

Rahul Vs. M/S. Allied Reality Private Ltd. and ors.

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Court : Delhi

Decided On : Apr-30-2013

Judge : Manmohan

Appellant : Rahul

Respondent : M/S. Allied Reality Private Ltd. and ors.

Judgement :

#F-1 \$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 914/2008 RAHUL Plaintiff Mr. Ravinder Chauhan, Advocate Through versus M/S. ALLIED REALITY PRIVATE LTD. AND ORS. Defendants Through Mr. Atul Bandhu with Mr. Varun Kumar and Mr. Pawan Kumar, Advocates for D-2. Date of Decision:

30. h April, 2013. % CORAM: HON'BLE MR. JUSTICE MANMOHAN JUDGMENT MANMOHAN, J (Oral):

1. Present suit has been filed for declaration/cancellation of documents and injunction. By the present suit the plaintiff has sought cancellation/annulment of the following documents :i) Unregistered Power of Attorney dated 18th May, 2004 allegedly executed by the plaintiff in favour of his brother, Mr. Dheeraj, defendant no. 4; ii) CS(OS) 914/2008 by defendant no. 4 in favour of defendant no. 3; iii) Unregistered Power of Attorney dated 18th June, 2004 executed by defendant no. 3 in favour of defendant no. 2; and iv) Sale Deed dated 20th September, 2006 executed in favour of defendant no.

1.

2. Learned counsel for the plaintiff states that unregistered Power of Attorney dated 18th May, 2004 is fraudulent inasmuch as the same was never executed by the plaintiff. He further states that on 18th May, 2004 the plaintiff was a minor of hardly fourteen years of age, as his date of birth is 12th March, 1990. He submits that as the chain of documents with regard to the suit property comprising 4 bighas and 8 biswas situated in the Village Kaidpur Kushak, Delhi is based on a null and void Power of Attorney dated 18th May, 2004, all the three subsequent Power of Attorneys/Sale Deed have to be cancelled/annulled.

3. In the present case defendant nos. 1, 3 and 4 have chosen not to appear. Though defendant no. 2 filed a written statement and also led his evidence, he has expired during the pendency of present proceedings. This Court has not deemed it appropriate to implead the legal heirs of defendant no. 2 as admittedly the defendant no. 2 has further sold the property.

4. On 27th September, 2010, the following issues were framed:(i) Whether the suit is barred on the ground of res judicata?OPD-2 (ii) Whether the sale deed dated 20.09.2006, Power of Attorneys dated 18.05.2004, 19.05.2004, 18.06.2004 are Power of Attorneys are liable to be declared as null and void? OPP (iii) Whether the suit is liable to be dismissed on account of alleged misrepresentation as articulated in Paragraph (1) of the preliminary objections to the written statement? OPD (iv) Whether the plaintiff is entitled to injunction as against the defendants as prayed for in prayer clause (e) of the plaint? OPP (v) Relief. ISSUE NOS. 2 an

5. These issues can be conveniently clubbed and decided together.

6. The onus to prove that three Power of Attorneys and the Sale Deed are liable to be declared as null and void is on the plaintiff. The plaintiffs sole submission is that the aforesaid documents are liable to be declared as null and void as plaintiff was a minor on the date when he is alleged to have executed the unregistered Power of Attorney dated 18th May, 2004.

7. However, this Court upon a perusal of the evidence on record finds that the plaintiff has failed to prove that he was a minor on 18th May, 2004. This Court finds that though the plaintiff has tendered in his examination-in-chief a certificate issued by the Principal of his school stating that his date of birth was 12th March, 1990 but no official from the said school has been produced as a witness.

8. The evidence led by the plaintiff also does not inspire any confidence as he states that though he studied upto Class 6, he cannot read and write English, Hindi or any other language. It is pertinent to mention that the unregistered Power of Attorney dated 18th May, 2004 executed by the plaintiff in favour of his brother does not mention either the plaintiffs age or his date of birth. Plaintiffs reliance on his janampatri in his cross examination is also irrelevant.

