

(2011) 02 DEL CK 0452

Delhi High Court

Case No: Regular Second Appeal No. 13 of 2009 and CM No. 814 of 2009

Sh. Chand Ram (since deceased)
through Legal heirs

APPELLANT

Vs

Sh. Narender Kumar and Others

RESPONDENT

Date of Decision: Feb. 25, 2011

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Sunil Chauhan, for the Appellant; Ajay Arora, for R-4, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 22.11.2008 which had endorsed the findings of the trial Judge dated 21.11.2005 whereby the suit filed by the Plaintiff Chand Ram through his legal heirs seeking a permanent and mandatory injunction against four Defendants had been dismissed. Defendant No. 4 was the Municipal Corporation of Delhi (MCD).

2. The case of the Plaintiff is that he had purchased plot No. 26-A, B Block, Sarai Pipal Thala Extension, Adarsh Nagar, Delhi measuring 150 square yards comprising of one room, latrine, bathroom, hand pump and boundary wall for Defendant No. 4. Relevant documents to the said effect had been executed. The said documents had been proved before the trial Court as Ex. PW-2/A to Ex. PW-2/C. They were an agreement to sell, power of attorney, Will etc. In the trial court, the trial Judge was of the view that only the photocopies of the said documents had been produced yet the appellate court had examined these documents and had exhibited them holding that they are originals. The said documents had been read in evidence. The impugned judgment had noted that the said documents are not reliable as the text of the said documents was contrary to the version set up by the Plaintiff. The Plaintiff had himself not come into the witness box. His legal representative/power of attorney had been examined as PW-3. PW-3 in his cross-examination had stated

that his father had constructed the structure on the suit property after purchasing it from one Shri Narender Singh. Documents of purchase by the Plaintiff are Ex. PW-2/A to Ex. PW-2/C. Ex. PW-2/A categorically recites that the Plaintiff had purchased plot No. 26-A, B Block, Sarai Pipal Thala Extension, Adarsh Nagar, Delhi comprising of one room, latrine, bathroom, hand pump and boundary wall built on it. The impugned judgment had noted that the oral evidence of PW-3 was clearly in contrast with the documentary evidence Ex. PW-2/A to Ex. PW-2/C adduced by him; his version was not believed. The supporting statements of PW-1 & PW-2 had also not been believed by both the courts below. Per contra, Defendant No. 4 had examined an Executive Engineer from the MCD as DW-4. The said witness had reiterated that the lay out plan was the correct lay out plan of the location of the suit property. The said document had been proved as Ex. DW-4/1. No cross-examination had been affected either of DW-1 or DW-4 on this count that this document is not a true copy of the layout plan. DW-4 who was the Engineer from the MCD was an official witness. He had deposed that as per this layout plan, there should be a lane of 30 ft. at the site but on inspection, it is found to be only 10-12 ft; 20 ft of the same had been encroached by the property owners of both sides and this encroachment had been noted by him; he had further deposed that the Plaintiff Chand Ram was an encroacher. This witness had no axe to grind. He was an official witness who have come on behalf of Defendant No. 4. Apart from the fact that no cross-examination had been done on the authenticity and veracity of the layout plan which had been proved in the version of DW-3 and endorsed by DW-4, even otherwise the Plaintiff through his own testimony i.e. PW-3 had destroyed his case. His oral evidence was contrary to the documents relied upon by him.

3. To obtain a relief of injunction which is an equitable relief, the Plaintiff must come to the Court with clean hands. Both the courts below had noted that the Plaintiff had not come with clean hand; he was not entitled to the relief as prayed for by him. The impugned judgment has returned the following findings:

8. Ld. Trial Court has observed that documents proved on record are the zerox copies. It is correct that documents Ex. PW2/A to PW2/C are not the zerox copies, but the original documents. However in order to prove these documents PW2 the son of a friend of Plaintiff appears in the witness box. As per the case of the Appellant Respondent No. 1 was the executant of these documents. As per record he had appeared before the court initially. Executant of these documents was the best witness to prove the documents. Even if he was arrayed as Defendant No. 1, there was no legal bar to examine him as Plaintiff witness to prove the documents Ex. PW2/A to PW2/C. Otherwise also, the testimony of PW2 suffers from material contradictions. He stated that he was not aware where the documents Ex. PW2/A to PW2/C were prepared and on which date the same were prepared. He further deposed that documents were signed by his father in the area of Adarsh Nagar in a plot situated just behind the plot No. 26-A on 15.5.87. He was not aware that who brought the documents to get it sign from his father. He further deposed that

