

Sh. Jai Ram Singh vs Sh. Jitender Singh @ Jeetu on 20 February, 2017

IN THE COURT OF SH. PRASHANT SHARMA:
ADMINISTRATIVE CIVIL JUDGE-CUM-ARC-CUM-CCJ:
NORTH EAST DISTRICT: KARKARDOOMA COURTS: DELHI

CS Suit No. 5027/

In the matter of :-

Sh. Jai Ram Singh
S/o Late Shri Bhagwan Dass
R/o B-269, Gali no.15,
Phase-10, Shiv Vihar,
Karawal Nagar, Delhi-110094.

.....Plaintiff

Versus

1.

Sh. Jitender Singh @ Jeetu S/o Shri Jai Ram Singh

2. Smt. Poonam Devi W/o Sh. Jitender Singh @ Jeetu D/o Sh. Jagbir Singh
Both Residents of : B-269, Ground Floor, Gali no.15, Phase-10, Shiv Vihar, Karawal Nagar, Delhi-110094.

....Defendants

SUIT FOR MANDATORY & PERMANENT INJUNCTION
AND DAMAGES/MESNE PROFITS

Date of Institution	:	14.10.2014
Date of Judgment reserved on	:	13.01.2017
Date of Pronouncement	:	20.02.2017

J U D G E M E N T

1. A party asserting the right, must prove his case. Plaintiff namely Jai Ram Singh failed to prove his case and that is why this suit is dismissed.

CS No. 5027/15 Jai Ram Singh Vs. Jitender Singh Page no.1 of 15

2. Plaintiff Jai Ram Singh had filed the present suit for permanent and mandatory

injunction against his son Jitender Singh @ Jeetu (hereinafter defendant no. 1) and daughter in law Smt. Poonam Devi (hereinafter defendant no. 2) alleging following facts :□"Plaintiff claimed that he is the owner of property bearing no. B□ 269, Gali no. 15, Phase□10, Shiv Vihar, Karawal Nagar, Delhi□ 110094, admeasuring 100 sq. yards, out of Khasra no.36/24 and old bearing plot no.129, situated in Village Karawal Nagar, in the abadi of Shiv Vihar, Illaqa Shahdara, Delhi. Plaintiff claimed that he had purchased the said property from his own income and thus it was his self acquired property. His son viz. defendant no. 1, married defendant no.2 on 02.05.2008 and subsequently both of them came in possession of one room on ground floor in the aforesaid suit property. Plaintiff claimed that defendants acquired the said portion in suit property in question as licensee alongwith their children. After marriage, defendants started quarreling with plaintiff and his family members. On several occasions, plaintiff and his family members were beaten by defendants. In 2010, defendants had beaten plaintiff badly. Plaintiff asserted that conduct of defendants was against the interest of plaintiff and his family members. As a result of said conduct, plaintiff disowned defendants from his movable and immovable property by publication in Newspaper 'Veer Arjun' on 22.05.2010. After knowing the contents of said publication, conduct of defendants became more cruel towards plaintiff and his family members. Not only that, in CS No. 5027/15 Jai Ram Singh Vs. Jitender Singh Page no.2 of 15 order to maintain peace, plaintiff asked defendants on various occasions to vacate the portion in suit property in question occupied by them but defendants not only refuted him, rather threatened him with dire consequences in case plaintiff made such oral request to them. In fact, defendant no.2 had threatened that she will falsely implicate the plaintiff in criminal case based on the offence of outraging her modesty. Defendant no.2, as per plaintiff, had also threatened him that she will commit suicide by taking poison which will implicate the entire family of the plaintiff. In response to the said threats, plaintiff gave written complaint to the concerned SHO on 18.09.2014 which was received vide DD no.55□B. Plaintiff also made a complaint to DCP concerned on 19.09.2014 against defendants. On 20.09.2014, defendant no.2 with her mother Smt. Lata, her father Jagbir, brothers Deepak and Sandeep and daughter Pooja had beaten plaintiff, his wife, his daughter and son. Said quarrels became a regular feature between plaintiff and defendants and thus plaintiff was left with no option but to file case against defendants. In this suit, plaintiff prayed that a decree of mandatory injunction be passed in favour of plaintiff and against defendants thereby directing defendants to vacate and handover the peaceful physical vacant possession of suit property occupied by them. He also prayed for a decree of permanent injunction against defendants thereby restraining defendants and their agents etc. from creating third party interest in the suit property in question. He also prayed for a decree of recovery of damages @ CS No. 5027/15 Jai Ram Singh Vs. Jitender Singh Page no.3 of 15 Rs.3000/□ per month w.e.f.

