

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

+ RFA (OS) 28/2008

Reserved on : 28th April, 2008

Date of decision: 16th May, 2008

KANAN BAKSHI Appellant
Through Mr.Ajay Kumar, Adv.

Versus

ATUL BALI & ANR. Respondent
Through Mr.Sunil Narula and Ms.Deepti
Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE V.K.SHALI

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

%

V.K.SHALI, J

1. The present appeal has been filed by the appellant under Section 96 of the CPC against the judgment dated 4th April, 2008 passed by the learned Single Judge in CS(OS) No.2076/2007 titled as Smt. Kanan Bakshi Vs. Atul Bali & Ors.

2. By the impugned judgment, the learned Single Judge has dismissed the claim of the appellant that he is having a 2/3rd share in the suit property bearing Plot no.104, Block B-1, Janakpuri, New Delhi and the balance share of 1/3rd belonging to the respondents. As against this, the learned Single Judge has held that the appellant and the respondents are having one

half shares each in the aforesaid property and accordingly passed a preliminary decree in this regard.

3. Briefly stated the facts leading to the filing of the present case are that the appellant filed a suit for partition in respect of the plot bearing No.104, Block-B1, Janakpuri, New Delhi measuring 126 sq. mtrs. on the ground that the aforesaid plot was purchased by her father Mr.Nand Kishore Datta vide perpetual lease executed by the DDA on 5th June, 1969. It was stated that late Sh.Nand Kishore Datta had constructed a three storey structure on the said plot. The appellant had married to one Smt. Shiv Kumari Datta. The appellant had one married sister namely Ms.Kamini Bali, since deceased. It is not disputed that late Sh.Nand Kishore Datta died on 28th April, 2004 leaving behind the appellant and her mother Smt. Shiv Kumari Datta. So far as the sister of the appellant named Ms.Kamini Bali is concerned, she had predeceased her father on 12th August, 2002. After the death of her father, the appellant and her mother Smt. Shiv Kumari Datta were the sole legal heirs who had inherited the property in the proportion of one half share each. It is stated by the appellant that her mother Smt. Shiv Kumari Datta had executed a relinquishment deed in respect of her one half share of the aforesaid property in favour of the appellant. On the basis of the said relinquishment deed she had applied to DDA on 28th May, 2004 and submitted an affidavit dated 10th June, 2004 and indemnity bond dated 28th May, 2004 declaring therein that on the death of her father, Sh.Nand Kishore Datta on 28th April, 2004, he was survived only by two LRs namely the appellant and her mother Smt. Shiv Kumari Datta. This fact that Late Sh.Nand Kishore Datta being survived only by two LRs is stated to have been given by the appellant on the basis of

a mistaken legal advice, while as, as the matter of fact, she ought to have mentioned the son and daughter of the predeceased sister Smt. Kamini Bali as the other LR's also. Be that as it may, the plaintiff stated that on realization of this fact. The plaintiff had filed a suit for partition bearing CS(OS) No.2076/2007 titled as Smt. Kanan Bakshi Vs. Sh.Atul Bali and Ors., wherein she stated that she has $\frac{2}{3}$ rd share in the aforesaid property as her mother Smt. Shiv Kumari Datta had bequeathed her share in favour of the appellant and so far as the remaining $\frac{1}{3}$ rd share in the said property is concerned that would go to the respondents being the son and daughter of the predeceased daughter of late Sh.Nand Kishore Datta.

4. Although on the basis of documents purported to have been executed by the mother of the appellant, the later had got the property mutated but on the basis of the complaint purported to have been made by the respondents, DDA had issued a show cause notice on 19th July, 2007 to the appellant to show cause as to why the mutation may not be cancelled to which the reply was filed by her on 3rd August, 2007. The appellant also filed a suit for partition culminating into the filing of the present appeal.

