and had thereafter constructed a building thereon for which plaintiff claimed to have paid the municipal taxes, it was asserted that being in Government service the plaintiff was serving outside Delhi and taking advantage of his absence the defendant took illegal possession of the plot in July 1983 after getting executed from the father of the plaintiff a sale deed in his favour on July 20, 1983. It was asserted that the father of the plaintiff could not convey title as he was not the owner of the property nor was he empowered by the plaintiff to sell the same. It was pleaded that due to old age, being 85 years old in the year 1983, due to weak mind, the father of the plaintiff was liable to be easily influenced and taking advantage of the said fact the defendant manipulated the father of the plaintiff..

4. The defendant pleaded title by adverse possession pleading that since June 20, 1958 he was in exclusive physical possession of the property to the knowledge of the plaintiff when it was a vacant land and that he was paying the property tax after the property was mutated in his name and that he was carrying on business from the property in the name and style Shri Ganesh Cement Jali Works. With respect to the sale deed dated July 20, 1983 which was executed by the father of the plaintiff in his name, he pleaded, in para 12 of the written statement as under:- "In fact since the father of the plaintiff claiming himself to be the owner of the said plot of land, RFA (OS) 105/1998 *Page 2 of 9* desired the defendant to pay him some compensation considering his old age for the ownership rights in the said plot, even though he was not entitled to anything because the defendant has already become the owner of the said plot of land on account of adverse possession. The defendant out of compassion and respect for the old man agreed to pay him a sum of `10,000/- (Rupees Ten Thousand only) in consideration of which the aforesaid father of the plaintiff desired to execute the sale deed in favour

of the defendant and consequently Shri Ram Chhiber, the father of the plaintiff executed a registered sale deed on 20.7.1983 in favour of the defendant for consideration of `10,000/- (Rupees Ten Thousand only) which was paid to him before the Sub- Registrar at Krishan Nagar, Delhi-110051 at the time of registration"..

5. Reiterating the case pleaded in the plaint and denying the stand pleaded in the written statement, replication was filed, and on the pleadings of the parties, following issues were settled:-.

1. Whether the plaintiff is the owner of the property in dispute?.

2. In case issue No.1 is proved, was Shri Shree Ram Chibber competent to effect sale of this property in favour of the defendant and what is the effect of the sale?.

3. Has defendant become owner of this property by adverse possession and is this plea available to him having purchased this property from Shri Shree Chibber?.

4. Is the suit within time?.

5. Is the plaintiff entitled to damages/mesne profits? If so, at what rate and for what period?.

6. Relief. RFA (OS) 105/1998 Page 3 of 9.

6. At the trial, the plaintiff examined 8 witnesses and the defendant examined.

2. 7. In a nutshell, the evidence which was proved was the sale deed Ex.P-10 dated March 4, 1950 whereunder, Delhi Land and Finance sold plot no.13, i.e. the plot in dispute to Om Prakash Goela; the sale deed Ex.P-9 dated April 29, 1955 whereunder Om Prakash Goela sold the plot to the plaintiff. Sale deed Ex.D-1/1 dated July 20, 1983 executed by plaintiffs father in favour of the defendant, house tax receipts Exs.P-3, P-4, P-5, P-7 and P-8 issued by the Municipal Corporation of Delhi evidencing house tax paid by the plaintiff Ex. P-1 being the sanctioned dated June 20, 1968 granted to the plaintiff to construct on the plot Ex. P-12 being the Jamabandi showing various agricultural lands sold by the recorded Bhumidar to DLF Ltd. Certain sale tax assessment orders were also proved pertaining to the

firm Shri Ganesh Cement Jali Works..

8. Thus, the plaintiff, through the medium of the Jamabandi established that the recorded Bhumidars of a large chunk of land had sold the same to DLF Ltd. and after developing the raw land, DLF Ltd. sold plot No.

13. to Om Prakash Goela who in turn sold the same to the plaintiff and that the plaintiff obtained sanction from the Municipal Corporation of Delhi in the year 1968 and constructed a building on the plot and that the plaintiff was assessed to house tax, which he paid. As regards the defendant, the plea that he was assessed to municipal tax was not made good and the plea of being in possession since the year 1958 was also made not good for the reason the sale tax assessment orders only showed that Sh. Ganesh Cement Jali Works was paying RFA (OS) 105/1998 *Page 4 of 9* sales tax and there was no linkage of business being carried out by the said firm from or at the plot in question..

9. An important admission made by the defendant, when he was cross-examined also surfaced. The admission is to be found in the under noted portion of the defendants cross-examination:- " I could not locate the sale deed which I was required to bring to Court today. Therefore, I am unable to produce the same in Court. I have seen the lay out plan of Krishan Nagar colony which falls within Kodli Village. The plan relates to the colony developed by Delhi Land and Finance Company which is called Krishan Nagar. I have seen the portion encircled red on this plan which shows the cinema shop plots No.1 to 16, including the plot in suit. The plan is Exhibit P-18. My shop plot is plot No.16 and that is marked A on this plan. Plot No.

