$~2

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

\+ FAO 173/2015

VED PRAKASH & ORS ..... Appellants

Through: Mr Rajshekhar Rao, Ms Gauri Puri & Mr Varun Mishra, Advs. with Mr Amit Gupta, S/o A-2, Mr Satya Prakash, A-3 in person and husband of A-4.

versus

DEEPAK & ANR ..... Respondents

Through: Mr Tarun Sharma, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 02.07.2015

Caveat No. 534/2015 (Exemption)

1. Since the caveator/ respondent no.1 has entered appearance, the caveat stands discharged.

FAO 173/2015 & CM No. 10132/2015 (Stay)

2. Issue notice.

3. Mr Tarun Sharma accepts notice on behalf of respondent no.1. Respondent no.1 is the contesting party in the appeal. Mr Sharma says that he is willing to argue the appeal based on the record available with the court.

4. Mr Rao, who appears for the appellants, has principally assailed the order dated 24.02.2015, passed by the trial court, in an application moved under Order 39 Rule 1 of the Code of Civil Procedure, 1908 (in short the CPC), (in a suit for declaration, permanent injunction and partition filed by respondent no.1), on the ground that, in the plaint, there is no challenge to

the gift deed dated 08.08.2012, executed by Sh. Mangat Ram in favour of appellants no. 1, 2 & 4.

4.1 I may only note that, respondent no.1 instituted the aforementioned action in the trial court based on registered Will dated 05.11.2009 executed by Sh. Mangat Ram. Sh. Mangat Ram expired on 17.11.2012.

4.2 In so far as the appellants are concerned, they were arrayed, amongst others, as defendants in the suit filed by respondent no.1. In the suit, the defence, inter alia, taken by the appellants was that the registered Will dated 05.11.2009 stood superceded and/or revoked by registered Will dated 19.05.2011 and 06.01.2012, as also, the gift deed dated 08.08.2012.

4.3 To be noted, both the registered Will dated 09.05.2011 and 06.01.2012 have also been executed by late Sh. Mangat Ram.

4.3 It is not disputed before me that in the suit filed by respondent no.1, there has been no challenge laid to the gift deed dated 08.08.2012. As is quite obvious, the Will executed by late Sh. Mangat Ram could have only taken effect upon his demise, and since, a gift deed was executed by him, it would have effaced the possibility of any right flowing in favour of the beneficiaries after his death in respect of matter which was covered by the said gift deed. This of course would be subject to their legal tenability.

5. Learned counsel for respondent no.1 having been recognized the fact that the gift deed dated 08.08.2012 had not been challenged, agreed to the following directions being issued. Similarly, Mr Rao, learned counsel for the appellants, on instructions of Mr Amit Gupta and Mr Satya Prakash, who are present in court, joins the counsel for respondent no.1 in this behalf.

6. Accordingly, following agreed directions are issued:

(i) The order dated 24.02.2015, passed by the trial court, is set aside.

(ii) Respondent no.1, will have a liberty to amend the plaint upon appropriate application being filed in that regard.

(iii) By way of the amendment application, respondent no.1, would seek leave to assail the gift deed dated 08.08.2012.

(iv) After amendment of the plaint, respondent no.1, will be at liberty to move a fresh application for injunction, as he may be advised.

(v) The appellants will not carry on any further construction or handover possession of the built up structure till the requisite permissions and clearances are received, in accordance with law, under the applicable municipal bye-laws from the relevant authorities.

(v)(a) It is made clear though, that since the original structure was demolished and a new structure was erected at the subject site, the presently structure in place includes the shares of others apart from that claimed by respondent no.1.

(vi) The trial court would expedite the proceedings in the suit and endeavour to conclude the proceedings within the next six (6) months.

(vii) Since, the MCD is in seisin of the application for regularization moved by the appellants, the same will be dealt with by it, albeit without reference to the observations made in the impugned order, which, in any case, has been set aside.

8. The appeal is, accordingly, disposed of.

9. I am informed that the matter is fixed before the trial court on 09.07.2015. Parties and/or their counsels will appear before the trial court on the said date.

10. At this stage, Mr Rao submits that there is a possibility of parties arriving at a settlement in the matter. Learned counsel for respondent no.1

says that he would have no difficulty in joining any process for mediation that may be triggered by this court. Accordingly, parties and their counsels will appear before the Mediation Centre, at Rohini Court, on 06.07.2015 at 3.00 p.m.

11. Dasti under the signatures of the Court Master.

RAJIV SHAKDHER, J

JULY 02, 2015
kk