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IN THE HIGH COURT OF DELHI

Judgment reserved on : November 11, 2008

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Judgment delivered on : November 19, 2008

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RFA 334/2008

SAMRITI BHASIN Appellant
Through: Mr.D.S.Sidhu, Advocate

VERSUS

UOI & ORS. Respondents
Through: Mr.Baldev Malik, Adv. for Respondents
No.1 & 2
Mr.J.P. Sengh, Sr. Advocate with
Ms.Sonia Arora for respondents
No.3 to 5

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog
Hon'ble Mr.Justice J.R. Midha

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

: PRADEEP NANDRAJOG, J.

1. Samriti Bhasin, daughter of late Mulkh Raj Sawhney, is in litigation with her sister-in-law (brother's wife) Meera Sawhney and her two daughters, Meenakshi and Asha Deep. She filed a suit under Section 31 of the Specific Relief Act, 1963 praying that the relinquishment deed dated 14.8.1981, Ex.P-1, be cancelled and directions be issued to L&DO to mutate the subject property i.e. 55/8, Old Rajinder Nagar, New

Delhi in her name and in the names of her sister-in-law and her daughters by recording that she had 50% share in the property and that her sister-in-law and her nieces had the remaining 50% share therein.

2. Samriti Bhasin has lost at the trial.

3. The impugned judgment and decree dated 26.3.2008 is fairly prolix, running into 87 pages. In our opinion the learned Trial Judge could have penned a short and a crisp judgment not exceeding 15 pages. Thus, we would be briefly noting the relevant evidence and would be dealing with the contentions urged by learned counsel for the appellant at the hearing held on 11.11.2008.

4. For the guidance of the learned Judges at the district level we wish to record that there is no relevance of extracting in detail the testimony of the witnesses in the judgment if the same is not to be referred to or relied for the purposes of the decision. In such situation it would be useful to briefly note that a particular witness has deposed on the issue but nothing turns on the testimony of the witness. Indeed, in the instant case nothing much turned on the testimony of the witnesses of Samriti Bhasin who merely reiterated her version and that for said reason while discussing the evidence in the operative part of the judgment, we do not find any discussion by the learned Trial Judge vis-à-vis the testimony of the witnesses of Samriti Bhasin.

5. Samriti Bhasin had examined as many as eight witnesses who were family members, neighbours and friends. They deposed that they had never heard about Samriti Bhasin relinquishing her share in the subject property. Only relevance is to the testimony of PW-3 and that too as would be noticed hereinafter, in favour of the sister-in-law and nieces of Samriti Bhasin.

6. Needless to state, on the basis of a registered relinquishment deed dated 14.8.1981, Ex.P-1, executed by Smt.Vedwati, mother of Samriti Bhasin and by Samriti Bhasin herself, L&DO mutated the subject property in the name of Arvind Sawhney, the brother of Samriti Bhasin. The mutation was effected after Mulkh Raj Sawhney, the perpetual lessee of the land under L&DO, expired on 4.6.1981 leaving behind his wife Vedwati, his son Arvind Sawhney and his daughter Samriti Bhasin as his legal heirs. The relinquishment deed in question was submitted along with the necessary application for mutation of the perpetual lease hold rights in favour of Arvind Sawhney and processing the same, L&DO mutated the property in the name of Arvind Sawhney.

7. Samriti Bhasin denied her signatures on the relinquishment deed and in the plaint alleged that after the death of her father she came to Delhi in the year 1982 and resided with her brother on the ground floor and in the year 1991 contributed money for raising further constructions on

the property. She stated that under a mutual understanding with her brother she occupied the second floor of the property and had been residing there since the same was constructed in the year 1991. She stated that after her brother died on 28.10.2002, claims were made to the entire property by her sister-in-law. This led her into an inquiry which revealed that a fraud had been played upon her by submitting the relinquishment deed in question to L&DO and mutation being obtained in his name by her brother.

8. Meera Sawhney and her two daughters opposed the claim in the suit and reaffirmed that Samriti Bhasin had duly executed the relinquishment deed as did her mother Vedwati. They relied upon the contemporaneous conduct of Samriti Bhasin to evidence that Samriti Bhasin was all throughout aware that she had no interest in the property and that her brother Arvind Sawhney was the sole owner thereof. For this purpose they relied upon the sale of the first floor of the property by Arvind Sawhney who executed various documents on 16.11.1988 in favour of one Kunti Rani Dureja transferring to her the rights in the first floor of the property. Said documents, being an Agreement to Sell dated 16.11.1981, Ex. PW-1/D-1, a General Power of Attorney of even date Ex. PW-1/D-2, and a Will dated 18.11.1988 Ex. PW-1/D-3 were relied upon. All documents were alleged to bear the signatures of Samriti Bhasin as an attesting witness. Plea urged by Meera

