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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 20th November, 2025

+ RSA 246/2016
RAN BAHADUR

.....Appellant

Through: Mr. Mayank Goel with Ms.
Mehanpreet Kaur and Mr. Diganta
Das, Advocates.

versus

ANITA DEVI & ANR

.....Respondents

Through: Mr. M. S. Jadhav, Advocate and R-1
in-person.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present second appeal filed under section 100 of the Code of Civil Procedure 1908 ('CPC'), the appellant impugns order dated 22.08.2016 passed in appeal bearing RCA No. 26/2016, whereby the appeal filed by the appellant against judgment dated 31.10.2015 passed by the learned Senior Civil Judge, South West District, Dwarka District Courts, Delhi in suit bearing CS No. 18/2012 has been dismissed by the learned first appellate court.

FACTUAL MATRIX

2. *Vide* judgment dated 31.10.2015, the suit filed by respondent No.1 (plaintiff in the suit) seeking a decree for possession, declaration, damages and permanent injunction against respondent No. 2 (her



former husband who was defendant No.1 in the suit) and the appellant (defendant No.2), in relation to property bearing No. C-68, Phase-I, Sector-3, Pappan Kalan, New Delhi, was decreed.

3. The suit was contested only by the appellant (defendant No.2) who filed written statement dated 02.05.2013. However respondent No.2 (defendant No. 1) did not appear before the learned trial court despite service; and was therefore proceeded *ex-parte vide* order dated 02.05.2013.
4. On point of fact, it is the admitted position, that respondent No. 1 and respondent No. 2, were divorced *vide* a decree dated 12.08.2000.
5. The genesis of the dispute between the parties was the purported transfer of the suit property by respondent No.2 – Sh. Triloki Jha to one Sh. Himanshu Jha on 05.03.2002; who (latter) subsequently transferred the property to one Dr. Sanjay Mahendru on 03.05.2005; who (latter) is claim to have purchased the suit property for and on behalf of Ran Bahadur, the appellant.
6. The present appellant is accordingly a subsequent ‘purchaser’ of the suit property through his proxy Dr. Sanjay Mahendru.
7. All these transfers were made by way of the ‘customary’ set of documents comprising a registered general power of attorney, an agreement to sell, an affidavit, a registered Will along with a possession letter, a receipt and other ancillary documents.
8. The court has heard Mr. Mayank Goel, learned counsel for the appellant; as well as Mr. M. S. Jadhav, learned counsel appearing for the respondents in the present matter.



APPELLANT'S SUBMISSIONS

9. Mr.Goel, learned counsel appearing on behalf of the appellant submits, that the suit property was originally allotted by the Delhi Development Authority ('DDA') in the name of respondent No.2 *vide* Allotment Letter dated 23.04.1996 under the slum relocation policy; but out of love and affection for his former wife, respondent No. 2 got the suit property allotted in the name of respondent No.1 - Anita Devi @Anita Jha. Learned counsel therefore argues, that the learned trial court and learned first appellate court have erred in holding that the suit property did not belong to respondent No.2.
10. Mr. Goel submits, that respondent No.2 was the (*de facto*) owner of the suit property, and was therefore well within his rights to transfer the same to the subsequent 'purchasers'; and accordingly, the appellant being a subsequent 'purchaser', cannot be denied ownership of the suit property. It is also pointed-out by learned counsel, that the appellant and one of the subsequent 'purchasers', one Himanshu Jha, even carried-out construction on the suit property while living there with their families.
11. Furthermore, learned counsel has drawn attention to the decision of the Supreme court in ***Kusum Sanghi vs. Raj Kishan Das***¹, to argue that section 115 of the Evidence Act, 1872 ('Evidence Act') is squarely applicable to the facts of the present case, since respondent No.1 had omitted to represent herself as owner of the suit property, and had thereby permitted the appellant to believe that her former husband –

¹ 2013 SCC OnLine Del 3742



Sh. Triloki Jha was the owner. It is argued that it was acting upon such omission by respondent No. 1, that the predecessor-in-interest of the appellant as well as the appellant went ahead and 'purchased' the suit property; and therefore, neither respondent No.1 nor any of her representatives could deny the truth of that position in the suit.

