

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3333 OF 2018

[Arising out of SLP (C) No. 726 of 2014]

Kedar Nath Kohli (Dead) by LRs. .. Appellants

Versus

Baldev Singh .. Respondent

J U D G M E N T

Mohan M. Shantanagoudar. J.

Leave granted.

2. Application for permission to file additional documents and the translated copies thereof is allowed in terms of this Court's order dated 6.10.2017.

3. This appeal is directed against the judgment and order dated 7.2.2013 passed by the High Court of Delhi in R.S.A. No. 133 of 2012, whereby the High Court while dismissing the Regular Second Appeal, has confirmed the concurrent judgments

passed by the trial Court as well as the first appellate Court dismissing the suit for possession.

4. The appellant's father, namely, Mehar Chand Kohli was the original plaintiff. He filed a Civil Suit No. 354/03/75 against the defendants claiming possession of Plot no. 27 bearing Municipal No. 1443 situated in Wazir Nagar, Gali No. 7, Kotla Mubarakpur, New Delhi on the ground that the father of the appellant was the actual owner of the said property and the defendants were in illegal possession of the same. The said Mehar Chand Kohli, i.e. the original plaintiff, died on 13.7.1980 and the appellant was thus substituted as plaintiff in place of his father. The trial Court dismissed the suit on 21.9.2016. The judgment of the trial Court is confirmed by the first appellate Court in Regular Civil Appeal No. 29 of 2011 dated 7.12.2011. As mentioned supra, the Regular Second Appeal No. 133 of 2012 filed by the appellant questioning the judgments of the trial Court as well as the first appellate Court also came to be dismissed by the High Court on 7.2.2013.

5. Brief facts leading to this appeal are as follows:

The appellant-plaintiff claims that he is the owner of Plot no. 27 (now bearing Municipal no. 1443 situated in Wazir Nagar, Gali No. 7, Kotla Mubarakpur, New Delhi) along with the adjoining land totally measuring 260 square yards. The respondents-defendants illegally trespassed into the above land and have raised construction without the consent and knowledge of the appellant. The said construction is unauthorised inasmuch as the same is raised without sanction from the Municipal Corporation of Delhi (for short 'MCD') or any other competent authority. The respondents do not have any right to be in possession of the said piece of land and they have not handed over the possession of the plot in question to the appellant despite repeated requests and demands by the appellant. The respondents have also obtained electricity and water connections by misrepresenting the MCD. The respondents though have no ownership over the property in question, encroached upon the same.

Per contra, it is the case of the respondent that the appellant is not the owner of the suit property as the same was purchased by the respondent from one Dharampal, s/o Haveli Ram as per the sale deed dated 15.8.1966 for a consideration of Rs.10,000/-.

Defendant nos. 1 and 2 (before the trial Court) are cousins. The respondent gave a portion of the plot in question to defendant no. 1 (since dead) and constructed structure on the plot in question at their expenses. Defendants are in physical possession of property constructed on part of plot No. 1443. The appellant-plaintiff was estopped from filing suit as he had earlier filed a suit for permanent injunction, which was dismissed. In sum and substance, the respondent-defendant took the plea that he purchased the property from one Dharampal, s/o Haveli Ram through a registered deed dated 15.8.1966 and, therefore, he is entitled to remain in the possession of the property.

6. It is pertinent to mention that original defendant no. 1 before the trial Court is reported to have died and he has been deleted from the array of parties vide this Court's order dated 28.9.2015 at the risk of the appellant and now the only respondent before us is the original defendant no. 2 – Baldev Singh (respondent herein).

7. Heard learned advocates on both sides and perused the records. Learned counsel appearing for the appellant, taking us through the material on record in detail and contends that the

Courts below while concluding have concurrently erred in holding that the appellant-plaintiff is not the owner of the property in question and that the defendants have purchased the property from one Dharampal vide sale deed dated 15.8.1966.

