

Delhi High Court

Sh. Karamvir & Anr. vs Shri Maan Singh And Ors. on 13 May, 2014

Author: Valmiki J. Mehta

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RSA No.27/2014

% 13th May, 2014

SH. KARAMVIR & ANR.

..... Appellants

Through:

Mr. Mahmood Hasan, Advocate.

Versus

SHRI MAAN SINGH AND ORS.

..... Respondents

Through:

Mr. L.B. Rai, Advocate for  
respondent No.1.

Mr. K.P.S. Bhati, Advocate for  
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Second Appeal is filed by the plaintiffs under Section 100 of Code of Civil Procedure, 1908 (CPC) impugning the judgment of the first appellate court dated 30.11.2013 by which the first appellate court set aside the judgment of the trial court dated 28.1.2012 which had decreed the suit of the appellants/plaintiffs seeking injunction against forcible dispossession. The disputes between the parties are with respect to a plot bearing no.C-1, khasra no.965/391, C-Block, Gali no.12, Meet Nagar, Shahdara, Delhi admeasuring 200 sq yds.

2. The case of the appellants/plaintiffs was that they purchased rights in the suit property from Sh. Subhash Chand by paying a consideration of Rs.27.20 lacs. In favour of the appellants/plaintiffs a registered general power of attorney (GPA) dated 10.8.2009 was executed by the said Sh. Subhash Chand. The registered power of attorney dated 10.8.2009 was exhibited as Ex.PW1/3 in the affidavit by way of evidence filed on behalf of the appellants/plaintiffs. At the place of exhibition the documents/GPA was wrongly called as a sale deed. The other documents which have been exhibited are the site plan (Ex.PW1/1), complaint dated 13.8.2009 to the police (Ex.PW1/2), order of assessment by the house tax authority (Ex.Pw1/4), house tax receipt (Ex.PW1/5) and P-4 form (Ex.PW1/6) of the revenue authorities showing the property in the name of the appellants/plaintiffs. I must mention that though in the affidavit by way of evidence filed on behalf of the appellants/plaintiffs, these documents have been specifically exhibited, I find that the exhibit

numbers on the documents which are there are not the exhibits as per the affidavit by way of evidence as the power of attorney is found as Mark CA, the P4 form is Mark D, property tax receipt is Mark C and the house tax assessment order is Mark B. The issue is that whether the documents though have been exhibited in the evidence but have been only marked by the trial court results in the set of documents being not proved. In this regard, it is relevant to note that the cross-examination of the plaintiff has been conducted on 10.3.2011 and on 10.3.2011 before beginning of cross-examination, there is no objection recorded by the respondents/defendants (who are husband and wife) with respect to affidavit by way of evidence wrongly exhibiting the documents. I may also note that neither in the written statement filed nor in the affidavit by way of evidence which is filed on behalf of the defendant no.1 (husband of defendant no.2)/ Sh. Man Singh, it is stated that the documents which are relied upon by the appellants/plaintiffs are forged and fabricated documents. In any case, I do not think that the documents being registered power of attorney, house tax assessment order and the house tax receipt filed by the appellants/plaintiffs would be forged and fabricated because if that was so, the respondents/defendants would surely have summoned the officials from the relevant department to prove that the documents, which are in fact public records, are forged and fabricated. Therefore, in view of the ratio of the judgment of the Supreme Court in the case of R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P.Temple & Anr. AIR 2003 SC 4548 it is held that the documents filed by the appellants/plaintiffs though are marked, the same would be exhibited and proved documents more so because authenticity of the same cannot be doubted inasmuch as they exist in the public records.

3. For the disposal of this second appeal, the following substantial questions of law are framed:-

"(i) Whether the first appellate court has committed a gross illegality and perversity in dismissing the suit of the appellants/plaintiffs with respect to the suit property although the document being irrevocable general power of attorney creates rights in favour of the appellants/plaintiffs by virtue of Section 202 of the Contract Act, 1872 in the suit property?

(ii) Whether the first appellate court committed a gross illegality and perversity in holding that no threats were extended to the appellants/plaintiffs, and consequently for the first appellate court to hold that the relief of injunction against the threats of dispossession cannot be granted to the appellants/plaintiffs?"

4(i) Both the aforesaid questions have to be answered in favour of the appellants/plaintiffs.

(ii) Firstly, the first appellate court has overlooked the ratio of the judgment of the Supreme Court in the case of Suraj Lamps & Industries Pvt. Ltd. Vs. State of Haryana and Anr. (183) 2011 DLT 1 (SC) and wrongly held that the general power of attorney cannot be looked at, inasmuch as, the general power of attorney is a registered general power of attorney. The judgment of the Supreme Court in the case of Suraj Lamps & Industries Pvt. Ltd. (supra) specifically allows benefit of registered documents. This aspect is further to be noted with the fact that it was only after 25.9.2001, when Act 48 of 2001 was passed by the legislature amending various provisions including Section 53A of the Transfer of Property Act, 1882, that the registration of the documents such as an agreement to sell having the flavor of doctrine of part performance was required to be registered. Therefore, once the

power of attorney is a registered power of attorney, this document can surely be looked into in terms of Section 202 of the Contract Act, and which provides for irrevocability of a power of attorney given for consideration and such a GPA cannot be cancelled. The relevant observations of the Supreme Court in the case of Suraj Lamps (supra) read as under:-

