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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.S. (OS) No.1983 of 2009 and I.A. Nos.13613-13615 of 2009

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LOTIKA SARKAR

.....Plaintiff

Through: Mr. A.K. Nigam, Senior Advocate with
Mr. Sanjoy Ghose & Ms. Pragnya,
Advocates with Ms. (Dr.) Lotika Sarkar.

versus

PREETI DHOONDIAL & ORS.

.....Defendants

Through: Mr. Prashant Mehndiratta, Advocate with
defendants in person.

Date of Order: 26th November, 2009

JUSTICE SHIV NARAYAN DHINGRA

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

J U D G M E N T

1. This suit was filed by the plaintiff aged about 86 years with a prayer of cancellation of gift deed dated 28th June, 2007 whereby the property No.L-1/10, Hauz Khas Enclave, New Delhi was gifted by the plaintiff to defendant No.1. A prayer is also made that the defendants be directed to handover the peaceful and vacant possession of the suit property to the plaintiff and they further be directed to render accounts in respect of her funds and financial dealings.

2. In the ground for cancellation, it was stated by the plaintiff that the plaintiff and her husband had no children and defendant No.2, husband of defendant No.1, was a serving officer in Indian Police Service and his son, that is, defendant No.3 had to pursue his education in Delhi and he wanted defendant No.3 to reside with the plaintiff and her husband. Since the plaintiff and her husband were at advanced stage of their lives, the

plaintiff was persuaded by her husband to agree to this proposal and she agreed. The plaintiff's husband passed away on 10th October, 2005 with the result that the plaintiff came under immense trauma and grief. Taking advantage of this situation the defendants shifted into the house of the plaintiff and took total control of the plaintiff and the suit property. She was made to handover all her documents relating to her financial investments, passport papers, etc. It is alleged that the plaintiff was not permitted to read current news, magazines, etc. and was discouraged from going out door and was kept under surveillance by the defendants. The plaintiff's relatives and friends reduced their visits and she later on learnt that the defendants behaved in an unwelcome manner to her relatives and friends with the result that their visits dropped. In a nutshell, it is stated that the plaintiff's life and affairs were being regulated by the defendants. Her financial affairs and other affairs regarding house came into the hands of the defendants because of old age and grief of the plaintiff. However, it is stated that the defendants were in fiduciary relationship of plaintiff and were in a position to dominate the Will of the plaintiff and in this background, the plaintiff was made to sign certain documents and she was taken to the Registrar office where her photograph was also taken and the plaintiff was not clearly in a position to appreciate the purpose of this exercise and she was not made to understand that the documents she executed was a gift deed whereby she gifted her property at Hauz Khas Enclave worth crores of rupees in favour of defendant No.1. She was made to understand that she was signing documents to transfer the property in her own name. Based on these averments and certain other averments, it is pleaded that the plaintiff was deprived of her property by way of executing a gift deed in favour of defendant No.1 deceptively, under undue influence and the plaintiff was rendered homeless at the age of 86 years. It is stated that on 11th January, 2009, one Mrs. Ranjana Bharti, wife of plaintiff's former cook attempted to forcibly enter the suit

property and occupy the servants' quarter in purported execution of some decree. Defendant No.2, who was posted at Patna rushed to New Delhi and an altercation took place between defendant No.2 and Mrs. Ranjana Bharti over the suit property and this was widely covered by national print and television media. It is then, the plaintiff learnt that L-1/10, Hauz Khas Enclave i.e. her property, was being claimed by defendant No.1 as her property on the basis of a gift deed. She also intimated police on 7th February, 2009 that she did not wish to be contacted by the defendants and she has been compelled to leave her home. There are various other facts which have been stated by the plaintiff as to what happened thereafter in the media and how a writ petition was filed by the defendants of *habeas corpus* for production of the plaintiff and this court appointed Mr. Arjun Bhandari as Commissioner. She had also got served a notice on defendants and the defendants refused to recognize the plaintiff as the owner of the property thus, this suit.

3. In the written statement it was stated that no cause of action had arisen in favour of plaintiff and the plaintiff may not even be aware about the exact contents of the suit and its ramifications. Plaintiff was able to appreciate the true and correct facts because of her loss of memory coupled with brain washing, tutoring and undue influence of conspirators.