It is relevant to note that after a huge gap of about 28 years from the date of the suit, the respondent filed an application before the trial Court under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure seeking to amend the pleadings. Through this application, the respondent sought to change the number of the suit property from Municipal no. 1443 to 1443A and also the date of the sale deed from 15.8.1966 to 15.9.1966 to establish and prove his ownership over the suit property. The allegations were made by the appellant that the respondent has forged the sale deed in his favour and that the forged sale deed relied upon by the respondent cannot be made the proof of ownership. In that regard, the trial Court ordered for an enquiry and has, however, concluded that the allegations so made by the appellant regarding forgery of the documents are not proved.

8. Both the parties have led their evidence, both oral and documentary. The crucial document is the sale deed dated

15.9.1966 (Ex.DW1/1) produced by the respondent to show his ownership of the plot in question, i.e. plot no. 27 (Municipal No. 1443). Since there was an allegation of forgery in respect of the said document, the enquiry was conducted, as mentioned supra, and the trial Court summoned the original records pertaining to the said sale deed. The Office of the Sub-Registrar, Asaf Ali Road, Delhi produced the original document, i.e. the sale deed 15.9.1966, maintained in the Sub-Registrar's office in a sealed cover. The trial Court has marked the said document which was produced in the sealed cover as Ex.C1. It is needless to mention that Ex.C1 is the original document maintained in the Sub-Registrar's office to verify as to whether the sale deed Ex.DW1/1 produced by the defendants is forged one or not.

9. Ex.DW1/1 dated 15.9.1966 relied upon by the defendants to show their ownership is in Urdu. English translation is also produced before us. The English translation of Ex.DW1/1 is not disputed by the learned counsel for the respondent. Ex.DW1/1 relied upon by the respondent shows that Sardar Baldev Singh, s/o Sardar Kartar Singh purchased one piece of land bearing no. 1443 measuring 230 square yards out of an area of 567 square yards from Dharampal, s/o Haveli Ram. This sale deed also

reveals that the said Dharampal, s/o Haveli Ram had in turn purchased the very property through a registered sale deed dated 5.12.1947 from Uday Chand, s/o Choudhury Wazir Singh. This sale deed, according to the appellant, is a forged one.

10. The said document Ex.C1 is almost replication of Ex.DW1/1 in all particulars, except on material particulars. Ex.C1 clearly reveals that Sardar Balwant Singh, s/o Sardar Kartar Singh purchased one plot of land measuring 230 square yards out of 567 square yards from Dharampal, s/o Haveli Ram. It is curious to note that either Municipal no. 1443 or Municipal no. 1443A are not found in Ex.C1. It is no doubt true that Ex.C1 also relates to 230 square yards out of 567 square yards, purchased through a sale deed dated 15.9.1966 from one Dharampal, s/o Haveli Ram. The very document also reveals that Dharampal, s/o Haveli Ram had in turn purchased the property from Uday Chand, s/o Choudhary Wazir Singh.

11. The appellant has also relied upon the document Ex.C3 dated 5.12.1947 which is in Urdu language. English translation is also furnished and such translation is not disputed before us. Through the said sale deed, Udai Chand, s/o Chaudhary Wazir

Singh sold the three plots of land, i.e. plot nos. 30, 31 and 34 in favour of Lala Dharampal, S/o Rai Sahab Choban Ram. The sale deed Ex.C3 further discloses that the three plots, namely plot nos. 30, 31 and 34 which are adjoining each other and situated at Chameli Wala, known as Wazir Singh in the village Mubarakpur Kotla, Delhi are carved out of one piece of land measuring 567 square yards of different dimensions. These plots were sold in favour of Lala Dharampal, S/o Rai Sahab Choban Ram for a valuable consideration through the said sale deed by Shri Udai Chand. The boundaries of the said plots individually on all the four sides are mentioned in detail. They clearly reveal that the three plots are abutting each other.

12. Plot no. 30 is measuring 60 ft. X 30 ft. (200 square yards); Plot no. 31 is measuring 60 ft. X 30 ft. (200 square yards) and Plot no. 34 is measuring 58 ft. x 26 ft. (167.56 square yards). Thus, it is amply clear that all the said three sites collectively measure about 567 square yards. Ex.C3 clearly reveals that all the three plots were carved out of 567 square yards only. Hence, Choudhary Udai Singh, who was the owner of 567 square yards had formed three sites, viz. Plot nos. 30, 31 and 34, out of entire 567 square yards and sold all the three

plots in favour of Lala Dharampal. Not even an inch of property was left after selling the three plots in total area of 567 square yards after selling to Lala Dharampal.

