

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 24th October, 2011
Judgment Pronounced on: 31st October, 2011

+ RFA(OS) 91/2010

DHARAMWATI Appellant
Through: Mr.S.S.Panwar, Advocate.

versus

SATBIR SINGH & ORS. Respondents
Through: Mr.B.S.Mann, Mr.Rajeshwar Dagar
and Mr.Jitin Tewatia, Advocates.

RFA(OS) 92/2010

MANOHARI DEVI Appellant
Through: Mr.S.S.Panwar, Advocate.

versus

SATBIR SINGH & ORS. Respondents
Through: Mr.B.S.Mann, Mr.Rajeshwar Dagar
and Mr.Jitin Tewatia, Advocates.

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.

1. Appellants, Dharamwati and Manohari Devi are real sisters. They are the daughters of late Chandgi Ram. Their grandfather, late Rai Singh, was blessed with two sons named

Chandgi Ram and Akhey Singh.

2. Chandgi Ram and Akhey Singh were the joint owners, in possession, of two properties, the first comprised in Khasra No.164(3-19) which was assigned Municipal No.84 village Adhchini and the second being plot ad-measuring 153 sq.yd. assigned Municipal No.43 village Adhchini.

3. From his marriage with Smt.Gopali, Chandgi Ram was blessed with four sons and five daughters, one of whom, Smt.Khazani, died in the year 1965.

4. On the death of Chandgi Ram in the year 1958, his half share in the two properties was inherited by his widow, four sons named Hardwari, Sardar Singh, Raghubir Singh and Kartar Singh, and four daughters named Smt.Risali, Smt.Kalawati, Smt.Manohari Devi and Smt.Dharamwati. For reasons unknown, neither party has explained as to what happened to the right of Smt.Khazani who died in the year 1965 i.e. seven years after the death of Chandgi Ram. Probably, after marriage she had so separated from the family that every body forgot about her and gave no share to her.

5. Upon the death of Smt.Gopali, her share was inherited by her four sons and four daughters.

6. In the year 1980, the sons of late Chandgi Ram sought partition of the land comprised in Khasra No.164(3-19) village Adhchini by filing an application before the Revenue Authorities. The claim was registered as Case No.37/RA/1980 and vide order dated 19.9.1980, the property was partitioned. At the partition, Dharamwati and Manohari Devi were assigned four biswa i.e. 200 sq.yd. land each.

7. Sumitra Devi, widow of late Hardwari, challenged

the partition by filing a civil suit, registered as Suit No.781/1980. The suit came to be dismissed in default on 16.8.1983.

8. Before it could be restored, after the suit was dismissed in default, Manohari Devi and Dharamwati and their brothers Sardar Singh, Kartar Singh and Raghubir Singh executed agreement(s) to sell dated 2.9.1983 and as recorded in the various agreement(s) to sell received the sale consideration and parted possession with the land agreed to be sold to defendants No.1 and 2 and their brother Chanderpal, the predecessor-in-interest of defendants No.3 and 4.

9. Pertaining to the two agreements to sell executed by Dharamwati and Manohari Devi on 2.9.1983 it be noted that the same were executed on their behalf by their general power of attorney holder and the sale consideration recorded as fully paid to each one of them is ₹33,225/-. A will of even date and a receipt of even date stands registered with the Sub-Registrar, Delhi.

10. During the pendency of Suit No.781/1983 instituted by Sumitra Devi & Ors. against Sardar Singh & Ors., Sardar Singh and his sisters, which included Manohari Devi and Dharamwati, filed a counter suit seeking partition of the same property i.e. the one of which partition was sought vide Suit No.781/1983, which suit was registered as Suit No.754/1985.

11. What a lawyers' delight! Two suits between same parties for same relief!

12. On being restored Suit No.781/1980 was decreed on 16.9.1997 pursuant to a compromise and the order dated

19.9.1980 passed by the Revenue Authorities partitioning the land was set aside. Fresh decree for partition was passed in which Manohari Devi and Dharamwati were given 300 sq.yd. land each as against 200 sq.yd. each which was given to them when partition took place before the Revenue Authorities.

