

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

% *Judgment Reserved on : July 30, 2015*
Judgment Delivered on : August 05, 2015

+ **RFA (OS) 100/2013**

SURINDER PAL KAPOORAppellant
Represented by: Mr.Davinder Kumar, Advocate

versus

SWARAN KATYAL & ORS.Respondents
Represented by: Mr.Varun Rajpal, Advocate for
R-1
None for other respondents

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Late Sh.Ram Sahai Kapoor and his wife Late Smt.Satyawati Kapoor were blessed with seven children. Two sons and five daughters. The appellant Surinder Pal Kapoor and respondent No.2, Sh.Jogender Pal Kapoor are the two sons. Respondents No.1 and 3 to 6; Swaran Katyal, Rama Maini, Nisha Malhotra, Rashmi Sabharwal and Sushma Dheer are the sisters.

2. Swaran Katyal along with her two sisters Rama Maini and Nisha Malhotra as also her brother Jogender Pal filed a suit, impleading the appellant, Surinder Pal Kapoor, Rashmi Sabharwal and Sushma Dheer as defendants No.1, 2 and 3 respectively. It was pleaded in the plaint that Late Sh.Ram Sahai Kapoor was the owner of property bearing No.A-5,

CC Colony, Opposite Rana Pratap Bagh Delhi, having purchased the same by a registered sale-deed dated June 06, 1967. It then comprised a basement and a ground floor on the plot of land ad-measuring 321.25 square yards. By virtue of a decree dated February 26, 1974 passed in suit No.26/1974 the learned Sub-Judge First Class, Jalandhar declared Satyawati as the owner of the rear portion of the property and on the death of Ram Sahai on November 17, 1979, the seven children relinquished their interest which they would have inherited from their father, vide relinquishment deed dated March 28, 1980 in favour of their mother, Late Satyawati Kapoor who thereafter became the owner of the entire property and for purpose of payment of house tax her name was mutated in the municipal records on October 29, 1980 as the person primarily liable to pay property tax levied on the property. Highlighting that without pleading the specific date or the year when further construction was made above the existing basement and ground floor, which as per the plaint existed when the father purchased the property, it was pleaded that on April 24, 1990, Satyawati sold front portion of the first floor of the property having covered area of approximately 1170 square feet in favour of Swaran Katyal for a consideration of ₹65,000/- (Rupees Sixty Five Thousand only) and that the sale-deed was registered. Thus, it was pleaded that Swaran Katyal became the owner of the front portion of the first floor and the remainder property remained as that of the mother. It was pleaded that Satyawati died intestate on September 05, 1998 and was survived by her two sons and five daughters, each of whom inherited 1/7th share in the property which remained under the ownership of Satyawati. It was pleaded that Surinder Pal Kapoor who had been residing in Jalandhar shifted to the back portion of the mezzanine floor of the suit property in the year 1987 and thereafter on the barsati floor in the

year 1990. It was pleaded that the plaintiffs recently learnt that Surinder Pal Kapoor had, by manipulation, got executed a sale-deed on August 12, 1998 as per which Satyawati sold the entire property to him for a consideration of ₹4,50,000/- (Rupees Four Lacs and Fifty Thousand only) It was pleaded that Satyawati was unwell, had low eyesight, failing memory, was hard of hearing and was confined to the bed for past several months before she died. Prayer made was that it be declared that Swaran Katyal was the owner of the front portion of the first floor of property No.A-5, CC Colony, Delhi and that the sale-deed dated August 12, 1998 purportedly executed by Satyawati in favour of Surinder Pal be declared as null and void.

3. The appellant was the contesting party because he alone filed a written statement. He denied that the sale-deed dated August 12, 1998 was obtained by him by manipulating his mother. He challenged the sale-deed dated April 24, 1990 under which Swaran Katyal claimed that her mother had sold the front portion of the first floor to her; but we need to highlight that the appellant did not plead any fact from which the sale-deed could be challenged.

4. It is apparent that the core issues settled on the pleadings of the parties centered on the sale-deed dated April 24, 1990 relied upon by Swaran Katyal to assert title to the front portion of the first floor of House No.A-5, CC Colony, Opposite Rana Pratap Bagh and the sale-deed dated August 12, 1998 relied upon by the appellant.

5. The plaintiffs examined Jogender Pal as PW-1, Swaran Katyal as PW-2 and Sunil Nagpal, Computer Operator from Punjab National Bank as PW-3. Whereas PW-1 and PW-2 deposed as per the plaint and deposed that Smt.Satyawati Kapoor remained confined to bed for a long time due to which she had developed bed sores. During her last days she

had become extremely weak and unable to move and had to be hospitalized which rendered her unfit to execute any document. The two did not prove any document of their mother being under medical treatment or confined to the bed. The sum and substance of the testimony of the two would be to highlight that the sale-deed relied upon by the appellant was dated August 12, 1998 and Satyawati died within less than a month of it being executed i.e. on September 05, 1998. Both affirmed that during her lifetime Satyawati had executed the sale-deed Ex.PW-1/2 on April 24, 1990 selling the front portion of the first floor to Swaran Katyal. PW-3 deposed that on April 04, 1974 a saving account No.3659 was opened at the Rana Pratap Bagh Branch of Punjab National Bank in the name of Satyawati Kapoor vide account opening form cum specimen signature Ex.PW-3/1 along with a specimen signature of Surinder Pal Ex.PW-3/2 authorizing him to operate the account jointly and that on May 05, 2000 a joint request Ex.PW-3/3 was received from Satyawati Kapoor and Surinder Pal Kapoor to close the account. The statement of account Ex.PW-3/5 showed transactions in the account from March, 1998 till May 05, 2000.

