

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

+ **RSA 23/2010**

Date of Decision: February 05, 2010

PRADEEP KUMAR Appellant

Through: Mr. Pradeep Kumar, Adv.

versus

SMT. ANITA & ORS. Respondents

Through: Mr. M. Sajid, Adv. with
Mr. Shahnawaz Ahmed Malik,
Adv.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

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

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Appellant through his next friend Smt. Urmila, filed a suit for permanent injunction and declaration claiming following relief:-

- i) To pass a decree of declaration in favour of the plaintiff and against the defendants

thereby declaring the plaintiff Sh. Pradeep Kumar as mentally retarded person, in the interest of justice & equity;

- ii) To pass a decree of declaration in favour of the plaintiff and against the defendants thereby declaring that no legal & valid document can be executed qua the properties of the plaintiff including the suit property bearing Khasra Nos. 97/7 (4-16), 8(4-16), 9(3-16), 98/1 (0-11), 11 (1-01) total measuring (15-00) situated in the revenue estate of Village Kanjhawala, Delhi without the consent & signatures of Smt. Urmila, the next friend of the plaintiff, in the interest of justice & equity;
- iii) To pass a decree of permanent injunction in favour of the plaintiff and against the defendant no.1 thereby restraining the defendant no.1, her, assignees, successors, agents, attorneys, sympathisers etc. from selling, alienating, transferring, disposing of or by any other way creating third party interest in the suit property i.e. land bearing Khasra Nos. 97/7 (4-16), 8(4-16), 9(3-16), 98/1 (0-11), 11 (1-01) total measuring (15-00) situated in the revenue estate of Village Kanjhawala, Delhi of the plaintiff, without the prior permission of the court of competent jurisdiction under law, in the interest of justice & equity;
- iv) To pass a decree of permanent injunction in favour of the plaintiff and against the defendant nos. 2 to 4 thereby restraining them, their assignees, successors, agents,

attorneys, sympathisers etc. from purchasing, taking possession of, registering, getting mutation sanctioned in their name(s), using, further transferring, disposing of or by any other way creating third party interest in the suit property i.e. land bearing Khasra Nos.97/7 (4-16), 8(4-16), 9(3-16), 98/1 (0-11), 11 (1-01) total measuring (15-00) situated in the revenue estate of Village Kanjhawala, Delhi of the plaintiff, without the prior permission of the court of competent jurisdiction under law, in the interest of justice & equity;

- v) To pass a decree of permanent injunction in favour of the plaintiff and against the defendant no. 5 thereby restraining the defendant no. 5, his successors or any other officer competent to mutate any property in Kanjhawla from sanctioning any mutation in favour of any other person regarding the suit property i.e. land bearing Khasra Nos. 97/7 (4-16), 8(4-16), 9(3-16), 98/1 (0-11), 11 (1-01) total measuring (15-00) situated in the revenue estate of Village Kanjhawala, Delhi of the plaintiff, in the interest of justice & equity, without the prior permission of the Court of competent jurisdiction under law, in the interest of justice & equity; and
- vi) To pass a decree of permanent injunction in favour of the plaintiff and against the defendant no. 6 thereby restraining the defendant no. 6, his successor(s) or any other officer competent to register any property in Kanjhawla from registering/issuing copy of any sale deed

or attorney or title transfer document in favour of any other person regarding the suit property i.e. land bearing Khasra Nos. 97/7 (4-16), 8(4-16), 9(3-16), 98/1 (0-11), 11 (1-01) total measuring (15-00) situated in the revenue estate of Village Kanjhawala, Delhi of the plaintiff, in the interest of justice & equity, without the prior permission of the Court of competent to jurisdiction under law, in the interest of justice & equity; and

- vii) To award Cost of the suit in favour of the plaintiff and against the defendant no.1.
- viii) To grant any other such relief(s), which this Hon'ble Court may deem fit & proper in favour of the plaintiff and against the defendants, keeping in view the facts & circumstances of the present case."

2. The suit was dismissed by the Civil Judge vide his judgment and decree dated 3.05.2007. Appellant filed first appeal against the said judgment and decree, which was also dismissed by the Additional District Judge vide impugned order dated 3.11.2009. Raising certain substantial questions of law, appellant has filed the second appeal invoking Section 100 of Code of Civil Procedure (CPC).
3. Appellant is stated to be mentally retarded and sought permission to file the suit through his next friend Smt. Urmila, who happened to be

his sister. Respondent No.1 is the wife of the appellant. Respondents No. 2 to 4 are the purchasers of the suit land bearing Khasra No. 97/7 (4-16), 8(4-16), 9(3-16), 98/1 (0-11), 11 (1-01) total measuring (15-00) situated in the revenue estate of Village Kanjhawala, Delhi.

