

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

+ **RFA No.454/2008**

% **24th November, 2011**

SANGAM LAL

..... Appellant

Through: Mr. A.K. Verma, Advocate with Mr.
Arun Kumar, Advocate and Mr. Vibhu
Verma, Advocate.

versus

NIRMAL KUMAR AGRAWAL & ANR.

..... Respondents

Through: Mr. K.K. Rohatgi, Advocate with Mr.
Sarvesh Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree of the trial Court dated 23.8.2008. By the impugned judgment and decree, the trial Court decreed the suit for partition, possession and permanent injunction filed by the respondent No.1/plaintiff with respect to the suit property being House No.49, Shanti Vihar, I.P. Extension-2, Karkardooma, Delhi constructed on a plot admeasuring 180 sq. yds. The appellant who is the brother of the respondent No.1/plaintiff was the defendant No.1 in the suit and was the only person who contested the suit. The respondent No.2 herein, the other brother, was the defendant No.2 in the suit, supported the case of the respondent

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No.1/plaintiff.

2. The case set up by the respondent No.1/plaintiff was that he and the respondent No.2 had contributed the monies towards the purchase of the suit plot with respect to a perpetual sub-lease deed which was executed and registered on 2.4.1979 in favour of the appellant/defendant No.1. It was stated that since the monies were paid by the respondent No.1/plaintiff and respondent No.2, the appellant/defendant No.1 executed and registered on 16.12.1982 a gift deed in favour of the respondent No.1/plaintiff and the defendant No.2/respondent No.2 giving 1/3rd ownership rights in the suit plot to the respondent No.1/plaintiff and respondent No.2/defendant No.2. It was further the case of the respondent No.1/plaintiff in the plaint that mutation of the suit property was also done in favour of all the three brothers by the Delhi Development Authority (DDA) vide DDA's letter dated 21.2.1983. The respondent No.1/plaintiff also claimed to have paid monies towards construction of the premises alongwith respondent No.2/defendant No.2. Whereas the respondent No.1/plaintiff paid a sum of ₹ 55,500/-, the defendant No.2 had paid ₹ 1,20,450/-. It was further the case of the respondent No.1/plaintiff in the plaint that all the three brothers jointly applied for conversion of the property from lease hold to free hold vide their application dated 31.3.1993 and the DDA had executed and registered the conveyance deed of the suit property in favour of all the three brothers on 12.8.1994. The respondent No.1/plaintiff stated that when he came to Delhi on 14.9.2003, the

attitude of the appellant/defendant No.1 had changed and when the respondent No.1/plaintiff asked for partitioning of the property, the appellant/defendant No.1 refused, whereupon a legal notice was sent and ultimately the subject suit came to be filed.

3. The appellant/defendant No.1 in the written statement firstly claimed that the gift deed was in fact a sale and therefore bad in law. It was further claimed that all the documents; whether it be the gift deed or the conveyance deed or the letters issued by him to the DDA for mutation in the joint names of all the three brothers or for issuing of conveyance deed in the joint names of all the three brothers; were got executed on account of fraud, undue influence and deception. The appellant/defendant No.1 pleaded that he was the sole owner of the property. It was also claimed that the property cannot be transferred in the name of the respondents inasmuch as they were not the members of the society and anyone who was not a member of the society could not be the owner of the property. It was further pleaded that the appellant/defendant No.1 had agreed to sell 1/3rd share of the property to each of the two brothers/respondents but the respondents had stated that execution of the sale deed would be costly and therefore a gift deed was executed for consideration. It was claimed that the appellant/defendant No.1 did not receive the balance consideration which was agreed to be paid considering the market value of the house and therefore the gift deed was bad. It was also pleaded that the appellant/defendant No.1 had taken certain loans from the two brothers

and in consideration of which the gift deed was executed because the appellant/defendant No.1 was unable to repay the loans. It was therefore prayed by the appellant/defendant No.1 that the suit be dismissed.

4. The trial Court, after completion of pleadings, framed the following issues:-

- “1. Whether the gift deed dated 16.12.1982 relied upon by the plaintiff is in fact an agreement to sell and had been obtained by way of fraud, undue influence and deception as claimed for by the defendant no.1 in Preliminary Objection No.7 of his written statement? OPD1
2. Whether the gift deed dated 16.12.1982 was made for consideration as claimed for by defendant no.1 in his written statement? If so, its effect? OPD1
3. Whether the plaintiff is entitled to the relief of partition as prayed for by him in the present suit? OPP
4. Whether the plaintiff is entitled to recover possession as claimed for by him in the present suit? OPP
5. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for by him in the present suit? OPP
6. Relief.”

