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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.226/2000 & RFA 141/2008

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20th January, 2011

1. RFA No. 226/2000

SH. RAM AVTAR AGGARWAL Appellant
Through: Mr. R.M.Sinha, Advocate

VERSUS

KANTI PRASAD AGGARWAL Respondent
Through: Mr. Pradeep Jain with
Mr. Yogesh Mittal, Advocates.

AND

2. RFA No. 141/2008

SMT. VIDYAWATI & ORS. Appellants
Through: Mr. R.M.Sinha, Advocate

VERSUS

SH.KANTI PRASAD AGGARWAL & ORS. Respondents
Through: Mr. Pradeep Jain with
Mr. Yogesh Mittal, Advocates.

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. Challenge by means of this First Appeal under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 28th March, 2000 whereby the suit of the respondent/plaintiff for recovery of possession of a portion of the property bearing no. 498-1A, Bhola Nath Nagar, Shadara, Delhi was decreed.

2. The facts of this case are that one Smt. Kailashwati became the owner of a plot of 143 square yards by virtue of a sale deed dated 30.9.1957 executed in her favour by one Sh. Muralidhar Sharma. As per the sale deed, exhibited as Ex.DW-3/A, the plot of 143 square yards was a part of a larger plot of 333 square yards numbered as plots no. 15 and 16. Smt. Kailashwati after purchase of this plot, wanted to make construction on the same and therefore applied for sanction of the plans from the municipal authorities. The plan in favour of Smt. Kailashwati for plot no. 16 was sanctioned by the Municipal Authorities vide letter dated 23.6.1962 (Ex.PW-1/9). This document Ex.PW-1/9 sanctions the plan of construction to Smt. Kailashwati for plot no.16. The sanctioned plan was filed and proved as Ex.PW-1/8. It appears that a portion of the plot which was purchased by Smt. Kailashwati, and which was originally a part of plots no. 15 and 16, was acquired for the purposes of road widening. For this reason, sanction which is applied for is only with respect to plot no. 16 and which now is referred to as municipal no. 498-1A. Smt. Kailashwati died on 25.4.1980. Before her death, Smt. Kailashwati however, executed her registered Will dated 11.5.1977 and

which has been filed and proved, through one of the attesting witnesses, as Ex.PW-3/A. As per this Will, Smt. Kailashwati bequeathed the entire subject property bearing no. 498-1A to the plaintiff/respondent. The plaintiff/respondent claims that the appellant/defendant who was his brother, that is, the son of Smt. Kailashwati was permitted to stay in a portion of the property no.498-1A on license basis by Smt. Kailashwati. This portion of 498-1A is one room with a bath room-cum-WC, a passage and a portion of the Verandah. After the death of Smt. Kailashwati the respondent/plaintiff on the appellant/defendant having constructed his own property at Shalimar Park, Shahdara, Delhi requested the appellant/defendant to vacate the portion of the property no.498-1A in his possession, and of which the respondent/plaintiff had become an owner by virtue of the Will dated 11.5.1977 of their mother. On the failure of the appellant/defendant to vacate the suit property, the suit for recovery of possession of the subject portion of the property was filed and which has been decreed by the impugned judgment and decree dated 28.3.2000.

3. The appellant/defendant in the suit raised various objections inter alia of an internal family arrangement of the year 1974, that is before the death of the mother Smt. Kailashwati, of the subject portion falling into his share, secondly the property not being of Smt. Kailashwati but Smt. Kailashwati being only a *benami* owner and lastly and most importantly that the property no. 498-1A is in fact not constructed only on plot no.16, but has been constructed on plot no. 16 as also on portions of plots no. 15A and 16A which were purchased in the name of Rajender Prasad and brothers by

means of a sale deed dated 18.5.1946. It was argued, before the Trial Court and also before this Court, that after the Government took away portions of the plots no. 15 & 16 and 15A & 16A, whatever area remained was not only plot no. 16 but in fact construction was on part of plot no. 16 and also on part of the plots no. 15A and 16A. It is, therefore, argued that though, the respondent/plaintiff would be entitled to the subject portion, but only if the subject portion falls in the property no. 16 and not if the same falls in the property nos. 15A and 16 A.

4. I may state that most of the facts stated in the present judgment while dealing with this RFA are common with the facts of the connected RFA No.141/2008 and which is also disposed of by this judgment. The connected RFA has been filed challenging the impugned judgment and decree dated 26.2.2008 of the Trial Court whereby the suit filed by the present appellant and others who represented the branches of the other heirs of Smt. Kailashwati, basically against the present respondent who was the defendant in the second suit, was dismissed. The impugned judgment and decree in RFA No. 141/2008 dated 26.2.2008 extensively relies upon and is for a considerable part based upon the impugned judgment and decree dated 28th March, 2000 which is subject matter of the appeal being RFA No.226/2000.

