

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

+ **RFA No. 470/2001**

% **1st March, 2011**

SHRI RAMU SHARMA & ANR. Appellants

Through: None.

VERSUS

SHRI R.C. BABBAR Respondent

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 17.1.2011. Today it is effective item no. 2 on the Regular Board. It is 12:45 pm but no one appears for the parties. I have therefore perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 17.5.2001 whereby the suit of the appellants for recovery of Rs.1,42,100/- was dismissed, and which recovery was claimed on the

3. Since the document dated 25.3.1998 in the present case is a curious one, I would seek to reproduce the same which reads as under:-

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4. In view of the strange language of the document, the Trial Court has rightly arrived at the following findings and conclusions in paras 10 and 11 of the impugned judgment and decree which read as under:-

“10. While analyzing the genuineness of the case of the plaintiffs, I begin with the premise that it is for the plaintiffs not only to plead their case but also to prove the same beyond shadow of doubt. While analyzing the deposition of PW1 and PW2; I find that they are silent on many relevant aspects which ought to have been answered and explained by them such as; who paid the consideration; to which property the present dealing belonged; what was the number and extent or specification of the property; who was the owner of the property; who was Chander Parkash? It remained to be answered by the plaintiffs as to whether the alleged amount was paid for mutation purposes or for some land deal, the plaintiffs are not clear on this aspect. PW1 and PW2; the plaintiffs have testified that the amount was advanced to the deft on the understanding that one plot in Vipin Garden Colony shall be mutated by the deft and after the mutation, the same shall be transferred to the plaintiffs. However, it remained to be answered by the plaintiffs that in regard to which property and for what consideration the land deal took place. Rather contrary to this suggestion was put to the deft that he had received the sum of Rs.70,500/- from them for affecting mutation of plot in Vipin Garden Colony, Delhi. They have not put any suggestion that it pertained to any land deal; as is suggestive in their deposition. Thus, it is not clear from the own deposition of plaintiffs as to whether the said amount was advanced for mutation purposes or it pertained to some land deal. Or was there some land-deal with Chander Parkash? Because the receipt spells that the payment shall be made to Chander Parkash. Further there are two inconsistent terms in the receipt; one is that the amount shall be returned on 25.6.98; then second is (addition) that if the amount is not returned on 25.6.98; it will be paid in double. The second term is apparently interpolated. The signatures of the witness also seem to be a added/interpolated on the receipt. There also seem to be interpolation in the words that ‘70% of the land shall be

transferred to the plaintiffs.' These overlap the line of signature.

These terms run contrary to the suggestion put to the deft that the alleged amount of Rs.70,500/- was paid to him for effecting mutation.

10. Further evidently the bare perusal of the receipt Ex.PW1/3 shows that there were number of material additions/interpolations/inconsistencies and even signature at the bottom differed to the signature dt. 25.3.98. Last but not the least, the practice is that the revenue stamp is affixed and signatures of the executants are put thereon. However, in this case on stamp there are no signature of the deft. Shri R.C.Babbar. Evidently, it lends credence to the plea of the deft that the receipt was forged and fabricated.

11. From my above discussion, it is evident that firstly, there is no mention as to who paid the consideration to the deft. Even in their deposition, each of the plaintiffs testifies that he paid the consideration. This is impractical. Secondly, there are inconsistent terms in the first portion and second portion of the receipt. Thirdly, there is apparent addition and interpolation in the terms that if money is not paid upto 25.6.98, then the double amount will be paid. Fourthly, the signatures below this are entirely different from the signatures on the dates 25.3.98. There is also apparently addition of the words and 70% of the I and shall be transferred to them (plaintiffs). Lastly, the testimony of the sole witness Shri Kapil Dev Bakshi does not inspire any confidence and he seems to be procured and interested witness." (Emphasis added)

5. In view of the language of the document dated 25.3.1998 and its curious formatting, I do not find any illegality and perversity in the impugned judgment and decree. The Trial Court has rightly observed that the document is forged/fabricated because it is silent as to who paid the consideration to the respondent/defendant, which was the property in question for which the transaction was entered into, who was the owner of

the property for which the transaction was entered into namely Chander Prakash or someone else, whether the amount was paid for mutation or certain transaction for immovable property. Further, there are clear-cut interpolations in the documents as rightly noted by the Trial Court. I may add that the signature of the witness and the particulars of witness also seem to have been interpolated later on because it appears in different ink and different handwriting. The Trial Court has found lack of credibility in deposition of the plaintiffs and has therefore dismissed the suit.

6. I do not find any illegality or perversity in the impugned judgment and decree which calls for interference by the Court in the appeal merely because two views are possible and one view has been taken by the Trial Court. The appeal being devoid of merits is therefore dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

March 01, 2011
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VALMIKI J. MEHTA, J.