13. On 19.11.1997, giving effect to the agreement(s) to sell dated 2.9.1983, two sale deeds Ex.DW-1/1 were executed by the general power of attorney of Manohari Devi and Dharamwati in favour of the purchasers.

14. It is not in dispute that defendants No.1 and 2 along with their brother late Chanderpal initiated a discussion with Manohari Devi and Dharamwati for acquisition of the 100 sq.yd. land each allotted to Dharamwati and Manohari Devi as per decree dated 16.9.1997 and for a sale consideration in sum of ₹30,000/- each paid to both of them, two sale deeds (Ex.P-1) dated 27.3.1998 were executed on their behalf by their general power of attorney. The two sale deeds, both exhibited as Ex.P-1, are dated 27.3.1998 and neither is registered for the reason after they were presented to the Sub-Registrar for registration, Manohari Devi and Dharamwati did not give their consent.

15. Under the two sale deeds, it stand recorded that possession of the 100 sq.yd. land sold under each sale deed has been handed over to the purchasers and the sale consideration in sum of ₹30,000/- has been received by Manohari Devi and Dharamwati.

16. Dharamwati filed Suit No.1262/2002 and Manohari Devi filed Suit No.1263/2002. The complaints are identically worded. Relief prayed is a decree for possession qua 300

sq.yd. of land comprised in Khasra No.164 in favour of each plaintiff and against the defendants. Damages have also been prayed for.

17. Narrating the facts as to how the ancestral property devolved on the two sons of late Rai Singh and how further devolution took place, as per facts noted herein above, it has been asserted in the plaint that agreement to sell dated 2.9.1983 in a meager sum of ₹33,225/- was ex-facie not commensurate with the market value of the land and that the general power of attorney holder of Manohari Devi and Dharamwati had executed the agreements to sell without the knowledge of the two sisters. It is asserted that under the agreement to sell(s) dated 2.9.1983, though so recorded, the purchasers never came in physical possession of the property. But, it needs to be noted that the sale deed(s) dated 19.11.1997, both exhibited as Ex.DW-1/1 pertaining to the sale of 200 sq.yd. land each have not been challenged. Challenge to the sale deed(s) dated 27.3.1998 is on the ground that agreed sale consideration was ₹10 lakhs, but an attempt was made to purchase the 100 sq.yd. land each at a sum of ₹30,000/- each i.e. the sum mentioned in the sale deed(s) dated 27.3.1998. Asserting that after the sale deed(s) dated 27.3.1998 were executed the plaintiffs approached defendants No.1 and 2 and Chanderpall requesting that they be paid ₹9,70,000/- so that the sale deed(s) could be got registered and alleging that the amount was never paid, suit was filed for the reliefs as above noted. It be highlighted that qua the agreement(s) to sell dated 2.9.1983, the only allegation is that there was inadequacy of consideration. It be also

highlighted once again that the sale deed(s) dated 19.11.1997 were not challenged.

18. The defence of the defendants was that the agreement(s) to sell dated 2.9.1983 were validly executed in respect of 200 sq.yd. of land and the sale consideration mentioned therein in sum of ₹33,225/- was the agreed sale consideration. It was asserted in the written statement that the agreement(s) to sell were executed by the general power of attorney of Manohari Devi and Dharamwati immediately after Suit No.781/1980 was dismissed in default on 16.8.1983. It was asserted that after the two cross suits bearing Suit No.781/1980, which was dismissed in default, but later on restored, and Suit No.754/1985, were compromised and decree passed on 16.9.1997, since share of Manohari Devi and Dharamwati increased by 100 sq.yd. each, the parties discussed sale of extra land to the defendants and in the meanwhile the agreement(s) to sell dated 2.9.1983 were given effect to by execution of the sale deed(s) dated 19.11.1997 and that after discussions it was agreed that balance 100 sq.yd. land each which fell to the share of Manohari Devi and Dharamwati would also be purchased for a consideration of ₹30,000/- each and the payment was made and sale deed(s) dated 27.3.1980 Ex.P-1 were executed and possession shown to have been handed over, but as a matter of fact the possession was already with the purchasers as the same land were already agreed to be sold to them by the brothers of Manohari Devi and Dharamwati when the subject lands were partitioned pursuant to the order dated 19.9.1980 passed by the Revenue Authorities.