Sawhney and her daughters was that having witnessed the execution of the afore-noted document i.e. the usual sale documents executed in Delhi, Samriti Bhasin was fully aware that her brother was selling the first floor of the subject property, meaning thereby, was conscious of the fact that her brother was the owner of the entire property. They also relied upon an affidavit executed by Samriti Bhasin on 16.11.1988, Ex.PW-1/D-4 wherein following was recorded:

"AFFIDAVIT

Affidavit of Smt. Samriti Bhasin D/o late Shri Mulkh Raj W/o Shri Anand Bhasin R/o 488, Ranjeet Street, Yamuna Nagar, Distt. Ambala, Haryana and presently resident of 55/8, Old Rajinder Nagar, New Delhi-110060, do hereby solemnly affirm and declare as under:-

1. That my brother Shri A.K. Sawhney S/o late Shri Mulkh Raj, is the exclusive owner of property No.55/8, Old Rajinder Nagar, New Delhi-110060.
2. That my brother has entered into an agreement to sell with Smt. Kunti Rani Dureja, for the sale of First Floor Flat for which I do not have any objection.
3. That he has given the General Power of Attorney, will and receipt in respect of sale of First Floor Flat, for which I do not have any objection.
4. That he has handed over the fully vacant peaceful possession to Smt. Kunti Rani Dureja, the intending purchaser.
5. That my legal heirs, nor myself, successors, successors-in-interest do not have any objection, claim or interest in the aforesaid flat under sale and if any objection is raised by them or by any legal heirs the same shall be deemed null and void and ineffective.

Verification:
Date: November 1988

Sd/-
DEPONENT

I Smt. Samriti Bhasin the above named deponent do hereby verify and confirm that the contents of the above affidavit are true to my personal knowledge and belief by me to be true.

Signed dated and verified at New Delhi on 16th November, 1988.

Sd/-
DEPONENT"

9. Meera Sawhney and her daughters also relied upon the loan obtained by Arvind Sawhney from his provident fund account when he raised construction on the first floor and above of the subject property. The application submitted by him seeking loan was proved as Ex.DW-3/PX and the statement of disbursement of loan was proved by them Ex.DW-3/PY.

10. On a fairly complex and rolled over process of reasoning, with the same point being reiterated and discussed at different places, the learned Trial Judge has held against Samriti Bhasin holding that the denial by her of her signatures on Ex.PW-1/D-1 to Ex.PW-1/D-4 was false. Learned Trial Judge has accepted the testimony of DW-3, T.R. Nehra, a handwriting expert, who opined that the disputed signatures of Samriti Bhasin on the said four documents as also on the relinquishment deed were of Samriti Bhasin.

11. From the fact that Samriti Bhasin had witnessed the execution of the Agreement to Sell, had witnesses the execution of the registered Power of Attorney executed by her brother in favour of the purchaser of the first floor as also witnesses the execution of the registered Will Ex.PW-1/D-3

executed by the brother of Samriti Bhasin in favour of the purchaser, it has been held that the same established consent of Samriti Bhasin for her brother to act as the owner of the first floor, meaning thereby, Samriti Bhasin consented that her brother was the owner of the entire property. According to the learned Trial Judge this could have only happened if Samriti Bhasin had relinquished her share in the subject property on the death of her father.

12. A three fold contention was urged at the hearing of the appeal by learned counsel for the appellant. It was firstly urged that the fact that Samriti Bhasin was occupying the second floor of the house without payment of any rent which fact evidenced that her brother was acknowledging Samriti Bhasin as having some right in the property. The second contention urged was that merely because a person witnesses the execution of a document does not mean that he or she has knowledge of the contents of the document. Thus, it was urged that merely because Samriti Bhasin had witnessed the execution of the Agreement to Sell of the first floor by her brother as also the Will and the General Power of Attorney executed by her brother, was of no consequence and that the finding returned by the learned Trial judge on the reasoning that having witnessed the execution of the said three documents, Samriti Bhasin consented to her brother being the owner of the property. Lastly it was urged that the stamp

paper on which the relinquishment deed was drawn was purchased by one R.K.Tyagi Advocate and there was no evidence that the same was purchased by Samriti Bhasin or Vedvati. Thus, it was urged that this casts a doubt on the due execution of the relinquishment deed as its origin is clouded.