5. The respondents/defendants filed their written statement contesting the claim of the appellant. It was stated by the defendants that on account of the death of their mother and grandmother, they are entitled to $\frac{1}{2}$ share in the property. Further, while they have been living on the ground floor for the last 30 years yet they were being sought to be excluded from inheritance. The learned Single Judge framed the following issues.

- “1. Whether the suit is not maintainable in law, as claimed by the defendant?;
2. Whether the plaintiff is entitled to a decree of partition and, if so, to what share?”

6. Thereafter, the learned Single Judge heard the arguments and delivered the impugned judgment dated 4th April, 2008 passing a preliminary decree in favour of the appellant and the respondents declaring them to be the owner of one half share each in the suit property whereas the claim of the appellant with regard to his share being 2/3rd in the property in question on the basis of relinquishment deed purported to have been executed by her mother was rejected. The plea of the appellant having 2/3rd share in the suit property was rejected on the ground that the appellant had given false information to the DDA to the effect that she and her mother were the only legal heirs of late Sh.Nand Kishore Datta.

7. The appellant is accordingly aggrieved by the said judgment of the learned Single Judge of passing a preliminary decree to the extent that the appellant and the respondents are equal co-sharers in the property in question and further passing directions inviting report of the Court Commissioner so as to divide the property in equal proportion by metes and bounds or such other mode as the learned Single Judge may deemed fit.

8. We have heard the learned counsel for the parties and perused the records. Mr.Ajay Kumar, advocate for the appellant has contended before us that the affidavit and indemnity bond, which was filed with the DDA as well as relinquishment deed was executed by her mother in her favour relinquishing her one half share in the property in question was given under a mistaken advice of the counsel who had advised the appellant on account of death of her father that it was only the appellant and her mother who were the legal heirs of late Sh.Nand Kishore Datta father of the appellant. This was accepted by the appellant on account of the fact that at the relevant time when such affidavit and relinquishment deed was got executed, the

sister of the appellant namely Smt. Kamini Bali had already pre-deceased her father, though her son and daughter were staying on the ground floor of the suit property. It is stated by the learned counsel that notwithstanding the fact that the relinquishment deed which is purported to have been executed by Smt. Shiv Kumari Datta mentions one half share in the property, but merely on account of the fact that the share of the mother has been wrongly shown to be $\frac{1}{2}$ in the relinquishment deed, the entire relinquishment deed does not become bad in law. The share of the late Smt. Shiv Kumari Datta in the property in question was only to the extent of $\frac{1}{3}^{\text{rd}}$ on account of the demise of her husband. While as the other $\frac{1}{3}^{\text{rd}}$ each was to be shared between the appellant and the mother of the respondents and therefore, the relinquishment deed ought to be treated as if it was confining or was intended to confine the relinquishment of Smt. Shiv Kumari Datta deed to the extent of $\frac{1}{3}^{\text{rd}}$ share only in favour of the appellant. It has also been contended by the learned counsel for the appellant that the relinquishment deed has to be interpreted according to the literal meaning and if done so, it has to give effect to by simply assuming that Smt. Shiv Kumari Datta had released her share in favour of the appellant which was to the extent of $\frac{1}{3}^{\text{rd}}$ share in the suit property. The learned counsel for the appellant has also placed reliance in this regard on the judgment of Sharda Nath Vs. Delhi Administration & Ors. 149 (2008) DLT 1 (DB) wherein the various methods of interpretations of the deed or the documents are given. The following rules have been adopted in the interpretation of the documents by the Hon'ble High Court:

“16. The above interpretation given by us is in consonance with certain well established principles of construction of deeds and documents. The first general rule of

interpretation of a deed or document is to read the document itself as a whole and not in piece-meal and gather the intention of the parties from the words used. [See in this regard, Odgers Construction of Deeds and Statutes, 5th Edition, 1967 and the observations of the Supreme Court in *Delhi Development Authority v. Durga Chand Kaushik*, reported in (1973) 2 SCC 825.

