

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (OS) No. 950 of 2013

Reserved on: July 15, 2013

Decision on: July 31, 2013

SHANTA CHOPRA

..... Plaintiff

Through: Mr. Arun Malik, Mr. Subhiksh
Vasudev & Mr. Srivats
Kaushal, Advocates

versus

UMA BAHADUR

.....Defendant

Through: Mr. Rajshekhar Rao,
Ms. Zehra Khan & Ms. Gauri
Puri, Advocates

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

31.07.2013

CS (OS) No. 950 of 2013 with IA No. 8335 of 2013 (under Order XXXIX Rules 1 and 2 CPC), IA No. 8337 of 2013 (under Order XXVI Rule 9 CPC), IA 8338 of 2013 (under Order XXXII Rule 15 CPC) and IA No. 10257 of 2013 (by the Defendant for recall of order dated 20th May 2013)

1. The present suit has been filed for a declaration and permanent injunction against the Defendant, Mrs. Uma Bahadur. The prayer in the suit is that a Release Deed dated 24th May 1999 and a Rectification Deed dated 17th November 1999 stated to have been executed by Mrs. Shanta Chopra, in whose name the present suit has been filed, in favour of the Defendant, in relation to the property at 24, Nizamuddin East, New Delhi (property in
CS(OS) No.950 of 2013

question) should be declared null and void. The further prayer in the suit is for a permanent injunction in favour of the Plaintiff and against the Defendant from holding out as the owner of the entire property in question and to restrain her from selling, mortgaging, transferring or creating any charge or parting with possession thereof to any third person without the consent of the Plaintiff.

The averments in the plaint

2. The cause title of the plaint reflects that the Plaintiff is Mrs. Shanta Chopra presently residing at the property in question. She is described as “a person of unsound mind” and being represented through her son and next friend, Mr. Ravi Chopra, presently residing at 54, Ground Floor, Sunder Nagar, New Delhi”. It is not disputed that the Defendant is the real sister of the Plaintiff. In para 1 of the plaint, it is stated that the Plaintiff “who is advanced in age and suffering from various ailments” is also presently residing in the property in question. In para 2, it is stated that the Plaintiff is 87 years old; that since 1995-96, she has been suffering from “severe ailments such as advanced Parkinson’s disease, osteoarthritis in left knee, Rhinitis and hypertension, which have deteriorated her physical and mental condition and due to which, she is unable to grasp, analyze or understand the implications of her actions spoken or written.” It is stated that “the Plaintiff, thus being of unsound mind, is unable to make informed and appropriate decisions and protect her interests.”

3. The plaint has been signed by Mr. Ravi Chopra and the affidavit in

support of the plaint is also signed by Mr. Ravi Chopra. In para 1 of the affidavit dated 16th May 2013 in support of the plaint, apart from stating that he is the son and legal heir of the Plaintiff, Mr. Ravi Chopra states that he is “the proposed next friend/guardian *ad litem* of the Plaintiff and as such is well conversant with facts and circumstances of the present case.”

4. The plaint narrates that Mr. Ravi Chopra was born to the Plaintiff and late Dr. (Brigadier) Sri Krishan Chopra (Retd.) in 1949 and his sister Mrs. Anuradha Chopra was born in 1958. It is stated that Mrs. Anuradha Chopra passed away in 1994. Para 5 of the plaint states that Mr. Ravi Chopra lived overseas for many years and continued to send money back home to his parents. He used to visit and live with his parents whenever he returned to India and even the parents visited and stayed with him till the year 1995 upon their visit to Dubai. In 1998, he decided to shift back to India permanently with his family to live with his parents at the Sunder Nagar Property belonging to and owned by his father. From 1998 till 1999, Mr. Ravi Chopra and his family lived with his parents at the Sunder Nagar property. It is stated that Mr. Ravi Chopra continued to look after his father till his demise on 8th September 2002.

