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

Judgment Reserved on: July 29, 2015

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Judgment Delivered on : July 31, 2015

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RFA(OS) 19/2015

RAKESH GUPTA

..... Appellant

Represented by: Mr.Manu Nayar, Mr.Suneet Nagpal, Ms.Meenakshi Chopra, Mr.Jaideep and Mr.Pratham, Advocates.

versus

RAMESH GUPTA

..... Respondent

Represented by: Mr.Anil Sapra, Sr.Advocate instructed by Mr.Rakesh Bawja, Ms.Rupali Kapoor and Ms.Sangeeta Kumari, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Rakesh Gupta, the defendant in the suit instituted by his brother Ramesh Gupta is aggrieved by the impugned decree dated October 01, 2014 allowing IA No.14073/2014 filed by Ramesh Gupta praying for a decree to be passed on admission. Allowing the application, the suit has been decreed as regards prayer 'A' i.e. for possession of the suit property which is a portion on the second floor of property bearing No.R-34, South Extension (NDSE) Part-II, New Delhi.

2. Case pleaded by Ramesh Gupta in the plaint is that he and Rakesh are real brothers. Their father late Sh.Dina Nath was the owner of property No.R-34, South Extension (NDSE) Part-II, New Delhi. He was also the owner of other properties. He executed a will on March 18, 1986, bequeathing his properties to his sons and his daughter-in-law : Ms.Anuradha the wife of Rakesh Gupta. That under the will he bequeathed the entire property R-34, South Extension (NDSE) to him except the front portion on the second floor consisting of a drawing-cum-dining room, a bed room, a kitchen, a bath room and a terrace in the front. He pleaded that the will was accepted when late Sh.Dina Nath died on December 12, 1986 and was acted upon. Rakesh Gupta's wife Anuradha sold the second floor of the property bequeathed to her at 2741, Gali Arya Samaj and in the sale-deed she claimed to be the owner under the will dated March 18, 1986 and that Rakesh Gupta signed as an attesting witness to the will. Ramesh Gupta further pleaded that in the year 1988 he constructed two rooms, a toilet-cum-bath, a store room and one dressing room on the rear open portion on the second floor of property No. R-34, South Extension (NDSE) Part-II, New Delhi because under the will said open space was bequeathed to him and out of love and affection permitted his brother to occupy the said portion without any consideration i.e. as a licensee. He pleaded that since he required the said portion of the property he asked his brother to vacate the same in the last week of November, 2011 and since his brother refused to vacate the same he had no option but to sue for a decree for possession and damages post the period the permission to occupy the suit property was withdrawn by him.

3. Rakesh Gupta filed a written statement-cum-counter claim. He made

pleadings by way of preliminary objections and relevant would it be to note the pleadings in para 4 (a), (e), (f) and (i). They read as under:-

“4(a) That property No.R-34, South Extension Part-II was constructed in the year 1972 and the defendant has been residing in the said property for the last about 41 years. The defendant is residing for the last 25 years on the second floor. The plaintiff has stated that he requires the portion in possession of the defendant for his personal use, but, it is submitted that the plaintiff has already rented out the property and the plaintiff is claiming charges from the defendant and the defendant is residing in the property being member of the family as the property belongs to a family and he is not liable to pay any amount to the plaintiff or any other person.

x x x x x

4 (e) That the father of plaintiff and defendant was expired on December 13, 1986 and after his death will was received by the plaintiff and defendant and the shares in the will were not equal. At that time, the defendant had only one son and wife. In June 1988 the defendant's wife conceived a child and the defendant feeling paucity of accommodation and Mr.Girdhari Lal, Mr.T.C.Gupta who were elders in the family had allowed the defendant to raise construction on the back portion and this was done with the consent of other family members including his elder brother and the plaintiff It is further submitted that at the time of arriving the family settlement, following members were present:-

- (i) Shri T.C.Gupta, samdhi of Sh.Dina Nath Gupta;*
- (ii) Sh.Girdhari Lal Gupta, brother of Sh.Dina Nath Gupta;*
- (iii) and Shri Girdhari Lal Gupta is also a witness of the sale deed of Bazar Sita Ram property;*
- (iv) Smt.Rami Devi w/o Sh.Dina Nath Gupta;*

- (v) *Sh.Rajesh Kumar,*
- (vi) *Ramesh Kumar;*
- (vii) *Sh.Raeksh Kumar s/o Sh.Dina Nath Gupta*

x x x x x

4 (f) That Sh.T.C.Gupta is none else but also a witness in the said will and therefore the said will was more or less declared null and void.

x x x x x

4 (i) It is submitted that Sh.Dina Nath Gupta was unwell for about three years before making the will and therefore the said will is not a genuine will and there is cloud on the will as the will has not been executed with sound and disposing mind of Sh.Dina Nath.”