19. That the defendants have in their favour sale deed(s) from the remaining heirs of Chandgi Ram as per which the shares assigned to the heirs of Chandgi Ram when the partition took place before the Revenue Authorities stands sold to them is not in dispute between the parties.

20. With respect to the issue of inadequacy of consideration pertaining to the sale deed(s) dated 19.11.1997 it is pleaded that the price in sum of ₹33,225/- agreed to be paid in the year 1983 qua 200 sq.yd. land was adequate and for the price in sum of ₹30,000/- qua 100 sq.yd. of land agreed to be sold and in fact sold under the unregistered sale deed dated 19.11.1997, it is pleaded that the additional strip, ad-measuring 100 sq.yd. each which came to the share of Manohari Devi and Dharamwati had a front admeasuring 4½ feet and depth of 204 feet. It has been highlighted that its shape was such that it was incapable of being utilized for any purpose and for said reason it was agreed that the 100 sq.yd. land would be sold at a price of ₹300/- per sq.yd.

21. It is apparent from the rival pleading of the parties that there were two main issues to be tried at the suit. The first was: Whether there was inadequacy of consideration when the agreement to sell was executed on 2.9.1983. The second issue was: Whether the sale price to be paid when the sale deed(s) dated 27.3.1998 were executed was ₹30,000/- or ₹10 lakhs. Ancillary issues pertaining to the validity of the agreement(s) to sell dated 2.9.1983 in view of subsequent partition effected as per compromise decree dated 16.9.1997 and the sale deed dated 27.3.1998 also arose and thus 9 issues were framed as under:-

“1. Whether the plaintiff is entitled to the decree of possession, damages and injunction as prayed for? OPP

2. Whether the plaintiff is entitled to the interest on damages, claimed by her? If so, at what rate and for which period? OPP

3. Whether the defendants No.1 and 2 along with their brother, Chander Pal have committed fraud on the plaintiff in getting the sale deeds dated 19.11.1997 and 27.03.1998 executed? OPP

4. Whether the agreement to sell & GPA dated 2.9.1983, executed by the plaintiff in respect of her share of 4 biswa (200 sq.yd.) in land of Khasra No.164(3-19), situated in village Adhchini, New Delhi were valid and binding on the plaintiff after the decision of original Suit No.781/80 titled “Smt.Sumitra Devi & Ors. vs. Shri Sardar Singh & Ors.” and original Suit No.754/85 titled “Shri Sardar Singh & Ors. vs. Smt.Sumitra Devi & Ors.” decided on 16.9.1997 and 22.9.1997 respectively by this Court? OPP

5. Whether the Sale Deed dated 27th March, 1998 is valid and binding on the plaintiff? OPP

6. Whether the Sale Deed dated 19th November 1997 pleaded by the defendant is valid and binding on the parties? OPD

7. Whether the defendants or Shri Chander Pal (the predecessor in interest of defendants No.3 and 4) ever came in legal and actual possession of any land in pursuance of the agreement to sell and GPA dated 2nd September, 1983 and sale deeds dated 19th November, 1997 and 27th March, 1998? OPD

8. Whether the defendants No.3 and 4 are entitled to retain possession of 100 sq.yd. of suit property under Section 53-A of the Transfer of Property Act 1882 by virtue of sale deed dated 27th March 1998? OPD

9. Relief.”

22. In their examination-in-chief as also cross-examination Manohari Devi and Dharamwati accepted the execution of the agreement(s) to sell dated 2.9.1983 as also having received ₹33,225/- each.

