

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

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Date of decision: 5th December, 2013

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RFA 84/2010

MMTC LTD.

..... Appellant

Through: Mr. Rohit Puri, Adv.

Versus

RAJ RANI GULATI

(DECEASED) THROUGH LRS & ORS.

..... Respondents

Through: Mr. S.P. Gairola, Adv. for Mr. D.S. Chauhan, Adv. for LR's of R-1.
Mr. J.S. Bakshi & Mr. A.S. Bakshi, Adv. for LR's of R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and decree dated 10.11.2009 of the Court of Additional District Judge (ADJ) (Central District), Delhi in suit No.182/2009 filed by the deceased respondent No.1 / plaintiff against the appellant and against the respondents No.2 to 4 viz. Sh. L.C. Madan, Smt. Veena Chanana & Smt. Shashi Madan and thereby declaring as null and void the Mortgage Deed and No Objection Certificate (NOC) allegedly executed by the deceased respondent No.1 / plaintiff pertaining to property No. M-1/3C, Model Town-III, Delhi in favour of the appellant and directing

the appellant to return the original sale deed of the said property in favour of the respondent No.1 / plaintiff to the respondent No.1 / plaintiff.

2. Notice of the appeal was issued. The counsel for the appellant / defendant today informs that the original sale deed supra was filed by the appellant / defendant No.1 in the suit file and pursuant to the judgment / decree and before the filing of this appeal, the legal heirs of the respondent No.1 / plaintiff took the delivery thereof from the Court file; in the circumstances, vide *ex parte* ad-interim order dated 26.03.2010, the respondents were restrained from creating any third party interest in the suit property. The respondent / defendant No.2 Sh. L.C. Madan died during the pendency of the suit and vide order dated 24.01.2011, his legal heirs were substituted. The appeal was on 29.09.2011 admitted for hearing and the *ex parte* ad-interim order dated 26.03.2010 confirmed. The hearing of the appeal was expedited on the application of the respondents on the ground that some of the respondents were senior citizens. The counsel for the appellant and the counsel for the legal representatives of the deceased respondents / defendant No.2 Sh. L.C. Madan have been heard. The arguing counsel for the legal heirs of the deceased respondent No.1 / plaintiff has not appeared and the counsel who has been sent has no knowledge of the case.

However, since the appeal is being shown in the list of regular matters of this Court, it is not deemed expedient to await the counsel for the deceased respondent No.1 / plaintiff and the records have been perused.

3. The deceased respondent No.1 / plaintiff instituted the suit from which this appeal arises, pleading:

- (i) that her husband Sh. K.L. Gulati had initially purchased the property No.M-1/3C, Model Town-III, Delhi by virtue of Agreement to Sell, Power of Attorney, Will etc.;
- (ii) that the said Sh. K.L. Gulati, as attorney of the recorded owner of the property, executed and registered sale deed dated 22.02.1993 of the said property in favour of the deceased respondent No.1 / plaintiff;
- (iii) that the respondent / defendant No.2 Sh. L.C. Madan being the son-in-law of the respondent No.1 / plaintiff was also present at the time of registration of the sale deed and took with himself for safe keeping the slips issued by the office of the Sub-

Registrar, Kashmiri Gate to enable collection of the registered sale deed after two months;

- (iv) that after two months, when the respondent No.1 / plaintiff asked the respondent / defendant No.2 for the sale deed, he avoided the same on some pretext or the other;
- (v) that the respondent No.1 / plaintiff then herself went to the office of the Sub-Registrar, Kashmiri Gate to collect the sale deed but learnt that the respondent / defendant No.2 had already taken away the original sale deed within one week of the date of registration thereof;
- (vi) that the respondent No.1 / plaintiff again enquired from the respondent / defendant No.2 about the sale deed when the respondent / defendant No.2 informed that he had mortgaged the same with the appellant / defendant No.1;
- (vii) that the respondent No.1 / plaintiff told the respondent / defendant No.2 that he had done a wrong to her by mortgaging

her sale deed with the appellant / defendant No.1 without her consent and at her back;

