

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

+ **RFA 198/2009**

% **25th January, 2012**

SHRI SOM DUTT Appellant
Through : Mr. Anil Kumar Sharma and
Mr. Apoorva Sharma, Advocates.

versus

SHARMA DEVI & ANR Respondents
Through : Mr. Hari and Sanjay Kumar Tyagi,
Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 19.5.2009 dismissing the suit for declaration and permanent injunction filed by the appellant/plaintiff seeking relief against respondent No.2/defendant No.2 who is the widow of his younger brother.

2. The facts as stated in the plaint are that the appellant claimed that the suit property being WZ-75, Village Keshopur, Delhi was owned by his father-Sh. Mool Chand, who died on 25.11.1984. Shri Mool Chand was survived by his two sons, namely; appellant/plaintiff and late husband of defendant No.2/respondent No.2; five daughters and a widow. Shri Mool Chand is stated to have executed a Will dated 29.10.1983 in favour of the appellant/plaintiff and husband of defendant No.2/respondent No.2 bequeathing the suit property to them. It is then pleaded in the plaint that the suit property has thus been wrongly sold by two registered sale deeds dated 28.4.1992 by respondent No.1/sister of the plaintiff and the late husband of defendant No.2/respondent No.2 to the defendant No.2/respondent No.2.

3. The suit was contested by respondent No.2/defendant No.2. The defendant No.1 turned turtle during the pendency of the suit by supporting the plaintiff in spite of having executed registered sale deeds dated 28.4.1992 and receiving valuable consideration. It may be noted that, in fact, earlier defendant No.1 had supported defendant No.2 and a joint written statement was filed by both these defendants praying for dismissal of the suit. The contention of the defendants in the joint written statement was that

defendant No. 1 was the owner of the suit property and was assessed to
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house tax of the property since the year 1976. It is further pleaded that construction was raised in the suit property in the year 1976 and which construction was also assessed in the name of defendant No.1. The defendant No.1 has also from 1976 till the execution of the sale deed on 28.4.1992 i.e. for over 18 years, paid house tax with respect to the suit property. It was further pleaded that the Will dated 29.10.1983 of the father-Mool Chand which was relied upon by the appellant/plaintiff could not support the appellant/plaintiff, inasmuch as this Will makes no mention of the suit property.

4. After the pleadings were complete, the trial Court framed the following issues:-

(i) Whether the plaintiff has no locus standi to file the present suit as alleged by the defendants in preliminary objection No.2? OPD

(ii) Whether the plaintiff has right in property No. WZ-75, Keshopur, Delhi and whether the suit for declaration as framed is maintainable? OPP

(iii) Whether the sale deeds executed by defendant no. 1 in favour of defendant no. 2, in respect of premises WZ-75, Keshopur, Delhi is (are) fictitious documents? OPP

(iv) Relief.”

5. The trial Court has held that the suit property was in fact owned by defendant No.1. This finding was given because not only the records of the house tax from the beginning were in the name of defendant No.1 till the suit property was sold to defendant No.2, but also because the appellant/plaintiff failed to file and prove any documentary evidence to show that father-Shri Mool Chand was the owner of this property. The trial Court has also noted that if really the father was the owner, the Will dated 29.10.1983 of the father-Sh. Mool Chand would have referred to this property, but, this property is not mentioned in the Will. The relevant observations of the trial Court, and with which I agree, are contained in paras 16 to 20 of the impugned judgment, and the same read as under:-

“16. ISSUE NO.1: Whether the plaintiff has no locus standi to file the present suit as alleged by the defendants in preliminary objection No.2? OPD

And

ISSUE NO.3: Whether the plaintiff has right in property No.WZ-75, Keshopur, Delhi and whether the suit for declaration as framed is maintainable? OPP

Since Issue nos. 1 and 3 are inter se connected they are taken up together. Defendant nos. 1 and 2 in their written statement have taken the preliminary objection that the plaintiff had no locus standi to file the present suit as he had no right

title or interest what so ever of any nature in the suit property. Also that defendant no.1 was the owner of the suit property and she sold the same to defendant no.2 vide the two registered Sale Deeds. The plaintiff (PW-4) in his affidavit in evidence has claimed that the suit property was owned by his father who handed over the ownership and possession of the same to him and Sh. Bhim Singh. Significantly the plaintiff has produced no evidence to show that the suit property was owned by his father or that he was ever in possession there of. In his cross examination he admitted that he had no documents to show his ownership of the suit property. He has only relied on the Will of his father dated 29.10.1983 (Ex.PW1/A) to show that he and Sh.Bhim Singh inherited all his father's properties.

17. In the Will (Ex.PW1/A) although it is mentioned that both his sons would inherit all the properties of Sh. Mool Chand in equal share and that all the properties movable and immovable wherever situated would go to both his sons in equal share, it cannot be lost sight of that in the Will the properties that have been bequeathed have been particularly described in a detailed manner and significantly the suit property does not find mention. This fact goes to corroborate the testimony of the defendant no.2 (DW-1) that it was known to the family and an accepted fact that the suit property was owned and in the possession of defendant no.1. Since the plaintiff traces his ownership to the suit property through his father Sh.Mool Chand, his having failed to prove that his father Sh. Mool Chand had any right, title or interest in the suit property his claim to the suit property cannot be upheld.