5. In Para 8 of the plaint, it is stated the Mrs. Shanta Chopra was suffering from Parkinson’s disease, osteoarthritis etc. and was diagnosed and regularly treated for the same. It is stated that “The mental and physical health of the Plaintiff was deteriorating with passage of time and post 2002 (i.e. after the demise of her husband), the Plaintiff’s health worsened at a much rapid

rate.” It is claimed that Mr. Ravi Chopra, while living at the Sunder Nagar property with the Plaintiff between 1998 and 1999, used to look after the Plaintiff’s needs, including her medical treatment.

6. Mr. Ravi Chopra is stated to have completed the construction of his house in Gurgaon between 2002 and 2003 and decided to move into this house with his family. It is stated that the Plaintiff, owing to her emotional attachment to the Sunder Nagar property, decided to stay there. It is claimed that Mr. Ravi Chopra kept visiting her mother on a regular basis. In para 10 of the plaint, it is stated that the Defendant being the younger sister of the Plaintiff used to visit the Plaintiff at Sunder Nagar after 1996 “once in a while.” It is alleged that the Defendant exploited her close relationship with the Plaintiff during her visits. It is stated that “the property at 24, Nizamuddin East, New Delhi is jointly owned by the Plaintiff and the Defendant having inherited the same from their parents.” It is stated in para 11 that the Plaintiff’s sudden desire in 2006-7 to shift out of the Sunder Nagar property and move in with the Defendant in the property in question permanently came as a surprise to Mr. Ravi Chopra. In para 12 of the plaint, it is claimed that Mr. Ravi Chopra was told by the Defendant that being the younger sister she had the right to look after the Plaintiff and that since “she was so sweet and honey”, he did not expect any foul play. In para 13 of the plaint, it is claimed that when Mr. Ravi Chopra visited the Plaintiff, he found she was kept in a small room in the property in question without amenities or comfort and upon being asked “somehow managed to inform Shri Ravi Chopra that the Defendant had brought to the suit property against

her wishes and desire.” It is then claimed that the Defendant asked Mr. Ravi Chopra not to interfere between the two sisters and that from March 2010 till December 2012, he explored all means of communicating with the Plaintiff but the Defendant thwarted those efforts. A meeting was held with the Defendant in April 2013 through elders and well wishers in the family when it transpired that the Defendant was interested in keeping the Plaintiff in her custody indefinitely “for giving effect to her devious designs and ill intentions and ensure that the truth does not surface during the life time of the Plaintiff.” In para 15, it is stated that Mr. Ravi Chopra apprehends that the Defendant may also have got some kind of documents signed from the Plaintiff with respect to the Sunder Nagar property which the Plaintiff or Mr. Ravi Chopra are not even aware of. In para 17, it is stated that Mr. Ravi Chopra approached the relevant authorities and obtained true copies of the Release Deed dated 24th May 1999 and the Rectification Deed dated 17th November 1999 executed by the Plaintiff in favour of the Defendant in relation to the property in question. It is alleged in para 17 that the Defendant had misused the Plaintiff’s physical and mental health.

7. Para 19 of the plaint states that the cause of action first arose in April 2013 when the Plaintiff came to know from the copies available from the office of the Sub-Registrar of the Release Deed and the Relinquishment Deed.

8. Along with the aforementioned plaint, an application, IA No. 8335 of 2013 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure,

1908 ('CPC'), IA No. 8337 of 2013 under Order XXVI Rule 9 CPC and IA 8338 of 2013 under Order XXXII Rule 15 CPC were filed.

9. IA No. 8338 of 2013 states that “medical records of the Plaintiff have been placed before the Court for its satisfaction that the Plaintiff is presently a person of unsound mind and incapable of thinking in her best interest.” It is pleaded that the Court should inquire and take necessary steps to ascertain the averments made in the plaint so that the rights and interests of the Plaintiff may be protected from the illegal and wrongful actions of the Defendant. It is claimed that the Applicant “has no interest in the matters in controversy in the suit adverse to that of the Plaintiff.” The prayer is that the Court should appoint Mr. Ravi Chopra, the Applicant, as the next friend/guardian *ad litem* of the Plaintiff. The application is supported by the affidavit of Mr. Ravi Chopra.