(viii) that the respondent No.1 / plaintiff never signed any documents mortgaging her property and it appeared that the respondent / defendant No.2 must have played a fraud with the appellant / defendant No.1 by misrepresenting any other lady in place of the respondent No.1 / plaintiff;

(ix) that the respondent / defendant No.2 gave an assurance in writing dated 22.04.1993 to the respondent No.1 / plaintiff that he had mortgaged the sale deed with some bank from where he had obtained certain credit facility and he will get back and return to the respondent No.1 / plaintiff the said documents within six months;

(x) however the respondent / defendant No.2 did not honour his commitment even for four years and the sale deed was still lying deposited with the appellant / defendant No.1;

- (xi) that any Mortgage Deed of her property with the appellant / defendant No.1 was not binding on the respondent No.1 / plaintiff or her property;

Accordingly, the suit for the reliefs decreed, was filed.

4. The appellant / defendant No.1 contested the suit, by filing a written statement, on the grounds:

- (a) that the suit claim was barred by time;
- (b) that the suit was not properly valued for the purposes of court fees and jurisdiction;
- (c) that the subject sale deed was deposited by the respondent No.1 / plaintiff with the appellant / defendant No.1 vide a Memorandum of Mortgage (MoM) dated 23.02.1993 with the intent to create the charge thereon for securing the repayment of a sum of Rs.25,00,000/- advanced by the appellant / defendant No.1 to M/s Madan Jewellers, the sole proprietorship firm of the respondent / defendant No.2 together with interest thereon;

- (d) that the said MoM was duly signed by the respondent No.1 / plaintiff;
- (e) that the factum of the property being mortgaged with the appellant / defendant No.1 was admittedly within the knowledge of the respondent No.1 / plaintiff; however, the respondent No.1 / plaintiff neither made any representation nor complained of the fraud allegedly played on her;
- (f) that the appellant / defendant No.1 had filed a suit against the respondent No.1 / plaintiff for restraining her from selling or alienating the property and in the written statement to the said suits, no such case as had been set up in the plaint was set up; and,
- (g) that the appellant / defendant No.1 was the mortgagee of the said property.

5. The respondent / defendant No.2 also filed a written statement pleading:

- (I) that the respondent No.1 / plaintiff had herself collected the sale deed from the office of the Sub-Registrar, Delhi and on the request of the respondent / defendant No.2 had handed over the same to him and he had deposited the same with the appellant / defendant No.1 with the consent of the respondent No.1 / plaintiff; and,
- (II) denying that any Memorandum of Deposit was executed and that anything was due from the respondent / defendant No.2 to the appellant / defendant No.1.

6. Needless to state, replications to both the written statements were filed by the respondent No.1/plaintiff, reiterating her case.

7. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 09.01.2008:

“1. Whether plaintiff has filed this suit within the period of limitation? (OPP)

2. *Whether the suit has been properly valued for the purposes of Court Fee and jurisdiction and appropriate Court fee has been affixed on the plaint? (OPP)*
3. *Whether the title documents of property of plaintiff were obtained by defendant no.1 from the office of Sub Registrar and deposited with defendant no.1 without her consent? (OPP)*
4. *Whether plaintiff is entitled to the decree of declaration as has been claimed? (OPP)*
5. *Whether plaintiff is entitled to the decree of mandatory injunction as claimed? (OPP)*
6. *Relief.”*

8. The respondent No.1 / plaintiff died during the pendency of the suit and some of her legal heirs were substituted in her place and two other legal heirs were impleaded as defendants No.3 and 4 (who are now respondents No.3&4).

9. The learned ADJ has vide the impugned judgment decreed the suit in favour of the respondent No.1 / plaintiff and against the appellant / defendant No.1, finding / observing / holding:

- (A) that since it was the case of the respondent No.1 / plaintiff that she came to know about the execution of the alleged MoM and NOC on 09.05.1996 only from the plaint in the suit for injunction filed by the appellant / defendant No.1, the suit was within time;
- (B) that though the respondent No.1 / plaintiff in the plaint had admitted knowledge of deposit of the sale deed by the respondent / defendant No.2 with the appellant / defendant No.1 in or about the year 1993 itself but she was not aware that any MoM deed or NOC had been fabricated and she learnt of the said fact only from the plaint in the suit for injunction filed by the appellant / defendant No.1 and thus the period of limitation would start running from that date only;
- (C) that the suit had been correctly valued for the purposes of court fees and jurisdiction;
- (D) that once the respondent No.1 / plaintiff had disputed that MoM and NOC were executed by her in favour of the appellant /

defendant No.1, the onus shifted on the appellant / defendant No.1 and respondent / defendant No.2 to prove that it was executed by the respondent No.1 / plaintiff herself;

