

Vinay Chhabra Vs Vera Ruth Rego Gonsalves

Court: Delhi High Court

Date of Decision: Jan. 22, 2015

Acts Referred: Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2A
Transfer of Property Act, 1882 - Section 53-A, 54, 55

Hon'ble Judges: Sanjeev Sachdeva, J.; Badar Durrez Ahmed, J.

Bench: Division Bench

Advocate: R.P. Sharma, for the Appellant; Surendra Sesai, Senior Advocate and Rakesh Kumar, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Sanjeev Sachdeva, J.

The Appellants impugn order dated 19.12.2014 whereby the learned Single Judge has been pleased to hold the

Appellants guilty of disobeying/committing breach of status quo order dated 11.05.2010.

2. The Respondent (Plaintiff) has filed a Suit for declaration, pre-emption, permanent injunction, partition and possession claiming amongst other

reliefs a decree of declaration that she is the co-owner of the suit property to the extent of 1/6th undivided share. The said Suit is still pending.

3. By order dated 11.05.2010, the learned Single Judge, noting the contention of the Respondent that the Defendants were contemplating to sell

the suit property, directed the Defendants to maintain status quo with regard to the title and possession of the suit property.

4. The Respondent filed an application under Order 39 Rule 2A contending that the Appellant No. 2 (Respondent No. 1 in the application) by

Agreement to Sell and Purchase and General Power of Attorney both dated 16.09.2010 had transferred her 1/3rd share and also handed over

possession of various portions of the suit property in favour of Appellant No. 1 (Respondent No. 2 in the application) and Appellant No. 3

(Respondent No. 3 in the application), in spite of being aware of the order dated 11.05.2010, agreed to be a witness to the said transaction.

5. The impugned order held the Appellants guilty of disobeying/committing breach of status quo order dated 11.05.2010.

6. The Appellants while admitting the execution of the Agreement to Sell and Purchase and General Power of Attorney dated 16.09.2010, deny

that they are in breach of the status quo order dated 11.05.2010.

7. Learned Counsel for the Appellants has contended that the Appellants have merely executed an Agreement to Sell and Purchase and the

physical possession has not been transferred. It is further contended that mere execution of the Agreement to Sell does not violate the status quo

order as the Agreement to Sell does not create any right or title in the property. Reliance is placed on the judgment of the Supreme Court in the

case of Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, .

8. We find no merit in the contention of the learned Counsel for the Appellants that by execution of the Agreement to Sell the status quo order has

not been violated.

9. The Appellants have not denied that at the time of the execution of the Agreement to Sell and the General Power of Attorney dated 16.09.2010

the Appellants were aware of the status quo order dated 11.05.2010.

10. The Agreement to Sell dated 16.09.2010 records that the total sale consideration agreed upon for sale of the 1/3rd share of the Appellant No.

2 is Rs. 22,00,000/-. The entire sale consideration is recorded to have been paid, it further records that the vacant and peaceful possession of the

portion of the basement floor and ground floor and terrace roof rights of first floor out of the said property has been handed over and the

proprietary/symbolic/ownership possession of the first floor which is occupied by tenants has also been handed over and the purchaser is

empowered to collect the rents, etc.

11. Along with the Agreement to Sell, the Appellant No. 2 has also executed, in favour of the son of the Appellant No. 1, a registered General

Power of Attorney dated 16.09.2010 giving all sorts of powers including the power to sell the 1/3rd share of the Appellant No. 2.

12. Direction to maintain status quo with regard to title and possession of the property implies that the injuncted party cannot thereafter take any

steps or enter into any transaction whereby the status of the title or possession of the property are affected. It is not that only a completed

transaction of sale or parting with possession would violate the status quo order but every step taken towards the completion of the transaction of

sale or parting with possession would also amount to a violation/breach of the status quo order.

13. In the present case, the Appellants have not only executed the Agreement to Sell but the entire sale consideration has been paid and received.

The vacant physical possession of a part of the property has also been delivered and received. The contention of the Appellants that the physical

possession has not been delivered cannot be believed in view of the contrary fact recorded in the Agreement to Sell and also the fact that a

General Power of Attorney giving various powers including a power of sale has been executed and registered with the sub-registrar.

14. The contention of the learned Counsel for the Appellants, that the Agreement to Sell dated 16.09.2010 was in furtherance to an earlier

agreement and part of the sale consideration was received prior to the passing of the status quo order, holds no water in as much as there is no

reference of a prior agreement to sell in the Agreement to Sell dated 16.09.2010 and also the fact that substantial sale consideration has been

received, Agreement to Sell executed, vacant possession handed over and General Power of Attorney executed and registered after the status quo

order.

15. The reliance of the learned counsel on the decision of the Supreme Court in Suraj Lamps (supra) is misplaced as the same is not applicable in

the facts of the present case. In the said judgment, the Supreme Court has laid down that a transfer of immoveable property by way of sale can

only be by a deed of conveyance duly stamped and registered and any contract of sale, which is not a registered deed of conveyance, would fall

short of the requirements of Section 54 and 55 of the Transfer of Property Act, 1882 and will not confer any title or transfer any interest in an

immovable property except to the limited right granted by Section 53-A of the said Act.

16. In the present case, the issue is not with regard to the completion of the transaction of sale but with regard to violation of the status quo order

with regard to the title and possession of the property in suit. The execution of the Agreement to Sell, receipt of the sale consideration, handing

over of the physical possession, execution and registration of the General Power of Attorney are steps taken towards the transfer of title and

possession of the property and clearly amount to violation of the status quo order dated 11.05.2010.

17. In our opinion, there is no infirmity in the impugned order and we find no merit in the appeal. The same is accordingly dismissed.