

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA No.104/2003**
% **30th November, 2011**

SMT. SAVITRI DEVI Appellant
Through: Mr. B.L.Chawla, Adv.

VERSUS

SHRI ASHOK KUMAR SEHGAL & ORS. Respondents
Through: Mr. J.C. Mahindroo, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure (CPC), 1908 is to the impugned judgment of the Trial Court dated 11.11.2002. By the impugned judgment, the Trial Court dismissed the suit filed by the appellant/plaintiff for declaration and cancellation of the sale deeds dated 29.2.1996 executed by the appellant/mother in favour of the respondent no.1/defendant no.1 (son) and respondent no.2/defendant no.2 (daughter).
2. The facts as pleaded in the plaint are that the appellant/plaintiff as owner of the property bearing no.J-27, Rajouri

Garden, New Delhi wanted to execute Wills with respect to one floor each, i.e. first floor and second floor to each of the respondent no.1/defendant no.1 and respondent no.2/defendant no.2, however, instead of the Wills, the respondents 1 and 2 got executed sale deeds in their favour with respect to the first floor and second floor, which were registered with the sub-Registrar on 29.2.1996. It was pleaded that the appellant/plaintiff wanted to execute a sale deed only with respect to the ground floor in favour of the other son-Sh.Anil Kumar Sehgal, and which sale deed was executed and registered, however, the appellant/plaintiff only wanted to execute Wills with respect to first floor and the second floor but was unknowingly made to sign sale deeds. It was claimed that fraud has been played upon the appellant/plaintiff and therefore the sale deeds dated 29.2.1996 executed in favour of the respondents no. 1 and 2/defendants no.1 and 2 with respect to the first floor and second floor of the property be cancelled by declaring them as void.

3. The respondents no.1 and 2/defendants no.1 and 2 defended the suit in which it was said that there was no misrepresentation and in fact the sale deeds were executed, which were intended to be executed, inasmuch as even with respect to the ground floor, a sale deed on the same date was executed in favour of the other brother-Sh.Anil Kumar

Sehgal. The defence was that in fact Sh. Anil Kumar Sehgal, the other brother is a witness to the sale deeds executed by the appellant/plaintiff in favour of the respondents no.1 and 2/defendants no.1 and 2. It was further pleaded that consideration had already been received by the appellant/plaintiff from the respondents no.1 and 2/defendants no.1 and 2, an aspect which is duly mentioned in the subject sale deeds. It was also pleaded that this aspect of receipt of consideration was duly accepted by the appellant/plaintiff at the time of the registration of the sale deeds before the sub-Registrar.

4. After the pleadings were completed, the Trial Court framed the following issues:

- “1) Whether suit of the plaintiff is properly valued for the purpose of Court fees and jurisdiction? OPP.
- 2) Whether suit of the plaintiff is hit by Order 1 Rule 3 CPC?
- 3) Whether suit of the plaintiff is bad for misjoinder of parties and causes of actions? OPP
- 4) Whether plaintiff is entitled to declaration claimed? OPP
- 5) Whether plaintiff is entitled to cancellation of instrument? OPP
- 6) Relief.”

5. Learned counsel for the appellant/plaintiff raised his arguments under two main heads. Firstly, it was argued that there was fraud upon the appellant/plaintiff in view of the fiduciary relationship of

mother and son/daughter. It was argued that on account of the fraud of having got executed the sale deeds, instead of Wills, the sale deeds in question are liable to be cancelled. The second argument is that the sale deeds are void on account of lack of consideration, and therefore, are liable to be declared as void in terms of Section 25 of the Contract Act, 1872.