(E) that the only witness examined by the appellant / defendant No.1 admitted in cross-examination that the documents were not executed in his presence and the appellant / defendant No.1 did not produce its official in whose presence the MoM and NOC, if executed by the respondent No.1 / plaintiff, had been executed;

(F) that the stand of the appellant / defendant No.1 was inconsistent;

(G) that since the sale deed was registered on 22.02.1993, the original could not have been returned by the office of the Sub-Registrar on the same day or on the next date for it to be deposited with the appellant / defendant No.1 on 23.02.1993;

(H) that it had been proved that one recovery suit had been filed by the respondent No.1 / plaintiff against her son-in-law

respondent / defendant No.2 in respect of loan taken by the respondent / defendant No.2 and which suit was decreed and which proved that their relationship was not cordial;

- (I) that had the respondent No.1 / plaintiff executed the MoM and NOC, she would not have filed the suit; and,
- (J) that the respondent No.1 / plaintiff had thus proved that the respondent / defendant No.2 collected the sale deed from the office of the Sub-Registrar and deposited the same with the appellant / defendant No.1 to get a loan facility, without the knowledge and consent of the respondent No.1 / plaintiff and the respondent No.1 / plaintiff had not executed the MoM and NOC.

10. The counsel for the appellant / defendant No.1 challenges the finding on the aspect of limitation and has contended that the respondent No.1 / plaintiff had not disputed her signatures on the MoM and NOC in favour of the appellant / defendant No.1 and her case was of fraud having been practiced by her son-in-law respondent / defendant No.2.

11. On enquiry, as to on whom the property has devolved on the demise of the respondent No.1 / plaintiff, it is stated that though the husband of the respondent No.1 / plaintiff claims a Will in his favour but no such Will has been produced least proved.

12. On further enquiry whether the respondent No.1 / plaintiff had lodged any FIR against her son-in-law respondent / defendant No.2, the counsel for the legal representatives of the respondent / defendant No.2 states that no such FIR or complaint of any offence was lodged.

13. On yet further enquiry as to what steps the appellant / defendant No.1 has taken for recovery of its dues if any against the respondent / defendant No.2, it is informed that arbitration is underway. However the counsel for the appellant / defendant No.1 admits that the said arbitration is qua the respondent / defendant No.2 and / or his legal heirs only and not against the respondent No.1 / plaintiff. On enquiry, as to what steps for enforcement of the mortgage have been taken, the counsel for the appellant / defendant No.1 states that only after the amount due to the appellant / defendant No.1 is crystallized in the arbitration, will such steps be taken and the limitation for the relief of foreclosure under Article 63 of the Schedule to the Limitation

Act, 1963 is of 30 years commencing from the day when the money secured by the mortgage becomes due.

14. The counsel for the appellant / defendant No.1 has also argued that the equitable mortgage by deposit of title deed in favour of the appellant / defendant No.1 would not be invalidated even if it were to be held that the MoM and NOC have not been proved.

15. I will first take up the aspect of limitation.

16. The relief claimed in the suit, was two-fold; firstly, of declaration of the alleged mortgage deed as null and void and not binding on the respondent No.1 / plaintiff or on her property; and, secondly, of mandatory injunction directing the appellant / defendant No.1 to return the title documents of the appellant plaintiff. As per para No.14 of the plaint, the cause of action for the suit had accrued to the respondent No.1 / plaintiff, on 05.03.1993 when the respondent / defendant No.2 illegally obtained the original sale deed from the office of the Sub-Registrar and pledged the same with the appellant / defendant No.1; thereafter on 22.04.1993 when the respondent / defendant No.2 in writing promised to get back and deliver the

sale deed to the respondent No.1 / plaintiff within six months; thereafter on various dates when the respondent No.1 / plaintiff requested the respondent / defendant No.2 for return of the sale deed; and, lastly on 23.06.1997 when the respondent No.1 / plaintiff served the 'defendants with a legal notice but the defendants failed to comply with the same'.

