

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

Judgment reserved on: 17.03.2011

Judgment delivered on: .07.2011

**RFA No. 437/2004**

Kush Malhotra .....Appellant.

Through: Mr.Nitendra Sharma, Advocate.

**Vs.**

Prakash Malhotra and Ors. ....Respondents

Through: Mr.Girish Aggarwal, Advocate for  
respondent No.4.  
Mr.Dinesh Agnani, Advocate for the  
respondents No.6 to 8.

CORAM:

**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

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

**KAILASH GAMBHIR, J.**

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1. By this appeal filed under Section 96 read with  
Order 41 Rule 1 of the Code of Civil Procedure, 1908 the

appellant seeks to challenge the judgment and decree dated 19.05.2004 passed by the learned trial court whereby the suit filed by the appellant for declaration, cancellation of sale deed, recovery of possession and perpetual injunction was dismissed.

2. Brief facts of the case relevant for deciding the present appeal are that the appellant is the son of respondent no.1 (deceased) and brother of respondent no. 2 and 3 and had filed a suit for declaration, cancellation of sale deed, recovery of possession and perpetual injunction with respect to the property bearing No.373, Block B in Janta Cooperative House Building Society Ltd., Meera Bagh, Outer Ring Road, New Delhi. The appellant had sought cancellation of the sale deed dated 24.10.2001 registered on 8.11.2001 executed by respondent no.1 namely Smt. Parkash Malhotra (deceased) in favour of respondent no. 4 and also the cancellation of the sale deed dated 22.6.2002 executed by respondent no. 4 in favour of respondents no. 6 to 8 . The case of the appellant is that the property in question was acquired by his late father

Sh. S.P. Malhotra through his own earnings in the name of his wife Smt. Parkash Malhotra (respondent No.1 herein) and he was the one who paid the entire amount towards the cost of the said plot. That the appellant moved to USA in the year 1982 and he claims that he contributed major portion towards the construction cost on the said plot by sending money from USA. The respondent no.1 sold the suit property to respondent no.4 for Rs. 8,05,000/- and the respondent no. 4 further sold the said property to respondents no. 6 to 8 for Rs. 12,08,500/-. The case set up by the appellant is that the respondent no.1 had no right to sell the said property as it was an ancestral property. The appellant also claims that the sale deed executed by respondent no.4 in favour of respondents no. 6 to 8 is liable to be cancelled on grounds of insufficient consideration as the property was sold for much less than its actual value. That the appellant filed the said suit before the learned trial which vide judgment and decree dated 19.5.2004 was dismissed and feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Assailing the impugned judgment and decree, Mr.Nitendra Sharma, learned counsel appearing for the appellant contended that the learned trial court failed to consider the documentary evidence placed on record by the appellant proving fabrication and forgery committed by the respondents No.4, 6, 7 & 8 in collusion with the respondent No.1. Counsel further argued that the learned trial court has also not appreciated the fact that the suit property is a family property and the appellant has invested his hard earned money out of his savings towards construction of the suit property. Learned counsel for the appellant also submitted that the learned trial court has ignored the valuation of the suit property which was more than 19 lacs and that it was sold much below its actual value. Counsel also submitted that the age of the respondent No.1 was 75 years and because of her old age the respondent No.1 did not possess sound mind to sell the property in favour of the respondent No.4. Based on these submissions, counsel for the appellant seeks setting

aside of the impugned judgment and decree passed by the learned trial court.

4. Opposing the present appeal, Mr.Girish Aggarwal, learned counsel appearing for the respondent No.4 submitted that the appellant had no legal right to file the said suit as he was neither the owner of the suit property nor derived any right in the suit property in any manner whatsoever. Counsel also submitted that in para-3 of the present appeal the appellant himself has admitted the source of earning of the respondent No.1 after she became the proprietor of M/s. Prakash Roadways. Based on these submissions, counsel for the respondent No.4 submitted that the present appeal filed by the appellant is patently illegal and unwarranted and, therefore, the same merits dismissal.

5. Mr.Dinesh Agnani, learned counsel appearing for the respondents No.6 to 8 opposed the present appeal. He submitted that the appellant himself was one of the plaintiffs in his capacity as a legal heir of Smt.Prakash Malhotra who had filed a civil suit No.CS(OS) 500/04 seeking declaration,

cancellation of sale deeds and for recovery of possession against the respondent No.4, 6, 7 and 8 and which suit was well within the knowledge of the appellant and wherein he had duly admitted the ownership of the respondent No.1 over the suit property. Counsel thus submitted that the present appeal filed by the appellant is a gross abuse of process of the court on the part of the appellant and, therefore, the same merits dismissal with exemplary costs.