12. Attention in this behalf is drawn *inter-alia* to paras 30 and 31 of *Kusum Sanghi* (supra), which read as follows :

“30. In our opinion, the aforesaid contentions of the counsel for the Respondent are misconceived. If, in fact, the Appellants had no right, title or interest in the suit property, the Respondent who claims to be the sole owner of the property would not have stood by and allowed the Appellants to raise construction on the suit property. On one hand, the Appellants claim to have incurred the complete cost of construction of the basement and ground floor on the plot and also paid all the charges to the local authorities with respect to the construction thereof and on the other, the Respondent has contended himself by vaguely denying that claim. Then again, the documents filed by the Appellants along with the written statement have not been denied by the Respondent nor any documents to rebut the aforesaid documents have been placed on record. The bundle of documents filed by the Appellants to prove that the construction of the basement and ground floor was carried on by the Appellants and the possession of the suit property was throughout with the Appellants (which fact is again not denied in the plaint) in our opinion, deserve consideration.

“31. As regards the plea of estoppel, the basis of the same has been laid down in paragraph 19 of the written statement reproduced hereinabove. In the said para of the written statement, the Appellant No. 2 has made a categorical statement that till the end of November, 1995 the Respondent/Plaintiff duly acknowledged and accepted that the basement and ground floor of the property belonged to and vested in the Appellant No. 2. It is further pleaded that the Respondent/Plaintiff did not raise any claim adverse to the right, title and interest of the Appellant No. 2 in the basement and ground floor as well as in half share of the plot of land. If this be so, Section 115 of the Evidence Act, 1872, in our opinion, is clearly attracted, for it is trite that once a person having a belief that he is the owner of a plot constructs on a plot and the real owner stands



by, then such real owner is stopped (sic) from claiming any title in the plot, inasmuch as by standing by he has given a representation that the person who has constructed on the plot had complete entitlement to construct, though formally there may not be title papers in his name with respect to the plot in question. It is equally well settled that estoppel may itself be a foundation of a right as against the person stopped (sic) and may with equal justification be described both as a rule of evidence and as a rule of creating or defeating rights. Nearly six decades ago, in the case of *DepuruVeeraraghava Reddi v. Depuru Kamamma*, AIR 1951 MAD 403, the illustrious Vishwanatha Sastri, J. observed:-

“The estoppel though a branch of the law of evidence is also capable of being viewed as a substantive rule of law insofar as it helps to create or defeat rights which would not exist and be taken away but for that doctrine.””

(emphasis supplied)

RESPONDENT NO.1'S SUBMISSIONS

13. On the other hand, Mr. Jadhav, learned counsel appearing for respondent No.1 submits, that Allotment Letter dated 23.04.1996, based on which respondent No.2 claims ownership over the suit property, was never adduced in evidence before the learned trial court; and that in fact, an application filed by the appellant under Order XLI Rule 27 CPC to produce the allotment letter was also dismissed by the learned trial court *vide* order dated 26.04.2016.
14. Most importantly, it is argued that the suit property was allotted by the Slum Wing of the DDA *vide* Allotment Letter dated 06.05.1997 under the Slum Relocation Policy; and one of the conditions of allotment as contained in the initial Allotment Letter dated 23.04.1996 issued by the DDA was that the suit property could not be transferred to any third-party. The relevant condition reads as under:

“आप प्लॉट को किसी भी व्यक्ति के नाम हस्तांतरित नहीं करेंगे और नहीं किराये पर देंगे”



15. Mr. Jadhav submits, that Allotment Letter dated 06.05.1997, which was adduced in evidence before the learned trial court, shows respondent No.1 as being the lawful allottee of the suit property. Learned counsel submits, that it is in this backdrop that the suit was decreed in favour of respondent No.1 and against the appellant; and the first appeal filed by the appellant was also dismissed by the learned first appellate court.