5. The respondent No.1/plaintiff filed and exhibited various documents and which included the gift deed being Ex. P-3, the conveyance deed executed by the DDA in favour of all the three brothers as Ex.P6, the letter dated 17.11.1979 to the Secretary of the society by the appellant/defendant No.1 to include the names of the brothers as joint sub-lessees as Ex.PW2/1, the letter of the society to the DDA to include the names of the respondents as co-lessees as Ex. PW2/3, DDA's letter accepting the names of all the three brothers as joint co-lessees as Ex.PW3/2.

The defendant No.1/appellant also led his evidence and orally deposed with respect to the coercion, undue influence and deception besides the fact that the gift deed was not validly attested and that the same was given for consideration and hence bad. Defendants also filed various documents which in fact supported the respondents. Ex.DW-1/4 is the letter dated 29.12.1982 written to the DDA and the same is in reference to the letter from the DDA dated 22.7.1982 granting permission to the appellant/defendant No.1 for executing a gift deed of an unspecified 1/3rd share in the plot to the respondents/brothers. Ex.DW1/P5 is the indemnity bond executed by the appellant/defendant No.1 dated 5.4.1982 disclosing his desire to add the names of his brothers as co-lessees. Documents Ex.DW-1/P7, P-8 and P-9 are the undertaking, affidavit and indemnity bond dated 28.3.1993 for execution of the conveyance deed in favour of all the three brothers.

6. The trial Court has disbelieved the stand of the appellant/defendant No.1 of undue influence and coercion by making the following pertinent observations, which I agree with and adopt:-

“The gift deed was executed on 16.12.82 and till 2004 when the written statement was filed the defendant no.1 did not question the gift deed. Rather he acted on the basis of the existence of a valid gift deed. He first informed his society of his intentions in 1979 when he sent the letter dated 17-11-1979 to the Secretary for inclusion of the names of his brothers as joint sublessees, which for the inclusion of their names as co-lessees. The letter of the society is Ex.PW2/3. The letter of the Defendant no.1 is Ex.PW3/1. The conveyance deed Ex.P-6 was executed in favour of all 3 brothers on 12.08.1994. Thereafter the defendant no.1 applied for conversion of the property from lease hold to free

hold.

On the application of the defendant no.1 and the Society, the DDA had accepted the names of all 3 brothers and vide letter Ex.PW3/2 had even mutated the plot no.49 in their joint names on 21.2.1993 much prior to the issuance of the conveyance deed. The record shows that throughout the defendant no.1 submitted to the authorities that his brothers were co-owners with him on the basis of the gift deed. He even annexed the copy of the gift deed with the applications including for mutation, Ex.PW3/1 dated 11/1/1983. This letter is signed only by him. He has even signed letters on behalf of his two brothers following up with the DDA in respect of the conveyance deed forms for the issuance of the title deeds vide letter Ex.PW3/4.

From December 1982 till 2004 the defendant no.1 never raised the plea of coercion, fraud, undue influence and deception in the execution of the gift deed. In his cross-examination he has claimed that he was scared of his brothers. This is indeed a spacious plea. On the one hand the defendant no.1 claims that he was afraid of his brothers and on the other hand he claims that his brothers were not residents of Delhi while again admitting that his brother, the plaintiff used to come to Delhi often and live with him for a few days and would even pay a visit to him for a few hours. The defendant no.1 is a highly educated person and even after retirement is involved in prestigious research projects of the Government of India. He is not a naïve, helpless, illiterate person who could be tricked by his brothers. If indeed he had been under coercion or threat it is clear he would have taken action particularly in the absence of his brothers from Delhi. Interestingly the defendant no.1 has not disclosed the reason of his fear or that kind of threat had been held out to him, what kind of harm was being avoided by him by acceding to the demands of his brothers.

The deposition of the defendant also shows that the defendant no.1 has a son. It does not appear possible that the defendant no.1 would have lived 22 years of his life in abject fear of his brothers who admittedly are not antisocial or gunda elements but are themselves highly educated persons. No event in the life of defendant no.1 has been brought forth which would support his claim that indeed despite physical distance between them, the brothers while remaining at Varanasi was able to control the actions of defendant no.1 as if he were a mere puppet by subjecting him to great fear. The defendant no.1 has not stated even in his testimony on oath that during the visits of the plaintiff there were only unruly scenes where the plaintiff was interested only to pressurize defendant no.1 into doing

various acts abdicating his rights in the suit property.