17. The second principle is where two clauses disclose some conflict or contradiction but the clauses can be reconciled, one should give effect to all the clauses rather than render one or more of them as nugatory. We should try and resolve the conflict at the first instance, in view of principle expressed in the maxim *ut res magis valeat quam pereat*.

18. Thirdly, where is it not possible to resolve conflict between two Clauses and the same are irreconcilable, Courts have evolved the principle or the theory that what once has been granted cannot be taken away. A clear disposition in an earlier clause cannot be withdrawn and cut down by a later clause. [Refer *Sahebzada Mohd. Kamgarh Shah v. Jagdish Chandra Deb*, reported in (1960) 3 SCR 604; **Ram Kishore Lal v. Kamal Narain**, reported in AIR 1963 SC 890; and *Forbes v. GIT*, reported (1922) 1 AC 256].

19. Fourthly, where there is a grant and an exception is carved out, the exception is to the benefit of the granter and the clause can be construed in favour of the grantee if two reasonable interpretations are possible. In such cases, interpretation in favour of the grantee and as against the granter should be accepted. This principle does not apply when the exception so carved out is not bad for uncertainty.

20. Lastly, rule of *contra preferentem* applies against the party/person who has prepared the document in case of any ambiguity. As per this rule, a document can be construed against a party who had prepared the same. [See **United India Insurance Company v. Pushpalaya Printers**, reported in I (2004) CPJ 22 (SC)=II (2004) SLT 263=(2004) 3 SCC 694].”

9. On the basis of the aforesaid judgment, the learned counsel for the appellant has contended that the intension of late Smt. Shiv Kumari Datta is explained in the relinquishment deed in as much as she wanted to give her share, irrespective of the quantum, in favour of the appellant and therefore, the share of Smt. Shiv Kumari Datta which is to the extent of $1/3^{\text{rd}}$ has to fall to the share of the appellant. The learned counsel in order to buttress his arguments further has urged that this was the intension of Late Smt. Shiv Kumari Datta on account of the fact that not only her sister Smt. Kamini Bali but the husband of the deceased Smt. Shiv Kumari Datta was subjected to a great deal of mental harassment by Smt. Kamini Bali and her husband.

10. We have given our thoughtful consideration to the submission made by the learned counsel for the appellant as well as perused the records. At the outset, it must be said that the conduct of the appellant Smt. Kannan Bakshi was not only immoral, illegal but also bordering on criminality. This is on account of the fact that Smt. Kannan Bakshi is stated to be an educated lady presently working in Nigeria. On account of the death of her father, who had not left any Will, the said property would have fallen in the share of the appellant her mother Smt. Shiv Kumari Datta and her sister Smt. Kamini Bali. However, as Smt. Kamini Bali had predeceased her father, therefore, the share of $1/3^{\text{rd}}$ in the suit property would have gone to the respondents 1 and 2 who were the son and daughter of predeceased sister of the appellant, named Smt. Kamini Bali. The respondent Mr. Atul Bali, Ms. Puja Bali successors in interest of Kamini Bali were admittedly residing on the ground floor of the suit property for the last three decades. Yet on account of the death of her father the appellant applied to the DDA

for the purpose of mutation, she had filed a wrong affidavit stating that late Sh.Nand Kishore Datta was survived by only two LR's namely Smt. Shiv Kumari Datta and herself. Same is the fact mentioned by her in the indemnity bond. This clearly shows that there was a deliberate attempt on the part of the appellant to grab the entire property to the exclusion from the children of her deceased sister. If one peruses the affidavit of the appellant, she has specifically mentioned in the said affidavit that Sh. Nand Kishore Datta, her deceased father was not survived by her mother. Similarly, if the intension of the appellant would have been clear though she could have stated that her father was survived by only two legal heirs she ought to have declared the factum of death of her sister. Since this was not done therefore, it raises a serious doubt about her intention. The pleas which has been set up by the appellant that the said affidavit and the indemnity bond or for that matter even the relinquishment deed was drawn under a mistaken advice of the learned counsel is totally incapable of belief on account of the fact that she herself is an educated lady and therefore, would not have filed an affidavit without cross checking the said facts, she was out and out to deprive her sister or children of her predeceased sister of their legitimate dues and it was out of that lust for property that misleading her mother and made her to execute a relinquishment deed in respect of one half of the suit property in her own favour.