23. Thus, the suit qua relief pertaining to the agreement(s) to sell dated 2.9.1983 became liable to be dismissed and has rightly been dismissed for the reason in the pleadings, no other challenge other than on adequacy of consideration has been urged to the agreement(s) to sell dated 2.9.1983. But, we find that it was argued before the learned Single Judge that the agreement(s) to sell dated 2.9.1983 relate to a land situs whereof within the same Khasra was different vis-à-vis the situs of the land within the same Khasra which has been sold. They argued that 200 sq.yd. land allotted to them when partition took place before the Revenue Authorities was at a different site than the 300 sq.yd. land allotted to them pursuant to the compromise decree dated 16.9.1997.

24. Learned Single Judge has held that Manohari Devi and Dharamwati led no evidence that the situs of 200 sq.yd. of land allotted to them when agreement(s) to sell dated 2.9.1983 were executed is different from what ultimately came to be allotted to them at the decree when the suits were compromised on 22.9.1997. The learned Single Judge has noted that simultaneously with the purchase of the share from Manohari Devi and Dharamwati the defendants had purchased the shares from all other co-owners except Sumitra Devi and

Risali Devi. Since the defendants had purchased virtually the entire property, the learned Single Judge has held that it would be difficult to even otherwise believe the stand of Manohari Devi and Dharamwati that the situs of 200 sq.yd. land which was allotted to them when partition took place before the Revenue Authorities was different from the situs of the 300 sq.yd. of land which was subsequently allotted to them, when partition, pursuant to a compromise took place before the Civil Court. The learned Single Judge has also observed that though there were averments qua the inadequacy pertaining to the agreement(s) to sell, the sale deed dated 19.11.1997 was not challenged.

25. We may at once highlight here that the sale deed(s) dated 19.1.1997 convey 200 sq.yd. land each from Manohari Devi and Dharamwati to the purchasers and give effect to the agreements to sell dated 2.9.1983. Qua inadequacy of consideration, the learned Single Judge has highlighted that the sale deed(s) dated 19.11.1997 gave effect to a bargain settled 14 years prior and thus the price in sum of ₹33,225/- for 200 sq.yd. land each, with respect to its stated inadequacy, had to be considered with reference to the past.

26. With respect to the sale deed(s) dated 27.3.1998 (Ex.P-1) pertaining to 100 sq.yd. land each which were admittedly executed by the general power of attorney holder of Dharamwati and Manohari Devi, the learned Single Judge has noted that Dharamwati has studied up to class-X and was a teacher in a government school. She retired from service in the year 2001. Her plea that sale consideration agreed to was ₹10 lakhs and not ₹30,000/- has been negated by the learned

Single Judge on the ground that she is an educated person and that there was no reason to believe that the sale consideration was ₹10 lakhs.

27. Dealing with the issue of the sale deed(s) dated 27.3.1998 being an unregistered document, the learned Single Judge noted that having executed the sale deed(s), Manohari Devi and Dharamwati did not co-operate in the registration thereof, but since sale consideration was paid and possession was with the purchasers, it has been held that the benefit of Section 53-A of the Transfer of Property Act would be available to them.

28. Holding no evidence to sustain fraud being played, either in the year 1983 or in the year 1997 or in the year 1998 i.e. the years when the agreement(s) to sell dated 2.9.1983 and the sale deed(s) dated 19.11.1997 and 27.3.1998 were executed, findings returned on 9 identical issues framed in both suits, as per para 15 of the impugned decision, are as under:-

“Issue No.1: In so far as issue No.1 is concerned, in view of the discussion above, the plaintiffs are not entitled to a decree of possession, damages or injunction.

Issue No.2: In view of the answer to issue No.1 being against the plaintiffs, issue No.2 is also decided against the plaintiffs. Accordingly, plaintiffs will not be entitled to any interest and/or damages as claimed by them.

Issue No.3: This issue is also decided against the plaintiffs. The plaintiffs have been unable to prove that the defendants have committed any fraud in either executing the sale deed dated 19.11.1997 (Ex.DW-1/2) or 27.03.1998 (Ex.P-1). The issue is, accordingly, decided against the

plaintiffs.