ANALYSIS & CONCLUSIONS

16. In the present second appeal, the following substantial questions of law came to be framed *vide* order dated 13.09.2017 :

*“1. Whether the courts below have not fallen into a complete legal error and committed an illegality/perversity in ignoring the fact that the case of the appellant was that Sh. Himanshu Jha had constructed a property hence Sh. Himanshu Jha was the owner of the property as per Section 115 of the Evidence Act read with the judgment passed by this Court in the case of **Smt. Reena Jain and Anr. Vs. Shri Rajiv Kumar Saxena** in FAO No. 181/2014 decided on 3.8.2016?*

“2. If the first question of law is answered in favour of the appellant, then, was not the suit decreed on account of gross illegality and perversity inasmuch as there will be no entitlement in the plaintiff/respondent no. 1 to get possession of the suit property?

“3. Whether the appellant is not entitled to take up the plea of factum of fiduciary relationship between the respondent no.1/plaintiff/wife and the respondent no.2/husband and consequentially ownership of the suit property originally itself to be of the respondent no. 2/husband?”

17. Upon considering the submissions made, and the documents on record, in the context of the substantial questions of law framed *vide* order dated 13.09.2017, the following inferences arise:



- 17.1. The question of whether or not respondent No. 1 was the allottee of the suit property stands fully answered in view of Allotment Letter dated 06.05.1997, from which it is clear that the suit property stood allotted (or re-allotted) in the name of respondent No. 1. For completeness, it may be mentioned that under the earlier allotment letter dated 23.04.1996, the suit property was allotted in the name of respondent No. 1's former husband – Sh. Triloki Jha; and, for reasons that are not immediately discernible from the record, the suit property was subsequently mutated in the name of respondent No. 1 – Anita Devi *by the DDA itself*. However, the original allotment letter dated 23.04.1996 contained a condition that the suit property could not be transferred or rented to *any third person* at all, since the allotment was made under the slum relocation policy.
- 17.2. Admittedly, all subsequent so-called 'sales' and 'purchases' of the suit property, as narrated above, were done on the basis of a 'customary' set of documents comprising a general power of attorney, an agreement to sell, Will and other ancillary documents; though the Supreme Court has held in *Suraj Lamp & Industries (P) Ltd. (2) vs. State of Haryana*² that such documents do not comprise or result in transfer of 'title' to immovable property.

² (2012) 1 SCC 656



- 17.3. As a matter of fact, *vide* the allotment letters referred to above, freehold title was never transferred by the DDA in favour of respondent No. 2 - Triloki Nath; and consequently no freehold title could have been transferred onwards by respondent No. 2 to the appellant or to any of his predecessors-in-interest.
- 17.4. Based on the position obtaining in the matter, as narrated above, *vide* impugned judgment dated 22.08.2016, the learned first appellate court has dismissed the appeal, thereby upholding the judgment of the learned trial court, with the following relevant observations:

“11. I have perused the grounds of appeal, judgement dated 31.10.2015 passed by the Ld. Trial Court, order dated 26.04.2016 passed by this court on the application under Order 41 Rule 27 CPC and other relevant record available with the paper book besides entire Ld. Trial Court Record and heard exhaustive arguments advanced by learned counsels for the parties.

“12. The main thrust of arguments of the appellant is that the suit property was allotted to the ex-husband of the respondent, namely, Sh. Triloki Jha and in lieu of said jhuggi Slum and JJ Department of MCD allotted the new jhuggi in the name of the respondent and all the amount of new jhuggi was born (sic) by her husband. Counsel for the appellant has heavenly relied upon the allotment letter dated 23.04.1996 issued by Slum and JJ Department in favour of Triloki Jha i.e. ex-husband of respondent to contend that the suit property has been allotted to him in lieu of his old jhuggi and out of love and affection, he got allotted the same in the name of his erstwhile wife i.e. respondent herein and thus, ex-husband of the respondent was within his rights to sale (sic) the same. The said document was never produced before the Ld. Trial Court and the application filed by the



appellant under Order 41 Rule 27 CPC was also dismissed vide order dated 26.04.2016, however, bare perusal of the document relied upon by the appellant demonstrates that the terms and conditions of the allotment letter itself stipulates that the said plot cannot be transferred or let out to any person and thus, ex-husband of the respondent could not transfer the said plot to any person.

