

(2011) 03 DEL CK 0391

Delhi High Court

Case No: Regular First Appeal No. 391 of 2001

Sh. Sanjay Kochhar

APPELLANT

Vs

Smt. Kamlesh Gupta and Others

RESPONDENT

Date of Decision: March 22, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 96
- Evidence Act, 1872 - Section 41
- Transfer of Property Act, 1882 - Section 48

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Suman Kapoor, for the Appellant; P.K. Seth, for Respondent Nos. 1 and 2, M. Hussain, for L.Rs. of Respondent Nos. 3 and 5, for the Respondent

Judgement

Valmiki J Mehta, J.

CM No. 1127/2001(condonation of delay)

Since I have otherwise heard the appeal, delay in filing the appeal is condoned. CM stands disposed of.

RFA No. 391/2001

1. The challenge by means of this Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 18.9.1998 whereby the suit of the Respondents No. 1 and 2 was decreed for specific performance with respect to the property No. C-12, Zafrabad Residential Scheme, Shahdara, Delhi and of which the Defendant No. 1/Sh. Budhu/Respondent No. 3 was the owner.

2. The challenge which is laid to the impugned judgment and decree is not by the original owner Sh. Budhu/Respondent No. 3, but is by one Sh. Sanjay Kochhar, who was in fact not even a party to the suit. The appeal therefore would not be

maintainable u/s 96 CPC because the Appellant was not a party to the suit. This position is no longer res integra and it has been held by a Division Bench of this Court in the case reported as [Bharat Singh Vs. Sheo Parshad Giani Ram and Others](#), that a decree or order against a person who is not a party to the suit, on general principles of law, is not binding on him and therefore such a person cannot have a legal grievance against the decree or order and hence cannot apply for a review of the decree or order. Para 32 of the said decision is relevant and the same reads as under:

No authority contrary to the view that we have expressed above was cited, nor was any authority cited in favour of the view that we have expressed. We are, however, fortified in taking the view that we have taken on the principle that a decree or order adversely affecting a person who is not a party to the lis in which that order or decree is passed is in law not binding on him. Such a person, therefore, can ignore the order or decree which adversely affects him and so, cannot apply for a review of that order or decree. He may take such other steps as may be available to him in law to protect his rights as and when the order or decree adversely affecting him is sought to be enforced so as to jeopardize his rights.

3. In my opinion, the ratio will equally apply to Section 96 Code of Civil Procedure. This is because only certain judgments, such as judgments in testamentary jurisdiction; matrimonial jurisdiction and so on operate as judgments in rem by virtue of Section 41 of the Indian Evidence Act, 1872, and all other judgments are only judgments inter-parties and therefore operate as judgment in personem and not judgments in rem. The Appellant therefore does not have any locus standi to challenge the impugned judgment and decree.

4. Learned Counsel for the Appellant sought to argue that the expression "aggrieved person" in Section 96 must be construed so as to include persons such as the Appellant. I cannot agree in view of the Division Bench's decision in the case of Bharat Singh (supra).

5. Another reason why this appeal is liable to be dismissed is that the present Appellant had filed objections in the Execution Petition which was filed by the Respondents No. 1 and 2 for enforcing the impugned judgment and decree dated 18.9.1998. The objections of the Appellant were predicated on documents dated 14.6.1993 which were executed in his favour by the Respondent No. 3 herein. The said objections were dismissed by the Trial Court and challenge to the said order has also been dismissed by this Court vide its order dated 14.1.2011 in Ex.F.A No. 34/2005. One of the reason for dismissing Ex. F.A. by this Court vide order dated 14.1.2011 is the lack of any right of the Appellant by virtue of Section 48 of the Transfer of Property Act, 1882 as per which the earlier set of documents will prevail over later set of documents, inasmuch as the documents creating right in favour of the Appellant are admittedly of 1993 and the Agreement to Sell executed in favour of the Respondents 1 & 2 is of 1989. Counsel for the Appellant relied upon Para 7 of

the order dated 14.1.2011 that the issue urged by the Appellant therein, and who was also Appellant in the present appeal, was left open to be decided by this Court. I find that though that is correct because the learned Single Judge of this Court who decided Ex.F.A No. 34/2005 on 14.1.2011 stated that the said decision will be subject to any finding as may be returned by this Court in the present appeal, however yet the present appeal is liable to be dismissed because there is no reason to depart from the rationale of Section 48 of the Transfer of Property Act which has been applied in Ex.F.A No. 34/2005 dated 14.1.2011 because, as stated already, the documents which are relied upon by the Appellant to allege right, title and interest in his favour are dated 14.6.1993 whereas the agreement to sell of the Respondents No. 1 and 2 is dated 16.11.1989. I am not referring to other aspects of the invalidity of the documents dated 14.6.1993 (which are stated to be registered as per the case of the Appellant) being the caretaker agreement, construction agreement and so on as has been observed by the learned Single Judge while dismissing of Ex.F.A No. 34/2005 on 14.1.2011 inasmuch as, in my opinion, it is enough for the purpose of dismissal of the present appeal that the documents relied upon by the Appellant are subsequent to the documents relied upon by the Respondents No. 1 and 2, and whose documents, will take precedence over the documents alleged to have been executed in favour of the Appellant.

6. Accordingly, I dismiss the appeal as not maintainable and also on account of the fact that the Appellant really cannot have a better claim to the subject property than the Respondents No. 1 and 2 whose agreement to sell is prior in point of time than the documents which are relied upon by the Appellant. Parties are left to bear their own costs. Trial Court record be sent back.

CM No. 1130/2001(stay)

No orders are required to be passed in this application as the main appeal itself is disposed of and thus application also stands disposed of.

CMs No. 1124/01(Under Section 151) & 11216/01(u/O.1 R.10)

These CMs stand disposed of having become infructuous as the main appeal has been disposed of.