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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : 24th November, 2011

+ RFA (OS) No.51/2010

SMRITI BHASIN Appellant
Through : Mr.Anis Ahmed, Advocate.
versus
MEERA SAWHNEY Respondent
Through : Ms.Savita Prabhakar, Advocate for
respondent Nos. 2 and 3.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE S.P.GARG

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?

PRADEEP NANDRAJOG, J. (Oral)

CM No.10026/2011 (delay) & CM No.10027/2011 (delay in re-filing)
in RFA (OS) No.51/2010

12 days delay in filing the appeal and equal number of delays in re-filing the appeal are condoned for the reasons mentioned in the two applications.

RFA (OS) No.51/2010

1. Late Sh.Mulakh Raj Sawhney was the perpetual lessee under L&DO of property bearing Municipal No.58, Rajinder Nagar, New Delhi. He died on 04.06.1981. His wife

Ved Wati, son Arvind Kumar and daughter Samriti Sawhney were his legal heirs and thus inherited the estate.

2. Arvind Kumar applied to L&DO for his name to be mutated as the perpetual lessee on account of death of his father, and for which claim, he relied upon a Deed of Relinquishment dated 14.08.1981, Ex.PW-1/2, stating that his mother and his sister were the executants thereof and that they had relinquished their share in his father's property and that he was the beneficiary of the relinquishment.

3. Vide letter dated 08.09.1992, Ex.PW-1/3, L&DO mutated the property in the name of Arvind Kumar.

4. At the time Arvind Kumar inherited the property from his father and upon the Relinquishment Deed being executed, it consisted of only the ground floor constructed on the plot. With his funds he effected further constructions thereon.

5. During his life time Arvind Kumar permitted his sister Samriti Bhasin to occupy the second floor and barsati of the property, as claimed by the wife of Arvind Kumar, purely as a gratuitous occupant.

6. Arvind Kumar died on 28.10.2002.

7. On the death of Arvind Kumar, claiming that she needed rental income, his wife Meera Sawhney claims to have requested her sister-in-law to vacate the portion of the property in her possession. At that stage Smt.Samriti Bhasin filed a suit, plaint whereof is Ex.PW-1/12. She challenged the Deed of Relinquishment dated 14.08.1991.

8. Meera Sawhney filed a suit seeking possession and mesne profits against Samriti Bhasin.

9. Vide judgment and decree Ex.PW1/13, suit filed by Samriti Bhasin was dismissed holding the Deed of Relinquishment to be validly executed, against which a Regular First Appeal filed by Samriti Bhasin came to be dismissed vide judgment and decree dated 19.11.2008, Ex.PW1/14.

10. In the suit filed by Meera Sawhney, Samriti Bhasin took a stand that she was an equal owner of the suit property, for the reason she challenged the Deed of Relinquishment.

11. Highlighting that at the stage when Deed of Relinquishment was executed only ground floor existed on the property and that further constructions were effected by Arvind Kumar, we proceed to note that since Samriti Bhasin's challenge to the Relinquishment Deed had failed up to this Court, she probably lost interest in the suit filed by her sister-in-law, and was proceeded against ex-parte on 18.04.2009.

12. Noting the aforesaid facts, at the heart of which is the fact that Samriti Bhasin's challenge to the Deed of Relinquishment dated 14.08.1981 having failed, the learned Single Judge, vide impugned judgment and decree dated 20.08.2009 has decreed the suit qua possession. Mesne profits have been declined in the absence of any satisfactory evidence led qua the prevailing rentals.

13. Samriti Bhasin has filed the instant appeal in which she alleges that she was lulled into not continuing to defend the suit filed by her sister-in-law on account of intervention by

family members who made the two sisters-in-law see reason and settle the dispute.

14. Highlighting that no written acknowledgement of any settlement has been filed, we further note that Samriti Bhasin has further pleaded in the appeal, which we find was filed in the month of March 2010, that against the judgement and decree dated 19.11.2008, dismissing the Regular First Appeal filed by Samriti Bhasin, i.e. the judgment Ex.PW-1/13 she has sought leave to appeal before the Supreme Court.

15. In the reply filed by Meera Sawhney to the application seeking stay of operation of the impugned decree, which reply was filed on 31.01.2011, in paragraph 11 it is stated that the SLP filed by Samriti Bhasin is lying under objections in the Registry of the Supreme Court since 08.07.2009 and that Samriti Bhasin is not interested in prosecuting the same.

16. Today is 24th November 2011. Learned counsel for the appellant states that the SLP filed by Samriti Bhasin is still lying under objections.

17. The long and short of the above facts noted is that challenge by the appellant to the Deed of Relinquishment dated 14.08.1981 having failed in the suit filed by her, her defence in the counter suit filed by her sister-in-law has no legs to stand on.

18. Accordingly, we affirm the impugned judgment and decree passed by the learned Single Judge but we refrain from imposing any cost keeping in view the relationship between the parties.

CM No.10025/2011(Stay)

Since the appeal has been decided today itself, instant application which seeks stay of operation of the impugned decree is dismissed as infructuous.

PRADEEP NANDRAJOG, J.

S.P.GARG, J.

NOVEMBER 24, 2011
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