

IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No. 284/2001

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18th February, 2011

VINOD KUMAR AND ORS

..... Appellants

Through: None.

VERSUS

SMT. KRISHNA DEVI & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers 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?

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the 'Regular Board' of this court since 3.1.2011. Today, it is effective item no.4 on the 'Regular Board'. No one appears for the parties although it is 12.30 pm. I have therefore perused the record and am proceeding to dispose of the matter.

2. The challenge by means of this regular first appeal under Section 96 of the Code of Civil Procedure, 1908 is to the ex parte impugned judgment and decree dated 30.3.2001 whereby the suit of the appellants/plaintiffs for

possession and permanent injunction was dismissed. The appellants had laid a case before the trial court that the original owner of the property bearing no. 100, Gali No.11, Sarojini Park, Shastri Nagar, Delhi-110031, was Smt. Bhagwati Devi, their mother, who became the owner thereof by means of usual documents being the agreement to sell, general power of attorney, the receipt, Will etc. dated 29.10.1986. It was stated that though Smt. Bhagwati Devi had executed sale documents of the suit property in favour of the defendant no.1/respondent no.1 at one point of time on 28.1.1999, however, since the defendant no.1 failed to pay the total consideration of Rs.3,50,000/- to Smt. Bhagwati Devi and only paid Rs.92,000/-, the said documents in favour of respondent no.1 were cancelled and which cancellation was also registered before the sub-Registrar. The amount of Rs.92,000/- received by Smt. Bhagwati Devi from the respondent no.1 was returned and a receipt dated 20.8.1999 was executed by the respondent no.1 in favour of Smt. Bhagwati Devi. Smt. Bhagwati Devi thereafter executed her Will dated 17.12.1999 whereby the suit property was bequeathed in favour of the appellants/plaintiffs.

3. The respondents failed to appear in the trial court and hence were proceeded ex parte. The trial court held the Will dated 17.12.1999 to be proved as Ex.PW1/1 and also held the various documents dated 29.10.1986 executed in favour of late Smt. Bhagwati Devi to be validly proved. The relevant portion of the impugned judgment and decree giving the aforesaid

conclusions read as under:-

“4. PW-1, Shri Nem Singh has been examined by the plaintiffs to prove the Will of Smt. Bhagwati Devi who was the mother of the plaintiffs and defendant No.1. He has deposed that he knows Smt. Bhagwati Devi since 20 years back. Smt. Bhagwati executed a Will on 17.12.99 in his presence and the Will bears his signatures at point A. The Will was executed in his presence and in presence of one Shri Madan Lal and they both signed in the presence of each other. Smt. Bhagwati Devi at the time of execution of Will was not suffering from any disease and she was of sound mind. Bhagwati also signed in his presence and Advocate, Sh. Om Prakash Gupta Advocate also signed in his presence. The Will has been proved as Ex.PW-1/1.

PW-2, Shri Madan Lal has deposed that Smt. Bhagwati Devi (since deceased) executed the Will Ex.PW-1/1 in his presence and at the time of execution of the Will Nem Singh was also present. The same bears his signatures at point B. He and Nem Singh signed in the presence of each other. Shri Om Prakash Gupta Advocate also signed in their presence and Smt. Bhagwati Devi also signed in their presence. That Smt. Bhagwati was not suffering from any disease and she was of sound mind. In his further examination, he deposed that the receipt Ex.PW-3/1 was executed in his presence and a sum of Rs.92000/- was returned by Smt. Bhagwati Devi to Smt. Krishna Devi who put her signatures on Ex.PW-3/1 after the receipt of Rs.92000/-. The receipt bears his signatures at point B.

PW-3, Smt. Sarla Sehgal W/o Shri Madan Lal Sehgal has deposed that receipt Ex.PW-3/1 was executed in her presence and same bears her signatures at point A. Smt. Bhagwati Devi returned amount of Rs.92000/- to Smt. Krishna Devi and Smt. Krishna Devi after receiving the amount signed the same in her presence and that her husband also signed the same in her presence.

PW-4, Shri Vinod Kumar who is one of the plaintiff in the present case has deposed that his mother, Smt. Bhagwati Devi was the owner of plot bearing No.100, Gali No.11, Sarojini Park, Shashtri Nagar, Delhi by virtue of documents G.P.A., Ex.PW-4/1, Agreement Ex.PW-4/2, Will deed Ex.PW-4/3 and Receipt Ex.PW-4/4..... .” (Emphasis added)

4. In spite of the above finding, the trial court has most surprisingly dismissed the suit by holding that Smt. Bhagwati Devi was not the owner because the documents Ex.PW4/1 to Ex.PW4/4 do not confer ownership rights on Smt. Bhagwati Devi. This is a most puzzling and surprising finding because the transferor of the property has never challenged the transfer of rights in the subject property to Smt. Bhagwati Devi. These documents, strictly may not be the ownership documents such as a sale deed, however, these documents have been held to confer valid rights in favour of the transferee by virtue of Section 53A of the Transfer of Property Act (doctrine of part performance) and Section 202 of the Contract Act (disentitlement to cancel a power of attorney executed for consideration). In fact, since the documents executed in favour of Smt. Bhagwati Devi are dated way back on 29.10.1986, Smt. Bhagwati Devi would have become the owner of the property by the law of prescription under Section 27 of the Limitation Act, 1963 as from 29.10.1998 whereas the impugned judgment was passed on 30.3.2001. This court has consistently recognized rights amounting to ownership rights in favour of a transferee of such documents and two of these judgments are ***Harbans Singh Vs. Shanti Devi 1977 RLR 487*** and ***Asha M. Jain Vs. The Canara Bank (2001) 94 DLT 841***. In any case, whatever rights which Smt. Bhagwati Devi acquired were capable of being bequeathed to the appellants by virtue of the will dated 17.12.1999. The findings and conclusions of the trial court are therefore illegal and perverse

inasmuch as it has held that no rights devolved upon the plaintiffs/appellants, although, the Will of Smt. Bhagwati Devi was proved as Ex.PW1/1, allegedly because, Smt. Bhagwati Devi allegedly did not have rights in the subject property.

5. The appellants/plaintiffs also proved their entitlement to mesne profits/damages as PW4 deposed that if the property was rented out it would fetch a rent of Rs.2000/- per month which was the prevalent market rate and he was not cross-examined and nor was any evidence led in rebuttal on behalf of the respondents who were proceeded ex parte. The statement of PW4 therefore had to be accepted.

6. The impugned judgment and decree is therefore clearly illegal and perverse and is set aside and the suit for possession of the appellants/plaintiffs is decreed against the respondents/defendants with regard to the property No.100, Gali No.11 Sarojini Park, Shastri Nagar, Delhi. The appellants will also be entitled to mesne profits/damages from the respondents at the rate of Rs.2000/- per month from date of filing of the suit till possession is handed over. Appellants will also be entitled to interest at the rate of 9% per annum simple on the arrears of mesne profits awarded from the date of filing of the suit till the same are realized and the aforesaid rate of interest will be calculated from the end of the month for which the mesne profits/damages would be payable. The respondents are also restrained from in any manner transferring possession or creating any third

party interest in the subject property. Decree sheet be prepared. Trial court record be sent back. Interim Orders stand vacated.

CM No. 877/2001 & CM No.878/2001

No orders are required to be passed in these applications since the main appeal has been disposed of.

The applications stand disposed of.

FEBRUARY 18, 2011
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VALMIKI J. MEHTA, J.