17. Similarly, the respondent No.1 / plaintiff, in para No.6 of the plaint pleaded having told her son-in-law respondent / defendant No.2 that he has done a wrong to her by mortgaging her sale deed with the appellant / defendant No.1 without her consent and by playing a fraud and misrepresentation'. In para No.7 of the plaint, the respondent No.1 / plaintiff admitted knowledge prior to 22.04.1993 of her son-in-law respondent / defendant No.2 having obtained 'certain credit facility by mortgaging the sale deed of the plaintiff.

18. As would be apparent from the above, it was not the case of the respondent No.1 / plaintiff in the plaint that the cause of action had accrued to her only on receipt of copy of the plaint in the suit for injunction filed by the appellant / defendant No.1 and which is the reason given by the learned ADJ for holding the suit to be within time. It is not found to be her case in

the replication to the written statement either. In fact, the respondent No.1 / plaintiff is not found to have even proved the plaint in the suit for injunction filed by the appellant / defendant No.1 and on the basis whereof the learned ADJ has held the suit within time. The reasoning of the learned ADJ on the aspect of limitation is thus clearly unsustainable, being beyond pleadings and evidence and rather I am nonplussed as to how the learned ADJ gave the said reasoning.

19. From the pleadings of the respondent No.1/plaintiff itself, it is evident that the respondent No.1 / plaintiff prior to 22.04.1993 was aware of the title documents of her property having been pledged / mortgaged with the appellant / defendant No.1 to secure the loans taken by the respondent / defendant No.2. The limitation for suits relating to declaration is dealt with in Part-III of the Schedule to the Limitation Act, 1963 and Article 56 provides limitation of three years for a suit to declare the forgery of an instrument issued or registered, commencing from the date when the issue or registration of the document becomes known to the plaintiff and Article 58 provides limitation of three years for obtaining any other declaration commencing from the date when the right to sue first accrues. The

respondent No.1 / plaintiff in the present case, three years prior to the institution of the suit was aware of the pledge of the title deeds / mortgage of her property with the appellant / defendant No.1. Even if it were to be believed that the respondent No.1 / plaintiff was on that date not aware of the MoM or NOC in favour of the appellant / defendant No.1 purportedly executed by her but the use of the words / expressions ‘pledge of title deeds / mortgage of the property’ clearly shows knowledge by the respondent No.1 / plaintiff of a lien on her property having been created. If it was the case of the respondent No.1 / plaintiff that no such lien could have been created, the words ‘pledge / mortgage’ would not have been used. Rather, the respondent No.1 / plaintiff claims to have given time of six months to her son-in-law respondent / defendant No.2 to get back the said documents.

20. In *Khatri Hotels Private Limited Vs. Union of India* (2011) 9 SCC 126 the Supreme Court was concerned with the aspect of limitation for a suit for declaration of title and mandatory and permanent injunction. The cause of action was pleaded to have accrued on the date when the plaintiff came to know of the entries in the revenue records in favour of defendant Union of India. It was held that while enacting Article 58 of the 1963 Act, the

legislature had designedly made a departure from the language of Article 120 of the 1908 Act ;The word 'first' has been used between the words `sue' and `accrued'. This was held to mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues; successive violations of right were held not to give rise to fresh cause and it was observed that suit was liable to be dismissed if it was beyond the period of limitation, counted from the day when the right to sue first accrued. Applying the said principles it was held that since the plaintiff, from the pleadings of DDA in an earlier suit knew of the rights claimed by the plaintiff having stood violated, even if the plaintiff did not know of the notifications by which his right to property was taken away, knowledge of violation of right was enough and cause of action had accrued and mere knowledge of entries would not confer a fresh cause of action to appellant/plaintiff.

21. In my view, the cause of action if any for a suit for declaration accrued to the respondent no.1 / plaintiff before 22.04.1993 and the suit filed beyond the period of three years therefrom was clearly barred by time.