5. The Trial Court in the impugned judgment and the decree qua RFA 226/2000 has relied upon basically two important aspects to decree the suit for possession in favour of the respondent/plaintiff and against the appellant/defendant. The first aspect is that the appellant/defendant himself had executed two affidavits for getting the electricity connection to the

subject portion from the local authorities and which affidavits are dated 24.9.1976 (Ex.PW-2/1) and 25.8.1976 (Ex.PW-2/2). These affidavits show the unqualified admissions of the appellant/defendant of ownership of the complete property 498-1A being that of Smt. Kailashwati- mother. The Trial Court has also referred to the fact that respondent/plaintiff had after the death of Smt. Kailashwati realized rent from the tenants in the property on the first floor and which was a Government Department. The respondent/plaintiff had also filed various cases of eviction against the different tenants in the property no. 498-1A claiming ownership of the same. These facts showed that the respondent/plaintiff treated himself as an exclusive owner of the property no.498-1A and no other legal heirs of Smt. Kailashwati claimed any title on rent with respect to the property no.498-1A.

6. Since, the findings of the Trial Court are very detailed on this aspect and are contained in paras no. 16 to 24 of the impugned judgment and decree dated 28.3.2000, it is not therefore feasible to reproduce the entire paragraphs, however, I am referring to certain portions of the said findings and conclusions of the Trial Court which read as under :-

“17. The plaintiff relies on two affidavits admitted sworn by the defendant one on 24.9.76 vide Ex.PW2/1 and the other on 25.8.76 vide Ex.PW2/2. These affidavits were proved through the statement of PW2 P.K.Jain a clerk from the Commercial Section of District Jhilmil Karkardooma Delhi Vidyut Board. They were submitted with erstwhile Delhi Electrical Supply Undertaking in the context of grant of independent electricity connection in the name of the defendant for the suit premises. The execution of these affidavits has been admitted by the defendant, though he has some different explanation to offer. None the less the affidavits need a careful look. In the affidavit Ex.PW2/2 sworn on 25.8.76 the defendant described himself as lawful

occupant of the property in question. He stated that he was not in a position to submit any "Latest proof" for the reason that his mother Kailash wati was out of station. He expressed his desire to have a new light connection in his name and made a request in that regard for installation of such electricity supply lines in the suit property specifically referring it as a property "owned by Smt. Kailash Wati". In the affidavit Ex.PW2/1 sworn on 24.9.76 again he described himself as the lawful occupant of the property in question for about five years. He again described his mother as owner of the property No.498/1A , Mahavir Block, Bhola Nath Nagar, (sic), Delhi-32. He declared he was living in a portion of the suit property and that the owner Kailash Wati does not charge any rent from him and that her mother was not in a mood to issue No Objection Certificate for reasons not know to him. He again requested for grant of electricity connection.

18. Defendant's explanation in this regard is that he had been advised by DESU authorities that he might mention name of his father or mother as DESU had no concern with that and since there was an electricity meter already installed in the name of his mother he had to mention name of his father in the affidavit. I see this as no explanation at all. There two affidavits do contain clear admission on oath on the part of the defendant in 1976, when both of the parents of the two sides were alive, that Kailash Wati was the owner of the property in question. These affidavits are much later in terms of time to the alleged internal arrangement of 1974 referred to by the defendant. Had there been any such internal family arrangement giving exclusive rights in respect of the suit premises to the defendant, he would have asserted such right for obtaining an independent electricity connection in his name.

20. It was a fact pleaded and alleged by the defendant that the super structure on the two different plots have been developed as one unit. It was, therefore, his burden to prove this as a fact. He has not led any cogent evidence worth the name except his bare word which is not sufficient.

21. The plaintiff has proved on the strength of letter of sanction for construction of super structure of plot no. 16, Bhola Nath Nagar, Shahdara vide Ex.PW1/9 and the sanctioned plan Ex.PW1/8 that the construction was raised at the instance of Smt. Kailash Wati. The sanctioned plan indicates that what was allowed to be constructed was a

building on plot no.16, Mahavir Block, Bhola Nath Nagar Extension, Shahdara having an area of 143 sq.yds. This definitely was a property distinct from any other property. The arguments of the defendant that the site plan was filed without disclosing proper identification of the property is, therefore, totally devoid of merits. He is trying to confuse the issue by making a reference to the purchase of the lot in the name of Rajidnder Pd. And Bros. He appears to be trying to derive undue advantage on this account only because the persons under whose name the said other plot was purchased were members of the said family and because the said plot is closely located.