It has to be seen that the Delhi Housing & Land Development Cooperative Society Ltd. had been granted the perpetual sublease on 02.04.1979. The sublease was executed in favour of the defendant no.1 Sangamlal on 16.06.1979 vide an agreement Ex.P-2. PW-2, the Secretary of the said society has deposed that on 17.11.1979, Sh. Sangam Lal had written a letter to the society requesting that both his brothers be enrolled as joint members. The copy of this letter has been placed on the record as Ex.PW-2/1. The society vide resolution dated 05.04.81 accepted the application and a letter was also written by the society to the under Secretary Land and Building Department, Delhi Administration, copy of which is Ex.PW-2/3. These events have taken place prior to the execution of the gift deed dated 16.12.82 while claiming that the gift deed had been executed by the defendant no.1 under coercion the defendant no.1 has not explained why he in 1979 i.e. within a few months of the allotment of the plot vide Ex.P-2 was asked about the use of the words "some family consideration" appearing in Ex.PW2/1. Obviously PW-2 was unable to explain what were these family considerations. Obviously, the best person to explain the use of such language was the defendant no.1 who has conveniently kept mum about it.

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That the defendant no.1 is lying through his teeth is apparent from the manner in which he has deposed in his cross examination of 21.04.08, where in respect of every document he claims that he had been pressurized by the plaintiff and coerced into signing the documents prepared by the plaintiff. It would be interesting to see what are these documents that the defendant no.1 as DW-1 has claimed that he had signed on being coerced and forced and pressured into signing by the plaintiff.

Ex.DW-1/4 is a letter dated 29.12.1982 which the plaintiff claims he had been coerced into signing. This letter is with reference to a letter from the DDA dated 22.07.1982 granting permission to the defendant no.1 for the gift of unspecified 1/3rd share each in plot no.49 in Delhi Housing & Land Development Cooperative Society Ltd. subleased in favour of Sangam Lal, in favour of his brothers Prem Kumar Aggarwal and Nirmal Kumar Aggarwal. It is a letter which enclosed a certified copy of the gift deed with a further request that mutation be also recorded. This letter would show not only the fact that the defendant no.1 had himself sought permission for including names of his brothers vide an earlier letter but also that the gift deed of 16.12.1982 was a

follow up of the permission accorded by the DDA on 22.07.82 almost 5 months prior to the execution of the gift deed. No circumstance has been disclosed and revealed by the defendant no.1 which would suggest either that there was coercion in July 1982 or in December 1982 when this letter was sent to the DDA.

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Ex.DW-1/P-6 is a letter from the 3 brothers to Lease Administrative Officer, DDA. The defendant no.1 as DW-1 had this to state about this document. While admitting that he had signed this letter which is dated 04.12.86 he claims that the plaintiff and the defendant no.2 had prepared the documents and placed the documents before the defendant no.1 covering the contents with their hands and had compelled him to sign the letter. It is a letter in response to the DDA's letter dated 19.08.96 and informs the DDA that the "Building on the plot no.49 has already been built by us" and "a Photostat copy of the completion certificate is attached herewith". A request was also made that future letters be addressed at 49, Shanti Vihar, IP Extension II, Delhi-92. The letter does not contain any fact that would be against the interest of Sangam Lal. Why would then the plaintiff and defendant no.2 covered the contents of this letter to force Sangam Lal to sign a letter informing the DDA of his new address and of the fact that the building had been constructed and which information was being sent to the DDA as required by the DDA vide earlier letter. This clearly discloses the intention of the defendant no.1 to put across a false case of coercion and undue influence as well as fraud.

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The defendant no.1 has denied the receipt of the conveyance deed as mentioned in Ex.DW-1/P-11, even claiming that he had not received this letter. However Ex.PW-3/4 is a letter written by the Sangam Lal in response to and with reference to this letter dated 17.05.94, enclosing 3 copies of the unsigned conveyance deed forms duly stamped by the Collector of Stamps. Significantly this letter has been signed only by Sangam Lal and from the document it is clear that Sangam Lal signed this letter on 28.06.94 not only for himself but 'for' Prem Kumar Aggarwal and 'for' Nirmal Kumar Agarwal. The defendant no.1 has no explanation how this happened.

