

(2011) 04 DEL CK 0223

Delhi High Court

Case No: Regular Second Appeal No. 164 of 2007

Babu Lal and Others

APPELLANT

Vs

Mahavir Singh @
Mahvir Prashad and
Others

RESPONDENT

Date of Decision: April 29, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 323, 342

Citation: (2011) 6 ILR Delhi 270

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Rohit Kumar, for the Appellant; O.P. Malviya and Gitanjali Malviya, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 05.3.2007 which had endorsed the finding of the trial judge dated 20.7.2005 whereby the suit filed by the Plaintiff Babu Lal seeking a declaration and permanent injunction to the effect that the Plaintiff is the owner of the property i.e. DDA Flat No. 109, Sunlight Colony (hereinafter referred to as "the suit property") and the Defendant be restrained from interfering in the peaceful possession of the Plaintiff had been dismissed.

2. The case of the Plaintiff as is evident is that she is in possession of therefore noted suit property; she is an illiterate lady; she was a lab our contractor at Tuglakabad Railway Station. Plaintiff had married Nek Ram; out of the said wedlock seven children had been born. Nek Ram"s whereabouts were not known for the last 16years i.e. since 1967. Defendant No. 1 in contact with the Plaintiff about 15 years ago i.e. the year 1968; he being a railway employee influenced the Plaintiff and the parties thereafter got married. At

that time Defendant No. 1 did not disclose that he was already a married man; he had been married to one Satyawati and had children from the said marriage. This fact came to the knowledge of the Plaintiff only in the year 1981. Defendant No. 1 had played a fraud upon her with an ulterior motive to grab her property. Plaintiff had given her cash and ornaments worth Rs. 15000/- to the Defendant No. 1. Plaintiff had paid Rs. 5000/- to Defendant No. 1 in the year 1971-72 for the purchase of this property and thereafter and Rs. 9000/- at the time when possession was given i.e. in the year 1974; she has since then been residing in that property and paying monthly installments of Rs. 157.55. Defendant No. 1 had played a fraud upon the Plaintiff and purchased the aforementioned plot in the name of Hme Lata i.e. her sister-in-law and later on it was transferred in the name of Kali ash Chand, his brother-in-law; Defendant No. 1 even refused to pay back the sum of Rs. 15,000/- to the Plaintiff as also her ornaments. He has also refused to look after the children which had been born out of their marriage. On 11.7.1983 Defendant called the Plaintiff for an amicable settlement; on reaching there she was beaten by the Defendant and his first wife. Under threat and coercion the Defendant No. 1 obtained the thumb impression of the Plaintiff; pursuant to which a complaint was lodged with the police. By way of the present suit Plaintiff had sought decree of declaration that the Plaintiff is the owner of the suit property; permanent injunction had also been sought restraining the Defendant from interfering in her peaceful possession.

3. Defendants had denied this version of the Plaintiff. It was stated that the Plaintiff was a tenant of Defendant No. 1; she had paid Rs. 5000/- towards rent as she was a tenant since 06.3.1967 and the sum had been paid as rent @ Rs. 300/- per month. Defendant No. 1 was collecting rent on behalf of the Defendant No. 2; Plaintiff was a tenant of the Defendant No. 2. Since 1980 she had stopped paying rent. On repeated demands this false and frivolous suit had been filed against the Defendant. It is pointed out that in all records including the ration card of the Plaintiff the name of Nek Ram has been shown as her husband.

4. From the pleadings of the parties, the following six issues were framed:

1. Whether the suit is bad for non joinder and mis joinder of necessary parties.
2. Whether the Plaintiff is tenant in suit property as alleged? If so whether she is barred from claiming declaration as claimed in Pre. Objection No. 3? OPD
3. Whether Plaintiff is owner in possession of suit property since 1974? OPP
4. Whether Plaintiff invested money in the property? OPP
5. Whether Plaintiff is entitled for relief of declaration and permanent injunction? OPP
6. Relief.

5. Oral and documentary evidence was led between the parties which included the statement of the Plaintiff who had examined herself as PW-1; seven witnesses were examined on behalf of the Defendant. The court had disbelieved the version set up by the Plaintiff; no details has been given. She was held not entitled for any relief; suit was dismissed. This was endorsed in first appeal.

6. This is a second appeal. It has been admitted and on 01.12.2010 the following substantial question of law was formulated:

Whether the findings in the impugned judgment dated 05.03.2007 are perverse? If so, its effect?

7. On behalf of the Appellant it has been urged that the impugned judgment suffers from a perversity as the Appellant had clearly set up a case of a benami transaction; the court had failed to take into account that the Plaintiff had made specific averments to the effect that she had made a payment of Rs. 5000/- in the year 1971-72 to Defendant No. 1 which he had paid as earnest money for the suit property; another sum of Rs. 9000/- was paid by her to Defendant No. 1 in 1974 at the time of allotment of the disputed property. These facts have not been considered in the correct perspective. It is pointed out that the Defendants had failed to adduce evidence to show as to who had made the payment for allotment of the suit property; the plot although allotted in the name of Defendant No. 2 yet it was out of cash proceeds made by the Plaintiff to Defendant No. 1. The impugned judgment suffers from a perversity. It is liable to be set aside.

8. Arguments have been rebutted. It is pointed out that on no account does the judgment calls for any interference. The impugned judgment had re-appreciated the oral and documentary evidence and had endorsed the finding of the trial judge.

9. The case of the Plaintiff is that she was married to Defendant No. 1; her contention was that two children namely Suresh and Meena were born from her wedlock from Defendant No. 1; however, in the cross-examination she admitted that the name of the father of Suresh and Meena as per school record is Nek Ram (her first husband); she further admitted that even in the voter list the name of her husband was mentioned as Nek Ram; even in the complaint filed by her before the Magistrate she had given her husband's name as Nek Ram. The suit property was admittedly allotted in the name of Defendant No. 2 where after it was transferred to Defendant no. 3. Before the first appellate court the purported installments of Rs. 157.51 that were being paid by the Plaintiff and receipt of the same had been produced which again evidenced that these payments had been made on behalf of Defendant No. 2; admittedly the house tax was also assessed in the name of the Defendant No. 3. Testimony of DW-6 and DW-7 was adverted to who had both deposed to the fact that the Plaintiff was a tenant in the suit premises. The court had noted that the recitals of the Plaintiff in her pleadings as also the testimony on oath were vague; she did not have any idea about the total cost of the suit property; how many installments were paid and in what manner installments were paid;

she was totally ignorant of all dates; she had failed to prove her submission that it was out of her funds that Defendant No. 1 had purchased this property in the name of Defendant No. 2. Apart from a bald statement on which no credence was given there was no other evidence with the Plaintiff. The court had also noted that a complaint had been made by the Plaintiff against Mahavir Singh which had led to the registration of an FIR under the provisions of Section 323/342 IPC; in this complaint also although the Plaintiff/complainant had averred that she had paid a sum of Rs. 5000/- to Mahavir Singh (Defendant No. 1) yet it was not mentioned that this sum of Rs. 5000/- had been paid for the purchase or allotment of the suit property. All this was duly considered by the first appeal court to arrive at the finding that the Plaintiff having been failed to prove her case; it was rightly dismissed by the trial Judge. The claim of benami nowhere stood proved by the Plaintiff. In no manner can it be said that this finding in the impugned judgment is perverse. Concurrent findings of fact can be interfered in a second appeal only if there is a perversity. No such perversity has been pointed out. Substantial question of law is answered accordingly in favour of the Respondent and against the Appellant. Appeal has no merit. Dismissed.