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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.596/2011

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23rd December, 2011

PAMELA SHARDA

..... Appellant

Through: Mr. S.S. Kulshrestha, Sr. Adv. with
Mr. A.S.Kulshrestha.

versus

RAMA SHARDA

..... Respondent

Through: Mr. Prabhjot Jauher with
Ms. Anupama Kaul, Advs.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment of the Trial court dated 1.11.2011. By the impugned judgment, suit of the respondent/plaintiff/mother-in-law against the appellant/defendant/daughter-in-law for mandatory injunction to remove herself from the suit property has been decreed. The suit property is the property bearing no.887, Vikas Kunj, Vikas Puri, New Delhi.

2. The respondent/plaintiff as per the plaint pleaded that she is an aged lady of more than 78 years and that the appellant/defendant was making

her life miserable by hurling abuses at her, ill-treating her etc. It is also pleaded that the respondent/plaintiff was forced to even file police complaints against the appellant/defendant. The respondent/plaintiff claimed that her son Sh. Rajiv Sharda was not living in the suit property and was living separately. It was further pleaded that the respondent/plaintiff being the owner of the suit property was not interested in view of the conduct of the appellant/defendant to let her continue to reside in the suit premises and therefore legal notices dated 3.12.2008 and 23.12.2008 were served which failed to yield any result resulting in filing of the subject suit. It is pleaded that though the son of the respondent/plaintiff shifted to another house being M-9, Vikas Puri, New Delhi, however, the appellant/defendant continued to reside in the suit premises.

3. The appellant/defendant contested the suit and pleaded that the suit has been filed in connivance with the son of the respondent/plaintiff because there was pressure upon the appellant/defendant to sign the divorce papers. In the written statement filed by the appellant/defendant, it was also pleaded that the respondent/plaintiff was not the owner of the suit property as there were no conveyance deed in her favour by the DDA. The appellant/defendant also claimed a right to live in the suit premises, inasmuch as, she was a daughter-in-law of the respondent/plaintiff and therefore had a right under the Hindu Adoptions and Maintenance Act, 1956.

4. The Trial Court after the pleadings were completed, framed the following issues:-

- “1. Whether the plaintiff has locus standi to file the present suit being owner of the suit property? OPP
2. Whether the suit is bad for non joinder of necessary parties? OPD
3. Whether the valuation of the suit for the purpose of court fees and jurisdiction is proper? OPP
4. Whether the plaintiff is entitled for decree of mandatory injunction as prayed? OPP
5. Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP
6. Whether the plaintiff is entitled for any damages, if so, at what rate and for which period? OPP
7. Whether the plaintiff is entitled for any interest on the damages, if yes, at what rate? OPP
8. Relief.”

5. The Trial Court has held the respondent/plaintiff to be the owner of the suit property on the basis of the Will, Ex.PW1/1 dated 11.1.1988 executed in her favour by the erstwhile owner Sh. Vijay Kumar Sharma, and whose death certificate was proved as Ex.PW1/3 (date of death of Sh. Vijay Kumar Sharma was 4.2.1988). It was held by the Trial Court relying upon Division Bench judgment of this Court reported as *Shumita Didi Sandhu vs. Sanjay Singh Sandhu & Ors., 2007 (96) DRJ 697* that once the husband is alive, neither the father-in-law nor the mother-in-law has any duty to maintain the daughter-in-law, and the daughter-in-law has no right to reside in the RFA No.596/2011

property of her in-laws which is not a matrimonial home, nor a “shared household” under the Protection of Women from Domestic Violence Act, 2005.

6. I am bound by Division Bench’s judgment of this Court in the case of *Shumita Didi (supra)*, and therefore, it is rightly held by the Trial Court that once the respondent/plaintiff is the owner of the property, and the suit premises is not a matrimonial home inasmuch as the husband of the appellant/defendant is living separately, the appellant/defendant would have no right to stay in the suit property.