4. The factum of acquaintance of defendants with the plaintiff and living of defendant No.3 with the plaintiff's family during lifetime of plaintiff's husband and thereafter living of defendant No.1 with the plaintiff, after death of plaintiff's husband was not disputed. However, it was denied that any undue influence was exercised by the defendants over the plaintiff. It was also denied that the plaintiff was ousted or dispossessed of the property in any manner. It was submitted that the plaintiff was illegally and against her wishes taken away by Mrs. Malvika Karlekar, Ms. Kamini Karlekar and Mr. Mithu Allur on 13th January, 2009 at about 10:30 a.m. The Three

persons accompanied by Mrs. Usha Ramnathan arrived at Hauz Khas residence and suggested that the plaintiff should be taken to Mumbai to stay with Mr. Mithu Allur. The defendants submitted that prior to 13th January, 2009 despite the fact that the plaintiff's husband had died, none of her relatives and friends had come forward to help. It was only defendants who were looking after the plaintiff and helping her in all her works. The sudden burst of concern on the part of these persons was considered suspicious by the defendants. Although defendant No.2 was not in favour of sending the plaintiff with these persons, however, on assurance of these persons to defendant No.2 that they will not take her to Mumbai but they would like to take her to a good restaurant, the defendants had no option but to allow these persons to take away the plaintiff, who at the age of 86 years was having a fragile body and loss of memory. It is stated that after these persons took the plaintiff, they all hatched a conspiracy to grab the property. Since they learnt that the property has already been gifted, they made all kinds of false, incorrect and malicious allegations against the defendants and made allegations that it was defendants who had grabbed the property of the plaintiff. It was stated that defendant No.3 had started living with the plaintiff and her husband at their invitation. It was Mr. Chanchal Sarkar (husband of the plaintiff), who groomed defendant No.3 to be a Journalist and took defendant No.3 to Pakistan in November, 2004 to attend a Youth Peace Conference at Lahore. It is stated that during old age of the plaintiff and her husband, it were defendants who had been helping both of them and none of the persons, who were making hue and cry now had come to help the plaintiff. It was defendants who had taken Mr. Sarkar to Ganga Ram Hospital and AIIMS and for dialysis and to Dr. Mahajan of AIIMS for treatment. Mr. Chanchal Sarkar was also operated on and it was defendant No.3 and other defendants, who took care of the plaintiff and her husband and provided them all necessary personal care and help.

5. The defendants had also given other instances in their written statement to show how defendants had been caring and loving the plaintiff and how none of the other relatives were helping and coming forward even at the death of Mr. Chanchal Sarkar. It is stated that at the time of performing last rites, even '*mukhagni*' was performed by domestic servant Dinesh Prasad since defendant No.2 could not reach, however, none of the other relatives and friends, who had now come forward as relatives and friends were there either at last ceremony or at other rites like *sharad*, etc.

6. It was vehemently denied that the defendants exercised any undue influence over the plaintiff in execution of the gift deed. It was stated that the plaintiff executed gift deed out of her own free will and desire. There was no instigation or suggestion given by the defendants.

7. Considering the age of the plaintiff and the controversy involved, it was decided that statement of plaintiff and defendant No.1 be recorded in the court under Order X Rule 1 CPC to narrow down the controversial issues and to expedite the disposal of the case. Today both Mrs. Lotika Sarkar and Mrs. Preeti Dhoundial, defendant No.1 had appeared in the court for this purpose.

8. Statement of Mrs. Lotika Sarkar was recorded by the court. She was shown the photocopy of gift deed dated 28th June, 2007 executed by her. She was also made to read the document with the help of her counsel and after going through the document she categorically stated that she had read the document at the time of signing the document and she had signed the document after understanding its contents. She was asked as to under what circumstances she had executed the document. She replied that after passing away of her husband, Mrs. Preeti Dhoundial, defendant No.1, and her husband (defendant No.2) agreed to look after her and the house and both of them were really looking after her well. Thereafter she gifted the house to Mrs. Preeti Dhoundial so that the property

could be taken care of by the defendants. She stated that all of them were of great help to her after death of her husband, when she was alone. However, she stated that she now realizes that she should have been more careful about the property but she did execute the gift deed. She stated that even after executing the gift deed, defendant husband and wife looked after her well and they looked after the property also. Since she was being looked after well, she just sat back and did not bother about anything.

9. During recording of her statement it looked that the plaintiff was having a problem with her memory and she sometimes did not understand the questions properly. The plaintiff during her good years had been a known legal luminary and a known Law Professor. Despite her old age, she was able to understand the language of the gift deed. From her statement however, it appears that she did not consider that the gift deed would deprive her absolutely of the rights over the property. Her statement shows that she has been more bothered about who will take care of the property and herself, since this involved payment of different bills, house tax, electricity and water bills, bearing expenses of the house and doing market work, etc. Her old age made her dependent on the defendants as none of her other friends and relatives had come forward for help. It also seems that she was quite happy with the services being provided to her by the defendants. However, when she was asked did she give up her right over the property? She categorically stated that she had not given up her right over the house. This only shows that she executed gift deed thinking that this would help the defendants in payment of all bills, etc. of the property. It would be appropriate to mention that all her expenses and expenses over property were being met out of her savings. Her nearest relative, a cousin Mr. Pradeep Sarkar was living far away from Delhi in Kolkata and he was not able to look after her or the property. It is for this reason that at this ripe age, she considered that executing gift deed in favour of the defendants to be the right thing.

