

\$~3-5

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

+ RSA 28/2016

Date of Decision: 08.04.2016

URMILA DEVI

..... Appellant

Through: Mr.K.Venkatraman, Mr.Dinesh
K.Chawla and Ms.Satyawati,
Advocates.

versus

KALAWATI & ORS.

..... Respondents

Through: None.

+ RSA 30/2016

URMILA DEVI

..... Appellant

Through: Mr.K.Venkatraman, Mr.Dinesh
K.Chawla and Ms.Satyawati,
Advocates.

versus

RAM PRAKASH OJHA & ORS.

..... Respondents

Through: None.

+ RSA 31/2016

URMILA DEVI & ORS.

..... Appellants

Through: Mr.K.Venkatraman, Mr.Dinesh
K.Chawla and Ms.Satyawati,
Advocates.

versus

KALAWATI & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

CM Appln.2901/2016, 2920/2016 & 2930/2016

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

CM Appln.2902/2016, 2921/2016 & 2931/2016

1. For the reasons stated in the applications, the delay of 12 days in re-filing the appeals is condoned.
2. The application stands disposed of.

RSA 28/2016, RSA 30/2016 & RSA No.31/2016

1. The appellant has challenged the judgment dated 16.09.2015 passed by the Additional District Judge-01 (East), Karkardooma Courts, Delhi whereby the judgment and decree of the Trial Court dated 05.05.2011 passed in Civil Suit No.257/2010 dismissing the suit of the appellant/plaintiff, was upheld and affirmed.
2. The three appeals have been taken up together and are disposed of by a common order as Suit No.753/2007 (Smt.Kala Wati & Anr. vs. Urmila Devi & Ors) and Suit No.279/2010 (Sh.Ram Prasad Ojha vs. Smt.Urmila Devi & Ors) were consolidated with Suit No.257/2010 (Smt.Urmila Devi vs. Smt.Kala Wati & Ors). Before the Trial Court Suit No.257/2010 (Smt.Urmila Devi vs. Smt.Kala Wati & Ors) was treated as the main case and evidence was recorded in that suit (Suit No.257/2010).
3. The appellant/plaintiff Urmila Devi sought a decree of declaration that the family settlement dated 23.10.1999 between Ram Prakash Ojha (respondent No.3) and Smt.Kalawati and Sh.Puran

Chand (respondent Nos.1 & 2 respectively) as null and void as well as for a declaration that she is the sole and absolute owner of property bearing No.T-208, Gali No.1, Gautam Puri, Seelampur, Delhi measuring 200 sq.yards, which was claimed to have been purchased by the appellant/plaintiff from her father-in-law, Late Sh.Kali Charan. The appellant/plaintiff also sought permanent injunction as against the respondents/defendants from dispossessing her from the said property along with a decree of mandatory injunction, directing respondent No.3 to reconstruct the wall between the properties T-208 and T-209 which had been demolished illegally.

4. Late Kali Charan and Sh.Ram Prakash Ojha (respondent No.3) are own brothers. Both the brothers jointly purchased two properties namely T-208 and T-209, one measuring 200 sq.yards and the other 150 sq.yards respectively in Gautampuri, Seelampur out of common funds. Later, Kali Charan came to occupy property bearing No.T-208 whereas the other property T-209, came in possession of Ram Prakash Ojha (respondent No.3). After the death of late Kali Charan a family settlement was arrived at on 23.10.1999, wherein, taking into account that the two properties (T-208 and T-209) were purchased out of joint funds of the two brothers and that they were entitled to 50% share each, the property was partitioned after carving out 25 sq.yards from T-208 and annexing the same with T-209, rendering both the properties of equal area and the heirs of Kali Charan i.e. respondent No.1 and 2 were to occupy T-208 whereas respondent No.3 Ram Prakash Ojha had to be given possession of T-209.

5. The case of the appellant/plaintiff is that she had been residing

with late Kali Charan, her father-in-law whereas respondent Nos.1 and 2 (Smt.Kalawati and Puran Chand) stayed separately in the native village at Madhya Pradesh. Neither of the respondents had good relations with Late Kali Charan. The property bearing No.T-208, Gali No.1, Gautampuri, Seelampur was purchased by the appellant/plaintiff through a general power of attorney, agreement to sell, affidavit and receipt, all dated 07.01.1991, for a consideration amount of Rs.45,000/-. Thus the appellant/plaintiff claimed to be the absolute owner of property No.T-208 of 200 sq.yards, of which late Kali Charan was the absolute owner prior to the conveyance of the property to the appellant/plaintiff.