October till recovery of possession. He also prayed for cost to be awarded to him from defendants."

3. Defendant no.1 in his written statement, took the preliminary objection that plaintiff had concealed material facts from the Court, for which suit must be dismissed. He also claimed that plaintiff had no cause of action to file present suit against him and that plaintiff had entered into a settlement with him, as per which suit property in question was let out to him for a period of two years starting from April, 2014 on licensee basis which will continue till April, 2016. On merits, he refuted the version of plaintiff. Defendant no.1 as such did not deny the ownership of plaintiff over suit property in question.

4. Defendant no.2 in her written statement also challenged the case of plaintiff, by taking certain preliminary objections viz. That plaintiff had not moved the Court with clean hands, that plaintiff had asserted false facts, that plaintiff wants to gain wrongfully from her based on false version, proper court fees has not been paid based on the relief, that suit has not been verified, that plaintiff is not the owner and person in possession of suit property in question and that plaintiff has filed this suit as counter blast to the domestic violence complaint case, filed by her which is pending adjudication. Besides that, she claimed that ownership and possession of suit property in question came to defendant no.2 after the partition of joint Hindu Family of plaintiff. The suit property, as per her, is in the share of defendant no.1. In the suit property, so handed over to defendant no.1 before many relatives and at the time of partition of Hindu Joint Family property of plaintiff. She also claimed that this suit was filed by plaintiff in collusion with defendant no.1 as both of them want to dispossess her from suit property in question. In para 10 of her preliminary objections, she claimed that suit property is ancestral property but presently it is CS No. 5027/15 Jai Ram Singh Vs. Jitender Singh Page no. 4 of 15 in possession and ownership of plaintiff which was a contradictory stand on her part when compared to contents of preliminary objections, para no.8. She also claimed that suit property was purchased by plaintiff from the money of defendants share as he ancestral property and jewellery as sold out for purchasing the said property. She also asserted that when joint family was in existence, she used to work privately and used to give her salary to plaintiff. On merits, she refuted the version of plaintiff.

5. After completion of pleadings, following issues were settled by this Court:

1. Whether the plaintiff is entitled to the decree of mandatory injunction, as prayed for? OPP
2. Whether the plaintiff is entitled to the decree of permanent injunction as prayed for? OPP

3. Whether the plaintiff is entitled to the decree of damages @ Rs. 3,000/□ per month w.e.f. October, 2014 till recovery of possession as prayed for? OPP

4

Whether the present suit has been filed by the plaintiff in collusion with defendant no.1? OPD□

5. Whether the present suit is a counter □ blast to the application of the defendant no. 2 under the Domestic Violence Law? OPD□

6. Relief.

6. Subsequently, matter was fixed for plaintiff's evidence. Plaintiff examined himself only as PW1. He tendered in evidence his affidavit Ex.PW1/A in which he reiterated the facts as mentioned in the plaint, which are not repeated here for the sake of brevity.