"12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53A of Transfer of Property Act). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter. Scope of Power of Attorney

13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In State of Rajasthan v. Basant Nehata : 2005 (12) SCC 77 this Court held:

"A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favor of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of- Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

## Scope of Will

14. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivo. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the life time of the testator. It is said that so long as the testator is alive, a will is not be worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see Sections 69 and 70 of Indian Succession Act, 1925). Registration of a will does not make it any more effective.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales." (emphasis added)

5. The appellants/plaintiffs therefore may not in the strict sense be owners of the property, but, in a suit for possession or for injunction, a plaintiff has only to prove an entitlement to the suit property which is better than the respondent/defendant. Once the appellants/plaintiffs prove an entitlement better than the respondents/defendants, it is upon the respondents/defendants to discharge the onus that they have a better entitlement to the suit property than as is pleaded by the appellants/plaintiffs. In this case, the respondents/defendants have not shown any vestige of title for they being entitled to the possession of the suit property, and, the appellants/plaintiffs have duly shown their entitlement by virtue of registered power of attorney dated 10.8.2009. Accordingly, I hold that the appellants/plaintiffs had a better title than the respondents/defendants and were therefore entitled to the relief that the respondents/defendants should be enjoined from illegally dispossessing the appellants/plaintiffs from the suit property.

6. I may note that the suit property is a plot of land and it is settled law that with respect to an open piece of land possession follows title. Therefore, possession of the suit property will also have to be taken of the appellants/plaintiffs.

7. So far as the aspect that the first appellate court has held that threats of dispossession having not been extended to the appellants/plaintiffs, and which is allegedly including for the reason of typing mistake in the plaint of the date of the alleged threat of dispossession, however, once the suit itself is very strenuously contested and the same has reached this stage of second appeal, surely it is because the respondents/defendants are threatening to dispossess the appellants/plaintiffs, and this contest of the suit itself proves the threat of dispossession of the appellants/plaintiffs by the respondents/defendants.

8. In my opinion, the first appellate court should not have taken a very technical view of some actual threats having to be meted out for dispossessing the plaintiffs, and only thereafter there existing the entitlement of the appellants/plaintiffs for grant of injunction, because, all these aspects are really theoretical issues once the respondents/defendants contest the suit.

9. Learned counsel for the respondents argued before this Court the following three aspects:-

(i) The first appellate court has rightly held that the appellants/plaintiffs are not owners of the suit property inasmuch as the appellants/plaintiffs have wrongly called the registered power of attorney dated 10.8.2009 as a sale deed in the affidavit by way of evidence and also that a power of attorney otherwise is not a sale deed. It is accordingly argued that once the appellants/plaintiffs are not the owners of the suit property, they cannot be granted the injunction as prayed for.

(ii) The appellants/plaintiffs have not been proved themselves to be in possession and consequently the appellants/plaintiffs cannot be granted an injunction.

(iii) The appellants/plaintiffs, as per the plaint filed, stated that the defendants threatened them on 13.8.2009, although the power of attorney is, as per the plaint, dated 18.8.2009, and the case of the appellants/plaintiffs should thus be disbelieved.

10. So far as the third argument is concerned, the argument is totally frivolous and addressing it will amount to wastage of judicial time because in fact the registered power of attorney in favour of the appellants/plaintiffs is dated 10.8.2009 and therefore I fail to understand that why should there be a hue and cry because of a typing mistake in the plaint which wrongly gives the date of power of attorney as 18.8.2009. Once the power of attorney is dated 10.8.2009, the threat by the defendants of 13.8.2009 as stated in para 4 of the plaint would be correct. In any case, I have already observed above the fact that since the respondents/defendants are strenuously contesting the suit, the same is sufficient to show the threat of dispossession of the appellants/plaintiffs from the suit property by the respondents/defendants.

11. So far as the aspect of possession is concerned, I may note that there are only self-serving affidavits filed by both the parties. In law, as already stated above, so far as an open piece of land is concerned, possession must naturally be held to be of the owner of the open piece of land or a person who has rights similar to ownership rights in the open plot of land. In the present case, I have already held that the appellants/plaintiffs have rights to the suit plot by virtue of the registered general power of attorney dated 10.8.2009 and the respondents/defendants having not shown any

title or right to the suit plot better than the appellants/plaintiffs, consequently the possession of the suit plot has to be held of the appellants/plaintiffs as possession follows title. In my opinion, the aspect of possession in favour of the appellants/plaintiffs is also otherwise established by virtue of the house tax assessment order and the house tax receipt filed and proved by the appellants/plaintiffs. The appellants/plaintiffs also can take benefit of form P4 of the revenue authorities showing the entitlement and possession of the appellants/plaintiffs of the suit plot.

12. In view of the above discussion, this second appeal is allowed. Impugned judgment of the first appellate court dated 30.11.2013 is set aside. Appellants/plaintiffs are held entitled to injunction restraining the respondents/defendants from in any manner interfering with the possession of or dispossessing the appellants/plaintiffs from the suit plot bearing no.C- 1, khasra no.965/391, C-Block, Gali no.12, Meet Nagar, Shahdara, Delhi admeasuring 200 sq yds as shown in red in the site plan Ex.PW1/1. Parties are left to bear their own costs.

MAY 13, 2014  
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VALMIKI J. MEHTA, J.