23. It has been admitted in the course of evidence that Kailash Wati was realizing rent from a Government department which was a tenant on the first floor and that after her death the rent was realized exclusively by the plaintiff from the said tenant. The defendant also does not dispute that plaintiff exclusively sued the tenants of different portions and obtained vacant possession thereof."

7. In my opinion, no fault can be found with the aforesaid discussion and conclusions of the Trial Court. In a civil case, a decision is arrived at on the balance of probabilities. When two views are possible, the Trial Court is free to adopt one view and which view will not be interfered by this Court, unless the said view is perverse and causes injustice. In the present case, once we give due emphasis to the admitted position of the appellant/defendant admitting the mother to be the complete owner of the property without any interference from anyone the conclusion of the Trial Court that the respondent/plaintiff after his mother Smt. Kailashwati became the owner of the subject property no. 498-1A cannot be interfered with. I may state that though initially, the learned counsel for the appellant sought to contend that the Will executed by the mother dated 11.5.1977 was not a valid document, however, this argument was given up inasmuch as in the

impugned judgment and decree dated 26.2.2008 in RFA no. 141/2008, it is clearly recorded that the appellant, who was the one of the plaintiffs in the said suit does not dispute the existence of the Will of the mother.

8. Before this Court, the learned counsel for the appellant laid great emphasis on the fact that once the property nos. 15 and 16 which were purchased by Smt. Kailashwati by means of the sale deed dated 30.9.1957 and the property nos. 15 and 16A which were purchased in the name of Rajender Prasad by the sale deed dated 18.5.1946 have been found to be adjacent properties and parts of both the properties were acquired towards road widening it should be held that the present property which is standing in the name of Smt. Kailashwati should automatically be held to be also a part of property nos. 15A and 16A. It is argued that the present construction which exists is in fact standing on part of the property which was purchased by the sale deed in the name of Kailashwati and a part of the property which was purchased in the name of Shri. Rajender Prasad.

In my opinion, this contention of the learned counsel for the appellant is misconceived because by virtue of the documents being the sanction letter and sanction plan, Ex.PW-1/9 and Ex.PW-1/8, it is clear that sanction was granted only to Smt. Kailashwati and that too for plot no. 16. Therefore, it is Smt. Kailashwati who would be the owner of the construction. If the construction was not only on the plot of Smt. Kailashwati but the construction was also on the plot belonging to the other sons in whose names there exists the sale deed dated 18.5.1946, then, the application for sanction of construction would have been made not only by Smt. Kailashwati but also

the other sons making them the co-applicants in the application for sanction of construction and the sanction letter for construction would have referred to not only plot no. 16 but would have referred to also plot nos. 15A and/or 16A. This, however, is not the position. Merely because there appears to be confusion with regard to some part of the property having been acquired for the road widening should not lead to the conclusion that the property in question on which construction has been made in the name of Smt. Kailashwati should not be held to be the property of Smt. Kailashwati. A lot of time has passed since the purchase of the plots by Kailashwati and Rajender Prashad & Bros. Layout has changed by virtue of acquisition of land for road widening. Roads both in the front and sides have been widened. The appellant cannot be allowed to take advantage of certain ambiguities as to what areas were acquired for road widening in view of his own admissions admitting the mother Kailashwati as the owner and also that in the municipal records this property has always been shown to be that of Kailashwati. Also as stated in the judgment disposing of RFA 141/2008 if really the property 498-1A was a property of the other brothers also then these other brothers would surely have pushed their rights on this property and which they have not.

9. In view of the above, I do not find any error in the impugned judgment and decree. The appeal is devoid of merits and is therefore dismissed, leaving the parties to bear their own costs.

10. The respondent has been depositing with this Court a sum of Rs.3,000/- per month pursuant to the order dated 2.4.2008. The amount

deposited by the respondent in this Court along with accrued interest, if any, be released to the respondent.

11. All interim orders, if any, are vacated.

12. The Trial Court Record be sent back

RFA No.141/2008

1. As already stated while dealing with RFA No.226/2000, the challenge by means of the present appeal is to the impugned judgment and decree dated 26th February, 2008 of the Trial Court whereby the suit of the appellants for partition of the property nos.15A and 16A, Bhola Nath Nagar, Shadara, Delhi was dismissed.

2. I may note at the outset that in the impugned judgment and decree, the following relevant observations exist and which are noted for disposal of the appeals :-

“She has very fairly contended before the Court that plaintiffs are not asserting their right over plot No.15 and 16 or on any construction raised thereupon and they have sought partition with respect to the property which has been erected in part upon plot No.15A and 16A. It has been claimed that the description of the properties as given in the two sale deeds and the boundaries described therein would clearly specify that both the properties were adjacent to each other. It has also been argues by her that construction was raised by consolidated efforts and funds of both the sides and, therefore, the plaintiffs are justified in seeking partition with respect to the property which had been purchased in the name of *Rajinder Prasad and brothers.*”

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“It had also been claimed that legal representatives of Shri Rajinder Prasad Aggarwal never consented to the filing of the suit and their signatures had been obtained by playing a

fraud and misrepresentation. He had also argued that none of them have either signed the replication or have entered into witness box which reveals that they are hardly concerned with the present matter.”

