

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

+ **RSA No.460 /2006**

% **13th January, 2014**

SH. RAMESH CHANDER (DECEASED) THROUGH LEGAL HEIRS
AND ORS. Appellants

Through: Mr. Ranjit Singh, Advocate.

VERSUS

SMT. KAUSHALYA RANI AND ANR. Respondents

Through: Mr. Anil Gera, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal has been filed by the appellants/plaintiffs against the judgment of the appellate Court dated 28.8.2006 whereby the appellate Court sustained the judgment of the trial Court dated 17.5.2004 dismissing the suit for declaration, possession and injunction filed by the appellants/plaintiffs. By the suit, appellants/plaintiffs prayed for declaration for declaring as null and void the judgment and decree dated 7.12.1973 passed by the civil Court in favour of the respondent no.1 herein-defendant no.1 in the trial Court.

2. I may note that this appeal is no doubt a second appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC), but really the same is not a second appeal, but a fifth appeal, inasmuch as the judgment and decree of which declaration is sought as being null and void has been sustained right till the Supreme Court on the dismissal of the SLP of the appellants/plaintiffs way back on 31.7.1986 i.e about 24 years back.

3. The facts of the present case show that appellants/plaintiffs are abusing the process of law although finality was achieved with respect to disputed property bearing No.1/251, Subhash Nagar, New Delhi by the respondent no.1/defendant no.1 being declared as the owner in the earlier proceedings.

4. The facts of the case are that the father of the plaintiffs namely Sh. Inder Prakash executed in favour of the respondent no.1/defendant no.1 documents being the agreement to sell, general power of attorney, Will and receipt dated 28.7.1964 transferring the subject property to the respondent no.1. Sh. Inder Prakash died on 31.8.1964 and therefore the respondent no.1/defendant no.1 filed the earlier suit claiming ownership with respect to the suit property on the basis of the Will dated 28.7.1964. Though the suit claimed rights only on the basis of the Will, the judgments passed in the earlier proceedings show that the Will which is dated 28.7.1964 was taken in

the context of having been executed alongwith other documents being the agreement to sell and general power of attorney dated 28.7.1964. I may, at this stage, mention that appellants/plaintiffs have not filed copy of the original judgment and decree dated 7.12.1973, however, on the record there is a copy of the judgment passed by a learned Single Judge of this Court in RSA No.131/1977 dated 1.6.1984 by which the appeal of the respondent no.1/defendant no.1 against the judgment of the appellate Court was allowed and this Court set aside the judgment of the appellate Court and restored the judgment of the civil court dated 7.12.1973 (which is sought to be declared null and void in the present suit) whereby the suit of the respondent no.1 herein and who was the plaintiff in the earlier suit was decreed. As already stated above, the SLP of the appellants against the judgment of learned Single Judge dated 1.6.1984 was dismissed by the Supreme Court on 31.7.1986.

5. The present suit was filed by the plaintiffs/appellants alleging basically three aspects:-

(i) The transaction in question dated 28.7.1964 was a loan transaction and not a transaction of sale and purchase of the subject property by late Sh. Inder Prakash in favour of the respondent no.1 herein.

(ii) The judgments in the earlier suit and in fact the earlier proceedings were liable to be set aside on the ground of fraud having been perpetuated inasmuch as the respondent no.1/defendant no.1 relied only upon the Will dated 28.7.1964 and concealed the other documents being the agreement to sell, a receipt and general power of attorney and which as per the appellants/plaintiffs showed that the transaction was a loan transaction.

(iii) Appellants/plaintiffs were minors when the earlier suit was filed, and since no guardian-ad-litem was appointed in the earlier suit, hence the decree passed against the plaintiffs/appellants in the earlier proceedings is null and void.