7. He relied upon documents site plan EX.PW1/1, photocopy of GPA dated 23.8.94 (running into 2 pages)(colly.) EX.PW1/2, photocopy of Agreement to Sell dated 23.8.94 EX.PW1/3 (OSR), photocopy of receipt dated 23.8.94 CS No. 5027/15 Jai Ram Singh Vs. J i t e n d e r S i n g h P a g e n o . 5 o f 1 5 EX.PW1/4 (OSR), legal notice dated 25.9.14 EX.PW1/5 (running into 3 pages) (colly.), two postal receipts EX.PW1/6 & EX.PW1/7, photocopy of complaint to SHO dated 18.8.14 EX.PW1/8 (OSR)(running into 2 pages)(colly.), photocopy of complaint to SHO dated 19.9.14 EX.PW1/9 (OSR) (running into 2 pages) (colly.), photocopy of complaint to SHO dated 20.9.14 EX.PW1/10 (OSR), photocopy of complaint to ACP dated 1 9 . 9 . 1 4 E X . P W 1 / 1 1 (O S R) (running into 2 pages)(colly.), photocopy of complaint to DCP dated 19.9.14 EX.PW1/12 (OSR)(running into 2 pages)(colly.), photocopy of newspaper dated 22.5.10 EX.PW1/13 (OSR), photocopy of ration card EX.PW1/14 (OSR), photocopy of Voter ID card EX . P W 1 / 1 5 (O S R) , photocopy of Aadhar card EX.PW1/16 (OSR), photocopy of Electricity bill EX.PW1/17 (OSR), photocopy of affidavit dated 19.9.14 EX.PW1/18 (running into 2 pages)(colly.).

8. Subsequently, he closed his evidence and matter was fixed for defendant's evidence.

9. Though defendants had filed separate written statements, but they were represented by a common counsel who had led evidence on behalf of both of them. So, evidence of defendants will be read by me viz□□viz both the defendants.

10. Defendants examined six witnesses to prove their case. Defendant no.1 examined himself as DW1 and tendered in evidence as affidavit Ex.PW1/1 in which he reiterated the facts as mentioned in the written statement, which are not repeated here for the sake of brevity. He relied upon documents viz. Bainama Ex.DW1/A, Fard of

ancestral property Ex.DW1/B, Election Card Ex.DW1/C, Aadhar Card Ex.DW1/D and D/L Ex. DW1/E. CS No. 5027/15 Jai Ram Singh Vs. Jitender Singh Page no.6 of 15

11. Defendant no.2 has examined herself as DW2. She also tendered in evidence her affidavit Ex.DW2/A and relied upon the documents viz. Bainama Ex.DW2/A, Fard of ancestral property Ex.DW2/B, petition of D.V.Act Ex.PW2/C, Election Card Ex.DW2/D, Aadhar Card Ex.DW1/E and Birth Certificate Ex.DW2/F.

12. DW3 Jagbir Singh, being the father in law of defendant no.1 had testified in his evidence by way of affidavit Ex.DW3/A that on 07.05.2008, a biradari/relatives Panchayat was held which was attended by him. In the said Panchayat, property dispute between plaintiff and defendants was sorted out. It was decided in the said Panchayat that ancestral property of plaintiff would be partitioned amongst family members of plaintiff. It was agreed that agricultural and ancestral land situated in village Aankpur, Tiwana, Pargana & Tehsil Siyana, Distt. Bulandshahar, Khata no.103, Khait no.260, measuring area 0.3520 Hecter and Khait no.259, measuring area 1.5000 hector and total area 1.8520 hector and lagani paisa 70.55 was to be given to plaintiff and plaintiff would sell out the same in lieu of suit property in question. He also deposed that on 26.08.2008, an agreement was executed by the plaintiff in the favour of Gajraj Singh Tyagi s/o Gopi Chand Tyagi on behalf of all family members and on 05.05.2009, the entire agricultural land was sold out in the name of Gajraj Singh Tyagi. Out of said sale purchase of land, amount of Rs. 8,40,000/- was received by plaintiff but defendants did not receive even a single penny from the said amount. This witness also deposed that matrimonial dispute had arisen between defendant no.2 on one hand and defendant no.1 alongwith plaintiff and other family members, on the other hand. Further, in a Civil Suit of permanent injunction, plaintiff and defendant no.1 had deposed in the Court that they will not dispossess defendant no.2 except due course of law. He also referred to domestic violence act case, filed by defendant no.2 against defendant no.1, plaintiff and his family members which is pending adjudication.

CS No. 5027/15 Jai Ram Singh Vs. Jitender Singh Page no.7 of 15 He relied upon documents viz. Bainama Ex.DW3/A and Fard of ancestral property Ex.DW3/B and election card Ex.DW3/C.