22. The matter can be looked at from another perspective. Even if it were to be believed that the respondent No.1 / plaintiff before 22.04.1993 was not aware of the MoM and NOC purportedly executed by her, once the respondent No.1 / plaintiff had learnt of the title documents of her property having been pledged / or her property having been mortgaged, the respondent No.1 / plaintiff ought to have been put to enquiry and cannot be permitted to allow such a state of affairs to continue to exist and, by unilaterally deciding when to make enquiries as to how without her consent the appellant / defendant No.1 on the security of the title documents of her property, advanced loans to the respondent / defendant No.2, govern the date of commencement of the limitation. The suit for declaration was thus barred by time and liable to be dismissed on this ground alone.

23. This court in *Satya Prakash Gupta Vs. Vikas Gupta* MANU/DE/2042/2010 held that where the plaintiff was aware of the existence of the document qua which the declaration of forgery was claimed, limitation of 3 years under Article 56 would begin to run and the plea of the plaintiff of not knowing of the exact documents would be of no avail. RFA (OS) No. 23/2010 titled *Satya Prakash Gupta Vs. Vikas Gupta* preferred

thereagainst was dismissed, again emphasising knowledge of existence of documents and observing that rules of limitation are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly and those who sleep upon their claims should not be assisted by the courts.

24. The same is the position with respect to the suit for the relief of mandatory injunction. The respondent No.1 / plaintiff, for more than three years prior to the date of institution of the suit was aware of the title documents of her property having been pledged / deposited by the respondent/ defendant No.2 with the appellant / defendant No.1. The cause of action if any for the relief of taking back the said documents accrued to the respondent No.1 / plaintiff latest by 22.04.1993 and the suit for the said relief also could not have been instituted beyond three years. Again, the respondent No.1 / plaintiff could not by choosing not to make a demand for the said documents on the appellant / defendant No.1, stop the period of limitation from running.

25. Thus the suit for the relief of mandatory injunction is also found to be barred by time.

26. I also find merit in the contention of the counsel for the appellant / defendant No.1 that there was no denial by the respondent No.1 / plaintiff of her signatures on the MoM / NOC.

27. The respondent No.1 / plaintiff died before her evidence could be recorded and her husband Sh. K.L. Gulati only appeared as a witness. He in his affidavit by way of examination-in-chief though deposed that neither he nor the respondent No.1 / plaintiff signed any deed of alleged mortgage or any other document of deposit of sale deed in the office of the appellant / defendant No.1 (as the said documents purportedly bear not only the signatures of the respondent No.1 / plaintiff but also of her husband Sh. K.L. Gulati) and also that the alleged mortgage deed is forged and fabricated but refrained from deposing that the signatures on the MoM and NOC are not of the respondent No.1 / plaintiff or his own. I must however record that even the counsel for the appellant / defendant No.1 did not put the said signatures to him.

28. The witness of the appellant / defendant No.1 in his deposition proved the MoM and the NOC and deposed the same to have been executed by the respondent No.1 / plaintiff. In cross-examination, he stated that the

signatures of the respondent No.1 / plaintiff on MoM and NOC matched the signatures on the sale deed. The said witness of the appellant / defendant No.1 was not cross-examined by the respondent / defendant No.2. The respondent / defendant No.2 in his evidence deposed that the property was mortgaged by the respondent / plaintiff No.1 herself and her signatures were attested by her husband Sh. K.L. Gulati. No suggestion was given to him that he had forged the signatures of the respondent No.1 / plaintiff or Sh. K.L. Gulati on the said documents.

29. I am of the view that the learned ADJ has mis-appreciated the evidence in this respect also. The only inference possible from the aforesaid state of evidence is of there being no denial of the signatures on the MoM and NOC being of the respondent No.1 / plaintiff and her husband.

