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

+ RFA 584/2015 and CM No.17395/2015 (stay) and CM No.17396/2015 (condonation of delay of 39 days in filing the appeal)

RAJU & ANR

..... Appellants

Through: Mr. Anil Kumar, Advocate

versus

KANTI DEVI

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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31.08.2015

1. This is an appeal directed against the judgment dated 10.04.2015. The appellant no.1/defendant no.1 is the son of the respondent / plaintiff. Appellant no.2 /defendant no.2 is the daughter-in-law of the respondent / plaintiff.

1.1 The appellants / defendants assail the judgment, principally, on the ground that the respondent / plaintiff had employed a fraud in having the relinquishment deed executed in her favour.

1.2 Pertinently, the appellant no.1 / defendant no.1, has executed the relinquishment deed (Ex. PW1/1) in favour of the respondent / plaintiff alongwith his siblings. By virtue of the said relinquishment deed, the share of appellant no.1 / defendant no.1 and other siblings stands vested in the respondent / plaintiff. This aspect of the matter was dealt with in great detail

by the trial court.

2. The Trial court has given definitive reasons in the impugned judgment, none of which has been dislodged before me. The reasons given in the impugned judgment are as follows :-

“..20. The onus to prove this issue was on the plaintiff. It is argued by the counsel for the defendants that there was likelihood of marriage of sister of defendant no.1 and due to that reason there was necessity of funds after the death of father of defendant no.1. The present NOC (Ex. PW1/1) was executed by defendant no.1 and other members on the pretext that the NOC shall be used for the purposes of getting pension of deceased father. On the other hand, it is argued by counsel for the plaintiff that there was no requirement for NOC for the purposes of pension.

21. As far as execution of Ex. PW1/1 by defendant no.1 is concerned, it is the admitted case of defendant no.1 that he had signed Ex. PW1/1. His case is that it got signed fraudulently and for some different purpose i.e. getting pension in the name of mother / plaintiff. As far as Ex. PW1/1 is concerned, it does not speak anything regarding its use for service benefits of deceased husband of plaintiff. On the other hand, it specifically speaks how the other co-heirs includes, defendant no.1 of Late Babu Lal (deceased father of defendant no.1) are relinquishing their share in favour of Smt. Kanti Devi. Moreover in the cross-examination of DW1, he had admitted the execution of this document and even admitted that he had gone to the office of Registrar for this purpose. As far as this document is concerned, it is a registered document duly proved by the plaintiff and execution admitted by defendants. In these circumstances, this document stands proved. The defence taken by the defendants do not stands on account of following reasons :-

(i). In his written statement he has taken the plea that the relinquishment deed was required for the purpose of getting the pension of Late Sh. Babu Lal. On the other hand in his cross-examination it is stated that it is on account of the marriage of his

sister and the requirement of money.

(ii). Ex. PW1/1 does not speak anything about its requirement for the purposes of pension.

(iii). Moreover defendants failed to call any document from the office of deceased husband of plaintiff which could have shown that the document was used for getting pension.

(iv). Since the plea of fraud was forwarded by the defendants so the facts leading to fraud are to be established by the defendants. However, defendants could not bring or establish those facts on record and in these circumstances those facts remain unestablished and unproved.

22. So, in these circumstances, it can be safely said that Ex. PW1/1 was properly executed document in which defendant no.1 had voluntarily signed the same and released his share in the property in favour of plaintiff i.e. his mother who thus have a clear title on the property and after the execution of Ex. PW1/1, the defendant no.1 is left with no right, title or interest in the property including suit property. So, the issue is decided in favour of plaintiff and against the defendants....”

(emphasis is mine)

2.1 A perusal of the aforesaid extract would show that the appellants /defendants had taken contradictory pleas in respect of the reasons which propelled appellant no.1 / defendant no.1 to execute the relinquishment deed. The relinquishment deed is admittedly, a written document. Therefore, evidence sought to be put forth to contradict the same would ordinarily not be admissible.

2.2 The learned counsel for the appellants /defendants in support of the appeal has submitted before me that the respondent / plaintiff in her testimony has indicated that the relinquishment deed (Ex. PW1/1) was executed as money was required for the marriage of her daughter and property was to be mortgaged. As a matter of fact, a perusal of the extract

of the testimony of the respondent / plaintiff would show that a suggestion was put to her that the property was never mortgaged. This suggestion was denied by the respondent / plaintiff. In fact she asserts positively that the property was in fact mortgaged to one Mr. Rajpal. Therefore, suggestion put forth to her that the property was never mortgaged to anyone or to Mr. Rajpal, in particular, was also denied by her. The respondent / plaintiff went on further to deny even the suggestion that Ex. PW1/1 was executed on the pretext of obtaining pension of her late husband i.e., one, Mr. Babu Lal.

3. Having regard to the aforesaid, I am of the view that the trial court has correctly returned a finding of fact that no fraud was employed or proved by the appellants / defendants. There is no merit in the appeal. The same is accordingly dismissed.

4. With the result, the two captioned applications are also rendered ineffectual.

4.1 I may only note that in so far as the application for condonation of delay is concerned, even according to the appellants, the delay is of 39 days. There is, in fact, no cogent and reasonable explanation set out in the application which would persuade me to condone the delay.

4.2 Accordingly, the application for condonation of delay being meritless, is dismissed.

4.3 As indicated above, since the application for interim relief would not survive, it is also dismissed.

5. Consequently, consign the case to record.

RAJIV SHAKDHER, J

AUGUST 31, 2015

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