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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 411/2012**

Decided on 24th May, 2013

SANJAY GUPTA

..... Appellant

Through: Mr. Achal Gupta, Adv. along
with appellant in person.

versus

ARUN GUPTA

..... Respondent

Through: Mr. Suhail Dutt, Sr. Adv. with
Mr. Azhar Alam, Mr. Sankalp
Goswami and Mr. K.K.
Sharma, Advs. along with
appellant in person.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Appellant-defendant is real brother of respondent-plaintiff.
2. Disputes between the parties revolve around the second floor of property bearing no. 6253, Block No. 6-B, Gali No.1, Dev Nagar, Karol Bagh, Delhi (for short the whole property hereinafter is referred to as “the suit property”).
3. Suit property was purchased by the mother of parties from Mrs. Ravinder Kumari vide a registered sale deed dated 4th August, 2008. Thereafter, she executed a registered gift deed on 3rd October, 2008 in

favour of respondent. Subsequently, respondent executed a registered gift deed in favour of the appellant on 1st May, 2009 in respect of the second floor. It is this gift deed which is bone of contention between the parties.

4. Respondent filed a suit for declaration and permanent injunction before the trial court alleging therein that gift deed dated 1st May, 2009 was executed by him under undue influence, pressure and coercion of the appellant. By the judgment and decree impugned in this appeal trial court has passed a decree of declaration holding the gift dated 1st May, 2009 to be null and void, on an application under Order 12 Rule 6 CPC filed by the respondent. Trial court has returned a categorical finding that it was evident from the record that a clear admission was made about non existence of second floor as on the date of execution of gift deed dated 1st May, 2009, thus, same was hit by Section 124 of the Transfer of Property Act, 1882 (the Act, for short). As regards relief of injunction suit is still pending.

5. Learned counsel for the appellant has vehemently contended that no clear and unequivocal admission was made in the pleadings that the second floor was not in existence at the time when gift deed was executed nor the same could have been inferred from the

documents placed on record. It is the case of appellant that second floor was in existence but was subsequently demolished and the suit property was reconstructed only upto ground floor in order to deprive the respondent of his rights to second floor. It is vehemently contended that as to whether the second floor was in existence or not is a matter of fact which could have been thrashed out only after a full fledged trial, thus, trial court has committed a grave error in decreeing the suit on the basis of purported admission which did not exist.

6. There is no gain saying that if Court is satisfied at any stage of the proceeding, that a clear and unequivocal admission of fact has been made it shall pass a decree under Order 12 Rule 6 CPC even without any formal application. Order 12 Rule 6 CPC envisages that where admission of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit either on the admission of any party or of its own motion and without waiting for the determination of any other question between the parties, makes such order or give such judgment as it may think fit having regard to such admission. In *Uttam Singh Dugal and Co. Ltd. versus Union Bank of India and others* AIR 2000 SC 2740, Supreme Court held, thus: “as to the object of the Order XII Rule 6, we need

not say anything more than what the legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgement. Where other party has made a plaint admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed". In Shikharchand and others versus Mst. Bari Bai and others AIR 1974 Madhya Pradesh 75, it has been held that it is open for the court to pass a judgment on a statement by a party not only in the pleadings but also de hors the pleadings. Such admissions may be made either expressly or constructively. In Chairman & Managing Director, VSP and others versus Goparaju Sri Prabhakara Hari Babu 2008 (5) SCC 569,

Supreme Court has observed that judicial admission can be made the foundation of rights of the parties.

7. In this case, the short question which needs to be considered is whether the second floor was in existence as on the date of execution of the gift deed. In case the second floor was not in existence the gift deed is obviously null and void in view of Section 124 of the Act.

8. Relevant it would be to refer to Section 124 of the Act with advantage, which reads as under :-

“Gift of existing and future property – A gift comprising both existing and future property is void as to the latter.”

9. A bare perusal of aforesaid provision makes it clear that a gift in respect of a non existence and/or future property is void. In Commissioner of Income-tax, Kanpur versus Dr. R.S. Gupta AIR 1987 SC 785, Supreme Court has observed that in order to constitute a valid gift there must be an existing property.

10. Thus, the whole issue revolves around the existence of gift deed.

11. In the plaint, respondent has categorically averred that second floor does not exist. In the written statement, this fact has been admitted. It has not been stated in the written statement that there

existed a second floor and the same was demolished subsequently. The whole written statement is silent on this aspect, inasmuch as, it has been admitted that second floor does not exist. Admission regarding non existence of second floor can be inferred from the statements made in the written statement, inasmuch as, documents clearly indicate its non existence. It has been stated in the written statement that an oral agreement was arrived at between the parties that second floor would be constructed and the same along with half of the third floor would vest in appellant. Pleadings to this effect are contained in para 6 and 7 of the written statement. In para 7 of the plaint respondent has made a categorical assertion about the non-existence of the second floor. In the written statement, this assertion has practically remained uncontroverted, inasmuch as, it is stated that parties had agreed that it would be constructed. The relevant portion of the written statement is quoted for the sake of ready reference and the same reads as under :-

“.....It is submitted that as per the oral agreement entered between the parties to the suit and family members more particularly mother of the parties to the suit that the second floor is to be constructed and half of the third floor is to be constructed and rest half of the third floor is to be handed over to the defendant.....”

12. The non-existence of second floor is also evident from a perusal of sale deed executed by Mrs. Ravinder Kumari through her attorney in favour of mother of the parties. Sale deed was executed on 4th August, 2008 and there is no reference of second floor therein. Immediately, thereafter mother of the parties had executed a registered gift deed in favour of respondent on 3rd October, 2008 where also there is no mention of second floor, inasmuch as, site plan attached with the gift deed shows existence of only ground and first floor. Thus, in my view, trial court has not committed any illegality in concluding that there was a clear admission with regard to the non-existence of second floor.

13. Learned senior counsel has vehemently contended that appellant had filed a complaint against the respondent before Metropolitan Magistrate, Delhi alleging therein that he was forcibly evicted and the second floor was demolished. After trial, Metropolitan Magistrate has returned a categorical finding that such a plea was false and not convincing, inasmuch as, second floor was not in existence. It is further pointed that order of the Metropolitan Magistrate passed on 17th August, 2012 has remained unchallenged in any superior court. I need not to put much reliance on this order since

it was not part of the trial court record. However, fact remains that from the material placed on record of trial court a clear admission about non-existence of second floor is made out, thus, the gift deed is null and void in view of Section 124 of the Act.

14. For the foregoing reasons, appeal is dismissed being devoid of merits. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

MAY 24, 2013

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