13. Defendants also examined Raju as DW4 and Subhash Kumar as DW5, who tendered in evidence their affidavits Ex.DW4/A and Ex.DW5/A respectively, in which they deposed the facts in tune with the facts deposed by DW3 which are not repeated here for the sake of brevity. They also relied upon documents, already relied by DW3.

14. DW6 Subhash Chand is a summoned witness from the concerned department. He placed on record sale deed dated 05.05.2009 entered into by Jairam and

Gajraj Singh Ex.DW6/A by placing the attested true copy of the same.

15. Subsequently, defendant's evidence was closed at request of defendants. Matter was fixed for final arguments. After hearing arguments, matter was fixed for judgement.

16. In my subsequent paragraphs, I will be deciding the issues settled by this Court. Issue No. 1, 2, 3 & 6 were pertaining to the reliefs claimed by plaintiff and were interrelated and decided by me by common appreciation of evidence and record placed before the Court.

17. Plaintiff in nutshell wants to oust defendants from suit property in question. His said relief is based on his ownership rights over suit property in question. Plaintiff has claimed himself to be the owner of suit property in question. If that is so, then he should have proved his ownership rights over suit property in question. Record reveals that plaintiff had relied upon the GPA CS No. 5027/15 Jai Ram Singh Vs. Jitender Singh Page no.8 of 15 Ex.PW1/2 (Only the photocopy of the same was filed), Agreement to Sell Ex.PW1/3, Receipt Ex.PW1/4, all are dated 23.08.1994, to show that he is the owner of suit property in question. Plaintiff had claimed that he had purchased the suit property in question from erstwhile owner namely Attar Singh, who inturn had executed aforesaid three documents in favour of plaintiff. So, case of the plaintiff was that he had become owner of suit property in question on the basis of documents i.e. Ex.PW1/2, Ex.PW1/3 and Ex.PW1/4. That claim of plaintiff did not help his cause as those documents did not give any ownership rights to plaintiff over suit property in question. As per Section 54 of the Transfer & Property Act, 1882, a sale of immovable property of the value of Rs. 100/□ and upwards can be made only by a registered document. In the case in hand, admittedly value of suit property in question is above Rs. 100/□ and therefore, plaintiff would have become owner of said property by way of registered sale deed only. Since, no registered sale deed was executed by plaintiff at any point of time, so plaintiff cannot claim his ownership rights over suit property in question based on the documents viz. Ex.PW1/2, Ex.PW1/3 and Ex.PW1/4.

18. Aforesaid title documents relied by plaintiff were not proved as per law also as plaintiff did not examine the executant and/or witnesses who had witnessed the said documents. As per Section 68 of the Indian Evidence Act, if a document is required to be attested, it shall not be used in evidence unless one attesting witness has been called for the purpose of proving its execution. In the case in hand, since documents Ex.PW1/2, Ex.PW1/3 and Ex.PW1/4 require signatures of attesting witnesses, so, plaintiff could have proved those documents by examining those witnesses. He did not do so. He had also not examined the witnesses who had witnessed the execution of those documents. Those alleged title documents stood not proved and therefore, plaintiff failed to prove his ownership rights over suit property in question.

19. Ld. Counsel for plaintiff had vehemently argued that ownership of plaintiff over suit property in question were not disputed. She referred to the cross examination of DW1 and DW2 who are the defendants in this case and who had admitted in their cross examination that plaintiff is the owner of the suit property in question. So, as such, when defendants had admitted ownership rights of plaintiff, question of proof of the said ownership rights did not arise, as per law. Said arguments is not tenable for the reason that admissions of parties cannot take the place of proof of a fact. Law nowhere recognises that if a party admits the ownership rights of other party, then, the ownership rights of said party stands proved.

Law mandates that a person can become owner of immovable property in three manners viz. (a) by purchasing said property (b) by getting the said property as a gift or (c) by getting the said property through Will. Case of the plaintiff was covered in the first category as plaintiff had allegedly purchased the said property from Sh. Attar Singh. If that is so, then, as per the aforesaid provision of the Transfer & Property Act, plaintiff should have placed on record the registered sale deed on record, which he did not do. Admissions of documents, as such, did not prove the fact that plaintiff had become the owner of suit property in question by way of its purchase from Sh. Attar Singh. Even otherwise, the case of plaintiff has to stand on its own legs. Plaintiff cannot take assistance of defendants in this regard. Since, plaintiff failed to prove his own case regarding ownership rights over suit property in question, he cannot take the assistance of admissions of defendants. In case, ownership rights are proved on the basis of admissions of the parties, then, it will flood gate for collusive litigations. To avoid said possibility also, I find that no reliance can be placed on the admissions of defendants, with regard to ownership rights of plaintiff over suit property in question.