9. Accordingly, issue nos. 2 and 4 are decided against the plaintiff. ISSUE NOS. 1, 3 and

10. These issues can be conveniently clubbed and decided together.

11. Defendant no. 2 during his examination-in-chief has placed on record a certified copy of the order dated 23rd April, 2005 in Suit No. 114/2005 passed by the Civil Judge, Delhi filed by the plaintiff along with his brother challenging the sale of the present suit property in favour of present defendant no.

2. Since the cause title and the judgment of the aforesaid Suit No.114/2005 is very helpful in adjudication of the present issues, the same is reproduced in its entirety: IN THE COURT OF SENIOR CIVIL JUDGE; DELHI SUIT NO...../2005 IN THE MATTER OF:1.

2. SH. DHEERAJ KUMAR S/O LATE SH. VED PRAKASH RAHUL (MINOR) S/O LATE SH. VED PRAKASH THROUGH SMT. MUNNI DEVI MOTHER AND NATURAL GUARDIANPLAINTIFFS VERSUS 1 SH. INDRAJ SAINI S/O LATE SH. HIRA LAL SAINI R/O H.NO.68, VILLAGE-KUSHAK NO.1, DELHI-36.

2. SH. SATISH SAINI S/O LATE SH. JAGDEV SAINI R/O VILLAGE-KUSHAK HIRANKI, DELHI-36.DEFENDANTS AMENDED SUIT FOR DECLARATION, CANCELLATION OF DOCUMENTS AND PERMANENT INJUNCTION xxx xxx

xxx 1. Plaintiffs have filed this suit seeking declaration, cancellation of documents and permanent injunction against the defendants.

2. Vide this order I shall decide maintainability of this suit. Brief facts of the plaintiffs case are that :- Father of the plaintiffs was allotted 4 bigha 8 Biswa land in khasra no. 444 village khadipur, Delhi (herein after referred to as suit property) by the gaon sabha. He expired on 17.1.98. Plaintiffs are his two sons. Plaintiff no. 2 is a minor who is represented through his mother Smt. Munni Devi. After the death of the father, the suit property was mutated in the name of the plaintiffs. Plaintiffs have been absolute owner and in possession of the aforesaid land. Mother of the plaintiffs was implicated in a false and fabricated case and was sent to judicial custody. Plaintiff no 1 sought the help from defendant no 2 to engage counsel and to get his mother free. Defendant no 2 obtained signature of the plaintiff no 1 on certain blank papers. Mother of the plaintiffs was released on bail in September/October 2004. Plaintiffs talked to the defendants for getting her mother out from the said criminal case and the defendants told them and their mother that they can get her acquitted. They asked the plaintiff no 1 and mother of the plaintiff to sign and affix the thumb on various blank, stamped and un stamped papers, on the pretext that they are needed to be handed over to the advocate. Plaintiffs and their mother being illiterate put their signatures and thumb impressions on the said blank papers in good faith. Now the defendants started harassing the plaintiffs and they have been making demand for Rs. 1,00,000/- (One Lac) from the plaintiff. They have threatened that they shall misuse the blank papers signed by the plaintiffs and their mother. Plaintiffs were surprised to see and understand the fraud played upon the plaintiffs by the defendants. They tried their best to seek the return of the blank papers, but in vain. In fact defendants have threatened to take forcible and illegal possession of the land belonging to and under the possession of the plaintiffs. Defendant no 1 came to the residence of plaintiff on 25.3.05 and threatened to take the illegal and forcible possession of the suit property. Such threats is still continuing. Plaintiffs lodged a complaint to SHO Samaypur Badali, ACP and DCP of the concerned area, but no action was taken by the police. Hence the present suit.

3. Plaintiffs have prayed for a decree of declaration, there by declaring the alleged documents to be null and void being forged documents. It is further prayed by them that defendants be directed to return the said blank papers to the plaintiffs. It is further prayed that the documents be cancelled and defendants be restrained from dispossessing the plaintiffs from the suit property and from using the alleged documents against the plaintiffs.

4. On 20.4.05 all the parties had appeared in persons. Plaintiff no. 1 gave his statement that he had sold his share in the suit property without any pressure on 11.11.01 and had given possession of half of this land to defendant no.1 around 2 months back. He further stated that present suit was not filed against either of the defendants by him. Smt. Munni Devi i.e., mother and natural guardian of plaintiff no.2 was also examined and she admitted that, she had knowledge about sale of half of the suit property to defendant no.1 and half of land was handed over to defendant no.1.

