

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

+ **RSA No. 88/2017**

% **Judgment reserved on: 20th April, 2017**
Judgment pronounced on: 2nd May, 2017

SHASHI

..... Appellant
Through: Ms. Monika Singhal and
Mr. Abhishek Gautam, Advocates.

versus

RAJESH KUMARI

..... Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant in the suit against the impugned judgment and decree dated 12.2.2016 of the First Appellate Court setting aside the judgment of the Trial Court dated 4.3.2015. The trial court by its judgment dated 4.3.2015 had dismissed the suit for possession and damages filed by the respondent/plaintiff. The first appellate court vide its impugned judgment dated 12.2.2016 has thus decreed the suit for possession and damages. The suit property is a three storey house bearing no. B-492, Weavers Colony, Ashok Vihar, Wazirpur Phase-IV, Delhi built on a plot of 32 sq. yds .

2. The facts of the case are that the subject suit for possession and *mesne* profits was filed by the respondent/plaintiff the widow of late Sh. Kamal Singh. The original owner of the suit property was the mother of late Sh. Kamal Singh namely Smt. Parvati i.e mother-in-law of the respondent/plaintiff. Smt. Parvati executed various documents being the site plan, agreement to sell, general power of attorney, Will etc etc dated 29.3.2012 transferring rights in the suit property in favour of her son Sh. Kamal Singh. Sh. Kamal Singh therefore became the owner of the suit property, and which documents have been proved and exhibited before the trial court as Ex.PW1/1 to Ex.PW1/10, and of which documents the general power of attorney and the Will have also been registered before the Sub-Registrar. Appellant/defendant is the sister-in-law of the respondent/plaintiff i.e the appellant/defendant is the sister of the husband of the respondent/plaintiff. It was pleaded in the plaint that in March 2003 the appellant/defendant on the pretext of helping her ailing mother started to live in the house of the respondent/plaintiff and which the respondent/plaintiff allowed to do till the recovery of the mother from sickness, however in spite of the fact that the mother-in-law of the respondent/plaintiff died on 14.4.2013 the appellant/defendant failed to vacate the suit premises in spite of repeated requests and on the

contrary started threatening the respondent/plaintiff and her two minor daughters that they would be evicted from the suit premises. In May 2013, the respondent/plaintiff asked the appellant/defendant to vacate the second floor of the suit property and also sent a legal notice dated 15.5.2013, which failed to yield the desired result, and hence the subject suit was filed.

3. Appellant/defendant was served in the suit and she filed her written statement. Appellant/defendant claimed that the mother Smt. Parvati had cancelled her previous Wills and GPA by her documents dated 30.8.2012 and also had executed a Will dated 11.2.2013 in favour of the appellant/defendant. Accordingly, it was prayed that the suit be dismissed.

4. Respondent/plaintiff led her evidence and proved the documents dated 29.3.2012 executed by the mother Smt. Parvati in favour of her husband late Sh. Kamal Singh. Appellant/defendant however was proceeded ex parte and no evidence was led by the appellant/defendant. Therefore, on the one hand, the respondent/plaintiff proved her case by showing that the suit property was sold to her husband Sh. Kamal Singh by Smt. Parvati by the

mother-in-law of the respondent/plaintiff, the appellant/defendant had failed to prove her case as no evidence was led by her.

5. It bears note that there is no dispute that the appellant/defendant was a witness to the documents Ex.PW1/1 to Ex.PW1/10 whereby the mother Smt. Parvati transferred rights in the suit property in favour of her son Sh. Kamal Singh. It is also required to be noted that the execution of the decree documents Ex. PW1/1 to Ex.PW1/10 were not disputed by the appellant/defendant and hence the onus of the issues which were framed was upon the appellant/defendant to prove that the documents dated 29.3.2012 were cancelled by the GPA dated 30.8.2012 and that a Will dated 11.2.2013 was executed by Smt. Parvati in favour of the appellant/defendant. However, as already stated above, the appellant/defendant failed to lead any evidence and was proceeded *ex-parte*. This order proceeding the appellant/defendant *ex-parte* has become final, and therefore, appeals before the first appellate court as also this Court had/have to be decided on the basis of the record of the trial court i.e evidence being led by the respondent/plaintiff but no evidence being led by the appellant/defendant.

6. I may also note that once the documents Ex. PW1/1 to PW1/10 were executed by the mother Smt. Parvati in favour of the respondent's/plaintiff's husband then in law the mother had no rights to cancel documentation by her alleged documentation dated 30.8.2012. A contract for transfer of rights in a property once entered into, cannot be unilaterally cancelled by the transferor inasmuch as a bilateral contract can only be cancelled by a bilateral contract, and therefore the unilateral act of the mother Smt. Parvati cannot result in cancelling of documents and contract of transfer of rights in an immovable property. As per Section 202 of the Indian Contract Act, 1872, a power of attorney given for consideration operates even after the death of a person, and which deceased person is the mother Smt. Parvati in this case and who had executed the power of attorney dated 29.3.2012 in favor of the husband of the respondent/plaintiff. This legal aspect of Section 202 of the Indian Contract Act has been considered by this Court in detail in the judgment in the case of ***Ramesh Chand vs. Suresh Chand and Anr. 188 (2012) DLT 538*** wherein the relevant paras of the judgment of the Supreme Court in the case ***Suraj Lamps Industries Pvt. Ltd. Vs. State of Haryana, 183 (2011) DLT 1 SC*** were referred and it was held that the judgment in ***Suraj Lamps Industries Pvt. Ltd. (supra)*** case protects rights under agreements to sell falling within Section 53A of the Transfer of Property Act, 1882, power of attorneys falling under Section 202 of the Indian

Contract Act, as also Wills which are executed. It is also held by this Court in the judgment in the case of *Kamla Nijhawan Vs. Sushil Kumar Nijhawan and Ors., 2014 VIII AD (Delhi) 330* that when a Will is a part of the set of documents for transferring rights in an immovable property, the same has not to be classically proved like in a classic case of disputes between the natural legal heirs of a deceased testator. The first appellate court has rightly relied upon this judgment and rightly held that the trial court has wrongly distinguished the ratio of this judgment.

7. For the sake of completion of narration it is also required to be noted that the husband of the respondent/plaintiff Sh. Kamal Singh had executed a Will dated 30.3.2012 in favour of his wife being the respondent/plaintiff, and which Will was proved and exhibited as Ex. PW1/11, but in any case, since the respondent/plaintiff is the wife of Sh. Kamal Singh, hence the respondent/plaintiff being the legal heir of Sh. Kamal Singh would be the owner of the suit property by devolution from Sh. Kamal Singh and who had become the owner of the suit property by virtue of documents dated 29.3.2012 executed in his favor by his mother Smt. Parvati.

8. In view of the above, no substantial question of arises. Dismissed.

MAY 2, 2017
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VALMIKI J. MEHTA, J