6. The Trial Court has in para 12 of the impugned judgment given the following findings and conclusions with respect to the aforesaid arguments as raised on behalf of the appellant/plaintiff, and which were the argument also raised before the Trial Court. Para 12 reads as under:-

“12. I have given by considered though to the arguments addressed on behalf of counsels for the parties. It is a case of the defendants that the documents were got executed for consideration. It is also the case of the defendants that the consideration was paid much before the documents were got executed in favour of defendant no.1 & 2. The only circumstances which is sought to be raised for declaring the document as void, there is no sufficient explanation on record by the defendants as to from where the money was arranged by them and in whose presence the money was paid in that, the plaintiff claims no money was at all paid to her. It is her case that she asked defendant no. 1 & 2 to get the Will executed in their favour in respect of ground floor and first floor of property but instead they got the sale deed registered in their favour, on the said day she has executed a sale deed in favour of Anil Sehgal her another son and she is not challenging the same. Document is a registered document and executed between mother, son and daughter. The contention that

the consideration for execution of sale deed is meagre by itself will not raise doubt about the due execution of the same. It has been proved on record in the cross-examination of PW-1 that she has sold properties earlier by executing documents and when she is confronted with a Will Ex.PW1/D1 she recognized the same being a Will executed by her in favour of one of the defendant and her another son. Hence, it cannot be said that she does not understand the difference between a Will and a sale deed specially when the document is a registered one registered before the Sub-Registrar being the photograph of both the persons vendee and vendee and there is presumption of its genuineness. That presumption I am constrained to say have not been rebutted on record, though she claims she can sign only in Hindi, the only attesting witness Anil Sehgal who was pursuing the same on behalf of the plaintiff being the another son though present on the hearings and though as a attesting witness to the document and in whose favour another sale deed was got executed on the same day by the plaintiff herself has not been examined to throw light on the assertion of the plaintiff that fraud has been played upon her. In view of the fact that the onus of rebutting the presumption in favour of genuineness of the document has not been discharged by leading any cogent and corroborative evidence by the plaintiff, I hold that plaintiff is not entitled to the declaration that the documents has been got executed from her by playing fraud upon her and by misrepresentation and she is not entitled to declaration of the documents being void and got the same cancelled accordingly.” (underlining added).

7. I completely agree with the findings and conclusions of the Trial Court. There is no substance in the arguments as raised on behalf of the appellant/plaintiff. The Trial Court has rightly held that the plea of misrepresentation/fraud is misconceived inasmuch as the other son-Sh.

Anil Kumar Sehgal who was pursuing and prosecuting the suit on behalf of the appellant/plaintiff was in fact a witness to the sale deeds which were executed in favour of the respondents no.1 and 2/defendants no.1 and 2. The Trial Court has also referred to the fact that once a sale deed is registered, the sub-Registrar at the time of registration asks and ensures receipt of consideration under the sale deed. The Trial Court has therefore held that the nature of the document was intended to be a sale deed and consequently the fact of receipt of consideration cannot therefore be denied by the appellant/plaintiff. I may to the aforesaid conclusions also refer to Illustration (e) of Section 114 of the Indian Evidence Act, 1872 and which states that there is a presumption as to the official acts being properly performed. It is statutory requirement under the Registration Act, 1902 for the sub-Registrar to ensure at the time of registration of the sale deed that consideration in fact has been paid and received as stated in the document. Therefore, the sub-Registrar at the time of registration of sale deeds would have naturally enquired and ensured the issue of payment of consideration.

8. A civil case is decided on balance of probabilities. The balance of probabilities show that in the present case there was no misrepresentation/fraud upon the appellant/plaintiff and quite clearly, this

litigation seems to have been inspired by the other son-Sh.Anil Kumar Sehgal who was in fact pursuing and prosecuting the suit on behalf of the appellant/plaintiff. As already stated above, this other son-Sh.Anil Kumar Sehgal was in fact witness to the sale deeds executed in favour of the respondents no.1 and 2/defendants no.1 and 2. The Trial Court has therefore rightly dismissed the subject suit for declaration and cancellation.

9. In view of the above, there is no merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA,J

NOVEMBER 30, 2011

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