13. Neither submission has impressed us.

14. Pertaining to the first contention urged, suffice would it be to state that where, out of love and affection, a brother permits his sister to occupy some property without paying any money to him does not mean that the said fact constitutes good evidence where from a presumption of an interest in immovable property can be inferred in favour of a party. In this connection, though there is no evidence on record, it was informed to the Court at the hearing by counsel for Meera Sawhney and her daughter that they and late Arvind Sawhney i.e. husband of Meera Sawhney never had any problems with Samriti Bhasin residing on the second floor because she had no house of her own. But with the passage of time she acquired a flat where her son is residing and that as Meenakshi and Asha Deep grew and became young maidens, they required space and once Samriti Bhasin was requested to vacate the second floor, she turned around to question the relinquishment deed.

15. It is true that a person who witnesses the execution of a document is not presumed to know the contents of the

document, execution whereof is witnessed by him/her. To that extent, the appellant may be right that merely because she witnessed the execution of Ex.PW-1/D-1 to PW-1/D-3 does not mean that she knew the contents of the documents much less acquiesced in her brother selling the first floor of the disputed property. But, Samriti Bhasin cannot escape the consequences of her having deposed to the affidavit Dx.PW-1/D-4.

16. Not only that, during cross-examination, Samriti Bhasin admitted that *"Kunti Rani told that she had purchased the first floor."* She further admitted that since 1983 till 1986 the *barsati* floor had been let out by her brother and that she had never partaken a share in the rent.

17. If Samriti Bhasin was told by Kunti Rani that she had purchased the first floor of the property in the year 1988 and had there been no relinquishment deed executed by Samriti Bhasin, the natural conduct would have been for her to question her brother as to how has he sold the first floor of the property in dispute.

18. We had noted hereinabove that the witnesses of the plaintiff went about parroting her version, simultaneously noting that testimony of PW-3 went against the case of Samriti Bhasin.

19. PW-3 Raman Kumar Sawhney, son of Om Prakash Sawhney, though deposed in favour of Samriti Bhasin, on

cross-examination stated that he was familiar with the signatures of his father and pertaining to Ex.PW-1/D-1 to Ex.PW-1/D-3 admitted that at point 'A' on each document, the signatures appended were those of his father.

20. It is apparent that late Shri Om Prakash, father of PW-3, a relation of the parties, was also involved in the affairs of the family and when all was fine, joined in being a witness to documents executed by Arvind Sawhney as also Samriti Bhasin.

21. The claim of Samriti Bhasin that she contributed funds in the year 1991 to raise constructions has remained a mere claim. No documentary evidence has been led by Samriti Bhasin to prove that she spent any money in the construction of the house.

22. On the contrary, Ex.DW-3/PX and Ex.DW-3/PY establish that Arvind Sawhney obtained non-refundable loan from his provident fund account to raise further constructions on the property way back in the year 1983.

23. The last plea urged is frivolous and without application of mind. The original relinquishment deed is in the record of DDA and a certified copy thereof has been brought on record as Ex.P-1. The same has been obtained by the appellant evidenced by the fact that she has filed the same as plaintiff as per list of documents dated 18.11.2003. R.K.Tyagi is the counsel whose services have been utilized to obtain the

certified copy of the relinquishment deed evidenced by the fact that on 28.3.2003 R.K.Tyagi Advocate purchased a stamp paper in sum of Rs.10 and filed the same with the Sub-Registrar concerned for issuance of a certified copy of the relinquishment deed. This stamp paper has been utilized by the Sub-Registrar to issue thereon the certified copy of the relinquishment deed in question. In any case, there is no evidence on record as to who purchased the stamp paper on which the original relinquishment deed was drawn up. Samriti Bhasin cannot thus urge any submission pertaining to: who purchased the stamp paper on which the original relinquishment deed was drawn.

24. Before concluding we note that the learned Trial judge has noted a fact which we have perused ourselves, that Samriti Bhasin, conscious of the fact that her signatures on the disputed documents were under a scanner was taking care to cloud her signatures, forgetting that the plaint and the vakalatnama signed by her in favour of the counsel engaged by her contained her signatures, and when compared with signatures of Samriti Bhasin on the disputed documents, even to the naked eye show that the same are by one person.

25. Instant litigation is yet another case where the phenomenal rise in prices of urban property is fouling family relationships.

26. The plot of land ad-measuring 85.9 sq. yards, bearing No.55/8, Old Rajinder Nagar, New Delhi, had hardly a value of about Rs.20,000/- in the year 1981 when Mulkh Raj Sawhney died. Samriti Bhasin's petty share, valued at Rs.7,000/- was not worthy of a fight with her brother. It being the only family house she readily relinquished her share in favour of her brother. Today, we were told that the house has a value of nearly Rs.2 crores. Today, it is no longer profitable to live in peace and hence the claim for half share in the property.

27. We fully concur with the conclusion arrived at by the learned Trial Judge.

28. We find no merit in the appeal. The appeal is dismissed.

29. Keeping in view the relationship between the parties, we refrain from imposing any costs.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

November 19, 2008
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