10. The suit was first listed for hearing on 20th May 2013 when summons in the suit and notice in the applications were directed to be issued to the Defendant, returnable for 29th May 2013.

11. On the next date, i.e. 29th May 2013, the Defendant entered appearance through counsel and sought time to file the written statement and replies and that if a short date was given “the Defendant shall maintain *status quo* in respect to the suit property.” The case was asked to be listed on 15th July 2013.

12. The Defendant has filed IA No. 10257 of 2013 for recall of the summons issued on 20th May 2013. It is contended by the Defendant that the documents placed on record do not demonstrate “that the Plaintiff is presently a person of unsound mind. In any event, medical prescriptions are insufficient to conclude the unsoundness of mind of a person.” It is submitted that none of the alleged serious ailments and diseases mentioned therein is such as to impair the mental faculties of a person and, therefore, the entire underlying premise is misconceived “apart from being a blatant falsehood to the knowledge of the purported next friend.”

The Defendant's contentions

13. According to the Defendant, under Order XXXII Rule 15 CPC it is possible for a next friend to sue on behalf of another person only when such person is either so adjudged by a court of competent jurisdiction, or found by the court on inquiry to be so. It is submitted that it is not open to the Court to consider the instant suit before the mandatory requirements of Order XXXII Rule 15 CPC are complied. The Defendant contends that “a bare perusal of the averments made in the plaint reveal that no cause of action has been made out therein and that the attempt of Shri Ravi Chopra to pursue this wholly false, frivolous and vexatious plaint under the guise of being the alleged next friend/guardian *ad litem* is liable to be rejected with exemplary costs as constituting the grossest abuse of the legal process.” It is then contended that the purported next friend, Mr. Ravi Chopra, had failed to discharge the obligation of pleading material and necessary particulars in respect of the allegation that the documents in question were executed

through misrepresentation, fraud and coercion, taking advantage of the Plaintiff's unsound state of mind. It is prayed that the suit ought to be dismissed on this ground as well.

14. The Defendant contends that Mr. Ravi Chopra, the purported next friend, does not satisfy the requirement of Order XXXII Rule 4 CPC and has an interest adverse to the Plaintiff inasmuch as he seeks to challenge the actions of the Plaintiff having executed a registered document transferring her rights in favour of the Defendant, who is her real sister. Further, the documents in question were registered as far back as in 1999 when the Plaintiff's husband was alive and Mr. Ravi Chopra was residing with them. It is stated that these facts were always known to the purported next friend as well as to the Plaintiff when she had voluntarily executed the said documents and participated in their registration way back in 1999. It is stated that Mr. Ravi Chopra has never had a good relationship with his parents and that is why the Plaintiff moved in with the Defendant. The Plaintiff chose to relinquish her rights in the property in question in favour of the Defendant, her real sister, in 1999 and that too by registered documents while her husband was alive and when she was in perfectly good mental health demonstrating the "absolute lack of any substance in the allegations being leveled at in the instant plaint which, admittedly, are at the instance of the purported next friend."

Submissions of counsel

15. Mr. Rajshekhar Rao, learned counsel for the Defendant, submitted that when a plaint is presented on behalf of a next friend, the representation by such next friend does not become effective for the purposes of admitting the plaint and issuing process until the stage contemplated by Order XXXII Rule 15 CPC is reached. In other words, unless the Court grants leave to the purported next friend to sue on behalf of the Plaintiff, the Court ought not to proceed with the suit. It is submitted that for these reasons the Defendant has not filed a written statement and would do so as and when the Court requires her to. It is submitted that the suit is an abuse of the process of law which is inherently fallacious since the purported next friend has lived with the Plaintiff and the Plaintiff has, for the last several years, been in the care of the Defendant.

