

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.7527-7528 OF 2012

GHANSHYAM

...APPELLANT

VERSUS

YOGENDRA RATHI

...RESPONDENT

J U D G M E N T

PANKAJ MITHAL, J.

1. Heard Shri Rajul Shrivastav, learned counsel for the defendant-appellant. None appeared for the plaintiff-respondent despite service.
2. After having lost from all the three courts below, the defendant to the suit has preferred this appeal.

3. The plaintiff-respondent instituted a suit for eviction of the defendant-appellant from the suit premises which is part of H-768, J.J. Colony, Shakarpur, Delhi and for mesne profits on the averment that he is the owner of the said property by virtue of an agreement to sell dated 10.04.2002, power of attorney, a memo of possession and a receipt of payment of sale consideration as well as a “will” of the defendant-appellant bequeathing the said property in his favour; the possession of the suit premises was handed over to the plaintiff-respondent pursuant to the agreement to sell subsequently on the request of the defendant-appellant the plaintiff-respondent allowed the defendant-appellant to occupy the ground floor and one room on the first floor of it for a period of 3 months as a licensee; the defendant-appellant failed to vacate the suit premises despite expiry of the licence period and termination of licence vide notice dated 18.02.2003.

4. The defendant-appellant contested the suit on the ground that the aforesaid documents have been manipulated on blank papers but without disputing the execution of any of them or that the possession memo was not executed or that the sale consideration as per the agreement was not paid.

5. The trial court after framing three issues; the first being with regard to manipulation and fraudulently obtaining the alleged documents, the second regarding the right of the plaintiff-respondent to get the defendant-appellant evicted and the third with regard to entitlement of mesne profits, decided all the issues against the defendant-appellant. A categorical finding of fact was recorded that there is no evidence to prove that any of the above documents were obtained by misrepresentation, manipulation or by playing fraud upon the defendant-appellant. The plaintiff-respondent has proved his right over the property and since the licence of the defendant-appellant stands determined, he is entitled to a decree of eviction and payment of mesne

profits though not at the rate claimed by the plaintiff-respondent for which there is evidence but at the rate of Rs.1000/- per month for the use and occupation of the premises in dispute.

6. The leave was granted and the appeal was admitted probably on the question as to whether the above documents namely the power of attorney, the will, the agreement to sell coupled with possession memo and the receipt of payment of sale consideration would confer any title upon the plaintiff-respondent so as to entitle him to a decree of eviction and mesne profits.

7. The aforesaid point was not raised by the defendant-appellant through his pleadings in the trial court or the first appellate court and, therefore, the High Court in second appeal held that he cannot be permitted to raise such an issue and that the appeal, as such, does not involve any substantial question of law.

8. The suit as per the pleadings is that of eviction and mesne profits on the averment that the plaintiff-respondent is the owner of the property. He has claimed ownership on the strength of the aforesaid documents especially the agreement to sell and the memo of possession as well as the receipt of payment of sale consideration.

9. No doubt, agreement to sell is not a document of title or a deed of transfer of property by sale and as such, may not confer absolute title upon the plaintiff-respondent over the suit property in view of Section 54 of the Transfer of Property Act, 1882, nonetheless, the agreement to sell, the payment of entire sale consideration as mentioned in the agreement itself and corroborated by the receipt of its payment and the fact that the plaintiff-respondent was put in possession of the suit property in accordance with law as is also established by the possession memo on record, goes to prove that the plaintiff-respondent is de-facto having

possessory rights over the suit property in part performance of the agreement to sell. This possessory right of the plaintiff-respondent is not liable to be disturbed by the transferer, i.e., the defendant-appellant. The entry of the defendant-appellant over part of the suit property subsequently is simply as a licensee of the plaintiff-respondent. He does not continue to occupy it in capacity of the owner.

10. In the wake of the finding that the above-mentioned documents have not been fraudulently obtained or have not been manipulated, treating the said documents to be duly executed and as genuine, one thing is clear that the plaintiff-respondent is in a settled possession of the suit property at least in part performance of the agreement which cannot be disturbed or disputed by the transferer, i.e., the defendant-appellant.