6. So far as the first argument which is urged on behalf of appellants/plaintiffs is concerned, in my opinion, it is not open to the appellants/plaintiffs to urge this argument on merits because the judgment and decree in earlier proceedings is binding on the appellants/plaintiffs on the principle of *res judicata* and therefore it is not permissible to reargue the case on merits which stands concluded till the Supreme Court. I may however note that the trial Court and the appellate Court in this case has however considered even the arguments on merits and held that the subject transaction dated 28.7.1964 was not the transaction of a loan to Sh. Inder Prakash but was a transaction of sale of suit property to the respondent no.1

herein inasmuch as there could not be an issue of a loan given to late Sh. Inder Prakash (father of the appellants/plaintiffs) of the sum of Rs.2,000/- because loan was claimed for payment to the Rehabilitation Department (vendor) by late Sh. Inder Prakash, the allottee of the suit property, but the price was much lesser at Rs.974/- payable to the Rehabilitation Department and not of Rs.2,000/- of which alleged loan was granted. Also, I may note that the judgment of the learned Single Judge in RSA No.131/1977 dated 1.6.1984 shows that the learned Single Judge in fact duly took note of the factum that the Will was in fact part and parcel of the transaction in which other documents including the general power of attorney was also executed on 28.7.1964. Though, learned counsel for the appellants in the present case sought to argue that the earlier Courts have not considered certain issues however such an argument cannot be raised because firstly all the arguments have clearly been considered not only in the earlier proceedings but also by both the Courts below, and also that if any plea was not raised in the earlier proceedings, appellants are now barred by the principle of constructive *res judicata* from raising the same, and which aspect has been adverted to in a way in the judgment of the trial Court. The first argument therefore urged on behalf of the appellants/plaintiffs is rejected.

7. So far as second argument that earlier proceedings are void on account of the judgment having been obtained by fraud, I note that the courts below have rightly rejected this argument on the ground that how can the appellants/plaintiffs take up a case of fraud because the documents of which concealment is alleged being the agreement to sell and the general power of attorney dated 28.7.1964 were very much in the possession of the appellants/plaintiffs and therefore it is not that there could be any concealment of these documents by the respondent no.1/defendant no.1. Also, as already stated above, the judgment of the learned Single Judge of this Court dated 1.6.1984 in RSA No.131/1977 takes note not only of the Will executed by late Sh. Inder Prakash in favour of the respondent no.1 herein but also of other documents being the general power of attorney of the same date viz 28.7.1964. Further, in my opinion, the plea of fraud is totally a baseless plea because, and as will be dealt with in the following paragraphs, the appellants/plaintiffs were parties to the earlier proceedings and which culminated/attained finality right till the Supreme Court.

8. So far as the third argument urged on behalf of the appellants/plaintiffs of the decree in the earlier proceedings being void as they were minors and no guardian was appointed, even this argument is wholly frivolous and lacking in substance because both the courts below

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have noted that the appellants/plaintiffs though were minors when the suit was filed, they had become majors before the judgment and decree was passed by the trial Court in that case on 7.12.1973. There is no prejudice to the appellants herein because they were duly represented by their natural mother in the earlier proceedings till they became majors although there is no formal order appointing the natural mother of the appellants/plaintiffs as a guardian. In any case, it must be noted that appellants/plaintiffs would have been the appellants in the first appeal challenging the judgment of the civil court dated 7.12.1973 (or in any case would have been parties as respondents) and which first appeal was decided in their favour. The respondent no.1/defendant no.1 thereafter had preferred an RSA as stated above being RSA No.131/1977, and all the appellants/plaintiffs were respondents in that appeal and had appeared through their counsel. Also, the certified copy of the order of the Supreme Court in the record of the present suit shows that all the appellants herein were in fact appellants in the SLP filed in the Supreme Court which was dismissed *in limine* vide order dated 31.7.1986. Therefore, the contention of earlier proceedings being null and void is wholly without merit and has rightly been rejected by the courts below.

9. The facts of the present case show that certain litigants leave no stone unturned to abuse the process of law. No doubt everyone is entitled to approach the Court of law, however, there has to be some reasonable issue which is required to be addressed or pleaded. In the present case, once earlier proceedings reached finality, and that too till the Supreme Court, filing of the present suit/legal proceedings by the appellants and thereafter also the present second appeal, is clearly an abuse of the process of law. It is high time that Courts sent out an appropriate message that dishonesty in litigation does not pay. I am strengthened in this regard by observations made by the Supreme Court in the case of ***Ramrameshwari Devi & Ors. Vs Nirmala Devi & Ors. (2011) 8 SCC 249*** which states that it is high time that in frivolous litigations, actual and exemplary costs must be imposed. I am empowered to impose costs under ***Volume V*** of the ***Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15.***

10. The present appeal is therefore dismissed with costs of Rs.1 lakh. Costs be paid within a period of one month from today.

JANUARY 13, 2014
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VALMIKI J. MEHTA, J.