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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA 373/2011

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14th November, 2011

AJAYPAL SINGH & ORS

..... Appellants

Through : Mr. S.K. Duggal, Advocate.

versus

SHAMSHER SINGH

..... Respondent

Through : Mr. Ajay Kapur, Sr. Advocate with
Mr. Harshbir Singh Kohli and
Mr. Dinesh Kumar, Advocate.

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. The challenge by means of this Regular First Appeal filed under Section 96 of Code of Civil Procedure is to the impugned judgment and decree dated 31st January, 2011 passed by the Trial Court. By the said impugned judgment and decree the Trial Court has dismissed the suit for declaration and possession filed by the appellants/plaintiffs with

respect to the suit property being house No. 127, Zamrud Pur Village, New Delhi. The suit property is built on a plot of 133 sq. yards.

2. The brief facts of the case are that the appellants/plaintiffs claimed to be the owners of the suit property and thus prayed for a declaration to that effect. In the plaint it was stated that the documents executed by their father late Shri Shanti Swarup in favour of the original defendant Shri Shamsher Singh were forged and fabricated documents and which be declared to be of no effect. The case of the plaintiffs was that the suit property is an ancestral property and their father was not the sole owner of the said property and hence could not transfer the same to the original defendant, now represented by his legal heirs/respondents.

3. Original defendant laid out a defence that rights in the property in question was purchased by means of an Agreement to Sell, Power of Attorney, affidavit, receipt and Will dated 15th March, 1985. The will in question was registered. By such documents the original defendant acquired rights in the property by virtue of Section 53A of the Transfer of Property Act, 1882 (doctrine of part performance) and Section 202 of the Indian Contract Act, 1972 (irrevocability of a power of attorney given for consideration). It was pleaded that originally the defendant was a tenant in the suit property which was taken on rent on 4th June,

1974 at Rs.300/- per month and subsequently the same was purchased by means of the aforesaid documents of the year 1985. It was, thus, pleaded that the suit was liable to be dismissed.

4. After completion of pleadings, following issues were framed by the Trial Court:-

- “1. Whether the plaintiff is entitled to the declaration, as prayed for? (OPP)
2. Whether plaintiffs are entitled to possession of the suit property i.e., House No. 127, Zamrudpur Village, New Delhi? (OPP)
3. Relief.”

5. The trial Court dismissed the suit on two main grounds. The first ground is that the appellants failed to prove their title in the suit property and the second main ground was that the suit is barred by limitation.

6. Learned counsel for the appellants similarly argued before this Court that there was no issue which was claimed as limitation and that the property was an ancestral property and therefore their father late Shri Shanti Swarup has no rights to transfer the property claiming it to be his exclusive property.

7. In my opinion, the appeal is without any merits and is, therefore, liable to fail. The appellants, who were plaintiffs in the trial Court if

they claimed to be the owner of the suit property, the onus of proof was thus admittedly on them to show that they were the owners of the property and that their father was not the sole owner of the property. It is admitted by learned counsel for the appellants that no documents have been filed at all to show that the suit property was an ancestral property. It is however, argued that the documents of the year 1985 by which rights of the property were transferred only mentions the father to be the owner without mentioning how the title was acquired. In my opinion, the appellants were the plaintiffs in the trial Court, and therefore the onus lay on them to show that they were the owners of the suit property and not the other way round.

8. In this case, the third party rights had come into existence since 1985 in favour of the respondents and, therefore, it is not possible to lightly disturb their ownership and possession qua the suit property merely because the appellants have laid out a case that the father was not the sole owner. I may note that at no point of time during the life time of the father, the appellants had challenged the rights of the original defendant in the suit property and it was only after the death of the father that the subject suit came to be filed. Accordingly, I concur with the findings of the trial Court that the appellants have failed to discharge the onus to entitling them to declaration and

possession as prayed for.

9. The argument of the learned counsel for the appellants that there was no issue of limitation and, therefore, the suit should not have been dismissed as being barred by limitation is an argument which is bound to fail because, firstly, a specific issue was framed that whether the plaintiff was entitled to declaration with respect to the cancellation of the documents executed in the year 1985. Once the onus of this issue is upon the appellants/plaintiffs, they had to show that they were entitled to declaration and the trial Court could have therefore looked into the issue whether such claim for declaration is within limitation for the appellants/plaintiffs to be entitled to the same. Also, I may note that as per Section 3 of the Limitations Act, 1963 every Court is bound to consider the issue of limitation although no such defence is laid out. It cannot be disputed that the entitlement with respect to declaration/cancellation of documents is governed by Article 58 of Schedule (1) of the Limitation Act, 1963 as per which a suit to challenge the documents has to be filed within three years from the date when the knowledge of the document is acquired by the plaintiff. In the present case, as noted by the trial Court, the respondents had made a complaint to the police Ex.PW1/X dated 26th May, 1997 and which also mentions about the earlier complaint dated 9th November,

1996. Admittedly, the appellants were summoned to the Police Station pursuant to these complaints and this aspect is also admitted in the pleadings and as a result of which they had come to know of the documents executed by their father in favour of the defendant. The suit, however, was filed fifteen years after the execution of the documents in the year 1985 v.i.z. on 6th July, 2000. I have already noted that during the life time of the father, the plaintiffs/appellants never claimed any rights in the suit property as the rights of the same were sold by their father by documents in the year 1985. The trial Court in my opinion is therefore justified in arriving at a finding that the suit was barred by limitation.

10. A civil case is decided on balance of probabilities. Appellants/plaintiffs having failed to discharge the onus to show that the property was an ancestral property, the trial Court rightly dismissed the suit. Merely because two views are possible this Court is not entitled to interfere merely because one plausible and possible view has been taken by the trial Court, unless such view is perverse and causes grave injustice. I do not find any perverseness in the judgment and nor any injustice has been caused to the plaintiffs/appellants. Infact, injustice shall be caused to the respondents as rights in the property were purchased way back in the

year 1985 and no suit was filed during the life time of the father.

11. In view of the above, the present appeal is dismissed leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

NOVEMBER 14, 2011

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