11. The contention of the learned counsel for the appellant that although the relinquishment deed makes a mention of one half share of her deceased mother which has been release in favour of the appellant but which actually was only to the extent of $\frac{1}{3}^{\text{rd}}$, therefore, by interpretation of that document, it must be assumed that the deceased mother of the appellant intended to

released 1/3rd share in favour of the appellant accordingly the learned Single Judge ought to have held that the appellant was having 2/3rd share in the suit property is totally untenable in law.

12. We are not impressed by this submission of the learned counsel for the appellant that she was misled by a mistaken legal advice. As a matter of fact, ignorance of law is not excuse. The appellant was not justified in relying upon a so called erroneous advice before swearing in the affidavit or the indemnity bond or making her mother sign a relinquishment deed. On the contrary the facts clearly show that the appellant was actuated by dishonest, malafide intention of depriving her sister and her children from their legitimate share in the property and that was the basis for getting the relinquishment deed in her favour in respect of the suit property. The learned Single Judge has rightly in his judgment observed that the conduct of the appellant was highly reprehensible though despite such a conduct, the learned Single Judge has let off the appellant without taking any action against her for the offence of perjury. So far as the relinquishment deed is concerned, there is no question of same being interpreted in the manner in which the learned counsel for the appellant wants us to interpret the same. It may be pertinent to her to refer to the judgment of the Supreme Court in S.P.Chengalvaraya Naidu Vs. Jagannath & Ors. 1994 (1) SCC 1, wherein the Hon'ble Supreme Court has held that if a party coming to the Court does not disclose the complete documents or wants to take advantage from the other side by concealing some documents or a decree is obtained by a fraud then the entire decree or the advantage so obtained is void and in nullity in law.

13. In the instant case also same principal would be applicable that the

relinquishment deed which has been obtained by the appellant from her mother is actuated by fraud and is therefore, a nullity and cannot be given effect to as suggested by the learned counsel for the appellant that it must be assumed to confine 1/3rd share of her deceased mother in favour of the appellant. Consequently, the mutation obtained by the appellant is also a nullity and deserves to be cancelled forthwith as having been obtained by fraud. On the contrary, it is implied with the relinquishment deed the factum of the appellant filing a false affidavit and indemnity bond before the DDA and getting the property mutated in her own name despite of the fact that her sister's children were living on the ground floor clearly shows that she was actuated by malafide intention of depriving the respondents of their legitimate share.

14. In the light of the aforesaid facts and discussion, we are of the considered opinion that there is no infirmity in the judgment of the learned Single Judge in rejecting the claim of the appellant that the appellant has a 2/3rd share in the property or the fact that the relinquishment deed can be relied upon by the Court for the purpose of construing that the deceased mother of the appellant had intended to released 1/3rd share in the suit property though in the relinquishment deed what has been mentioned is one half share. Accordingly, the appeal of the appellant must fail & the same is dismissed.

15. We cannot refrain from observing that the appellant has unnecessarily and dishonestly dragged the respondents who are her sister's children into the litigation and by filing false affidavit, indemnity bond etc., & thus deserves to dealt with severely. Accordingly, we impose costs of Rs.50,000/- on the appellant which shall be paid to the respondents. In

case, the said cost is not paid within 4 weeks, the respondents shall be free to recover the same in accordance with law with interest at 9% payable after the period of 4 weeks from today.

MUKUL MUDGAL,J

V.K.SHALI, J

MAY 16th,2008
RN