

**Mansa Ram Vs. Tilak and Another**

**Mansa Ram Vs. Tilak and Another**

**SooperKanoon Citation :** [sooperkanoon.com/948986](http://sooperkanoon.com/948986)

**Court :** Delhi

**Decided On :** Oct-18-2012

**Judge :** Pradeep Nandrajog & Manmohan Singh

**Appeal No. :** RFA(OS) NO. 12 OF 2012

**Appellant :** Mansa Ram

**Respondent :** Tilak and Another

**Judgement :**

**MANMOHAN SINGH, J.**

1. This appeal has been filed by the appellant Mansa Ram against the judgment and decree dated July 08, 2011 passed by the learned Single Judge in CS(OS) No.2077/2009 whereby the plaint filed by the appellant has been rejected by allowing application under Order VII, Rule 11 CPC being I.A.No.3733/2010 filed by the respondents. Consequently, it was also ordered that the suit as well as all pending applications are also dismissed.

2. The relevant brief facts of the matter are that the appellant had filed the suit for declaration praying for cancellation of General Power of Attorney dated September 05, 2003 and the sale deed dated November 03, 2006 against the respondents, namely, Tilak and Sanjeev Kumar. The appellant claims that he has been in the continuous and undisturbed possession of 6 Bighas of land comprised in Khasra No.296/112/1 situated in the revenue estate of Vill.Khajuri Khas, New Delhi.

3. The case set up by the appellant against the respondents is that respondent No.1 had obtained Power of Attorney dated September 05, 2003 by fraud and misrepresentation holding out that under the power he would manage and look after the lands since the appellant was of old age. The respondent No.1 had executed the sale deed dated November 03, 2006 on behalf of the appellant by using the fraudulently obtained Power of Attorney. The specific averments are made in paras 14 to 23 and paras 30, 31 and 39 of the plaint.

4. After the service of summons and filing a written statement, the respondents filed an application being I.A.No.3733/2010 under Order VII, Rule 11 CPC for rejection of the plaint, mainly, on the grounds that the suit filed by the appellant is barred by the provisions of the Delhi Land Reforms Act, 1952 (hereinafter referred to as the "Reforms Act") and the other revenue laws. It was stated in the application that the appellant had admitted in the proceedings dated March 16, 2007 before the Tehsildar (Seelampur), Delhi that he had no objection if the mutation of the suit property was executed in the name of respondent No.2, as he had already received the sale consideration, and the possession of the suit property was given to respondent No.2 and on the basis of the said proceedings, the orders had been passed for carrying out necessary mutation in the revenue records in favour of respondent No.2 who was also granted permission to raise the boundary wall of the suit property by the office of Sub Divisional Magistrate, Seelampur, G.T.Road, Shahdara, Delhi vide order dated December 15, 2007. A mere perusal of the said order would show that the said land is an agricultural land, therefore, any grievance with regard to the suit property would not confer any jurisdiction upon this Court. Thus, the plaint is liable to be rejected.

5. The application was opposed by the appellant. It is not denied by the appellant that the Revenue Courts under the Reforms Act have the jurisdiction to determine the issues as set out in Schedule-I to the Reforms Act, however, the present case is not covered under the said jurisdiction as the appellant's suit is only for declaration of cancellation of the General Power of Attorney dated September 05, 2003 which had been obtained by fraud and misrepresentation and in consequence to that, the sale deed dated November 03, 2006 which was registered in favour of respondent No.2 by playing a fraud, for which the Revenue

Courts have no jurisdiction to decide the said issue. The issue of fraud and cancellation of document can only be decided by the Civil Courts. The appellant is not seeking any declaration of Bhumidari rights and claiming ownership in any manner.