Issue No.4: The agreement to sell and GPA of even date, i.e., 2.9.1983 bound the plaintiffs in respect of 200 sq.yd. Khasra No.164(3-19) situated in village Adhchini, New Delhi; inasmuch as the defendants were not a party to either Suit No.781/1980 or Suit No.754/1985 which were decreed on 16.9.1997 and 22.9.1997 respectively based on a compromise arrived at between the parties to the said suits. The agreement to sell and the GPA of even date, i.e., 2.9.1983 were valid and subsisting, insofar as, the defendants were concerned, since the plaintiffs, did not file any proceedings for being relieved of the obligations contained in agreement to sell dated 2.9.1983 and GPA of even date, i.e. 2.9.1983. Accordingly, this issue is decided against the plaintiffs.

Issue No.5: This issue is also found against the plaintiffs. The sale deed dated 27.03.1998 (Ex.P-1), even though unregistered, is a valid contract which binds the plaintiffs to the obligations undertaken by them under the said agreement. This issue is also decided against the plaintiffs.

Issue No.6: The sale deed dated 19.11.1997 (Ex.DW-1/2) is also a valid agreement, which is binding on the plaintiffs, in view of the fact that they had executed a GPA dated 2.9.1983 based on which the sale deed dated 19.11.1997 (Ex.DW-1/2) was executed. The defendants have been able to discharge their onus with regard to this issue. The issue is found in favour of the defendants.

Issue No.7: This issue is also found in favour of the defendants. Based on the evidence, it is clear that defendant No.2 came in possession of the land, which was subject matter of the agreement to sell and GPA of even date, i.e. 2.9.1983, as also the sale deed dated 19.11.1997 (Ex.DW-1/2). Similarly, late Sh.Chandra Pal, the

predecessor-in-interest of defendant Nos.3 and 4, came to possess the 100 sq.yd. of land, which was subject matter of the sale deed dated 27.3.1998 (Ex.P-1). The defendants have been able to discharge their onus in regard to the said issue.

Issue No.8: This issue is consequently found in favour of defendants No.3 and 4. They are, in my opinion, entitled to shield their possession of 100 sq.yd. of the suit property falling in Khasra No.164 of Municipal Property No.84, by taking recourse to the provisions of Section 53-A of the Transfer of Property Act; having fulfilled their obligations under the unregistered sale deed dated 27.3.1998 (Ex.P-1). The failure, if any, in the completion of the transfer, was that of the plaintiffs.”

29. Not finding any fault with the reasoning of the learned Single Judge, with respect to the evidence led, at the hearing of the appeal(s) Sh.S.S.Panwar, learned counsel for the appellants challenged the sale deed(s) dated 19.11.1997 by urging that an agreement to sell loses validity after three years. Learned counsel urged that no sale deed being executed pursuant to the agreement to sell dated 2.9.1983 within 3 years thereof, the sale deed(s) dated 19.11.1997 were illegal.

30. With reference to para 12 of the two sale deeds, where date of no objection obtained from the Revenue Authorities is recorded being as per letter No.265 dated 3.2.1998, learned counsel questioned the authenticity of the narratives in the sale deed(s) by urging: How come a sale deed dated 19.11.1997 makes a reference to a sale permission obtained on 3.2.1998.

31. The appellants cannot be permitted to challenge

the two sale deeds dated 19.11.1997 for the reason, as noted by the learned Single Judge, as plaintiffs in the two suits, they have not challenged the two sale deeds dated 19.11.1997. As noted herein above the two have only questioned the adequacy of the consideration in sum of ₹33,225/- recorded in the agreement(s) to sell dated 2.9.1983 and qua which we agree with the findings returned by the learned Single Judge that there was no evidence to show that as of the year 1983 said sale price of land ad-measuring 200 sq.yd. each within a village abadi was inadequate.

32. Be that as it may, we deal with the two submissions. The first plea, questioning the sale deed(s) dated 19.11.1997 has to be simply noted and rejected for the reason if there is a dispute pertaining to an agreement to sell, limitation prescribed to enforce the agreement to sell is three years from the date when the cause of action accrues. But, nothing prevents the parties to take an agreement to sell to its logical conclusion, by executing a sale deed, at any point of time. The reason why the agreement(s) to sell dated 2.9.1983 fructified in the sale deed(s) being executed on 19.11.1997 is self-evident from the facts noted herein above.