13. is marked B on the said plan. Plot No.15 is marked C and plot No.14 is marked D. It may be correct that these plots were owned initially by the Delhi Land and Finance Company. However, I did not purchase any plot from Delhi Land and Finance Company. I know that plot No.16 was not purchased by my father from Delhi Land and Finance Company. Cinema Plot No.15 is owned by younger brother Hukum Chand. It is incorrect to suggest that Cinema Plot No.15 was purchased by my brother from Ms. Pushpa, wife of Mr. K.N. Chhibber in the year 1971-72. In the year 1971-1972 the plot was purchased from one Narain Dass

Chadha. I cannot say anything about plot No.14 because the same was purchased by my younger brother. It is incorrect to suggest that all the three plots, i.e. plot Nos. 14, 15 and 16 were in my possession. The averments in para No.7 of the plaint to the effect that plot Nos. 14, 15 and 16 are in possession of the defendant are incorrect.".

10. In view of the fact that plaintiffs father was neither the owner nor was he empowered to sell the suit property, and in view of the Jamabandi Ex. P-12; the sale deed executed by DLF Ltd. in favour of Om Prakash Goela and the sale deed executed by him in favour of the plaintiff, the learned Single Judge has held that the plaintiff has established the case pleaded by him. In view of the sanction granted by the MCD to the plaintiff to construct a building on the plot and the house tax receipts filed, learned Single Judge has held that it is apparent that the plot was un-built till the year 1968 and that thereafter, the plaintiff constructed a building thereon. Except for a self serving statement made by the defendant of being in possession of the plot since 1958, finding no evidence and as against that there being documentary evidence showing plaintiffs possession, the suit has been decreed. The learned Single Judge has noted that the admission by the defendant, in the form of non-denial, that plot no.14, 15 and 16 were owned by the defendant and his family members through sale deed executed by DLF Ltd., the learned Single Judge has held that the defendant could not challenge title of DLF Ltd., as the colonizer, for the land in dispute..

11. It was urged by learned counsel for the defendant that the Jamabandi Ex. P-12, records an oral sale of a large chuck of agricultural land by the recorded Bhumidar in favour of DLF Ltd. Counsel urged that such large chunk of land would not presumably be of a value less than ` 100/- and thus, DLF did not acquire title to the land as recorded in the Jamabandi..

12. The argument takes the defendant nowhere. If DLF acquired a defective title, this would not mean that the defendant acquired title to the land. If DLF acquired a defective title, at best it can be said that DLF passed on a defective title to Om Prakash Goela, who in turn, passed on a defective title to the plaintiff. But, this defective title would be a better title than that

of the defendant, who in fact, has none..

13. Learned counsel for the defendant had no answer to the admissions made by his client qua DLF Ltd. conveying title to him and his family members in respect of the adjoining plots bearing No.14, 15 and.

16. We have highlighted hereinabove the portions of the admissions of the defendant during cross-examination and need not re-note the same. We only need to highlight that during course of his deposition on August 22, 1990 the defendant told that on the next date he would produce the sale deed pertaining to plot No.

16. purchased by him, production whereof was necessary because during cross-examination on August 22, 1990, he remained non committal as to from whom he had purchased the plot. It is apparent that the defendant was withholding a valid document because if produced, it would have shown that in respect of plot No.16, the defendant had acquired title through DLF Ltd. and this would have reinforced the case of the plaintiff qua plot No.13. Thus, on the strength of the legal principal that where a party withholds from the scrutiny of a Court a valid document, a presumption would be raised against the party that if produced, the document would have gone against the party concerned, we find the issue being decided against the defendant..

14. The defendant had pleaded title by adverse possession and suffice would it be to state he pleaded possession with him since the year 1958, a fact which was not proved. No act of hostile adverse possession has been shown. As against that, the plaintiff has shown possession in the year 1968 for the reason it was in said year that the Municipal Corporation of Delhi granted sanction to the plaintiff to construct a building on the vacant plot. On the building being constructed, plaintiff was assessed to, and paid house tax. The levy of house tax is on self occupancy basis. The house tax payment receipts would show that all throughout till the year 1982 house tax was paid by the plaintiff. In fact, the receipt Ex.P-8 shows house tax being paid by the plaintiff even for the year 1984-85..

15. The plea taken by the defendant to justify the offending sale deed executed by plaintiff's father in his favour, is an obvious ruse and irrespective of the fact whether plaintiff's father was of weak mind or not, the said document does not convey any title to the defendant for the reason the father of the plaintiff was not the owner of the property and there is no document to evidence that the plaintiff ever authorized his father to sell the property to the defendant..

16. The Jamabandi Ex.P-12 shows that the recorded Bhumidar sold the land, and much more, to DLF Ltd. The sale deed Ex.P-10 shows that DLF Ltd. transferred title in the plot in question to Om Prakash Goela. The sale deed Ex.P-9 shows that Om Prakash Goela transferred title of the plot in the name of the plaintiff. Thus, the plaintiff has successfully established title to the land. For the evidence discussed hereinabove, the plaintiff has also proved possession till he was illegally dispossessed in the year 1983 on the strength of the offending sale deed. The defendant has no evidence to show possession, much less adverse. The sale tax assessment orders proved do not show that the defendant's firm was carrying on business from the suit property. RFA (OS) 105/1998 Page 8 of 9.

17. Thus, we concur with the findings of fact arrived at by the learned Single Judge and we dismiss the appeal with costs against the defendant and in favour of the plaintiff. (PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE FEBRUARY 10, 2012 KA RFA (OS) 105/1998 Page 9 of 9