18. The inter se contradiction in the testimony of the plaintiff (PW-1) makes his claim about him being the owner of the suit property and the same being in his possession till 1992 further

difficult to believe. In his replication he has admitted the fact about the defendant no.1 being assessed to house tax. However in his cross examination he claimed having no knowledge qua the same. Also his feigning ignorance in his cross-examination about the defendant no.2 also being assessed to house-tax after the execution of said Sale Deeds has to be seen in the light of his claim in his cross-examination that he took action qua the house tax of the suit property in 1995.

19. The plaintiff (PW-4) in his cross examination while on the one hand has claimed that at the time of partition of the family in 1980-81 he and Sh.Bhim Singh were in possession of the suit property on the other hand he admitted that at the time of death of Sh. Bhim Singh his wife (defendant no.2) was residing at WZ-52, 1st floor, Village Kesho Pur, Delhi and shifted to the suit property 13 days after the death of her husband Sh. Bhim Singh on 17.02.1992 and thereafter did not return to the earlier house. These contradictions make the version of the plaintiff difficult to believe.

20. The plaintiff has not been able to prove or produce any documents showing his possession or ownership of the suit property. In his affidavit in evidence he claimed that since he was in possession of the suit property he had got issued the life Insurance policy from LIC mentioning his address as that of the suit property. Also his ration card which was issued on 29.01.1990 mentioned his address as that of the suit property. However neither the LIC policy nor the ration card of the plaintiff was ever produced or proved in evidence by him.”

(Emphasis added)

6. In addition to the aforesaid findings and conclusions of the trial Court,

and with which I completely agree, in my opinion, the respondent/plaintiff is supported by Section 41 of the Transfer of Property Act, 1882, which reads as under:-

“41. Transfer by ostensible owner. - Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it:

Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.”

A reading of this provision shows that where the property stands in the name of a particular person and a third person/stranger purchases the property on the basis of the apparent ownership, then, even if someone else is an actual owner (which in this case, let us assume was Sh. Mool Chand), even then, the bonafide purchaser for value (the respondent No.2/defendant No.2 in this case) gets a valid title of the property.

7. I fail to understand the harassment which is being unnecessarily caused to the widow/defendant No.2 by the appellant/plaintiff/brother-in-law considering the fact that valuable consideration was admittedly paid for execution of the sale deeds dated 28.4.1992 in favour of defendant *RFA No.198/2009*

No.2/respondent No.2 by defendant No.1. So far as the lack of honesty on the part of defendant No.1 is concerned, the trial Court has rightly observed the following in the impugned judgment:-

“23. Although DW-1 had been valiantly contesting the suit in support of defendant no. 2 and her case was that she was the owner in possession of the suit property and had vide two registered Sale Deed after receiving consideration sold the suit property to defendant no.2, suddenly she changed guards and her version at the stage of evidence. However her subsequent conduct is contrary to the registered document i.e the Sale Deeds and her version given in her written statement duly verified by her. Therefore, her version as given in her affidavit in evidence cannot be trusted. Significantly in her cross-examination she has not been able to hide the truth and has come out with the same. Despite her claim in her affidavit in evidence that she executed the Sale Deeds under a misrepresentation, in her cross examination she has categorically admitted that she visited the office of the Sub-Registrar along with defendant no.2 for the execution of the sale deed. She has testified in her cross examination “it is correct that I visited the office of the Sub-Registrar along with Smt. Geeta Tragi to execute the sale deed on 28.04.1992” She has also admitted that “it is correct that the sale deed in question were executed by me after my marriage”. In her cross examination she has admitted that although she was illiterate, her husband was a well qualified teacher and that she used to consult her husband on whatever documents she received at home through posts or otherwise going to show that the Sale Deeds and her written statement were signed by her with full knowledge and voluntarily.

24. In her cross-examination DW-1 has also admitted the reasons for the relationship between her and defendant no.2 going sour. She has testified that at the time of execution of the two Sale Deeds her relations with defendant no.2 were good and that defendant no.2 used to perform all her obligations towards her, being her sister-in-law. She has testified that neither the plaintiff nor defendant no.2 took any initiative in the 'bhaat' ceremony in the marriage of her daughter and that she has since not visited them to request them to perform the 'bhaat' ceremony. She has also admitted that now she was not on visiting terms with defendant no.2. This explains her motive for her changed stand to harm the interest of the defendant no.2.

25. The contradictions in the testimony of the plaintiff and defendant no.1 only go to show that the claim of misrepresentation was an afterthought born of collusion. Defendant no. 1 in her written statement although claimed that she executed the Sale Deed, in her affidavit in evidence (Ex.DW1/1A) she claimed that she executed them under a misrepresentation that she was signing for getting compensation for land acquired. However in her affidavit in evidence she has not explained as to how facts different from that in her written statement have come to be stated. In her cross examination, defendant no.1 has nowhere testified that she was made to sign forcibly or that her signatures were obtained by fraud. PW-4 in his affidavit in evidence has claimed that the defendant no.1 told him that she signed the two Sale Deeds because it was misrepresented to her that the same were relinquishment deeds for relinquishing her share in her father's property."