13. One more sale deed (marked as Ex.DW4/1) on record is dated 9.12.1947. Through the said sale deed, Udai Chand, s/o Chaudhary Wazir Singh sold plot no. 28 measuring 200 square yards in favour of Pandit Ved Prakash Shukla, s/o Pandit Nand Lal Shukla for a valuable consideration. The boundaries of the said plot no. 28 are also mentioned in the said sale deed, which clarify that plot no. 28 is adjoining plot no. 27.

14. The maps showing the plots are also on record. A perusal of the maps Ex.PW2/4 and Ex.DW1/3 reveal that plot nos. 30 and 31 are adjoining each other and they form one block. East, South and North of these plots are roads. Another map relating to plot no. 28, which was stated to be annexed with the sale deed dated 9.12.1947, reveals that plot no. 28 sold by Uday Chand, s/o Wazir Singh in favour of Ved Prakash Shukla, s/o Pandit Nand Lal Shukla is adjoining plot no. 27. To the East of plot no. 28, it is a 16 feet road and to the East of that 16 feet road is plot no. 30. To the West of plot no. 28 lies plot no. 27. Thus, plot

nos. 27 and 28 are also surrounded on three directions by the roads. The two maps clearly reveal that they match each other and plot nos. 30, 31 and 34 are adjoining each other. They also reveal that to the West of plot No. 30 is a 16 feet road. The West of that 16 feet road is plot no. 28 measuring 200 square yards; and West of plot no. 28 is plot no. 27.

15. According to the respondent's case, as mentioned supra, the land in question was purchased by him vide sale deed dated 15.8.1966 (which date is later amended after 22 years as 15.9.1966) from one Dharampal, s/o Haveli Ram. In turn, Mr. Dharampal, s/o Haveli Ram had purchased the property from Udai Chand, s/o Choudhary Wazir Singh vide sale deed no. 3292 dated 5.12.1947.

16. As aforementioned, Ex.DW1/1 discloses that Sardar Baldev Singh purchased plot no. 1443 measuring 230 square yards from Dharampal, s/o Haveli Ram, whereas the original deed which was summoned to the Court by the trial Court, which is marked as Ex.CRW2/P1 (Ex.C1) clearly reveals that it was not the Baldev Singh who has purchased the suit property, but it was Sardar Balwant Singh, s/o Sardar Kartar Singh. So also, the plot

number of the Municipal plot no. 1443 is also not mentioned in the original deed. There is nothing on record to show that Sardar Balwant Singh is the same as Sardar Baldev Singh. So also, there is nothing on record to show as to why and when the number of the plot, i.e. plot no. 1443, was inserted in the sale deed which is produced in support of the case of the respondent as Ex.DW1/1. Thus, fabrication of the said deed dated 15.9.1966 (i.e. Ex.DW1/1) is evident from comparison of the same with the original sale deed received by the trial Court in the sealed cover from Sub-Registrar's office. It is relevant to note that Balwant Singh has nothing to do with the present case.

17. The sale deed Ex.DW1/1 dated 15.9.1966 is in respect of the land measuring 230 square yards out of 567 square yards, obviously had to be carved out of plot nos. 30, 31 and 34 belonging to Shri Dharampal. The same is clear from the sale deed 5.12.1947, under which the original owner Udai Chand had sold the three plots in favour of Lala Dharampal, who in turn sold the same in favour of Baldev Singh. Thus, the sale deed Ex.DW1/1 cannot be in respect of the appellant's plot no. 27.

18. The site plan of the locality of Kotla Mubarakpur, which was marked as Ex.PW2/4 clearly shows that the location of property bearing plot nos. 21, 22, 27, 28, 30 and 31 which are adjacent to each other and in a straight row, of course, a small road of 16 feet exists in between plot nos. 28 and 30.