6. The appellant examined himself as DW-1 and one Sh.Ramesh Kaushik as DW-2 and one Sh.Ravi Chopra as DW-3. Whereas appellant deposed that he paid ₹4,50,000/- (Rupees Four Lac and Fifty Thousand only) to his mother when the sale-deed dated August 12, 1998 was executed, DW-2 deposed that he gave ₹2,00,000/- (Rupees Two Lacs only) in cash to DW-1 and DW-3 deposed that he gave ₹2,50,000/- (Rupees Two Lacs and Fifty Thousand only) in cash to DW-1. Relevant would it be to highlight that neither witness proved any document evidencing money to be advanced as loan or its return.

7. Relevant would it be to highlight that during cross-examination, the appellant stated as under:-

“I cannot confirm or deny but it may be possible that my mother had remained admitted in Pentamed) Hospital from 20.8.98 to 26.8.98 i.e. for six days. It is true no medical record of that period has been produced in this case. Vol. it has never been asked for. I can produce that record whatsoever is available/traceable with me. It is wrong that medical record has been withheld by me intentionally as it would have disclosed that condition of my mother was very critical during that period. It is true decision to take my mother to hospital on that occasion was a collective decision by all we brothers and sisters. It is true during her stay in hospital all her sons and daughters were visiting her.

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It is true that in her last days she had got bed sores but it is wrong that she had become bed ridden in her last days..... It is true that my mother was admitted in Pentamed Hospital but she was there only for two or three days and I do not confirm if on 26.8.98 she was lying admitted there. It is wrong to suggest that we brought her back to home from the hospital on 26.8.98 only on Doctors advice that she had reached her last stage.”

8. Vide impugned judgment and decree dated October 31, 2012 a preliminary decree has been passed declaring the seven siblings as having 1/7th share each in property bearing No.A-55, CC Colony, Opposite Rana Pratap Bagh, Delhi save and except the front portion of the first floor, which has been held to be under the ownership of Swaran Katyal. The reasoning of the learned Single Judge is based on an appreciation of the evidence; and succinctly put would be : (i) there being no proof of DW-2 and DW-3 lending ₹4,50,000/- (Rupees Four Lac and Fifty Thousand only) to the appellant; (ii) the value of the suit property being much more than ₹4,50,000/- (Rupees Four Lac and Fifty Thousand only); and (iii)

Satyawati being aged, infirm and medically infirm on the date when the sale-deed was executed.

9. We have perused the testimony of DW-1, DW-2 and DW-3 and concur with the view taken by the learned Single Judge that it does not inspire any confidence of DW-2 and DW-3 having lent ₹4,50,000/- (Rupees Four Lac and Fifty Thousand only) to DW-1. There is no evidence, except for their bald statements of the money being lent. There is no evidence that the money was ever returned. Besides, the testimony of PW-3 establishes that the deceased had an operational bank account with the Rana Pratap Bagh Branch of Punjab National Bank and it would be highly suspicious that Satyawati would be receiving so much money in cash.

10. Whilst it may be true that the plaintiffs did not produce any documentary evidence showing that Satyawati was unwell, had low eyesight, was hard of hearing, had a failing memory and was confined to the bed for past several months before she died, but we note that during cross-examination the appellant after vacillating on his mother's physical and mental health ultimately virtually admitted that his mother's condition was far from satisfactory. We have reproduced hereinabove in paragraph 7 above extracts from the cross-examination of the appellant and would highlight that he did not deny that the mother of the parties was admitted at Pentamed Hospital from August 20, 1998 to August 26, 1998. He remained vacillating and said that he cannot confirm or deny said fact. He immediately said that it may be possible that the mother was hospitalized for said duration of six days. He thereafter admitted that it was correct that the decision to take the mother to the hospital was a collective decision by all brothers and sisters. He admitted that the mother of the parties got bed sores in her last days. He then went on to

state that the mother was admitted at the hospital only for two or three days. The date of death of Satyawati Kapoor is September 05, 1998 and the date of the execution of the sale-deed in question is August 12, 1998. The time lag is short. The mother was aged 84 years is the admitted case of all the parties. The totality of the evidence probablizes, the view taken by the learned Single Judge, that the sale-deed relied upon by the appellant was a procured and a contrived document factoring in the further fact that the plot of land on which the house is constructed ad-measures 321.25 square yards and even in the year 1998 had a value much more than ₹4,50,000/- (Rupees Four Lacs and Fifty Thousand only).

11. There is another vital evidence which has been overlooked by the learned Single Judge and reinforces the finding returned by the learned Single Judge. The same is the fact that Satyawati Kapoor died on September 05, 1998. After a year and seven months the appellant submitted Ex.PW-3/3 to the bank bearing signatures of Satyawati and himself with a request that the bank account No.3659 be closed. The document is in vernacular. It is addressed to the Punjab National Bank, Branch Rana Pratap Bagh. It makes a request that account No.3659 be closed. It has been signed by the appellant and Satyawati. Now, Satyawati could not have signed Ex.PW-3/3 on May 05, 2000, the date scribed on the document. The document establishes that either the appellant could obtain Satyawati's signatures on blank papers or he could forge her signatures.

12. We note that no serious challenge was made while cross-examining PW-1 and PW-2 regarding the sale-deed dated April 24, 1990 under which Satyawati sold the front portion of the suit property to Swaran Katyal.

13. The appeal is accordingly dismissed with costs against the appellant and in favour of respondent No.1. The impugned judgment and decree dated October 31, 2012 is upheld.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 05, 2015

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