6. Be it noted that the original sale documents were never produced before the Trial Court. Instead, averments were made with regard to misplacement of the aforesaid documents and it was stated that a report was lodged with the police station Seelampur. The father-in-law of the appellant/plaintiff died on 01.01.1998. Under such circumstances, the appellant/plaintiff prayed for declaring the family settlement dated 23.10.1999 as void; for a declaration that she is the sole and absolute owner of property T-208 (200 sq.yards); permanent injunction restraining the respondents/defendants from dispossessing her from the suit property and a decree of mandatory injunction for reconstruction of the wall dividing property Nos.T-208 and T-209 illegally.

7. The suit was contested by the respondents on the strength of the family arrangement as well as for the reason of both the properties having been purchased by the two brothers namely the father-in-law of

the appellant/plaintiff and respondent No.3, jointly out of common funds.

8. On the basis of the pleadings of the parties, the Trial Court vide order dated 27.08.2004, framed the following issues:-

- 1. Whether the suit of the plaintiff is not maintainable in view of the preliminary objection no.1 to the written statement of defendant no.1 & 2? (OPD)*
- 2. Whether the plaintiff is entitled for the declaration as she prayed for? (OPP)*
- 3. Whether the plaintiff is entitled for relief of permanent injunction as she prayed for? (OPP)*
- 4. Whether the plaintiff is entitled for relief of mandatory injunction as she prayed for? (OPP)*
- 5. Relief.*

9. The suit preferred by the appellant/plaintiff was dismissed by the Trial Court holding that she is not entitled to the declaration that the family settlement is null and void or that she is the owner of property bearing No.T-208, Gali No.1, Gautampuri, Seelampur as having been purchased in the year 1991 from late Kali Charan, her father-in-law, for a consideration of Rs.45,000/-.

10. The Trial Court, relying upon the original registered sale deed dated 19.04.1971 (Exh.DW-3/1/1), Agreement to Sell, GPA, Certified copy of the registered receipt dated 01.01.1980 (Exh.DW-1/2) as well as the deposition of respondent No.2 (DW-1) and respondent No.3 (DW-3/1) held that late Kali Charan and respondent No.3 had jointly purchased both the properties.

11. The assertion of the appellant/plaintiff could not be substantiated as the appellant/plaintiff (PW-1) and Ramji Lal (PW-2),

the attesting witness of the sale documents executed by late Kali Charan in favour of the appellant/plaintiff, did not claim to have any knowledge about the nature of documents which were prepared by late Kali Charan. The Trial Court took note of the fact that appellant/plaintiff (PW-1) did not mention in her pleadings about the existence of registered sale deed and Ramji Lal, PW-2 specifically stated before the Trial Court that the appellant/plaintiff had not signed any document in his presence. There was no statement regarding the source from where the consideration amount was garnered and only photocopies of the documents were relied upon by the appellant/plaintiff. Those documents, referred to above, were also torn and illegible. Since no permission was sought to lead any secondary evidence regarding the existence of original documents, the Trial Court took an adverse view. Thus the Trial Court held that late Kali Charan died intestate, who was succeeded by respondent Nos.1 and 2 and one married daughter. The family arrangement dated 23.10.1999 was made by the consent of all the legal heirs including the daughter of late Kali Charan and respondent No.3 (own brother of late Kali Charan). Since the appellant/plaintiff did not have any right, title or interest in the property, therefore, she could not have claimed that her presence in the family settlement was a must for holding such settlement to be valid and legal. Having failed to prove her right, title or interest in the property, the appellant/plaintiff was not found to be entitled to permanent and mandatory injunction.

12. The First Appellant Court upheld the judgment of the Trial Court. In the absence of original documents and even having failed to

prove the complaint to the police (marked B) regarding the original documents having been misplaced, the First Appellate Court was of the view that no interference was required with the judgment and order of the Trial Court.

13. This Court finds no good reason for differing with the judgment of the First Appellate Court. No substantial question of law arises in the present second appeals.

14. Consequently, these second appeals are dismissed but without costs.

CM Appln. No.2919/2016 & CM Appln. No.2928/2016

1. Since the regular second appeals are dismissed, these applications have become infructuous.

2. Dismissed as having become infructuous.

CM Appln.2929/2016 in RSA No.31/2016

1. Since the RSA No.31/2016 is dismissed, this application has become infructuous.

2. Dismissed as having become infructuous.

Caveat Nos.73, 76 & 77/2016 in RSA No.28/2016

1. Since the second appeal has been dismissed at the threshold for absence of any substantial question of law arising therein, there is no necessity of noticing the caveator.

2. All the caveat petitions stand disposed of.

ASHUTOSH KUMAR, J

APRIL 08, 2016/k