16. Mr. Arun Malik, learned counsel for the Plaintiff, relies upon the decision in ***Babulal Badriprasad Varma v. Surat Municipal Corporation AIR 2008 SC 2919*** to urge that the Defendant has waived her right to file an application seeking recall of the order dated 20th May 2013 by virtue of the statement made on her behalf by her counsel in Court on 29th May 2013 undertaking to file the written statement.

Decision of the Court

17.1 The above submission of the learned counsel for the Plaintiff is based on an improper reading of the aforementioned decision. The facts in ***Babulal Badriprasad Varma*** were that the Appellant therein was a tenant under the

Respondent Municipal Corporation in respect of a plot measuring 1067 sq. mts. in which he ran a business of marble and stone. Pursuant to a road widening project, 867 sq. mts. of the land was acquired, leaving only 200 sq. mts. Under the Gujarat Town Planning and Urban Development Act, 1976, 20% of the land was taken over without payment of compensation. Despite public notice, the Appellant did not file any objection. A scheme was notified in 1999 and notice under Section 67 of the Act was issued to Respondent No.4, who was allotted the plot. 200 sq. mts. of land that had been left out was also merged in the final plot which was allotted in favour of Respondent No.3.

17.2 The Appellant filed a writ petition challenging the notices issued to Respondent No.4, the landlord of the property in which the Appellant was a tenant, asking him to surrender the plots. At that stage, the notices were challenged by the Appellant. In that context, it was contended by learned counsel for the Respondent Corporation that since there was no response to the public notice by the landlord, there was an implied waiver by the Appellant tenant as his interest was not different from the interest of the landlord.

17.3 It is in the above context that in para 24 the Court observed that “A person may waive a right either expressly or by necessary implication. He may in a given case disentitle himself from obtaining an equitable relief particularly when he allows a thing to come to an irreversible situation.” It was noted that although the Appellant filed an objection with regard to a

draft scheme, he did not choose to pursue it; he did not file any objections to the re-allotment and did not participate in the proceedings following acquisition instituted by the authorities under the Act. In that view of the matter, it was held that it was not entitled to a right to receive special notice under the Act.

17.4 The present case is entirely different. No irreversible stage has been reached. All that was done on 29th May 2013 was that learned counsel for the Defendant took time to file the written statement. That can by no means be taken to be a waiver, either implied or express, of the right of the Defendant to seek recall of the order by which summons were directed to be issued in the suit without there being a compliance with the mandatory requirement of Order XXXII Rule 15 CPC.

18.1 Learned counsel for the Plaintiff next relied upon the decision of this Court dated 25th March 2011 in IA No. 10287 of 2010 in Test Case No. 56 of 2009 (*Dr. Stya Paul v. The State*). By the said order, the Court disposed of an application filed under Order XXXIX Rule 3 and Order 32 Rule 15 CPC filed by one Mrs. Sushma Berliah, daughter of late Dr. Stya Paul and Mrs. Rajeshwari Paul.

18.2 The background facts to the said application were that a testamentary case was filed by late Dr. Stya Paul praying for grant of Letters of Administration ('LOA') to the estate of his brother, late Mr. Jeet Paul. The parties to the said petition were the State, the other brother and the three

others sisters, arrayed as Respondents 2 to 5. The Petitioner himself passed away on 7th June 2010 leaving behind his widow, Mrs. Rajeshwari Paul and his daughter, Ms. Sushma Berlia as surviving legal representative (LR). At that stage, an application was filed under Order XXXII Rule 3 and Order I Rule 10 CPC praying that the mother and the LR should be substituted as Petitioners 1(a) and 1(b) in place of Dr. Styra Paul.

18.3 Thereafter, Mrs. Sushma Berlia filed a separate application under Order XXXII Rule 3 CPC and Order XXXII Rule 15 contending that consequent upon the death of Dr. Styra Paul, the widow, Mrs. Rajeshwari Paul (her mother) was under serious depression; that she was suffering from Alzheimer's disease which had deteriorated her physical and mental condition and that the same had worsened as a result of which she was unable to grasp matters. The Applicant stated that she was staying with her mother for more than two decades; that the mother was under her care; that she had no interest adverse to that of her mother and, therefore, she was fit to be appointed as guardian *ad litem*.