The numerous documents that have been brought on the record from official custody date before and after the execution of the gift deed dated 16.12.82, since 1979 till issuance of the conveyance deed on 12.08.1994. The

defendant no.1 continued to act with the complete intentions of including the names of his brothers as to owners in the suit property for such an entire length of time. It is impossible to believe that he was suffering from fear, coercion and pressure applied by his brothers on him. It cannot be overlooked that even after 1994 till the filing of the present suit in the year 2004 the defendant no. 1 did nothing to protest against the inclusion of his brothers names in the conveyance deed. The defendant no. 1 admittedly a highly educated person with other family members including an adult son chose not to complain against the plaintiff and defendant no. 2 not being regular residents of Delhi against such harassment and coercion and fraud. He took no steps to revoke the gift deed. He took no steps to lodge criminal complaints. He took no steps to approach the Civil Court for declaration.

Thus it is clear that defendant no. 1 was under no coercion or undue influence at the time the gift deed was executed by him on 16.12.82. There was no deception played on the defendant no. 1 at the time of the execution of the gift deed dated 16.12.82.” (emphasis supplied).

7. I completely agree with the findings and conclusions of the trial Court inasmuch as a self serving statement cannot be the proof of the alleged fraud, coercion or deception. The appellant/defendant No.1 talked of no fraud or collusion for over 20 years from execution of the gift deed and in fact acted on the basis of the gift deed and applied not only to the society but also to the DDA for making the respondents/brothers as co-lessees of the plot. In fact, subsequently, in the year 1994, a conveyance deed was also got executed in favour of all the three brothers, and which was done as per various request letters signed and sent by the appellant/defendant No.1 himself. The suit was filed in the year 2004 and at no point of time prior thereto any of the stands as were taken by the appellant/defendant No.1 in the written statement are in any manner reflected from any documentary evidence

whatsoever. In the face of overwhelming documentary evidence, all of which have been signed by the appellant/defendant No.1 admitting the respondents as 1/3rd co-owners of the property, I really fail to understand as to how the appellant/defendant No.1 can deny 1/3rd ownership rights to each of the respondents/brothers in the suit property.

8. Learned counsel for the appellant before this Court argued the following points:-

(i) The gift deed is bad because it was actually a sale and therefore the said document is void and cannot be looked into.

(ii) The gift deed/the conveyance deed and all other documents/letters executed/signed by the appellant/defendant no.1 were signed under coercion and therefore as the same are void and thus it is the appellant/defendant no.1 who is the sole owner of the suit property. It is also argued that there is no cross-examination done on behalf of the respondent no.1/plaintiff to the deposition-in-chief of the appellant/defendant no.1 that there was coercion and consequently it must be accepted that the documents are void on account of coercion.

(iii) The gift deed was attested by one of the witnesses being the Advocate, Iqbal Bahadur Mathur even before the gift deed was executed by the appellant/defendant no.1, and consequently, on account of defective attestation, the gift deed is not valid. It is also argued that there is no cross-examination on this aspect which is deposed to by the appellant/defendant no.1 in the examination-in-chief and consequently

this aspect is deemed to be admitted and therefore the gift deed must fail.

(iv) It was finally argued that in fact the gift deed was executed in consideration of the loans which were given to the appellant/defendant no.1 by the respondents and therefore the gift deed cannot operate.

9. In my opinion, all the arguments as aforesaid raised on behalf of the appellant lack any substance whatsoever and are therefore liable to be rejected. The first and the last argument can be taken together because they talk of the gift deed operating as a sale and therefore void. Firstly, in my opinion, the arguments raised under this head are in fact based on a misconception. The misconception is that there cannot take place transfer of ownership in an immovable property although there is a registered gift deed, merely because the gift deed was executed for consideration. Once, there exists registered gift deed, and title in the property has been transferred thereby, if the document was executed for consideration, the only effect would be that the stamp duty on the same would be inadequate, and nothing further would emerge out of such an argument. So far as the issue of defective stamping is concerned, no objection for impounding was raised before exhibiting of the documents and therefore this objection is deemed to have been waived by virtue of Section 36 of the Indian Stamp Act, 1899. In any case, this issue of stamping or impounding is irrelevant because as per the evidence led on record, the appellant/defendant failed to prove that any loans were given to him or that any other consideration

was paid for transfer of the property by him to the respondents. The only amounts which were paid by the respondents were towards construction of the property, and which funds were used for construction of the property. Therefore, looking at this argument from any angle whatsoever, the argument is wholly misconceived and is therefore rejected as such.