19. The site map of plot no. 28 dated 9.12.1947, which is a certified copy obtained from the Sub-Registrar office, if compared with the site map of plots bearing nos. 30, 31 and 34 dated 5.12.1947, which is also a certified copy obtained from the Sub-Registrar office, match with each other. These maps were stated to have been produced along with the sale deeds in respect of those plots at the time of their registration. The location of plots as shown in the maps is exactly the same, as mentioned in the sale deed pertaining to those plots. Those sale deeds were executed at an undisputed point of time. These site maps help in unmasking the fraud committed.

20. We have already discussed in detail about the location of each of the plots, including plot no. 27, which is adjacent to plot no. 28 owned by one Ved Prakash Shukla. As mentioned earlier, plot no. 27 lies to the west of plot no. 28. Even, according to the

respondent, his plot is adjacent to plot no. 28 of Ved Prakash Shukla and he relies upon Ex.DW1/1 to support his contention. Thus, the respondent's claim to have allegedly purchased the property from one Dharampal, who owned plot nos. 30, 31 and 34 which lie on the east of plot no. 28 and 16 feet road. Under no circumstance, plot no. 27 can ever be carved out from plot nos. 30, 31 and 34, as sought to be shown by the respondent, inasmuch as such claim leaves the existence of plot no. 28 totally inexplicable as per the claims and the site map submitted by the respondent.

21. In so far as the plaintiff's/appellant's case is concerned, we do not find any reason to suspect the sale deed pertaining to plot no. 27 purchased by the appellant's father, namely, Mehar Chand, s/o Maghar Mal. The appellant-plaintiff relies upon the sale deed dated 30.5.1952. The copy of the said sale deed produced before the court was in Urdu language, the translation of which in English language is also produced for the convenience of the court. It is relevant to note that the respondent's counsel has not objected to such English translation of the said sale deed in favour of the appellant's father produced before the Court. The said sale deed reveals that

Smt. Kesara Devi, d/o Lala Chint Ram, w/o Lala Sham Lala purchased the residential land measuring 200 square yards (60 ft. x 30 ft.) bearing no. 27 situated at Wazir Nagar, village Mubarak Kotla, Delhi from Smt. Kailashwati on 23.1.1948, which was confirmed/registered on 10.3.1948 before the Sub-Registrar, Delhi. The said Kesara Devi, d/o Lala Chint Ram in turn sold the said property in favour of Shri Mehar Chand, s/o Lala Maghar Mal, who is none other than the father of the appellant-plaintiff for a valuable consideration. In the very sale deed, the boundaries are mentioned. It is specified in the said sale deed that plot no. 28 abuts plot no. 27 in the East (i.e. plot no. 27 is to the west of plot no. 28). So also, all other sides of the said property are surrounded by road. The boundaries mentioned in the said sale deed executed by Smt. Kesara Devi in favour of the appellant's father fully concur with the boundaries of plot no. 28, as is clear from the sale deed pertaining to the said plot no. 28 as well as from the maps. After the demise of appellant's father, the appellant has inherited the said plot and thus has become the owner of the said plot no. 27. It is not the case of the respondent that he had purchased plot no. 27 from Smt. Kesara Devi who is the real owner of the property.

22. It is the specific case of the respondent that he had purchased plot no. 27 carved out of 567 square yards of land belonging to one Dharampal. Since such Dharampal was never the owner of plot no. 27, there was no occasion of transferring the title relating to plot no. 27 in favour of the respondent. Hence, it is amply proved by the appellant that he is the owner of plot no. 27 and that he is entitled to get back the possession of the same from the respondent, who is in unauthorised possession.

23. Having regard to the aforementioned discussion, we are of the clear view that the appellant has proved his case and the suit is to be decreed. The trial Court and the first appellate Court unfortunately have erred to take into consideration the aforementioned factual aspects while coming to the conclusion. The High Court has also, without assigning any valid reason, confirmed the judgments of the trial Court and the first appellate Court, which led to injustice.

24. Accordingly, the appeal is allowed. The impugned judgments of the High Court, first appellate Court and the trial Court are set aside and the civil suit no. 354/03/75 filed by the

original plaintiff Late Mehar Chand Kohli before the trial Court is decreed.

.....J.
(R.K. Agrawal)

.....J.
(Mohan M. Shantanagoudar)

New Delhi,
March 27, 2018