DEBTS RECOVERY APPELLATE TRIBUNAL, DELHI

Appeal No.35/2024
Arising out of SA No.439/2021(DRT-Jaipur)

Item No. 17

Vinod Kanwar
V.
Aavas Financiers Limited and others

25.08.2026 Hon'ble Dr. Justice Sudhir Kumar Jain

Present: Sh. Kamal Sagar, Advocate for appellant no.1 through VC

Sh. Anuj Bhandari, Advocate for respondent FI.

This matter is taken up through Hybrid hearing.

1. The appellant filed S.A. bearing No. 439/2021 titled as **Vinod Kanwar v. Aavas Financiers Limited and others** which was stated to be pending before DRT-Jaipur.

2. DRT-Jaipur vide impugned order dated 28.07.2023 has disposed of the S.A. bearing No. 439/2021 as a dismissed. The operative part of the order dated 28.07.2023 is reproduced as under:

> **12. Therefore, considering entire facts, evidence and documents, available on record. The prayer of SA applicant, is dismissed on the following grounds:-**
>
> **(i) The SA applicant do not have any document to show her right of ownership on the subject property.**
>
> **(ii) Right of ownership can not be claimed, merely on the basis of unregistered documents.**
>
> **(iii) Loan was sanctioned by respondent FI, on the basis of original title documents, of the subject property, mortgage was created on the basis of a Registered documents (R/5) and Therefore, Respondent FI, is having every right to recover the outstanding amount from the borrower who turned to a defaulter.**

3. The appellant before DRT-Jaipur in S.A. has contended that the respondent no.4 allotted the plot bearing no. B-8, situated at Gopalpuri-B, Meenawala, Sirsi Road, Jaipur measuring 501.38 sq. yds. vide allotment letter dated 09.04.1994 to the

respondent no.3 Soni Devi. Thereafter, respondent no.3 sold part of the plot bearing no. B-8 measuring 200.55 to Dinesh Kumar Khandelwal vide sale deed dated 22.11.2011which was renumbered as B-8A. The respondent no.3 sold the remaining part of the plot measuring 301.38 sq. yds. to the appellant vide agreement of sale dated 30.04.2014 in consideration of Rs.31.00 lacs. The appellant has paid Rs.31.00 lacs to the respondent no.3 on 21.08.2014 which was acknowledged by respondent no.3 vide receipt dated 21.08.2014. The respondent no.4 has transferred the plot measuring 301.38 sq.yds. in favour of the appellant vide letter dated 07.02.2021. The respondent no.3 has continued to occupy the said plot as a tenant on rent. Subsequently, the respondent no.3 had vacated the entire plot measuring 301.38 sq. yds. The respondent no.3 as such was not having any right, title or interest in respect of the plot measuring 301.38 sq. yds.

4. The appellant after vacation of the plot by the respondent no.3 had given the said plot on rent to one Shankar Lal Saini. The officers of respondent no.1 on 27.06.2019 came to the subject property and informed the appellant through tenant Shankar Lal Saini that the respondent no.2 Banna Lal Gurjar has taken the loan against the property Plot bearing No.B-8B on 10.08.2017 and due to default, the respondent no.1 was proposing to sell the subject property.

5. The appellant came to know that the respondent no.2 has availed the loan facility from respondent no.1 by depositing forged *patta* of plot bearing No. B-8B measuring 401.11 sq. yds., whereas there was no such plot in existence. The respondent no.3 happened to be the mother of respondent no.2. The respondent no.2 has obtained the loan from respondent no.1 on the basis of forged patta/ allotment letter dated 09.04.1994 for plot no. B-8B measuring 401.11 sq.yds. The appellant being aggrieved filed the present S.A. bearing No. 439/2021.

6. The DRT-Jaipur vide impugned order dated 28.07.2023 has dismissed the SA by observing that the appellant had claimed right over the subject plot on the basis of agreement to sell dated 30.04.2014 stated to have been executed by respondent no.3 which was unregistered document and witnessed by respondent no.2.

7. The perusal of impugned order dated 28.07.2023 reflects that the appellant to prove the title in respect of the subject property had relied upon agreement to sell dated 30.04.2014 which was unregistered and the receipt issued by respondent no.4 reflects the change of ownership of the subject property in favour of the appellant. Except these two documents, the appellant was not having any other title documents in respect of subject property claiming to be measuring 301.38 sq. yds.

8. The DRT-Jaipur has also relied upon copy of agreement for loan Annexure R-5 and deposition of title deed of the mortgage property dated 29.08.2017 stated to have been executed by respondent no.2 in favour of respondent no.1.

9. The Counsel for appellant had argued that the impugned order dated 28.07.2023 was passed without following the principle of nature justice as the DRT-Jaipur has adopted hyper technical approach. The impugned order was contrary to the facts and material placed on record and was passed without application of mind. The respondent no.2 has availed the loan facility on the basis of forged and fabricated documents. The respondents no.2 and 3 have committed fraud on the respondent no.1 as the respondent no.3 has created forged documents for taking loan from respondent no.1. The appellant was a victim of the fraud played by the respondent no.1. The appellant has never taken any loan from respondent no.1 or any other bank and never mortgage the subject property to anyone. The respondent no.1 has not verified the title documents of the respondent no.2 while advancing the loan. The appellant is owner of the Plot No. B-8, which was never mortgaged to respondent no.1.

10. The Counsel for respondent no.1 during the course of arguments has referred the judgment passed by the Hon'ble Supreme Court titled as **Cosmos Co. Operative Bank Ltd. v. Central bank of India and Others,** 2025 SCC OnLine SC 352, and more particularly para no 20 & 65 of the judgment which are reproduced as under:

> **20. .....The law is very well settled as explained by this Court in Suraj Lamp (spura) that a contract of sale i.e. an agreement of sale does not itself create any interest in or charge on any property. This is evident on plain reading of Section 54 of the Transfer of Property Act, 1884.**

65. The proposition of law is that though the transaction evidenced by the prior unregistered document is valid in itself, yet any title or interest created by it is liable to be defeated under the rule of priority by a valid later and legal sale or mortgage evidenced by a duly registered document. The reason is, otherwise, no effect can be given to the rule which implies that the later registered title is intended to prevail against an earlier unregistered title. No weight can, therefore, be attached to the contention that by a valid unregistered agreement of sale, the vendor's title is exhausted, he has, afterwards, nothing to sell, and the later registered sale deed gives nothing to the predecessor. The fallacy in the contention lies in ignoring the reason of the rule, namely that as between the registered and unregistered transactions, the registered transaction creates the dominant right or title.

11. It is apparent that the appellant is claiming the title in respect of the subject property merely on the basis of agreement to sell dated 30.04.2014 which was unregistered document. The appellant also relied upon the receipt issued by the respondent no.4. However, the receipt issued by respondent no.4 merely reflects the change in the name but it is not a valid document to establish right, title or interest of the subject property. The Hon'ble Supreme Court of India in **Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana (2012) 1 SCC 656** has observed that the documents i.e. General Power of Attorney and Agreement to Sell do not confer any ownership right and title can only be validly transferred by the Registered Sale Deed. Arguments so advanced by the appellant have no effect on the merits of the case.

12. Hence, the appeal is dismissed being devoid of any merit.

Sd-

(Dr. Justice Sudhir Kumar Jain)
Chairperson

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