5. From the statement of plaintiff no.1, this suit becomes non maintainable on his behalf. From the statement of Smt. Munni Devi i.e., guardian of plaintiff no.2, it becomes clear that story given in the plaint is not correct regarding taking of signature of plaintiff no.1 and Smt. Munni Devi on blank papers. Further more, when defendant no.1 was already given possession around two and half months back, then there is no question of any need for defendant no.1 to come to the plaintiff and to threaten them for forcible dispossession. Thus from the statement of aforesaid persons, it becomes totally unambiguous situation that defendant no.1 was sold half of the suit property by plaintiff no.1 within the knowledge of natural guardian of plaintiff no.2. In fact after examination of these persons, it has become clear now that present suit has been filed giving a false story and in that situation, this suit has to fail being a frivolous one.

6. In view of my aforesaid findings and observations, plaint is rejected and consequently suit is dismissed with cost of Rs.3,000/- in favour of each of the defendants. Decree sheet be prepared accordingly. File be consigned to Record Room. (emphasis supplied) 12. In the opinion of this Court as Suit No. 114/2005 was filed by the present plaintiff through his natural guardian as plaintiff no. 2, he

was duty bound to disclose the said judgment in the present plaint.

13. This court is of the view that non-disclosure of the aforesaid judgment amounts to suppression and concealment. In *Ramjas Foundation and Another vs. Union of India and Others*, (2010) 14 SCC 38, the Supreme Court has held as under: 21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in other courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.

14. In *S.P. Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) & LRs & Ors.*, (1994) 1 SCC 1 the Supreme Court has held as under: 1. Fraud avoids all judicial acts, ecclesiastical or temporal observed Chief Justice Edward Coke of England about three centuries ago.....

15. Learned counsel for the plaintiff tries to urge that Suit No. 114/2005 was not filed by the present plaintiff but by his brother as plaintiff no.1. He further submits that the plaintiff's mother had not taken any permission under Order XXXII CPC to sue on behalf of the present plaintiff.

16. However, this court finds that though the defendant no. 2 in his evidence by way of affidavit has clearly averred that Suit No. 114/2005 had been filed by the present plaintiff through his mother and natural guardian, the counsel for the plaintiff had not cross-examined the defendant no. 2 on this aspect.

17. Further, the plaintiff in his cross-examination has admitted that he and his brother along with their mother are still residing in the same house. Given this factual situation, it is unbelievable that the plaintiff would be unaware of the litigation filed by his mother acting as his guardian. Also the absence of plaintiff's brother, defendant no.4 in the present proceedings gives credence to defendant

no.2s allegation that the present suit has been filed by the plaintiff in collusion with defendant no.4.

18. This Court also takes note of the fact that the plaintiff in his replication stated that the plaintiff was not aware of any proceedings filed by his mother but reserved his right to seek appropriate remedies once he gets details of the alleged suit. Till date this Court has not been informed by the plaintiff whether he has challenged the decision in Suit No.114/2005. This Court is of the opinion that the plaintiff has advisedly not produced or summoned the trial court record or challenged the decision in Suit No.114/2005! 19. This Court is further of the opinion that the present suit is barred by virtue of Order II Rule 2 CPC and on the principle of constructive res judicata as on a new ground, sale of the suit property in favour of defendant no.2 could not have been challenged by the plaintiff by way of a second suit.

20. This Court is of the view that the present suit is liable to be dismissed on the ground of suppression and concealment. Accordingly, issue nos. 1 and 3 are decided against the plaintiff.

21. In view of the aforesaid, present suit is dismissed with costs of Rs. 5,00,000/-. This Court may mention that the aforesaid costs has been imposed as this Court is of the opinion that present suit is not only vitiated by fraud but an attempt to arm twist the subsequent bonafide purchasers for valuable consideration. Plaintiff is directed to deposit the aforesaid costs in the Advocates Welfare Fund within a period of eight weeks. MANMOHAN, J APRIL 30 2013 rn

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