18.4 The application was supported by a certificate dated 30th July 2010 issued by a medical practitioner who held Certified Diplomate of the American Board of Psychiatry & Neurology. The certificate stated that the mother was suffering from "Lewy Body Dementiam, which is a variant of Alzheimer's disease. In this condition, there is impairment of 'cognitive (intellectual) function'; that the patient is unable to make informed and

appropriate decisions. The demise of her husband has aggravated her condition.”

18.5 However, the question that came up for consideration before this Court was whether it should proceed with the matter when an earlier petition had been filed by M/s. Kumar Brothers, being Case No. 268 of 2009 in the Court at Alipore in West Bengal for grant of LOA to the estate of Late Mr. Jeet Paul. Even in the suit in Alipore, an application had been filed to implead Mrs. Rajeshwari Paul and Mrs. Sushma Berlia as LR's of Dr. Stya Paul. Even in those proceedings an application was filed under Order XXXII Rule 3 CPC by Mrs. Sushma Berlia seeking to sue as the next friend of her mother. In that application the Court at Alipore passed an order on 18th December 2010 adjourning the case to 15th January 2011 for further hearing on the maintainability of the application asking the Director, IPGMER, Kolkata to send the names of the doctors, one Psychiatrist, one Neurologist and one Neuro Psychologist for ascertaining the health condition of the mother.

18.6 In the background of the above facts and circumstances, this Court observed that the “provisions of Order XXXII Rule 5 cast a duty on the Court to conduct inquiry and to assess the ability of a party to the proceedings who is stated to be suffering from a disadvantaged or a disability to protect his interest.” The Court was of the view that the application filed in the proceedings in this Court under Order XXXII Rule 15 CPC was also similar to the application filed in the Court of the District

Judge, Alipore and, therefore, the Court ought to proceed to inquire into the condition of Mrs. Rajeshwari Paul. In para 46 of the judgment, it was concluded as under:

“46. It is therefore well settled that so far as the representation of a child or a mentally challenged person is concerned, an independent and impartial evaluation has to be carried out by the court after conducting an inquiry in a manner deemed fit and proper before proceeding in. Having arrived firstly on the conclusion that a party is mentally incapable and is unable to prosecute or defend the case or against it, the court would thus proceed to appoint a fit person as guardian ad litem. One of the essential requirements for such appointments is the fact that the guardian ad litem does not have any interest adverse to that of the applicant.”

18.7 Directions were then issued to the All India Institute of Medical Sciences to constitute a Board of medical experts to evaluate the mental status of Mrs. Rajeshwari Paul.

19. The law explained in the above decision is unexceptionable. What is significant in the facts leading to the above decision is first that the mother of the Applicant therein was staying with her for more than two decades; the Applicant had no interest adverse to the mother; the Applicant was able to produce a medical certificate proximate to the date of the application; the mother was certified medically to be suffering from Alzheimer's disease as a result of which there was “impairment of cognitive (intellectual) function” and she was “unable to make informed and appropriate decisions.” However, in the instant case, the Plaintiff on his own admission has been not been staying with the Plaintiff for over a decade. Even as per the plaint the

right he is now seeking to assert is adverse to the interests of the Plaintiff. His assertion that the Plaintiff is mentally unsound is not supported by any medical certificate. As will be seen presently, a person suffering from Parkinson's disease cannot on that count be said to be mentally unsound. Also, ultimately the Court has to be satisfied that the application is bonafide and will not subject the Plaintiff as well as the Defendant to undue harassment.