6. I have heard learned counsel for the parties at considerable length and given my thoughtful consideration to the pleas put forth by them.

7. Indisputably, the appellant has admitted the ownership of the respondent No.1 over the subject property i.e. property bearing No.373, Block B in Janta Co-operative House Building Society Ltd., Meera Bagh, Outer Ring Road, New Delhi. The appellant has also admitted that the respondent No.1 had sold the said property to respondent No.4 vide sale deed dated 24.10.2001 registered on 8.11.2001 for a sale consideration of Rs.8,05,000/- and the respondent

No.4 later on sold the same very property in favour of the respondent No.6 to 8 vide sale deed dated 22.06.2002 for a sum of Rs.12,08,500/-. In the suit filed by him he sought cancellation of both the abovementioned sale deeds i.e. that executed by his mother and respondent No.4. The appellant had also claimed possession of the suit property and also permanent injunction so as to restrain the respondent No.6 to 8 from selling, alienating, transferring or otherwise parting with possession of the suit property to anybody else. Initially, the appellant had filed the suit only against the respondent No.1 to 5, but later on he had also impleaded respondents No.6 to 8 in whose favour the property was sold by the respondent No.4.

8. The learned trial court in para-3 of the impugned judgment has observed that the suit filed by the appellant is a luxurious litigation. The learned trial court has also observed that the appellant has failed to state as to how the suit property is an ancestral property as the same was purchased by his mother, the respondent No.1 herein. The learned trial

court has also observed that appointment of Shri O.P.Sharma as Special Power of Attorney by the appellant (plaintiff) is doubtful because the appellant (plaintiff) did not file a copy of the Special Power of Attorney along with the plaint. In para-6 of the impugned judgment, the learned trial court also observed that the appellant had duly admitted that the property in question stood in the name of the respondent No.1 as owner in the records of the Society and the appellant had never filed any objections in the Society to object to the said ownership of the respondent No.1. The learned trial court has further observed that in his cross-examination, the appellant duly admitted the fact that he had not filed any document on record to show that he was ever shown as co-owner of the suit property. Even before this Court the appellant has not been able to satisfy as to what is the basis on which the appellant has claimed a right over the said property. The learned trial court rightly observed that simply because the appellant happens to be the son of the respondent No.1 that alone will not give him any right to challenge the sale deed executed by

his mother in favour of respondent No.4. It is not the case of the appellant that he had contributed any amount towards purchase of the land, as he had merely claimed contribution of funds in the construction on the plot in question. The appellant has also not led any evidence to show that he had incurred any amount towards the construction of the house. The appellant has also failed to prove that the said property was an ancestral house. In his cross-examination the appellant referred to some statement of accounts wherein he had accounted for the money spent by him towards construction. Admittedly, no such statement of account was filed by him so as to prove the same in support of his said plea. The learned trial court has clearly observed in para-16 of the impugned judgment that the appellant did not file and prove the statement of account, so an adverse inference is liable to be drawn against him. The appellant has further not given any answer with regard to his own admission of admitting the ownership of his mother, respondent No.1 herein in the said suit No.CS(OS) 500/04 filed by his mother

where the challenge was made to the sale deed executed by the respondent No.1 in favour of respondent No.4 and further to the sale deed executed by the respondent No.4 in favour of the respondents No.6 to 8. It appears that with a view to file a false suit, the appellant did not choose to file the same himself and got the same filed through his attorney Mr.O.P.Sharma and similarly has also got the present appeal filed through the same attorney. It is quite surprising that in the said suit No.500/2004 the appellant was impleaded as plaintiff No.2 being the legal heir of his mother Smt. Prakash Malhotra, respondent No.1 herein wherein he had duly admitted the ownership of his mother, but in this Court he sought to claim the ownership of the same property in himself although without any basis. The present appeal as well as the suit filed by the appellant/plaintiff are clearly based on false, frivolous and vexatious pleas and this Court does not find any illegality, perversity or infirmity in the impugned judgment and decree passed by the learned trial court. The learned trial court rightly observed that adequacy of the amount of sale

consideration was immaterial so far the appellant was concerned as the same at best could be agitated by the vendors and not by the third party.

9. This case is a classic example of frivolous and cantankerous litigation which causes the genuine cases a delay in adjudication. The advocates should be mindful that it is their duty as the officers of the court to winnow the clients approaching them with malevolent intentions from the bonafide seekers of justice to strengthen the justice delivery system.

10. Based on the above discussion, I do not find any merit in the present appeal. The present appeal is tainted by false and vexatious considerations and, therefore, the same is hereby dismissed with costs of Rs.20,000/-.

**July , 2011**  
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**KAILASH GAMBHIR, J**