6. The learned Single Judge vide order dated July 08, 2011 allowed the respondents' application and rejected the plaint of the suit filed by the appellant, holding that the Civil Courts have no jurisdiction to directly decide the question of title in the matter pertaining to the Reforms Act, as the appellant is seeking cancellation of a document by ascertaining his right in the agricultural land, therefore, the appellant cannot come to the Civil Court and he can seek a relief for correction of the revenue record and eviction of respondent No.2 as well as declaration with possessory rights in the Revenue Courts under the Reforms Act. Another reason given by the learned Single Judge is that the suit simplicitor for declaration and cancellation of the sale deed is hit by Section 34 of the Specific Relief Act, 1963. Consequently, the suit of the appellant was also dismissed.

7. There is no dispute that in order to decide the application under Order VII, Rule 11 CPC, the averments made in the plaint have to be read without looking at the defence raised by the opposite party. From the plaint it is to be seen by the Court as to whether the suit is barred by way of any law or the plaint does not disclose any cause of action. No doubt, rejection of the plaint is a serious matter as it non-suits the plaintiff and kills the cause of action. Therefore, without satisfaction of requirement of the said provision, the plaint cannot be rejected. Reliance is placed on **Popat and Kotecha Property vs. State Bank of India Staff Association**, JT 2005 (12) SC 302 and **Mayar (H.K.) Ltd. and Ors. vs. Owners and Parties, Vessel M.V. Fortune Express and Ors.**, AIR 2006 SC 1828. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the

plaint in their entirety must be held to be correct. The test is, if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed or not. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated question of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. While adjudicating the question of rejection of plaint, it is immaterial for the Court if the case is weak or not likely to succeed.

8. In **Vijai Pratap Singh v. Dukh Haran Nath Singh And Another**, reported in AIR 1962 SC 941 the Supreme Court held as under:-

“By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima-facie, show a cause of action, the Court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him...”

9. As regards averments of obtaining the power of attorney in the fraudulent manner, the specific statements are made in paras 30, 31 and 39 of the plaint which read as under:-

“30. From the said documents the plaintiff obtained the knowledge that a General Power of Attorney dated 05.09.2003 containing power to sell the said land had been obtained fraudulently by the defendant no.1 and that the defendant No.1 using the impugned Power of Attorney has further executed a Sale Deed dated

03.11.2006 in favour of Shri Sanjeev Kumar defendant No.2 herein. It was further revealed that using the impugned sale deed dated 03.11.2006 the defendant No.2 has obtained the mutation of his name in the revenue records with respect to the said land.

31. It is pertinent to mention here that the defendant No.1 and 2 are the local villagers of Village Khajuri Khas and are well aware of the conditions and circumstances of the plaintiff. The defendants were also aware of the fact that the plaintiff is uncared for and is not looked after by his family members. The defendant No.2 is also aware of the fact that the plaintiff had never sold and/or executed any document of any nature which could be used to transfer the said land, nor has the plaintiff ever intended to sell the said land. The defendant No.2 is as much as accomplice of the defendant No.1 in the entire fraudulent transaction as is the defendant No.1 himself. The defendant No.2 never approached the plaintiff in any manner whatsoever, to seek clarification with respect to the veracity of the impugned General Power of Attorney dated 05.09.2003 though both the defendants were aware that the said land was under acquisition and that the plaintiff has challenged the acquisition proceedings in respect of the said land. The defendant No.2 also never approached the plaintiff to satisfy as to whether the impugned General Power of Attorney dated 05.09.2003 was still valid and operative.

39. The impugned Power of Attorney dated 05.09.2003 and the impugned Sale Deed dated 03.11.2006 has been obtained by fraud, cheating and misrepresentation and are void documents as the plaintiff at no point of time had executed any Power of Attorney granting the defendant No.1 power to sell and/or transfer the said land in any manner. The defendant No.1 had no power of any nature to transfer, sell and/or create any sort of interest in favour of any person whatsoever in the said land. It is further submitted that the Sale Deed dated 03.11.2006 has been executed by the defendant No.1 in favour of defendant No.2 without any authority.”