20.1 On behalf of the Defendant, reliance is placed in the decision in ***Somnath v. Tipanna Ramchandra Jannu AIR 1973 Bombay 276***. The said decision discussed the provisions of Order XXXII Rules 1 and 15 CPC in considerable detail. It was highlighted that where the Plaintiff in a suit has not already been adjudged to be of unsound mind, the case would fall under the second part of Rule 15 which required the Court to find on inquiry whether, in fact, the Plaintiff is of unsound mind. After discussing the provisions of Order VII Rule 1 as well as Order XXXII Rule 15, the Court in Para 17 explained the procedure to be followed as under:

“17. The above discussion clearly leads to the logical conclusion that when the plaint is being examined for the purpose of admission, if it contains a statement as required by clause (d) of Rule 1 of Order 7 that the plaintiff is a person of unsound mind and that a next friend is suing on his behalf, the court must at once hold an inquiry. It is the duty of the court to do so and it is not necessary for the next friend to make a separate application for that purpose. This inquiry should ordinarily include the calling of the plaintiff himself and questioning him in Court. If the Court entertains doubt about the mental capacity or the soundness of his mind, it is open to the Court to take further assistance in the form of medical examination and the evidence of the doctor under whose observations the plaintiff may be kept. The quantum and extent of

inquiries must be left in each case to the circumstances prevailing. There may be a plaintiff who on immediate view may appear to be a person of unsound mind, and the Court may not need much evidence beyond recording of the questions put to and the answers given by the person concerned. There can be other cases which are not so clear and more evidence may be necessary. However, apart from the total extent of the evidence that might be led, we would suggest that as a matter of strong commonsense approach, the plaintiff who is alleged to be of unsound mind should be invariably called for being questioned when the case falls under the second part of Rule 15 of Order 32. This inquiry is made "for the purpose of recording a finding by the court that the plaintiff is a person of unsound mind, or a person mentally so infirm as to be incapable of protecting his own interests. **The provisions of Rule 15 of Order 32 makes it possible for a next friend to sue on behalf of an adult person as a next friend only when the person is either so adjudged by a court of competent jurisdiction, or if not so adjudged, is found by the court on inquiry to be so. That is the foundation, prima facie, for a next friend to avail and proceed with the suit. Such inquiry is obviously an ex parte inquiry for the court to give a finding and to admit the plaint and issue the process to the other side.**" (emphasis supplied)

20.2. Thereafter, in paras 18 and 19, it was explained as under:

"18. We may at once point out that such an inquiry and finding may be good for the purpose of the next friend to present the suit and obtain first order of the court. This finding of the court does not and cannot bind the defendant who may after entering appearance point out to the court that it has been misled into giving a wrong finding and the defendant was willing to prove that the plaintiff was a person who was capable of protecting his own interests. If such a challenge is held out in a given case, the issue is still open between the parties. The defendant is entitled to prove this allegation. The court cannot shut out an inquiry simply because on the earlier inquiry by it, it gave a finding as contemplated by one part of Rule 15 of Order 32. If a defendant holds out such a challenge and succeeds in proving what he alleges, the consequences are obvious, and we have already indicated what the

court will do when on its own inquiry it found that the plaintiff was a person capable of defending his own interest. The same consequence might follow if the defendant is able to satisfy the Court that the plaintiff was a person who was capable of defending his interests.

19. This according to us, is the correct procedure which must be adopted in a litigation where a next friend seeks to file a plaint on behalf of a person of unsound mind.”

21. The above decision makes it clear that it is the duty of the Court, at the first instance, to embark upon an inquiry to ascertain if, indeed, the Plaintiff is of unsound mind and whether a next friend should be appointed as guardian *ad litem* of the Plaintiff. The procedure under Order XXXII Rule 15 CPC is in such cases mandatory. Without such enquiry, and without satisfying itself that the Plaintiff requires to be represented by a next friend on the grounds claimed, the Court cannot proceed to admit the plaint and issue summons. The inquiry should be such as to give a finding and to admit the plaint and issue the process to the other side. Even if such an inquiry is held and the process is issued, the finding cannot bind the Defendant who may “after entering appearance point out to the court that it has been misled into giving a wrong finding”. Consequently, there is no question of any waiver by the Defendant in the instant case of her right to seek recall of the order dated 20th May 2013 passed by the Court directing summons to issue without complying with the mandatory requirement of Order XXXII Rule 15. Even otherwise, there is an inherent power in the Court to recall an order that has been passed without complying with the mandatory requirement of the law.