*“13. The ex-husband of the respondent admitted that the allotment letter dated 06.05.1997 Ex. PWI/A has been issued by Slum and JJ Department and the allotment of the suit property is in favour of the respondent. Ld. Trial Court has rightly held that since the allotment was in the name of the respondent, any transfer of the suit plot by any person including her ex-husband i.e. defendant no.1 or subsequent transfer by Sh. Himanshu Jha and Dr. Sanjay Mahendru in favour of the appellant was patently unlawful. It was rightly observed by the Ld. Trial Court that neither the ex-husband of the respondent (defendant no.1) nor other two subsequent transferors (namely, Sh. Himanshu Jha and Dr. Sanjay Mahendru) **possessed any right, title or interest in the suit plot and thus, the purported transfer was not valid in law and moreover, the said transfer is also in violation of the terms and conditions of the allotment letter** issued by Slum & JJ Department of MCD.”*

“14. In view of the aforesaid discussions, I do not find any infirmity or illegality in the findings given by the Ld. Trial Court and thus, the impugned judgment and decree dated 31.10.2015 passed by Ld. Trial Court are re-affirmed. The appeal is accordingly dismissed. Both parties are left to bear their own cost.”

(emphasis supplied)

18. On a conspectus of the foregoing, this court is of the view that, for one, it is the admitted position that the so-called ‘transfers’ of the suit property happened in 2002 and 2005, that is after respondent No. 1 and



respondent No. 2 were divorced in 2000. Evidently, respondent No. 1 was neither party nor privy to any of these transactions.

19. At this point the provisions of section 115 of the Indian Evidence Act, may be noticed:

115. Estoppel.—When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

20. In view of the position that all the so-called subsequent ‘purchasers’ dealt *only* with respondent No. 2 - Triloki Nath and not with respondent No.1 - Anita Devi @ Anita Jha, clearly no “*declaration, act or omission*” could have been made by respondent No.1 ; nor could she have “*intentionally caused or permitted*” any of the subsequent so-called ‘purchasers’ to believe that her former husband respondent No.2 was the owner/allottee of the suit property.
21. Viewed from another perspective, it may be said that section 115 of the Evidence Act, namely the concept of ‘estoppel’, would apply against respondent No.2 (former husband), namely that respondent No.2 represented to the subsequent so-called ‘purchasers’ and caused them to believe that he was the owner/allottee of the suit property and they acted on such belief. However, even this perspective would not bind respondent No.1, since she had divorced respondent No.2 in 2000; and it cannot be said that respondent No.1 was the “*representative*” of respondent No.2 within the meaning of section 115 of the Evidence



Act, and therefore cannot be allowed “*to deny the truth*” of who the owner/allottee of the property was.

22. As a consequence, in the opinion of this court, section 115 of the Evidence Act has no application to respondent No. 1.
23. Most importantly, the suit property was not transferable at all, nor could the suit property have been let-out in view of the prohibition contained in the terms of allotment of the suit property issued by the DDA.
24. *Lastly*, the purported transfer of title in the suit property by way of the ‘customary’ set of documents comprising a general power of attorney, an agreement to sell, Will and other ancillary documents, is clearly untenable in law in view of the decision of the Supreme Court in *Suraj Lamps*. Accordingly, no rights came to be transferred to the appellant or to any of his predecessors-in-interest.
25. In view thereof, respondent No.1 was entitled to get back possession of the suit property, since she was the last allottee thereof under the DDA; and all further purported ‘transfers’ of title to the suit property were neither legally effectuated, nor were they legally permissible.
26. Accordingly, all substantial questions of law set-out in order dated 13.09.2017 are answered against the appellant.
27. As a sequitur to the above, impugned judgment dated 22.08.2016 passed by the learned first appellate court in RCA No. 26/2016 is upheld and the present second appeal is dismissed.
28. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 20, 2025/ds