10. It is also specifically stated in the plaint that the appellant is the owner and in possession of the suit land. Similarly, in paras 14 to 23 of the plaint it was averred

that respondent No.1 had obtained the Power of Attorney dated September 05, 2003 by fraud and misrepresentation and on the basis of the said Power of Attorney, respondent No.1 had executed the sale deed dated November 03, 2006 on behalf of the appellant by using the fraudulently obtained Power of Attorney.

The appellant has denied the possession of respondent No.2 and also denied any statement made before any mutation proceedings with respect to the suit property.

11. Obviously, in case, the respondents in trial are able to prove that the General Power of Attorney was validly given by the appellant to respondent No.1 and he has actually made the statement in the proceedings dated 16th March, 2007 before the Teshildar (Seelampur), Delhi, then the suit must fail, however, at this stage, in view of the specific statement in plaint, the same cannot be rejected. It is also in view of the fact that the appellant has specifically denied that no such statement was made by him and he is in actual possession of the suit property. But we have still to decide the issue raised by the respondents that the Civil Court has no jurisdiction to entertain the suit and only jurisdiction lies in respect of matter in the Revenue Courts under the Reforms Act.

12. The Full Bench of the Allahabad High Court in **Ram Padarath vs. Union of India**, 1989 All WC 290 was ceased of a suit for cancellation of a sale deed and permanent injunction on the ground that the sale deed has been executed by impersonation and that the plaintiff was the tenure holder in possession of the land. The Bench held that the Civil Courts will have jurisdiction in a suit for cancellation of documents where, it is a suit for cancellation of document simplicitor with no declaration of title. The Constitution Bench decision in **Ram Padarath** (supra) case was upheld by the Supreme Court in **Smt. Bismillah vs. Janeswar Prasad and Ors**, (1990) 1 SCC 207. In the said case, a suit for cancellation of the document and possession was filed where the Apex Court held that the Civil Court would have jurisdiction to decide the issue as the sale deed requires to be set aside before the plaintiff is entitled for possession and other consequential reliefs. The Supreme Court in **Shri Ram and Anr. vs. Ist Additional District Judge and Ors.**, (2001) 3 SCC 24 approving the **Ram Padarath** (supra) case held that a tenure holder in possession can file a suit in

Civil Court for cancellation of a sale deed on the ground of fraud or impersonation, as prima facie the title of the recorded tenure holder is not under cloud.

13. Recently, the Supreme Court in **Horil vs. Keshav and Anr.**, (2012) 5 SCC 525 has expanded the scope in case of the jurisdiction of the Civil Court to decide the issue of fraud and has held that the Civil Courts can entertain suit even in regard to decrees or orders passed in suit or proceedings under different statute or tribunal of limited jurisdiction.

14. The learned Single Judge relied on the judgment of **Ram Niwas vs. Pitamber Singh and Ors.**, 2008 (102) DRJ 81 (DB). However, the said case has no applicability to the present case, as the same was decided on the admissions of the parties and that it did not lay down any ratio which could be relied upon by the learned Single Judge. The said case was also distinguishable on the fact that five issues were framed, out of which three main issues were triable by the Revenue Courts and only two ancillary issues fell within the jurisdiction of the Civil Court. In the present case, all the prayers sought and the issues arising fall within the exclusive jurisdiction of the Civil Court. Further, in the present case, no declaration was sought that the appellant be declared that he is the absolute owner in possession of the suit property, rather in the case in hand specific statement is made in the plaint that he has been in continuous possession of the suit property. Thus, the decisions referred by the respondents do not help the facts of the present case.

15. We are of the considered view that the learned Single Judge has erroneously decided that the Civil Courts have no jurisdiction to decide the dispute involved in the matter and he can only seek the relief of correction of the revenue record and eviction of respondent No.2 by claiming possessory rights in the revenue record and further he cannot come to the Civil Courts directly.

