

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

+ **RSA No. 255/2016**

% **20th September, 2016**

RAJ RANI Appellant
Through: Mr. Praveen Kumar, proxy Advocate for
Mr. Yudhvir Singh Chauhan, Advocate.
versus

HARI KISHAN Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.33671/2016 (for exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

C.M. No.33670/2016 (for condonation of delay of 41 days in filing the appeal u/S 5 of the Limitation Act)

2. For the reasons stated in the application delay of 41 days in filing the appeal is condoned.
C.M. stands disposed of.

RSA No.255/2016

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the concurrent Judgments of the courts

below; of the Trial Court dated 30.9.2013 and the First Appellate Court dated 29.3.2016; by which the suit filed by the appellant/plaintiff for declaration was dismissed and by which suit the appellant/plaintiff prayed for a declaration that respondent/defendant should not act upon the documents dated 30.12.2002 with respect to 100 sq. yards in the property bearing no.D-46/A Khasra No. 44/5, Village Pooth Kalan, Delhi.

4. The facts of the case are that the appellant/plaintiff claims that she needed money and hence approached the respondent/defendant to seek a loan of Rs.70,000/- by mortgaging the suit property, but, the respondent/defendant took signatures of the appellant/plaintiff on blank papers and thereafter forged the documents being the General Power of Attorney, Will, Agreement to Sell, etc dated 30.12.2002 by which instead of showing the loan transaction, the respondent/defendant showed that appellant/plaintiff had sold the suit property of 100 sq. yards to the respondent/defendant.

5. Respondent/defendant contested the suit and denied that the documents were signed/taken in blank and it was denied that there was any loan transaction because actually the transaction in terms of the documents dated 30.12.2002 were for transferring title/rights in the suit property to the respondent/defendant. The relevant documents have been proved in the trial court as Ex.PW1/1 to Ex.PW1/5 and Ex.PW1/D1 to Ex.PW1/D3. The

documents being the General Power of Attorney dated 30.12.2002 and the Will dated 30.12.2002 executed in favour of the respondent/defendant are in fact duly registered before the Sub-Registrar. The suit was therefore prayed to be dismissed.

6. The singular issue is as to whether the documents dated 30.12.2002 executed by the appellant/plaintiff in favour of the respondent/defendant are forged and fabricated documents because they were signed in blank and these documents were in fact to be mortgage documents and not documents of transfer of title of the suit property by the appellant/plaintiff to the respondent/defendant.

7. In this regard, the courts below have rightly observed and held that the appellant/plaintiff admits her signatures on the documents dated 30.12.2002, and in fact the General Power of Attorney and Will dated 30.12.2002 in favour of the respondent/defendant executed by the appellant/plaintiff have been duly registered before the Sub-Registrar. The courts below have, therefore, rightly held that there does not arise issue of forging and fabrication of the documents dated 30.12.2002 as claimed by the appellant/plaintiff and the documents were in fact documents of transfer of title in the suit property and not for any loan of Rs.70,000/- given by the respondent/defendant to the appellant/plaintiff. I may note that the courts below have also referred to Section 202 of the Indian

Contract Act, 1872 along with the judgment of a learned Single Judge of this Court in the case of *Hardip Kaur Vs. Kailash & Anr., 193 (2012) DLT 168* that a general power of attorney given for consideration is irrevocable because of Section 202 of the Indian Contract Act. In any case, the issue is with respect to whether the documents dated 30.12.2002 are valid or not and this issue has been rightly found against the appellant/plaintiff by the courts below.

8. I may also finally like to observe that the trial court has examined the photographs of both the parties with respect to possession of the suit property and there is a correct finding that the photographs of the appellant/plaintiff are deceptively taken at night whereas the photographs of the respondent/plaintiff are clear and taken during the day, and which show that the possession of the suit property was with the respondent/defendant. This is so observed by the trial court in paragraph 20 of its judgment and which reads as under:-

“20. **Issue No. 2.**

Whether the plaintiff is still in possession of the suit property? OPP

The issue of proof of the present issue is also upon the plaintiff. In support of her possession over the suit property, the plaintiff has relied upon certain photographs wherein the plaintiff is shown outside and within the suit property as filed on 29.3.2010 and marked as Mark DW3/P1 to Mark DW3/P5. Per contra, the defendant has also relied upon certain photographs which are exhibited as Ex.PW1/D1 and as filed on 25.3.2003. A comparison of said two photographs would reveal that the photographs of the plaintiff have been taken in insufficient light presumably in night while the photographs filed by the defendant appear to have been taken in broad day light. The plaintiff has not disputed that the photographs so filed by the defendant are not of the suit property. In the photographs of the defendant, the complete suit property is shown including the

gate on the room constructed in the suit property whereupon the following message has been painted in Devnagri Script, “is plot ke malik harikishan chopra hain, kisi dakhalandazi ki to kanuni karyawahi hogi”. Some persons have also been shown to be standing in the suit property. In the photographs filed by the plaintiff either deliberately or for other reasons the said gate/message has not been depicted. The comparison of the photographs in the light of the aforesaid observations would tilt the balance in favour of the defendant. In addition thereto, the court has to consider the possession letter dated 30.12.2002 wherein the plaintiff has stated to have delivered the actual vacant possession of the suit property to the defendant.” (underlining added)

9. In view of the above, no substantial question of law arises for this second appeal to be entertained under Section 100 CPC. The Regular Second Appeal is accordingly dismissed.

SEPTEMBER 20, 2016

AK

VALMIKI J. MEHTA, J