4. In the counter claim he made a prayer as under:-

“In view of the aforesaid facts and circumstances, it is most respectfully prayed that this Hon’ble Court may kindly be pleased to declare the will dated 18.03.1986 executed by Shri Dina Nath Gupta is ineffective and inoperative and also declare that the settlement in the family has been arrived at and acted upon and second floor of property bearing No.R-34, South Extension part 2, New Delhi, has fallen into the share of the defendant.”

5. Responding to the plea of Ramesh Gupta in para 2 of the plaint that his i.e. Rakesh’s wife Anuradha sold the second floor of property No.2741, Gali Arya Samaj, Delhi bequeathed to her by the father of the parties under the will dated March 18, 1986, Rakesh Gupta admitted said fact.

6. Vide impugned judgment and decree dated October 01, 2014, the learned Single Judge has held (refer para 9 to 12) that Rakesh Gupta having admitted that his wife sold property No.R-34, South Extension (NDSE), Part-II, New Delhi, an admission would emerge of he having accepted the will because in the sale-deed dated June 27, 1988 extensive recitals were made showing her tracing the title to the will in question, which was witnessed by Rakesh Gupta. The learned Single Judge has also noted para 4 (e) of the preliminary objections in the written statement to highlight the admission made regarding the execution of the will by the father of the parties and the two brothers accepting the same. The learned Single Judge has thereafter referred to a decision of the Supreme Court reported as (1977) 4 SCC 467 T.Arivandandam vs. T.V.Satyapal & Anr. to highlight that vexatious, meritless and irresponsible litigation needs to be nip in the bud.

7. Learned counsel for the appellant : Rakesh Gupta, vehemently urged that in view of the written statement-cum-counter claim filed it cannot be said that the appellant made any unequivocal admission that the father of the parties executed the will dated March 18, 1986, much less the two brothers having accepted the same. Learned counsel urged that in the written statement-cum-counter claim it was categorically pleaded that since under the will there was an unequal distribution of the wealth by the father, with the intervention of family elders it was orally agreed that he would be permitted to raise additional construction on the second floor. Thus, learned counsel urged that his client was entitled to prove the defence that an oral family settlement was arrived at.

8. We repeatedly put it to learned counsel for the appellant whether his client accepts the execution of the will by the father of the parties on March

18,1986 and whether the case pleaded is that the parties accepted the will but later on in the year 1988 under an oral agreement the respondent permitted the appellant to raise a construction on the open portion on the second floor; or that the case pleaded by his client was that the father did not execute any will.

9. We did so for the reason a reading of the written statement-cum-counter claim would show the vague and evasive pleadings by the appellant. In para 4(e) of the preliminary objections the appellant admits that the father of the parties died on December 13, 1986 (somewhere the parties have referred to the date of death as December 12, 1986, but that is irrelevant) and that a will was received by the brothers but the shares bequeathed were not equal. He follows up the said plea by pleading that in the year 1988 with the intervention of Mr.T.C.Gupta it was agreed between the brothers that he could construct on the open portion of the second floor, therefrom he pleads an inference that since Sh.T.C.Gupta was a witness to the will therefore it should be concluded that the parties treated the will to be more or less void. He thereafter pleads that the father was unwell for about three preceding years to when he died and therefore the will is not a genuine will and there is a cloud on the will. The prayer made by him in the counter claim is to declare the will executed by their father as ineffective and inoperative. He categorically admits that his wife inherited the property bearing No.2741, Gali Arya Samaj and sold the second floor of the said property which was bequeathed to her under the will dated March 18, 1986.

10. No document has been filed by Rakesh Gupta to show that he ever asserted any title to the suit property i.e. the rear portion on the second floor of property bearing No.R-34, South Extension (NDSE), Part-II, New Delhi.

11. Rules of pleadings stand crystallized under various rules of Order VI of Code of Civil Procedure. Rule 2 of Order VI reads as under:-

“2. Pleading to state material facts and not evidence – (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegations being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.”

12. Highlighting that the mandate of the Rule is that the pleadings must contain a statement in the concise form of the material facts on which the party pleading relies for its claim or defence, it needs however be noted that Rule 4 of the same Order further expands by requiring particulars to be given where necessary. Rule 4 of Order VI reads as under:-

“4. Particulars to be given where necessary – In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with date and items if necessary) shall be stated in the pleading.”

13. In a leading pronouncement on the subject of pleadings, being the decision reported as 2011 (6) SCALE 677 Ramrameshwari Devi & Ors. vs. Nirmala Devi & Ors. highlighting how frivolous litigations are being instituted and how these frivolous litigations are choking the stream of justice, with reference to importance of pleadings, in sub-para A of para 52

of the decision, the Supreme Court observed as under:-

“A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and documents filed by the parties. This must be done immediately after suits are filed.”

14. In the decision reported as 1987 (2) SCC 555 Ram Sarup Gupta (Dead) by LRs vs. Bishun Narain Inter College & Ors, highlighting the object and purpose of pleadings, in para 6, the Supreme Court observed as under:-

“6. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that the other party may not be taken by surprise.”