16. It is a matter of fact that nowhere in the application filed by the respondents, it has been mentioned that defendant No.2 is in actual physical possession of the suit property. It is also pointed out by the counsel appearing on behalf of the appellant that as per sale deed, the entire consideration for selling the suit property was received by respondent No.1 in cash from respondent No.2. Both

respondents have filed the joint written statement. He also pointed out that after obtaining the certified copy of the General Power of Attorney and now the certified copy filed by the respondents, it appears that the description of address mentioned of the suit property does not match with each other. According to him, in case the power of Attorney is read in a meaningful manner, actually the same was got executed for the purpose of maintaining the suit property except in general clause in one corner of clause-5 it was also mentioned “to sell or to transfer in any other way the said property in all respects”. Since we are not dealing with the subject matter of the application of Order VII, Rule 11 CPC, we are not inclined to make any comment towards the discrepancies pointed out by the counsel for the appellant which cannot be dealt with at this stage. These can be considered by the Court below at the appropriate stage of the proceedings if so raised. However, we do highlight, to bring out on a look, read and feel test, by reproducing the contents of the General Power of Attorney with respect to its tenor. It reads as under:-

#### **“GENERAL POWER OF ATTORNEY**

This Deed of General Power of Attorney is executed at Delhi on this 5th day of Sept., 2003, by SH. MANSA RAM s/o Sh. Katuwa R/o Village Khajuri Khas, Delhi-110094, hereinafter called the Executant.

IN FAVOUR OF:

SH.TILAK S/o Sh. Late Sh. Ram Phal R/o 186/6, Arvind Nagar, Ghonda, Delhi-110053, hereinafter called the Central Attorney.

Whereas the executant is the absolute owner and in possession of a land area measuring 6 Bigha out of the khasra No. 296/112, Situated at village Khajuri Khas, Near Shri Ram Colony, Rajiv Nagar, Illaqa Shahdara, Delhi-110094.

For performance of certain duties and formalities, I do hereby appoint nominate and constitute the aforesaid person as my General Attorney to the Following acts, deeds and things in my name and on my behalf

ACTS DEEDS and THINGS OF G.P.A. are as follows:-

- 1) To submit all kinds of applications, affidavits, I bond, whatsoever to the concerning departments, on my/our behalf, under his own signatures.
- 2) To file any kinds of Civil/ Criminal suit or suits or suits, whatsoever against other on my behalf and to contest the same if filed by others against me/us.
- 3) To appoint any vakil/Advocate. Further attorney or Attornies on my behalf.
- 4) To give any statement oral/written on my behalf before any concerning authority/authorities, to sign on the same on my behalf.
- 5) And Generally to do all other kinds of formalities, acts, deeds and things if would not be mentioned in this deed for fully management and to sell or to transfer in any other way the said property in all respect.
- 6) I, do hereby agree to ratify and confirm and all whatsoever my said attorney shall do or cause to be done by virtue of this Deed of General Power of Attorney shall be considered as I could do the same myself if I were present personally.

IN WITNESSES WHEREOF THE executants has signed this Deed on the day month, and year first above written.”

17. The learned counsel for the respondents has referred certain documents as well as para 3 of the application by stating that the appellant had made a statement in the proceedings dated March 16, 2007 before the Tehsildar (Seelampur), Delhi whereby he had raised no objection in executing the mutation of the suit property in the name of respondent No.2. However, in reply to the corresponding para of the application, the said statement was specifically denied by the appellant and it was stated that the entire mutation proceeding initiated before the Tehsildar was itself a fraud committed not only on the plaintiff but also on the State.

18. In the light of the above settled law and for the reasons given in earlier paras of our order, we are of the view that if the entire plaint is read in a meaningful manner, the same cannot be rejected.

19. Without expressing and deciding anything on merit of the case, we are of the view that the present case warrants trial. No doubt, the issues raised by the respondents in their application under Order VII, Rule 11 CPC as well as in the written statement have to be decided after the trial. We are of the view that the findings given by the learned Single Judge are not sustainable, thus, the impugned judgment dated July 08, 2011 is set aside. The present appeal is allowed with no order as to costs. The suit is restored at the original position and the same shall be listed before the Joint Registrar on January 16, 2013 for admission/denial of the documents.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**