(Underlining added)

8. I may further note that the trial Court has referred to the fact that there

is not even an electricity connection, either in the name of the appellant/plaintiff or in the name of late Sh. Mool Chand, in the suit property and which would be the minimum evidence to show possession or ownership of the property as claimed. The trial Court, in my opinion, has further rightly held the suit to be barred by Section 34 of the Specific Relief Act, 1963 by observing that since admittedly the appellant/plaintiff was not in possession of the property, the suit for declaration simplicitor could not be filed without claiming possession of the suit property before the appropriate Court even for such relief. This finding is given in para 30 of the impugned judgment and with which I agree, inasmuch as a person cannot simply file a suit for declaration seeking the ownership rights in the suit property without claiming actual physical possession of the suit property, which admittedly is not in possession of the appellant/plaintiff but in fact is in possession of defendant No.2/respondent No.2 under duly executed registered sale deeds. The suit claiming injunction also was not maintainable because as per Section 41(h) of the Specific Relief Act, 1963 the plaintiff was bound to sue for the alternative efficacious relief of possession but he did not pray for the same.

following aspects:-

(i) In villages, there are no records with respect to the ownership of the property, and therefore, defendant No.2 should not be allowed to take advantage of this fact.

(ii) The sale deeds which were executed by defendant No.1 in favour of defendant No.2 were an emotional act after the death of husband of defendant No.2 and such emotional acts cannot be taken advantage of.

(iii) The defendant No.1/respondent No.1 did not file any proof/ownership documents in her favour so as to justify her ownership of the suit property.

10. In my opinion, none of the arguments as advanced on behalf of the appellant have any weight whatsoever. The first argument is misconceived because surely even in villages there are revenue records which show ownership with respect to the lands in the village, whether the same be an agricultural land or *lal dora* on residential land. Further even assuming for the sake of arguments that what is stated by the appellant/plaintiff is correct, the fact of the matter is that for 18 long years the suit property continued to

be shown in the ownership of defendant No.1 and therefore Section 41 of the
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Transfer of Property Act, 1882 gives a complete protection to defendant No.2 with respect to the title which she has derived by means of registered sale deeds dated 28.4.1992 after paying valuable consideration. The argument that the sale deeds were executed out of an emotional act on the death of husband of the defendant No.2, is an argument of desperation inasmuch as, there is no such pleading or any issue framed accordingly in the trial Court. Also no suit was filed by defendant No.1 to cancel the sale deeds on the ground that they were executed in an emotional moment only. On the aspect/issue that no ownership documents were shown by defendant No.1/respondent No.1, again this argument is wholly without any substance, because it was the appellant who was the plaintiff in the trial Court and it is upon the plaintiff to prove his case that the suit property belonged to Sh. Mool Chand i.e. the father. Obviously, the appellant cannot shift the onus of the issue of ownership upon defendant No.2/respondent No.2 inasmuch as a person cannot be asked to prove negative and to lead evidence that actually defendant No.1 was not the owner. Also, the factum of the property existing in the property tax records for as long as 18 years leaves no manner of doubt that defendant No.1 as per the records is the owner, inasmuch as, even assuming there are no title deeds in favour of Sh. Mool Chand, yet, there is

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also no other document referred to by the appellant to show that late Sh. Mool Chand was the owner of the suit property.

11. The Supreme Court in the recent case of ***Ramrameshwari Devi and Others v. Nirmala Devi and Others, (2011) 8 SCC 249*** has held that it is high time that dishonesty in litigation must be compensated by actual costs. In the present case, I find that the widowed sister-in-law has been unnecessarily harassed by being put to unnecessary costs of litigation. The attitude of the appellant is therefore not appreciated by this Court. The Supreme Court in the case of ***Ramrameshwari Devi*** (Supra) has made the following pertinent observations with regard to imposition of costs:-

“43. We have carefully examined the written submissions of the learned Amicus Curiae and learned Counsel for the parties. We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

47. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true

owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In *Swaran Singh v. State of Punjab* (2000) 5 SCC 668 this Court was constrained to observe that perjury has become a way of life in our courts.

52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. ...

B. ...

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have

to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.”

(underlining added)

Even earlier a Division Bench of three Judges of the Supreme Court in the case of *Salem Advocate Bar Association Vs. Union of India, (2005)6 SCC 344* in para 37 had also observed that it is high time that actual costs be imposed. I am also empowered to impose actual costs by virtue of *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi)*

Chapter VI Part I Rule 15.

12. Accordingly, the present appeal is dismissed with costs of ₹50,000/-, which I quantify to be actual costs. Costs be paid within four weeks from today.

13. Appeal is dismissed and disposed of accordingly. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

JANUARY 25, 2012

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