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

+ **Date of Decision: 24.11.2015**

% **RSA 1/2015**

KALPANA DEVI Appellant

Through: Mr. G.S.Sharma, Advocate

versus

SUDAMA SINGH & ANR. Respondents

Through: Mr. Sunil Kumar & Mr. Pawan
Prakash Sharma, Advocates for R1
Mr. N.U.Ahmed, Advocate for R2

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment and decree dated 25.09.2014 passed by the learned Additional District Judge – I, Shahdara District, Karkardooma Courts, in RCA No. 160/2013, preferred by the appellant-defendant No. 1, whereby the said first appeal has been dismissed and the judgment and decree dated 18.11.2013 – decreeing the suit of the plaintiff/respondent No. 1 – being Suit No.697/2009, passed by the learned trial court, seeking the relief of possession and permanent injunction, has been affirmed.

2. Plaintiff/respondent No. 1 had filed the said suit impleading the appellant herein as defendant No. 1 and Shri Bachan Singh, his father, as defendant No. 2. The case of the plaintiff was that defendant No.2-Shri

Bachan Singh-his father was the sole and exclusive owner of property No. B-16/2, Gali No. 7, Gamri Extension, Delhi – 110053, measuring 58 sq. yds. situated in khasra No. 212 in the area of village Ghonda, Gujran Khadar, Shahdara, Delhi, and he had sold the said property to the plaintiff by executing a set of documents, such as, agreement to sell, registered General Power of Attorney, registered Will, Affidavit, etc. on 29.08.2005. Defendant No. 1, according to the plaintiff, was running a tea stall near the office of defendant No. 2, and defendant No. 2 had provided a single room to defendant No. 1 on the ground floor of the said property. The plaintiff filed the suit on the premise that, contrary to the assurances given by the defendants that the room in possession of defendant No. 1 would be vacated, defendant No.1 failed to vacate the same. Defendant No. 1, it was alleged, took over possession of other rooms on the ground floor and started living there. The plaintiff accordingly sought possession of the suit property and also permanent injunction against the defendants, restraining them from creating any third party interest in the suit property. Defendant Nos. 1 and 2 filed their separate written statements. While defendant No. 1 claimed that plaintiff and defendant No. 2 had colluded; that the set of documents relied upon by the plaintiff was a result of pressure and coercion; that she had invested Rs. 3 lacs in the construction of the house, and; that defendant No. 1 was the wife of defendant No. 2, defendant No. 2, in his written statement, admitted execution of the documents dated 29.08.2005 with respect to the ground floor of the suit property in favour of the plaintiff. He also stated that first and second floor of the suit property was also sold out by him to other two sons, namely, Shri Surender Singh and Shri Virender Singh. He stated that he had provided to defendant No. 1 a single room accommodation

on humanitarian grounds and looking to her poverty and critical condition, for her residence for a short time. He stated that defendant No. 1 had assured that she shall vacate the room but subsequently refused to do so, and further threatened defendant No. 2 to get him implicated in the false cases. He admitted that the sale consideration of the transaction between him and the plaintiff was Rs. 1.5 lacs. He denied having any relationship with defendant No. 1 as that of husband and wife. He further stated that keeping in view of the dishonest intentions of defendant No. 1, he got published the publication dated 19.02.2006 regarding sale of the suit property to the plaintiff and his other sons. He stated that defendant No. 1 had threatened to implicate defendant No. 2 when he asked her to vacate the room in question.

3. On the basis of pleadings of the parties, the trial court framed the following issues on 20th May, 2008:

- (i) Whether the plaintiff is entitled to a decree for declaration as prayed for?
- (ii) Whether the plaintiff is entitled to a decree for declaration as claimed?
- (iii) Whether the plaintiff is entitled to decree of permanent injunction as claimed? OPP
- (iv) Whether the suit of the plaintiff is not valued property for the purposes of court fees and jurisdiction? OPD-1
- (v) Whether the plaintiff has no locus standi to file the present suit? OPD-1
- (vi) Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD-1
- (vii) Whether the suit of the plaintiff is without any cause of action? OPD-1
- (viii) Relief.

4. The parties led their respective evidence. The plaintiff examined himself as PW1. He examined PW 2 – Shri Vijay Kumar Rawat, Record Clerk, from the office of the Sub Registrar, who brought the record pertaining to the documents dated 29.08.2005, registered in the office of the Sub-Registrar. Ashok Rajput was produced as PW4 who was the Advocate involved in the registration work at the office of Sub Registrar, Nand Nagari, Delhi. This witness turned hostile and was cross-examined on behalf of the plaintiff and in his said cross-examination, he admitted that the seal affixed on the document was in his name. PW5-Suresh Kumar deposed that he was a witness to the execution of the documents, namely, GPA, Agreement to Sell, Will and Receipt executed in favour of the plaintiff. The General Power of Attorney was exhibited as Ex.PW1/Mark 1 (also Ex.PW2/A), Agreement to Sell was marked as Ex.PW1/B (also Ex.PW5/A), Will was exhibited as Ex.PW1/Mark 3 (as also Ex.PW2/D) and the receipt was exhibited as Mark PW1/2 (also Ex.PW5/D).

5. The defendant examined herself as DW1 and she deposed in terms of the written statement. She also produced witnesses who produced relevant service records of defendant No. 2 to show that she had been nominated by defendant No. 2 for the purpose of release of his pension and other retiral benefits to defendant No. 1. I may note that defendant No.2 passed away during the pendency of the suit after filing his written statement but before the matter went into trial. He was substituted by his legal representatives who did not contest the suit. Consequently, defendant No.1/appellant was the only contesting respondent.