10. The argument with respect to all the documents having been executed by coercion, have already been dealt with by me in para 7 above, but more importantly by the detailed findings and conclusions of the Trial Court, some of which I reproduced in para 6 above and the relevant portions of which have also been underlined. In sum and substance, the gift deed and the conveyance deed having prevailed for 20 years and 10 years prior to the present suit without any objection whatsoever by the appellant/defendant no.1 of the same being void allegedly on account of coercion, leads one to the irresistible conclusion that there was no coercion upon the appellant/defendant no.1 in having to execute the gift deed or the conveyance deed or any other document or letters executed/written by him to the society or the DDA. This argument is also therefore rejected.

11. I may also, at this stage, deal with the argument that there is no cross-examination on the aspect of coercion. Firstly, this argument is factually correct inasmuch as averment of coercion was made by the appellant/defendant no.1 in paras 10 to 16 of his affidavit by way of evidence and which portion also deals with alleged lack of validity of the

gift deed on account of improper attestation. There is a specific question put in the cross-examination of the appellant/defendant no.1 on 25.3.2008 that the contents of paras 10 to 16 of the affidavit by way of evidence are false, motivated and after-thought. Therefore, it cannot be said that there was no cross-examination. In any case, vital issues which were the subject matter of the suit and with respect to which there is considerable detailed evidence, more so documentary evidence, even for the sake of argument if I accept that there was no cross-examination, yet, that in itself cannot be decisive. Absence of cross-examination is only one of the aspects which the Court considers in the overall context of the entire evidence which has been led in the case. Accordingly, I reject this argument also as raised on behalf of the appellant/defendant no.1.

12. The last argument which is raised is that the gift deed is void on account of improper attestation as the attesting witness Sh.Iqbal Bahadur Mathur signed the same before the same had been signed by the appellant/defendant no.1 and hence the gift deed must fall. Firstly, except a self-serving statement of the appellant/defendant no.1, there is nothing on record to substantiate this aspect. In any case, this plea is a very spacious plea, inasmuch as, and as already observed above, the gift deed was never challenged for 20 years and was challenged for the first time only in the written statement filed by the appellant/defendant no.1. The gift deed was also all along acted upon and admitted by the appellant/defendant no.1 in various correspondences with the society as

well as DDA and therefore this argument is without substance. I have already noted above, that there is proper cross-examination on this aspect when cross-examination of the appellant/defendant no.1 was done on 25.3.2008. The sub-Registrar at the time of registration of the gift deed would have satisfied himself as to the due execution and attestation of the gift deed. This argument is also rejected that there was no valid attestation of the gift deed.

13. Independently of all above aspects, there was a legal argument whereby the appellant/defendant no.1 was in effect estopped from challenging the gift deed and the conveyance deed executed in favour of all the three brothers, i.e. appellant/defendant no.1 and the respondents. This is for the reason that any document which stands against a person, has to be, by virtue of Article 59 of the Limitation Act, 1963, challenged within a period of 3 years of the same coming to the knowledge of the person. In the present case, and as referred to above, the gift deed was not challenged for over 20 years and the conveyance deed was not challenged for over 10 years before filing of the suit. The challenge therefore to these documents has become barred by time and the plea of the gift deed and thus the conveyance deed being barred by time on account of coercion should not be countenanced. Of course, as argued by counsel for the appellant, there is no requirement of a void document being challenged, however, the gift deed and the conveyance deed are not void documents which need not have been challenged, but these were voidable documents inasmuch as the plea of the

appellant/defendant no.1 was that the documents were got signed under coercion. Therefore, it was necessary that the documents being the gift deed and the conveyance deed, being only voidable documents, and not void documents, ought to have been challenged as per Article 59 of the Limitation Act, 1963 within a period of 3 years of their having been executed, as the appellant/defendant no.1 was very much a party to these documents. That not having been done they have become final and rights of the parties got crystallized by these documents.

14. A civil case is decided on balance of probabilities. The balance of probabilities in the present case quite clearly shows that all the three brothers were equal co-owners of the suit property. The suit for partition filed by the respondent no.1/plaintiff was therefore rightly decreed by the Trial Court. The appeal therefore being without any merit, is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J

NOVEMBER 24, 2011
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