20. In view of the aforesaid conclusion regarding plaintiff failing about proving his right of ownership over suit property in question, he has no right ouster of claim of plaintiff from suit property in question. Further, plaintiff has CS No. 5027/15 Jai Ram Singh Vs. Jitender Singh Page no. 10 of 15 no right to claim the relief of permanent injunction, damages and cost as prayed by him, as the said rights emanated from his ownership right over suit property in question, which he failed to prove. All the aforesaid issues are decided against plaintiff. As such, plaintiff is not entitled to any relief, sought by him.

Issue No. 4.

21. Onus of proving this issue rested on defendant no. 2. It was she, who had claimed that plaintiff had filed this suit in collusion with defendant no. 1. In her Written Statement, as such, she had taken the said stand regarding collusion between plaintiff and defendant no. 1 but did not explain the grounds of

claiming the same. It was bald assertion on her part only. She did not explain in her Written Statement as to how this was a collusive suit between plaintiff and defendant no. 1. She claimed that this suit was filed by plaintiff after filing of case under the Domestic Violence Act by her against plaintiff and his family members. By virtue of filing this suit, after filing of the case under Domestic Violence Act, I find that she had only inferred that this was the collusive suit between plaintiff and defendant no. 1. While cross-examining PW1, she did not give any suggestion that this suit was the collusive suit between plaintiff and defendant no. 1. As such, she did not put her said defence on plaintiff for checking its veracity. Not only that in her evidence by way of affidavit Ex.DW2/1 she did not explain as to on what basis she had concluded that her husband and plaintiff wanted her ouster from suit property in question. So, as such, besides her said inference, I failed to find any cogent proof regarding collusion between plaintiff and defendant no. 1 with respect to filing of this case against defendant no. 2. More so, where defendant no. 1 had not simply taken the case of plaintiff rather had challenged his case by filing Written Statement separately and by cross-examining plaintiff. Further, defendant no. 1 had given evidence separately on his own by challenging the case of plaintiff. Lastly, both the defendants had common Counsel which only indicated interests of both the CS No. 5027/15 Jai Ram Singh Vs. Jitender Singh Page no. 11 of 15 defendants, were not against each other. If that is so, then, I find that both the defendants sailed on the same boats during the trial and claim of defendant no. 2 against defendant no. 1 was unfounded. Aforesaid issue is decided against defendant no. 2.

Issue No. 5.

22. Again onus of proving the fact that this suit was counter blast to the application of defendant no. 2 under the case of Domestic Violence Act, rested on defendant no. 2. She did not put the said suggestion while cross-examining PW1 (plaintiff) for checking its veracity. She did not give any cogent reason as to on what basis she had claimed that this was the counter blast litigation. She was not able to prove the ulterior motives of plaintiff in filing present suit against her. So, aforesaid issue is decided against defendant no. 2.

23. Both the aforesaid issues which were supposed to be proved by defendant no. 2 were not proved by defendant no. 2 and that conclusion can be viewed from another perspective, which is that, it is admitted case that defendant no. 2 had filed complaint against plaintiff and his family members under the case of Domestic Violence Act. It meant that they were certain issues between defendant no. 2 and plaintiff. It also meant that the said issues were such that they had taken the shape of violence as that had prompted defendant no. 2 in moving the Court for filing the case under the Domestic Violence Act. So, the factum of violence between plaintiff and defendant no. 2 became evident. By filing the case under the Domestic Violence Act, it was defendant no.