30. Even otherwise, the collusion between the respondent No.1 / plaintiff and the respondent / defendant No.2 who is none other than her son-in-law, is writ large in the facts of the case and the suit was clearly an attempt to defeat the security against which the appellant / defendant No.1 had advanced monies to the respondent / defendant No.2. It is unfortunate that the learned ADJ has failed to see through the game being played and has

allowed such security in favour of the appellant / defendant No.1 a Public Sector Undertaking to be nullified. The husband of the respondent No.1 / plaintiff in fact in his cross-examination admitted that the respondent / defendant No.2 was not inimical to him and his wife respondent No.1 / plaintiff in 1993. The only inference possible was of the mortgage by deposit of title deeds in favour of the appellant / defendant No.1 being consensual and the suit having been filed as an afterthought, after the appellant / defendant No.1 had already initiated proceedings upon default by the respondent / defendant No.2 and sought injunction against the respondent No.1 / plaintiff.

31. Though the pleadings in the suit for injunction filed by the appellant / defendant No.1 have not been proved but I find photocopies thereof on record and a perusal of the written statement of the respondent No.1 / plaintiff in the said suit shows that that the respondent No.1 / plaintiff was fully aware of the business affairs of her son-in-law respondent / defendant No.2 in the name and style of M/s Madan Jewellers even though the respondent/defendant no.2 was not a party to the said suit, so much so that allegations were also made against the Arbitrator by then already appointed

by the appellant / defendant No.1 and the claim of the appellant / defendant No.1 against the respondent / defendant No.2 before the Arbitrator was styled as frivolous and untenable.

32. The learned ADJ, instead of taking up the respondent / defendant No.2 who was then still alive to task, unfortunately chose to deprive the Public Sector Undertaking of the means to recover public monies.

33. I am also of the view that even if it were to be believed that the initial deposit of title deeds of the property of the respondent No.1 / plaintiff with the appellant / defendant No.1 was without the consent of the respondent No.1 / plaintiff, the respondent No.1 / plaintiff by allowing the said title deeds to remain with the appellant / defendant No.1 for a period of over three years and by allowing the appellant / defendant No.1 to rest secured in the knowledge of holding mortgage of the property of the respondent No.1 / plaintiff as security for recovery of its dues against the appellant / defendant No.1, created / ratified such mortgage. The counsel for the appellant / defendant No.1 is correct in his contention that a mortgage by deposit of title deeds under Section 58 of the Transfer of Property Act, 1882 does not require any MoM to be executed. All that is required is delivery to a

creditor of documents of title of immovable property with intent to create a security thereon. Even if the intent to create a security is lacking at the time of delivery of the documents, if the owner of the immovable property by not taking any action inspite of knowledge, of another having created a situation of delivery of such documents to a creditor under the impression that the same was with an intent to create a security thereon, allows the said state of affairs to continue, that itself would amount to the intent of the owner of the immovable property to create security of her property in favour of the creditor.

34. Some of the other reasons given by the learned ADJ for deciding in favour of respondent No.1/plaintiff also astound me. The reasoning, that the original Sale Deed could not have been returned on the very next day of registration or that if the respondent No.1/plaintiff had executed the MoM/NOC, she would not have filed the suit, is nothing but conjectures and surmises and presumptions. The reasoning, of the relationship between respondent No.1 / plaintiff and her son in law respondent/defendant No.2 being not cordial because of suit filed, inspite of express admission in cross-examination, is also baffling. The learned ADJ did not notice that the suit was filed much later, just prior to institution of the suit from which this

appeal arises and *ex-parte* decree was obtained. There is nothing to show that the respondent No.1/plaintiff executed the said decree against respondent/defendant No.2. The said proceeding was thus nothing but creation of evidence to show the relationship to be strained.

35. The appeal thus succeeds, the judgment and decree of the learned ADJ is set aside and the suit filed by the deceased respondent No.1 / plaintiff is dismissed. The legal heirs of the respondent No.1 / plaintiff are also burdened with exemplary costs of Rs.20,000/- for bringing and pursuing a false and frivolous suit.

36. The legal heirs of the respondent No.1 / plaintiff or such of the legal heirs who have taken delivery of the original sale deed are directed (in exercise of the powers of restitution) to within 30 days deposit the same back with the appellant/defendant No.1, failing which they / he / she shall be liable for being proceeded against for disobedience of the directions of this Court.

Decree sheet be drawn up.

DECEMBER 05, 2013
'gsr'..

RAJIV SAHAI ENDLAW, J.