33. When the Revenue Authorities partitioned the land vide order dated 19.9.1980, at which partition Dharamwati and Manohari Devi were assigned 200 sq.yd. land each, before they could deal with the lands, Civil Suit No.781/1980 was filed. The suit was dismissed in default on 16.8.1983 and immediately thereafter Manohari Devi and Dharamwati and their brothers executed agreement(s) to sell dated 2.9.1983 in favour of defendants No.1, 2 and Chander Pal, husband of

defendant No.3 and father of defendant No.4 and one Dharampal. Before the agreement(s) to sell could fructify into sale deed(s), Suit No.781/1980 which was dismissed in default on 16.8.1983 was restored on 1.9.1983. It was only when the suit got compromised on 16.9.1997 that the stage was reached to give effect to the agreement(s) to sell by executing a sale deed(s). Thus, there is nothing unusual or unnatural in the agreement(s) to sell dated 2.9.1983 fructifying into sale deed(s) dated 19.11.1997.

34. The second argument: How come the sale deed(s) dated 19.11.1997 have a reference to a sale permission dated 3.2.1998 is not available to the appellants for the reason they never questioned the sale deed(s) on said plea. Having not questioned the sale deed(s) on the said plea, they cannot advance an argument and take the defendants by surprise. But we find an answer to the apparently logical plea urged by Manohari Devi and Dharamwati. The answer is that the sale deed(s) dated 19.11.1997 were presented for registration on the same day but registration was kept pending to await sale permission from the Revenue Authorities which came on 3.2.1998 and thus, though a technically incorrect thing permitted to be done by the Sub-Registrar, in para 12 of the sale deed(s), it was recorded, by hand, that sale permission was obtained on 3.2.1998; resulting in the sale deed(s) being registered by the Sub-Registrar on 19.2.1998.

35. As regards the challenge to the executed but unregistered sale deed(s) dated 27.3.1998, the appellants admitted having executed the two sale deeds, both dated 27.3.1998, pertaining to 100 sq.yd. land but took a stand that

the agreed sale consideration was ₹10 lakhs and not ₹30,000/-.

36. Manohari Devi and Dharamwati are sisters. They were fighting the litigation together. Though Manohari Devi is not much educated but Dharamwati is high-school graduate and had been teaching in a government school. Thus, it would be difficult to believe that the two sisters were tricked. That apart, no evidence has been led by the two sisters to prove what was the market value of land in village Adhchini in the year 1998 when they agreed to sell the additional 100 sq.yd. land which came to their share when the ancestral lands were partitioned as per compromise in a civil suit. That apart, the additional strip of 100 sq.yd. land which fell to their share, as noted herein above, has a front of 4½ feet and a depth of 204 feet. This narrow strip of land is a useless piece of land as a single entity strip and is of no use to any person but would be of some use to the owner of the adjoining land, which ownership is admittedly that of the defendants and this peculiar odd physical feature of the land would obviously impact its sale price.

37. A feeble attempt to rely upon L&DO rates published in a book during hearing of the appeals is an attempt which needs to be noted by us, being made by learned counsel for the appellants, so that the record is complete. But, no such notification was proved at the trial and thus we refuse to look into the same. That apart, the notification in question pertains to rates fixed by L&DO to charge unearned increase pertaining to developed colonies under the ownership of L&DO when perpetual lease hold rights by perpetual lessees under L&DO are transferred and not to abadi land in villages in Delhi.

38. The last argument pertaining to the sale deed(s) dated 27.3.1998 not being registered and hence no right being conveyed to the purchasers, has been rightly answered by the learned Single Judge with reference to Section 53-A of the Transfer of Property Act.

39. The two appeals fail and are hereby dismissed with costs in favour of the respondents and against the appellants.

(PRADEEP NANDRAJOG)
JUDGE

(S.P.GARG)
JUDGE

OCTOBER 31, 2011
dk