2 who had exercised her right against plaintiff based on that violence against her. Further, by filing present suit, plaintiff had exercised his right based on the same very violence against him. The issue of violence therefore, remained a common thread between the litigation initiated by plaintiff and litigation initiated by defendant no. 2. As such, by filing all those litigations neither of the CS No. 5027/15 Jai Ram Singh Vs. Jitender Singh Page no.12 of 15 parties, can be said to have filed those litigations based on ulterior motives, just like that. Therefore, filing of this case by plaintiff by itself after filing of the case under the Domestic Violence Act by defendant no. 2 did not make this case a counter blast case on behalf of plaintiff and/or a case filed by plaintiff in collusion with defendant no. 1.

24. Before coming to the conclusion, I must mention here that case of plaintiff also failed on account of limitation. Reason being that a holistic reading of the plaint revealed that relations between plaintiff and defendants became sour after the marriage of defendants on 02.05.2008. Plaintiff had claimed in 'para 3' of the plaint that defendants had beaten him in the year 2010. If that is so, then grievance of plaintiff for filing of present suit arose in the year 2010 only as it was in that year that plaintiff had found defendants through their conduct that they were averse to the interest of plaintiff. The cause of action for filing of present suit arose in the year 2010 and the limitation period of filing of present suit therefore had to be calculated from the said year only which ended in the year 2013. This suit was filed on 14.10.2014 much beyond the expiry of the said limitation period. Infact, 'para 12' of the plaint itself revealed that cause of action for filing the present suit arose in the year 2010, which fortified my aforesaid conclusion.

25. Besides that, plaintiff had prayed a decree of damages against defendants in prayer (c) of the plaint but said prayer in itself was incomplete as plaintiff had prayed a decree of damages @ Rs. 3000/- per month w.e.f. October till recovery of possession. Plaintiff not specified the year from which, he had claimed the said relief of damages. Since, plaintiff himself was not clear about the relief of damages, as such, he cannot be granted any relief on that account.

CS No. 5027/15 Jai Ram Singh Vs. Jitender Singh Page no.13 of 15

26. Lastly, case of plaintiff, failed on account of vague pleadings. In the plaint, plaintiff did not specify as to from which date exactly, quarrel between him and defendants started. Further, it was not mentioned as to on which dates exactly, he had asked defendants to handover him with vacant peaceful possession of portion of suit property in question occupied by them. He did not specify the exact threats, given by defendants, when he had requested so to them. Further, the Site Plan filed by plaintiff Ex.PW1/1, was not based on any measurement, so, as such, no effective decree can be passed in this case, as the room marked with red colour in suit property in question in Site Plan Ex.PW1/1, is not marked with any specific details of its measurement. Besides that, the

testimonies of DWs viz. DW3, DW4, DW5 and DW6 were inconsequential in nature as they neither proved the case of plaintiff nor proved the case of defendants. They were accordingly discarded by me.

27. Plaintiff had objected to Benama (Ex.DW1/A) and Fard (Ex.DW1/B) on the ground that those documents were not filed along with Written Statements. As per plaintiff, defendants had not complied with the provisions of Order 13 Rule 1 CPC. Said objection of plaintiff was not unfounded. Defendants had placed on record the documents for the first time during their evidence, without taking permission of the Court. As such, those documents are discarded by me and defendants had not right to file the same in such manner which is contrary to the Order 13 Rule 1 CPC, which mandates that original documents relied by the parties must be produced at or before the stage of settlement of issues. Besides that, plaintiff had objected to the documents relied upon by defendant no. 2 viz. Bainama□ Ex.DW2/A and Fard of ancestral property□ Ex.DW2/B, which is allowed at this stage, as defendant no. 2 had placed photocopies of said documents on record. She did not place on record the primary or secondary evidence with respect to the said documents and therefore, those documents remained not proved during trial.

CS No. 5027/15 Jai Ram Singh Vs. Jitender Singh Page no.14 of 15

28. In view of the aforesaid appreciation, present suit stands dismissed. No order as to costs is made. Decree□ Sheet be prepared, accordingly.

29. File be consigned to Record Room after necessary compliance.

Announced in the open Court
on 20.02.2017

[PRASHANT SHARMA]
ARC/ACJ/CCJ
North-East Distt, KKD,

CS No. 5027/15

Jai Ram Singh Vs. Jitender Singh

Page no.1