payment of Rs. 55000/- was made at the same time and receipt Ex. PW2/C was prepared and signed by his father on 15.05.07. This portion of his testimony is just contrary to the pleadings and documents filed by the Appellant. As per the case of the Appellant documents Ex. PW2/A to PW2/C were executed at the office of Sub Registrar and not in the area of Adarsh Nagar. Similarly as per the case of Appellant consideration amount of Rs. 55000/- was also paid at Sub Registrar office at the time of execution of receipt Ex. PW2/C and not at Adarsh Nagar. Further as per the testimony of PW2 the receipt Ex. PW2/C was executed on 15.5.07 whereas the receipt Ex. PW2/C clearly established that the same was executed on 21.5.1987. In view of the above observations, in my view, the testimony of PW2 is full of contradictions and lies contrary to the basic case of the Appellant. The testimony of PW2 does not appears to be trustworthy, credible, reliable and truthful. I am convinced that PW2 is not a genuine and natural witness.

9. Therefore, in my opinion, Ld. Trial court correctly concluded that documents Ex. PW2/A to PW2/C could not be proved in accordance with law of evidence and the chain was interrupted, incomplete and broken.

10. Now coming to the testimony of PW1 Sh. Sher Singh. As per his testimony he was the resident of the same locality. As per his testimony Sh. Chand Ram has raised construction of room, one latrine and bathroom over the property, which were removed in the year 1992. His testimony is also contrary to the documents relied by Appellant. As per GPA Ex. PW2/A, on the date of execution of this document, the suit property was comprising of one room, latrine, bathroom and boundary wall. If GPA Ex. PW2/A is taken as correct, the testimony of PW1 appears to be false. The testimony of PW1 does not appear to be trustworthy and reliable.

11. PW3 Sh. Jeet Singh the son of Sh. Chand Ram stated that when his father purchased the suit property, it was totally a vacant plot and there was no construction on the suit property. As per his testimony his father raised the construction over the suit property, whereas mentioned above document Ex. PW2/A filed by Plaintiff clearly established the facts just contrary to the testimony of PW3. In my opinion PW3 is also not trustworthy and reliable witness.

12. On the other hand testimony of D3W1 Sh. Suresh Kataria, D3W2 Sh. Inder Singh, D3W3 Sh. Inderjeet Sharma appears to be natural. They are independent witnesses, resident of the same locality. As per their testimony suit property bearing plot No. 26A never existed. As per their testimony it was a public lane, which was admitted to be encroached firstly by the colonizer and then by the Plaintiff. In this regard they have clearly mentioned about the holding of Panchayat and reports to the police. Testimony of Sh. Ashok Drabu D4W1, who was the Executive Engineer of the MCD further proved that he filed a report after a survey of the locality. As per his testimony, in accordance with lay out plan, there was a lane of about 30" and 20" of the road was encroached upon by the property owners on both the sides. He also stated that Plaintiff has made encroachment on the municipal land/gali and as per

lay out plan there was no plot bearing No. 26A. During cross examination of witness nothing material could be achieved. As per the lay out plan Ex.D3W1/4 duly certified by the MCD, between 28B and 29B, there was a lane about 30".

13. After careful consideration of entire material on record and in view of the above findings, in my opinion Appellant has failed to prove his case before the trial court. He could neither proved the documents Ex.PW2/A to PW2/C in accordance with law of evidence nor could established his possession. From the testimony of witnesses and material on record, I am convinced that Appellant in collusion with other parties filed the present suit with a motive to grab the public land of a gali.

14. With these findings, in my opinion, there is no illegality or infirmity in the judgment of the Ld. Trial Court.

4. There is no infirmity in the same.

5. Substantial questions of law have been formulated at page 4 of the body of the appeal. They read as under:

(a)Whether the registered documents, such as General Power of Attorney coupled with Agreement to Sell and Receipt executed by Respondent No. 1 in favour of the Appellants, could have been ignored by the courts-below while dismissing the suit for injunction simplicitor filed by the Appellants ?

(b) Whether the courts-below erred in law in relying upon the oral testimony of the witnesses and ignoring the documentary evidence placed on record by the Appellants, which were duly proved ?

(c) Whether question of title could have been gone into in a suit for permanent and mandatory injunction without there being a specific issue?

(d) Whether a document placed on record in complete contravention of the provisions of CPC and which was not even proved in accordance with law could have been considered for denying the relief to the Appellant ?

6. They are all facts based and have been gone into in detail by the two facts finding courts. No substantial question of law has arisen. There is no merit in this appeal.

7. Appeal as also pending application are dismissed in limine.