22. For the aforementioned reasons, the Court has no hesitation in recalling the order dated 20th May 2013 directing summons to be issued even without embarking into an inquiry whether the Plaintiff is, as claimed in the plaint, of unsound mind. The Court ought to have examined the application under Order XXXII Rules 1 and 15 CPC first and satisfied itself even at that stage that the Plaintiff was of unsound mind, requiring the appointment of a guardian *ad litem*.

23. Consequently, this Court recalls the order dated 20th May 2013. IA No. 10257 of 2013 is accordingly allowed.

24. The question that next arises is whether, in fact, a case has been made out by the Plaintiff in IA No. 8338 of 2013 to require the Court to commence such an inquiry. At the outset, it is necessary to place on record the statement of learned counsel for the Defendant, on instructions, that the Defendant is not interested or connected in any manner with the Sunder Nagar Property. She has been, throughout, residing in the property in question at Nizamuddin. Even, according to Mr. Ravi Chopra, the Plaintiff has moved in with the Defendant and has been residing with her since 2006/2007.

25. One of the essential requirements under Order XXXII Rule 15 is that the person seeking appointment as guardian *ad litem* of the Plaintiff should not have any interest adverse to that of the Plaintiff. Even according to the narration in the plaint, the Plaintiff, Mrs. Shanta Chopra had, way back in

1999, executed both the Release Deed and the Rectification Deed. Both the documents are admittedly registered documents. For over 14 years, there has been no challenge to either documents. There is no explanation as to the belated challenge to the said documents except the statement of the Plaintiff that sometime in April 2013 he chanced upon these documents.

26. There is a presumption as to the validity of registered documents which is, of course, rebuttable. But there have to be very strong reasons to dislodge that presumption. The Court is not satisfied with the vague explanation given in the plaint that Mr. Ravi Chopra was not aware of these documents till April 2013. The said documents were executed at a time when his father was alive, his parents were in the Sunder Nagar property and importantly when he is supposed to have lived with them there on and off. Therefore, it seems highly unlikely that he would not have known of the documents. By the said documents, the Plaintiff has relinquished her rights in the Nizamuddin property in favour of her real sister who is in fact now looking after her. It is not even the case of Mr. Ravi Chopra that there were at any point in time any differences between the sisters. The said documents were obviously executed out of the close relationship between them. There is no reason to doubt its genuineness and that too fourteen years after its execution. It was in accordance with the wishes of the Plaintiff. The prayer in the plaint that the said deed must be declared null and void is in the circumstances, an assertion of an interest by the applicant Mr. Ravi Chopra adverse to that of the Plaintiff. There being no other Class I heir of the Plaintiff, the real beneficiary of the prayer in the plaint is Mr. Chopra. The

essential requirement of Order XXXII Rule 15 CPC is, therefore, not met in this case.

27. Secondly, the documents placed on record in support of the application under Order XXXII Rule 15 CPC do not even *prima facie* make out a case for entertaining the prayer made therein. These documents purport to show the medical condition of the Plaintiff. There is a certificate dated 22nd January 2009 issued by one Dr. Vijay Chandra, which reads as under:

“TO WHOM IT MAY CONCERN

This is to certify that Mrs. Shanta Chopra, (age 81, wife of late Brigadier S.K. Chopra, resident of 54, Sunder Nagar, New Delhi) has been under my medical care for the past several years for Parkinson’s disease and related conditions. This disease has now become very advanced due to which she has become immobile and needs twenty four hour nursing care by attendants.”

28. What is important is that the above certificate nowhere speaks of the mental faculty of the Plaintiff at that point in time, i.e. 1999 when the aforementioned Release Deed and the Rectification Deed were executed. Then, there are two documents dated 8th September 1999 and 9th September 1999 titled “Request for special investigation.” The name as shown is S.K. Chopra with the rank Brigadier.