7. Learned senior counsel for the appellant stressed on three aspects before this Court for challenging the impugned judgment:-

i) The respondent/plaintiff was not the owner of the property inasmuch as the transactions dated 11.1.1988 relied upon by the respondent/plaintiff are those transactions which have been held by the Supreme Court to be void in its recent judgment in the case of *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr., 183 (2011) DLT 1*.

ii) The appellant/defendant has a possessory title to stay in the suit property inasmuch as the ownership of the suit property was actually of the husband of the respondent/plaintiff, and therefore after the death of

the husband, Sh.C.L.Sharda, the ownership of the property devolved

both on the respondent/plaintiff and the son, Sh. Rajiv Sharda, and therefore, the appellant/defendant as the wife of Sh.Rajiv Sharda had an entitlement to stay in the suit property.

iii) That the appellant/defendant being the daughter-in-law had a right to reside in the property of the respondent/plaintiff/mother-in-law.

8. Let me take the last argument first, inasmuch as, the same is fully covered against the appellant/defendant in view of the decision in the case of *Shumita Didi (supra)*, and therefore, the appellant/defendant can have no right to reside in the suit property, inasmuch as, a daughter-in-law has no right to claim residence/maintenance against the property of either the father-in-law or mother-in-law. Of course, it is a moot point as to whether the property in question was owned by the respondent/plaintiff, and which is an aspect I will deal with immediately hereafter.

9. The main stress of the learned senior counsel for the appellant was on the fact that the respondent/plaintiff was not the owner of the suit property, inasmuch as, the document dated 11.1.1988 was actually executed in favour of the husband of the respondent/plaintiff namely Sh. C.L.Sharda, and therefore, even if such document created a right, the respondent/plaintiff was not the owner of the property. In the alternative, it is also pleaded that the property jointly belongs to both the respondent/plaintiff and her husband,

Sh.C.L.Sharda, therefore, on the death of Sh.C.L.Sharda, the suit property devolved not only upon the respondent/plaintiff but also on the son, Sh.Rajiv Sharda, and the appellant/defendant being the wife of Sh. Rajiv Sharda, had therefore a right to reside in the property of which her husband, Sh. Rajiv Sharda was a co-owner.

I am unable to agree with these arguments raised on behalf of the appellant by the learned senior counsel. Before proceeding further, I must put on record that I put it to learned senior counsel for the appellant whether the appellant is interested in settling the matter by taking sufficient time to vacate the suit premises, however, learned senior counsel for the appellant states that the appellant is not wanting to vacate the suit premises. Therefore, I went through the record with the assistance of counsel for both the parties in order to determine the twin issues of whether the respondent/plaintiff was not owner of the property or whether the suit property was in fact actually owned by the respondent/plaintiff jointly with her late husband, Sh. C.L.Sharda.

10. Before the Trial Court, the respondent/plaintiff proved on record the Will dated 11.1.1988 executed by Sh. Vijay Kumar Sharma, the erstwhile owner in favour of the respondent/plaintiff, and which Will has been exhibited as PW1/1 through the attesting witness, Sh. Rajiv Sharda. The Will is a duly registered Will. The Supreme Court in the case of *Suraj Lamp &*

Industries Pvt. Ltd.(supra) has held that the transactions by which the properties are transferred under such documentation being an agreement to sell or general power of attorney of Will are not valid transactions and therefore must fail. Accordingly, so far as the factum with respect to the respondent/plaintiff claiming ownership only on the basis of the Will is concerned, the same in my opinion, will fall foul of law as laid down in the judgment of *Suraj Lamp & Industries Pvt. Ltd.(supra)* and therefore only on the basis of the Will, it cannot be said that the respondent/plaintiff is the owner of the suit property. However, in my opinion, the respondent/plaintiff still very much be the owner of the suit property, inasmuch as, the so-called invalid documents in the present case are of the year 1988 i.e. from 1988 till 2009 when the suit was filed a period of about 21 years had elapsed and during which period the respondent/plaintiff was proclaiming herself to be the owner of this property to the world at large, and which is in fact even admitted by the appellant/defendant, inasmuch as, one of the defences is that the appellant/defendant being the daughter-in-law, has a right to reside in the property of the respondent/plaintiff/mother-in-law. Ordinarily on expiry of a period of limitation only the right to approach the Court is lost, but the entitlement is not lost, however so far as the immovable properties are concerned because of Section 27 of the Limitation Act, 1963, even rights/entitlement of a person who is an actual owner, but does not file a suit