11. At the cost of repetition, the suit is for eviction of the defendant-appellant from the suit premises and for recovery of mesne profits on the ground that after the defendant-appellant has parted with the possession of the property in favour of the plaintiff-respondent in part performance of the agreement, he has no right to disturb his possession. He is simply a licensee and the licence having been terminated, he has no right to remain in possession but to restore possession to the person having rightful possessory title over it.

12. It goes without saying that the power of attorney executed by the defendant-appellant is of no consequence as on the strength of said power of attorney, neither sale deed has been executed nor any action pursuant thereof has been taken by the power of attorney holder which may confer title upon the plaintiff-respondent. Non-execution of any document by the general power of attorney holder

consequent to it renders the said general power of attorney useless.

13. Similarly, the will dated 10.04.2002 executed by the defendant-appellant in favour of the plaintiff-respondent is meaningless as the will, if any, comes into effect only after the death of the executant and not before it. It has no force till the testator or the person making it dies. The said stage has not arrived in the present case and, therefore, even the aforesaid will in no way confers any right upon the plaintiff-respondent.

14. In connection with the general power of attorney and the will so executed, the practice, if any, prevalent in any State or the High Court recognizing these documents to be documents of title or documents conferring right in any immovable property is in violation of the statutory law. Any such practice or tradition prevalent would not override the specific provisions of law which require execution of a

document of title or transfer and its registration so as to confer right and title in an immovable property of over Rs.100/- in value. The decisions of the Delhi High Court in the case of ***Veer Bala Gulati Vs. Municipal Corporation of Delhi and Anr.***¹ following the earlier decision of the Delhi High Court itself in the case of ***Asha M. Jain Vs. Canara Bank and Ors.***² holding that the agreement to sell with payment of full consideration and possession along with irrevocable power of attorney and other ancillary documents is a transaction to sell even though there may not be a sale deed, are of no help to the plaintiff-respondent inasmuch as the view taken by the Delhi High Court is not in consonance with the legal position which emanates from the plain reading of Section 54 of the Transfer of Property Act, 1882. In this regard, reference may be had to two other decisions of the Delhi High Court in ***Imtiaz Ali Vs. Nasim Ahmed***³ and ***G. Ram Vs. Delhi Development Authority***⁴

1 (2003) 104 DLT 787

2 (2001) 94 DLT 841

3 AIR 1987 DELHI 36

4 AIR 2003 DELHI 120

which *inter-alia* observe that an agreement to sell or the power of attorney are not documents of transfer and as such the right title and interest of an immovable property do not stand transferred by mere execution of the same unless any document as contemplated under Section 54 of the Transfer of Property Act, 1882, is executed and is got registered under Section 17 of the Indian Registration Act, 1908. The decision of the Supreme Court in ***Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.***⁵ also deprecates the transfer of immovable property through sale agreement, general power of attorney and will instead of registered conveyance deed.

15. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the

5 (2009) 7 SCC 363

Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferer or any person claiming under him.

16. Notwithstanding the above as the plaintiff-respondent admittedly was settled with possessory title in part performance of the agreement to sell dated 10.04.2002 and that the defendant-appellant has lost his possession over it and had acquired the right of possession under a licence simpliciter, exhausted his right to continue in possession after the licence has been determined. Thus, the defendant-appellant parted with the possession of the suit property by putting the plaintiff-respondent in possession of it under an agreement to sell. The plaintiff-respondent in this way came to acquire possessory title over the same. The defendant-appellant, as such, ceased to be in possession of it as an owner rather occupied it as a licensee for a fixed period which stood determined by valid notice, leaving the

defendant-appellant with no subsisting right to remain in possession of the suit premises.

17. In view of the aforesaid facts and circumstances, the plaintiff-respondent has rightly been held to be entitled for a decree of eviction with mesne profits, we do not find any error or illegality in such a decree being passed. Accordingly, the appeals lack merit and are dismissed with no order as to costs.

..... J.
(DIPANKAR DATTA)

..... J.
(PANKAJ MITHAL)

New Delhi;
JUNE 02, 2023.