29. Also placed on record is a book containing notes/investigations of the Armed Forces Clinic (AFC), Dalhousie Road, New Delhi from 5th February 1996 onwards. There is a diagnosis of early Parkinson disease. There are notes of 1996 stating “doing well with drugs”. There is a note of 23rd

February 1998, which shows that improvement is continuing. On 28th August 1998, it is stated that there are no fresh complaints. Importantly, around the time of Rectification Deed and Relinquishment Deed, there are no significant entries regarding any medical condition of the Plaintiff, and in particular her mental condition, having deteriorated. The entry of 25th June 1999 states '*status quo*' and this continues till 18th October 1999. On 25th October 1999, the entry is "no fresh symptoms." On 1st November 1999, the entry states "*status quo*." The last entry is dated 5/6th March 2002. Significantly, there is no entry in this booklet of the AFC concerning the mental unsoundness of the Plaintiff all. The entries of 2nd December 1999 and 5th January 2001 both state "Asymptomatic."

30. The documents placed on record, therefore, do not enable the Court to conclude that the Plaintiff was of unsound mind in 1999 or even thereafter. The extant medical literature does not suggest that there is any connection between Parkinson's disease and mental soundness. In other words there is nothing placed on record to suggest that a person suffering from Parkinson's disease is by that reason also mentally unsound. In any event it would be difficult to determine in 2013 what the mental condition of the Plaintiff would have been in 1999 i.e. more than fourteen years ago. As already noted, even the contemporaneous entries in the clinical notes of investigations do not indicate at all that she was of unsound mind in 1999. She appears to have been regularly receiving treatment at the AFC and is shown to have responded well to that treatment. It is, in the circumstances, not proper for Mr. Ravi Chopra to make a casual averment that the Plaintiff

is presently of unsound mind and was so in 1999. There is no basis for such averment.

31. Lastly, the question of the bonafides of Mr. Ravi Chopra. The Plaintiff is today 87 years old. After her husband's death she was admittedly living all by herself at the Sunder Nagar property. In 2006/2007 she decided to shift out from there and move in with her sister with whom she had good relations. The Court is not impressed with the self-serving statements of Mr. Ravi Chopra in the plaint as to why he waited for fourteen years to challenge the Release Deed and the Relinquishment Deed. In any event, the share of the Plaintiff in the property in question is in the nature of an absolute interest which during her lifetime she was free to deal with in whichever way she pleased. Mr. Ravi Chopra has no vested right in the share of the Plaintiff in the property in question while she is alive. The Defendant states that she has no claim to the Sunder Nagar property. The allegation that the documents in relation to the Nizamuddin property, in which Mr. Ravi Chopra has no vested right, have been executed from the Plaintiff by the Defendant in 1999 under undue influence, coercion and fraud is wholly unsubstantiated. When both the said documents are registered documents, the burden on the challenger to displace the presumption of validity is considerable. Mr. Ravi Chopra has not even been able to make out a *prima facie* case for questioning the genuineness of those documents.

32. The Court is in the circumstances of the view that the application and the suit filed by Mr. Ravi Chopra claiming himself to be the next friend of his

mother is not bonafide. The facts pleaded and the documents placed on record are insufficient to persuade this Court to embark upon an inquiry into the mental condition of the Plaintiff. Given the respective ages of the Plaintiff and the Defendant it appears grossly unfair to drag them into this pointless and vexatious litigation on the basis of unsubstantiated allegations. The further pendency of these proceedings is likely to cause mental trauma and harassment not only to the Defendant, but to the Plaintiff herself.

33. The application under Order XXXII Rule 15 CPC is, accordingly, dismissed.

CS (OS) No. 950 of 2013 & IA Nos. 8335-38 of 2013

34. In view of the above order, the suit and the pending applications are dismissed.

July 31, 2013

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S. MURALIDHAR, J.