within a period of 12 years as per Article 65 of the Limitation Act, 1963 would stand extinguished. Therefore, on the expiry of a period of 12 years of a person claiming to be the owner of the property, comes to an end by virtue of law of prescription contained in Section 27 of the Limitation Act, 1963, and thereafter such person as the respondent/plaintiff in the present case, would become the sole and absolute owner of the immovable property. I may at this stage refer to the fact that the appellant/defendant herself placed reliance upon the fact that the respondent/plaintiff by an application dated 5.1.1998 had claimed ownership in the suit property with the Delhi Development Authority. This aspect is proved because the appellant/defendant filed a letter dated 19.2.1998 of the DDA referring to the application of the respondent/plaintiff dated 5.1.1998 for getting the property mutated in her name. Therefore, from 1998, beyond doubt, the respondent/plaintiff had proclaimed to the world at large, including the superior lesser-DDA, that she was claiming ownership rights in the suit property. Therefore, by virtue of law of prescription, the respondent/plaintiff by 2000 (twelve years from 1988 expiring in 2000), and definitely by 2009 when the suit was filed, had become the owner by law of prescription. I therefore, hold that the respondent/plaintiff was the owner of the suit property, and since the respondent/plaintiff as a matter of law has no legal

liability to maintain the daughter-in-law/appellant, under the Hindu Adoptions and Maintenance Act, 1956, therefore, the suit was rightly decreed.

11. The related argument which was raised on behalf of the appellant/defendant was that the property in question actually belonged to husband of the respondent/plaintiff namely, Sh.C.L.Sharda and not the respondent/plaintiff. In my opinion, once the respondent/plaintiff proclaiming herself to be the owner, and was claiming ownership rights, and which was proved by filing of the Will, Ex.PW1/1, which of course may not be taken as transferring ownership rights, however, the same can be taken as a proclamation of claim of ownership interest in the property, when taken with the letter dated 19.2.1998 of the DDA referred to above, the respondent/plaintiff in law had discharged the initial onus to show that she was the owner of the suit property. The onus of proof thereafter shifted upon the appellant/defendant to show that the ownership of the suit property vested not with the respondent/plaintiff, but with her husband, Sh. C.L.Sharda. However, in my opinion, this onus of proof has not been discharged by the appellant/defendant, inasmuch as, except making self-serving statement in deposition, no documentary evidence whatsoever has been filed to show that the husband, Sh.C.L.Sharda was the owner of the suit property.

12. In a ripe old age of 78 years, surely, citizens of this county, if they are acting bonafidely, are entitled to peace of mind and being not harassed by their next generation, i.e, their children or their daughter-in-law. The respondent/plaintiff has come out with a positive case of grave harassment to her and impossibility to live with the appellant/defendant. In my opinion, therefore the respondent/plaintiff at her advanced age of 78 years cannot be forced to keep the appellant/defendant in the suit property. However, in order to ensure that there is no connivance between the son of the respondent/plaintiff, Sh. Rajiv Sharda, i.e. the husband of the appellant/defendant with the respondent/plaintiff, while dismissing the appeal, I also direct that in case the husband, Sh.Rajiv Sharda in any manner is found to be residing in the suit property, then, in such circumstances, the appellant/plaintiff would have a right to reside in the suit property, inasmuch as, there is no dispute that there is no divorce between Sh. Rajiv Sharda and the appellant/defendant, and the appellant/defendant continues to be the wife of Sh.Rajiv Sharda.

13. In view of the above, there is no merit in the appeal, and which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA,J

DECEMBER 23, 2011

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