6. The trial court decreed the suit on the premise that the plaintiff had been able to establish the transfer of his interest by defendant No.2-his father, in his favour by the aforesaid set of documents. On the other hand, defendant No. 1 had not been able to establish any right, title or interest in the suit property. Reliance placed by the appellant/defendant No. 1 on ***Suraj Lamp and another Vs. State of Haryana*** AIR 2012 SC 206 was rejected by placing reliance on a subsequent decision of this court in ***O.P.Aggarwal Vs. Akshay Lal*** in RFA No. 127/2004 decided on 15.03.2012 wherein this Court had held that even though the said set of documents does not confer an absolute right of ownership, the said documents did create certain rights in respect of the immovable property in favour of the person in whose favour the said documents were executed. In contrast, defendant No. 1 did not have any claim to the suit property. Therefore, assuming that defendant No. 1 was the wife of defendant No. 2, defendant No. 2 having assigned his rights in the suit property in favour of the plaintiff, she was not entitled to retain possession of the suit property. Consequently, the suit was decreed in favour of the plaintiff. The first appellate Court has concurred with the said findings and dismissed the first appeal.

7. The submission of learned counsel for the appellant/defendant No. 1 is that PW4 had turned hostile and he did not support the case of the plaintiff that he was a witness to the set of documents relied upon by the plaintiff to claim interest in the suit property. Learned counsel further submits that PW 2 was only an official witness who produced the registered document, namely, the registered General Power of Attorney and Will and mere registration of documents does not prove the document. In this regard, he

placed reliance on *Bhagat Ram and another Vs. Suresh and others* AIR 2004 SC 436. Learned counsel further submits that, whereas PW1 stated that the consideration of Rs. 1.5 lacs had been paid to defendant No. 2 in the presence of Suresh Kumar, Suresh Kumar – who was produced as PW5, denied having witnessed the payment of any money by the plaintiff to defendant No. 2 at the time of execution of the aforesaid set of documents in favour of the plaintiff. Learned counsel submits that defendant No. 1/appellant was not bound by the written statement of defendant No.2. He submits that defendant No. 2 acted hostile to the interest of defendant No. 1 and the collusion between the plaintiff and defendant No. 2 was writ large.

8. Learned counsel submits that the courts below have failed to appreciate that the appellant/defendant No. 1 had been able to establish that defendant No. 2 had nominated the appellant/defendant No. 1 as his nominee in his service record so as to enable the appellant to receive the pension, gratuity, etc. and the same militates against the sale of the suit property in favour of the plaintiff.

9. Having heard learned counsels and perused the judgment of the trial court and the first appellate court, as also the evidence referred to and relied upon by the parties, I am of the view that there is no merit in this appeal and the same is liable to be dismissed at this stage, since no substantial question of law arises for consideration of this Court.

10. The two courts below have on appreciation of evidence returned concurrent findings of fact to the effect that defendant No. 2 had indeed executed the set of documents relied upon by the plaintiff in his favour, thereby assigning his interest in the suit property in favour of the plaintiff.

Consequently, defendant No.1/appellant – even if she were assumed to be the wife of defendant No. 2, is left with no right, title or interest to retain possession of any portion of the suit property.

11. The plea of the appellant that the set of documents executed by defendant No. 2 in favour of the plaintiff was a result of coercion or pressure was not established by leading any cogent evidence. Such a plea was also not sustainable in the face of the written statement admittedly filed by defendant No. 2, wherein he admitted that he being the erstwhile owner of the suit property, had executed the said set of documents in favour of the plaintiff, namely, his son for consideration of Rs. 1.5 lacs. The said transaction could not have been doubted in the face of the admission made by defendant No.2, coupled by the fact that the GPA and Will executed by defendant No.2 were contemporaneously registered in the office of the sub-registrar. The submission of learned counsel that defendant No. 2 acted in collusion with the plaintiff and adverse to the interest of defendant No. 1 cannot be accepted for the reason that even according to the appellant, she was nominated by defendant No. 2 as the person entitled to receive the gratuity and other pensionary benefits of defendant No. 2. If defendant No. 2 were acting hostile to the interest of defendant No. 1/appellant, in collusion with the plaintiff, he would certainly not have nominated appellant/defendant No. 1 as his nominee in his service record to receive gratuity, pension etc. and even if he had so nominated the appellant/defendant No. 1 as his nominee, he would have changed the same prior to his demise. Had pressure and coercion been exercised as alleged, defendant No.2 would have said so in his written statement. Reliance placed

on ***Bhagat Ram*** (supra) is of no avail for the reason that Suresh Kumar-PW5 has been produced by the plaintiff who has admitted to have witnessed the execution of the aforesaid set of documents, namely, the Agreement to Sell, receipt, registered Will and registered General Power of Attorney in favour of the plaintiff. The decision in ***Suraj Lamp*** (supra) is prospective in its application, therefore, transactions which took place prior to the rendering of the said decision are not affected by the said decision.

12. It appears to this Court that defendant No. 2 executed the aforesaid set of documents in favour of the plaintiff-his son, precisely to avoid any claim being staked on the suit property by defendant No. 1, who may or may not have been his wife, but whose interest defendant No. 2 certainly protected by nominating her as the person entitled to receive his gratuity, pension etc. It appears that defendant No. 2 was desirous of keeping the interest of plaintiff-his son, and defendant No. 1 separate and clear, and while giving the suit property to the plaintiff, left his service benefits to defendant No. 1. Merely because defendant No. 2 did not have the suit property to the appellant/defendant No.1, who claimed to be the legally wedded wife of defendant No.2, the transaction between the plaintiff and defendant No. 2, cannot be called in question in the aforesaid background.

13. For all the aforesaid reasons, I find no merit in the present appeal and dismiss the same leaving the parties to bear their respective costs.

VIPIN SANGHI, J

NOVEMBER 24, 2015

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