10. Statement of Mrs. Preeti Dhoundial was recorded under Order X Rule 1 CPC. She in her statement made it clear that her son, defendant No.3, used to live with Mrs. Lotika Sarkar and her husband as a family member since 2004. She herself moved to the house in the year 2005, that is, after death of husband of Mrs. Lotika Sarkar so that she could look after Mrs. Sarkar. Prior to that, she was living at Patna with her husband. She stated she moved to Delhi to help the plaintiff because of a commitment given to Mrs. Lotika Sarkar. The relations of her husband with Mrs. Lotika Sarkar and Mr. Chanchal Sarkar were more than 30 years old and she had known the family since 1982. Mrs. Sarkar even used to visit their house wherever her husband was posted and used to stay with them. She had not asked Mrs. Lotika Sarkar to gift the property. It was gifted by Mrs. Lotika Sarkar of her own will. She had come to stay with her out of love and affection for her and she had not come to stay with her for greed of the house. The house was immaterial and love and affection were more material. She categorically stated that she was prepared to give back the gifted house to Mrs. Lotika Sarkar (plaintiff) if Mrs. Lotika Sarkar so desired. On her so saying, Mrs. Lotika Sarkar, who was present in the court was again called and was made to face Mrs. Preeti Dhoundial, defendant No.1. Mrs. Lotika Sarkar in presence of Mrs. Preeti Dhoundial told that she wanted her house back. On this Mrs. Preeti Dhoundial told that she was prepared to give this house back to her, however, she would not then be able to stay with her and would not be able to look after her. On this Mrs. Lotika Sarkar told that if Mrs. Preeti Dhoundial wanted to live with her, she could live with her in the house but she would like to have her house back and she would make arrangements for her own welfare and taking care.

11. After recording of statements of the plaintiff and defendant No.1, I heard counsel for the defendants and also defendant No.2 in person. I consider it was not a case where Mrs. Preeti Dhoundial exercised any undue pressure or influence over plaintiff for

execution of the gift deed in her favour. It is not a case where fraud was played. However, it does seem that Mrs. Lotika Sarkar did not understand the implications of executing the gift deed at that ripe age. She not only had fragile body but a failing memory also. It is the defendants own case in the written statement that Mrs. Lotika Sarkar was suffering from loss of memory and she may not be knowing as to what was written in the plaint. If that is so, the execution of gift deed has not taken place in a far past. It had taken place only about two years back and as per the statement of Mrs. Lotika Sarkar, she had been needing help right from the year 2005 onwards as she was not capable of looking after herself or the property. Thus, it seems to me that though the gift deed was executed by Mrs. Lotika Sarkar but she had executed the gift deed without understanding the complete nature of document and the result of the document.

12. In any case, defendants after recording of the statements of Mrs. Lotika Sarkar and Mrs. Preeti Dhoundial, made a categorical prayer to the court that the gift deed executed by Mrs. Lotika Sarkar be cancelled and a consent decree be passed in this case for cancellation of the gift deed and of reverting back the property to Mrs. Lotika Sarkar.

13. The possession of the property was already with the police and under lock and key of the police. On making of this prayer by the defendants, counsel for the plaintiff also agreed that a consent decree be passed and the suit be disposed of after passing a consent decree in respect of cancellation of the gift deed. The plaintiff's counsel did not press any other reliefs except that the possession of the property be handed over to the plaintiff forthwith.

14. In view of this, the suit is decreed to the extent that the gift deed dated 28th June, 2007 executed by Mrs. Lotika Sarkar in favour of defendant No.1 in respect of house No.L-1/10, Hauz Khas Enclave, New Delhi is hereby declared null and void and cancelled with consent of the defendants. The property No.L-1/10, Hauz Khas Enclave,

New Delhi henceforth shall belong absolutely to Mrs. Lotika Sarkar and she shall be the absolute owner of the property. The possession of the property which is presently lying sealed under lock and key of police shall be handed over to Mrs. Lotika Sarkar forthwith. The other reliefs in the suit are not pressed by the plaintiff.

The suit and the pending applications are, therefore, disposed of in view of the aforesaid order.

SHIV NARAYAN DHINGRA J.

NOVEMBER 26, 2009
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