15. With reference to the decisions reported as 1974 (6) BLR 368 Pandu Dhongi Yerudkar vs. Ananda Krishna Patil & Anr. and AIR 1982 Bom 491 M/s Nilesh Construction Company & Anr vs. Mrs. Gangubai & Ors, in the decision reported as AIR 1999 SC 1464 D.M.Deshpande & Ors vs. Janardhan Kashinath Kadam & Ors, in paras 9 and 11, the Supreme Court highlighted that a vague plea does not justify an issue being settled and further, where no material in support of a plea has been set up anywhere in any form, the Court would be justified in not settling an issue requiring the parties to traverse the torturous path of a trial. In said case, the Supreme Court observed qua claim for tenancy that in the absence of a concise statement of material facts relating to the tenancy, the mere raising of a plea of tenancy is not enough for the purpose of raising an issue. The Court cautioned against a pedantic approach to the problem and directed that

Courts must ascertain the substance of the pleading and not the form, in order to determine the same. It was observed that pertaining to a claim of tenancy, the exact nature of the right which is claimed is to be set-forth and no issue pertaining to existence of tenancy could be framed on a vague plea.

16. In the decision reported as 2012 (6) SCALE 340 A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam it was held as under:-

“27. The pleadings must set-forth sufficient factual details to the extent it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the Court must carefully look into it while deciding a case and insist that those who approach the Court must approach it with clean hands.”

17. In the decision reported as 2012 (5) SCC 370 Maria Margarida Sequeria Fernandes vs. Erasmo Jack de Sequeria the Supreme Court held as under:-

“72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject claim or pass decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

x x x

78. The Court must ensure that the pleadings of a case must contain sufficient particulars. Insistence on details reduces the

ability to put forward a non-existent or false claim or defence.”
(Emphasis Supplied)

18. The vacillating pleadings of the appellant which we have noted above clearly bring out that the appellant has admitted that the father of the parties had executed his last legal and valid testament on March 18, 1986 and that the two brothers, and for that matter, all beneficiaries under the will accepted the same. His admission that his wife had inherited the property No.2741, Gali Arya Samaj and sold the second floor of the said property and his plea that his wife did so as the owner thereof is an admission that everybody accepted the will and thus the learned Single Judge is correct in holding that it is a case of admission by the appellant that late Sh.Dina Nath had executed the will dated March 18, 1986 and that it was accepted by the two brothers.

19. The plea in the written statement that in the year 1988 the respondent and he entered into an oral family settlement concerning the unconstructed portion on the second floor of property No.R-34, South Extension (NDSE), Part-II, New Delhi, is a plea raised by him to urge that because of the unequal distribution of wealth the two brothers resolved to bury the hatchet i.e. orally agreed to a family settlement. But what was that family settlement? He pleads nothing.

20. It is settled law that the heirs of a deceased can elect for an intestate succession notwithstanding a will executed by the deceased because the doctrine of election says that where two modes of inheritance are available to the parties, they may chose either.

21. It is not the case pleaded by the appellant that notwithstanding the will being found, the two brothers agreed for succession to the estate of the father treating it to be intestacy. Indeed, he could not plead so because one of the

beneficiary under the will was not the heir of late Sh.Dina Nath i.e. the appellant's wife.

22. Having made an admission, or rather we may say, the vacillating pleadings requiring a meaning to be given to the stand taken in the pleadings, and the result being an admission found that late Sh.Dina Nath had executed the will on March 18, 1986, the only further issue which we need to discuss is whether the further pleading as noted above makes any sense in law and has to be accepted as a plea worthy of being set down for proof.

23. If ownership of a party is admitted to a property and the claim in defence, to protect possession, is that the owner permitted the defendant to raise a construction on the property in question, the plea has to be of a kind where a right is created by law. We would have appreciated a plea to bring the case within Section 60(b) of the Indian Easements Act, 1882. If it was pleaded that under an oral license, in the year 1988 the plaintiff, permitted him to execute the work of a permanent character thereby making him incur expenses and hence the licence cannot be revoked, one could have considered whether the defence warranted a trial and hence notwithstanding the appellant admitting the will executed by the father, no decree for possession could be passed on an admission. But alas for the appellant, he has not raised any such plea. As noted above, his defence is vacillating. Conscious of the fact that his wife inherited property No. 2741, Arya Samaj Gali under the will in question from her father-in-law and sold the second floor thereof and he was a witness to the will, it became appellant's compulsion to accept the will, but in the very next breath it became his compulsion to question the will because he had to try and protect his

possession on the rear portion of the second floor of property No.R-34, South Extension (NDSE), Part-II, New Delhi. The two pleas are mutually destructive. Removing the veil sought to be created by the appellant it is a clear case of admission of the pleadings in the plaint and thus we concur with the view taken by the learned Single Judge that case was made out to pass a decree on admission.

24. The appeal is dismissed with costs against the appellant and in favour of the respondent.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 31, 2015
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