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“It has been claimed before me that plaintiffs are not staking their claim over any portion on plot No.15 and plot No.16. Such plots were owned by Smt. Kailashwati and by virtue of her last will, the same were bequeathed in favour of defendant No.1 herein and, therefore, defendant No. 1 is the sole and exclusive owner of plot No.15 and plot No.16 and also of the construction raised over plot No.15 and plot No.16.”

3. The Trial Court has dealt with the core issue in the impugned judgment and decree as issue no. 4 as to “whether the plaintiffs/appellants are entitled to the relief of partition?” While discussing the said issue, reference is made to the judgment and decree dated 28.3.2000 passed earlier in the suit filed by the respondent in this appeal and who was the defendant no. 1 in the suit from which this appeal is preferred and who was the plaintiff in the suit in which the judgment and decree dated 28.3.2000 was passed. In a sum and substance, the Trial Court has said that there is a big question mark as to what is the exact location and identification of property nos.15A and 16A and therefore there can be no question of granting the relief of partition. I have already discussed this aspect at the end of para 8 in the judgment in RFA 226/2000. The contention of the respondent/defendant has been noted by the Trial Court that the suit was in fact a counter blast to the earlier suit which was filed against one of the appellant Sh. Ram Avtar Aggarwal by the defendant no. 1/Kanti Prasad Aggarwal and which was decided by the judgment and decree dated

28.3.2000. It has been held that the appellant failed to discharge his onus that the property of which partition is sought is property no. 15A & 16A. The fact that the other brothers i.e. other sons of Kailashwati did not pursue the suit because none of them stepped into the witness box in support of their claim to the property which is alleged to be on plot 15A & 16A although they were the plaintiffs who claimed rights in this immovable property.

4. I must note that the decision in the present appeals has been fraught with certain uncertainties and which uncertainties also existed before the Trial Court which passed the impugned judgments and decrees dated 28th March, 2000 and 26th February, 2008. This is because enough clarity has not emerged as to what is the exact area and portion which was acquired by the Government for road widening and whether the property nos. 15A/16A still continues to exist or if it exists, then does it still exist pursuant to the sale deed of the year 1946. But for the reasons I have already given at the end of para 8 of the judgment in RFA 226/2000, and not repeated here to avoid repetition, the appellant cannot take advantage of the apparent confusion created by him.

5. A civil case is decided once the entire evidence is led by both the parties and after putting the same in a melting pot. A picture which emerges is then taken into consideration by the Court to pass a judgment on balance of probabilities. I do not feel that the impugned judgments and decrees should be interfered with especially because of the clear cut admissions in the affidavits executed by the appellant Sh.Ram Avtar Aggarwal of the year

1976 where he had admitted the mother Smt. Kailashwati to be the complete and exclusive owner of the property no. 498-1A. Also, if there existed actually as of today property on plot nos. 15A and 16 A, the onus was upon the appellants to discharge as to where is the sanction plan for construction of the said property and if that was so why the same has been treated all times in the ownership only of Smt. Kailashwati. Also after the death of the mother, the same has been dealt with as the exclusively owned property of the respondent no. 1 at all points of time and at no point of time any objection was raised to the same.

In my opinion, enough litigation has been carried on between the family members in this case and which has continued from 1996 for a portion of just one room with bath room and WC along with a Verandah and a portion of passage. This portion/value is not of such high stakes that a quietus should not be given to the litigation, more so because the appellant Sh. Ram Avtar Aggarwal is not living in the subject property but is having his own property at Shalimar Park, Shadara, Delhi.

6. Once again while dealing with this appeal I would seek to reiterate that merely because two views are possible and one view is adopted by the Trial Court, this Court is not entitled to interfere in the impugned judgment and decree unless there is gross illegality or perversity. I do not find that there is any such illegality or perversity in the impugned judgment and decree and in fact equity is quite clearly in favour of the respondent Sh. Kanti Prasad Aggarwal in view of the documents pertaining to

sanctioning and construction on the property no. 16, now referred to as property no. 498-1A and also the affidavits executed by Sh.Ram Avtar Aggarwal admitting the mother to be the exclusive owner of the property.

7. In view of the above, I do not find any merit in this appeal also and the same is dismissed leaving the parties to bear their own cost.

8. All interim orders, if any, are vacated.

9. The Trial Court Record be sent back.

JANUARY 20, 2011
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VALMIKI J. MEHTA, J.