4. All substantial questions of law as suggested by the appellant relate to mental capability of the appellant to execute the impugned Sale Deed in favour of respondent Nos. 2 to 4.
5. Trial court while dealing with issue No.1 as to whether the appellant is a person of unsound mind, assessed the evidence adduced on record by the appellant in the following manner:-

“ISSUE NO.1:- Whether the plaintiff is a person of unsound mind? OPP.

The onus to prove this issue was on plaintiff. It has been claimed that plaintiff is a person of unsound mind, however, defendant has denied the same. Plaintiff has mainly relied on PW5 to prove the insanity of plaintiff. The said witness has deposed that he examined plaintiff only once, however, he claimed that the plaintiff was suffering from mental retardation and mental epilepsy though he claimed that he saw plaintiff only once and he has not carried out any test of plaintiff to ascertain that fact of retardation and

epilepsy and even no prior medical record of the plaintiff was there and history of the plaintiff was only told through attendant of the plaintiff. In the circumstances, it is clear that the said witness has not based his opinion of retardation and epilepsy of the plaintiff through conducting any test or proper examination and prior treatment medical record of the plaintiff. Plaintiff has met him only once and even then he did not carry out any test to find out the insanity etc. In the circumstances, the evidence of the doctor said PW5 with regard to insanity does not inspire much confidence. Hence, on basis of the same plaintiff can not be considered to be an insane person.

When we look to other evidence even as per PW2 the plaintiff was granted land after consolidation and thereafter he has been cultivating the said land. The plaintiff is also admittedly holder of a joint account with deft no.1 and it is not case of plaintiff that he was unable to the said joint bank account due to insanity. It is strange that plaintiff though claimed to be an insane person and allegedly not capable of entering into a contract and he still had a bank account jointly operated by him for long time. If the plaintiff was insane as claimed by his sister then there ought to have been constant supervision and watch for and over his acts, however, no such record has been brought and in fact his sister has admitted that she never had strained relation with deft no.1, the wife of the plaintiff and prior to this she has never acted as guardian of plaintiff in any matter, transactions or other acts. In the facts and circumstances of the case, it is clear that the judgments cited by the plaintiff do not help them since the facts of the present case are different and the plaintiff has not been held to be an insane person. It is clear from the

aforesaid that plaintiff has failed to establish that Pradeep Kumar is an insane person. Accordingly, issue no.1 is decided against the plaintiff and in favour of depts.”

6. These findings on facts based on analysis of medical opinion and other oral evidence adduced on record were confirmed by the Appellate Court. This question cannot be allowed to be re-agitated by the appellant in this appeal.
7. Suit of the appellant was dismissed by the trial court on the ground that the property in suit was sold by appellant to respondent Nos. 2 to 4 by way of a registered Sale Deed before filing of the suit. Court also observed that the suit was barred under Section 41 (h) of the Specific Relief Act as another efficacious remedy by way of a declaration that Sale Deed executed by the appellant in favour of respondent Nos. 2 to 4 was illegal and void *ab initio* and therefore, appellant was not entitled to claim the relief that document executed by him was not validly executed without the signatures of his next friend Urmila.
8. All these findings on facts have been affirmed by the appellate Court in the impugned judgment and decree. Appellate Court also considered the fact that the property in suit had been sold away by

the appellant in favour of respondents No.2 to 4. It is not in dispute that appellant has a joint account in the Bank along with respondent No.1 for a long period. An insane person could not have operated the joint account independently without any supervision or guidance. The findings of the courts below are based on appreciation of oral as well as documentary evidence of the parties and are findings of facts.

9. Under the circumstances, no substantial question of law is involved. Both the courts below were right in holding that since the property had been sold away in favour of respondents No.2 to 4 before filing of the suit and there was no challenge to the legality and validity of the questioned document, the suit filed by the appellant was not maintainable.
10. Therefore, no substantial question of law as suggested needs formulation as they are not questions of law but are only based on appreciation and re-appreciation of evidence of the parties.
11. Hence, I find no merit in the appeal, the same is accordingly dismissed.

CM APPL Nos.2276-2279/2010

In view of the dismissal of the appeal, this application has become infructuous and is accordingly dismissed.

**(ARUNA SURESH)
JUDGE**

**FEBRUARY 05, 2010
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