

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

% **Date of decision: 14th November, 2017.**

+ **C.R.P. 54/2015, CM no.6627/2015 (for stay), CM No.28473/2015**
(u/O XXXIX R-4 CPC) & CM No.39175/2016 (u/S 151 CPC)

ADITYA PRASAD DUBE & ORS

..... Petitioner

Through: Mr. K.K. Sharma, Sr. Adv. with
Mr. Pragyan Sharma, Mr. Rakesh
Kumar, Ms. Gagandeep Chauhan
and Mr. Avirar Agniotri, Advs.

Versus

SHOBHA DUBE & ANR

..... Respondents

Through: Mr. Sudhir Nandrajog, Sr. Adv.
with Mr. Pramod Kumar Dubey,
Mr. Shiv Chopra, Ms. Namita Wali,
Mr. Mayank Mishra, Advs. for R-1.

AND

+ **RFA 97/2016**

TARUN DUBE

..... Appellant

Through: Mr. K.K. Sharma, Sr. Adv. with
Mr. Pragyan Sharma, Mr. Rakesh
Kumar, Ms. Gagandeep Chauhan
and Mr. Avirar Agniotri, Advs.

Versus

SOBHA DUBE & ORS.

..... Respondents

Through: Mr. Sudhir Nandrajog, Sr. Adv.
with Mr. Pramod Kumar Dubey,
Mr. Shiv Chopra, Ms. Namita Wali,
Mr. Mayank Mishra, Advs. for R-1.
Mr. C.M. Goyal, Adv.for R-5/UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Both these proceedings have been listed together and are taken up together for hearing and are being disposed of by this common judgment.

2. C.R.P. 54/2015 under Section 115 of the Code of Civil Procedure, 1908 (CPC for short) impugns the judgment and decree [dated 15th November, 2014 in Civil Suit No.160/2014 of the Court of Additional District Judge-04, Patiala House Courts, New Delhi] for recovery of possession of the portion shown in red colour in the site plan Ex.PW1/1 proved therein, of property No.28, Central Lane, Bengali Market, New Delhi, in the suit under Section 6 of the Specific Relief Act, 1963 filed by Sharad Dube against (i) Aditya Prasad Dube, (ii) Vimmi Dube, (iii) Tarun Dube, (iv) Sonali Dube, and (v) M.C. Gupta. The defendants in the Suit were also restrained by a decree for permanent injunction from locking the common front main gate and common front varandah door of the property and from creating third party rights in the red portion aforesaid. However, since the property then was in possession of a Receiver appointed by the Court vide order dated 2nd March, 2009 in the Suit, the Court Receiver was directed to hand over possession of the said red portion of the property to Sharad Dube.

3. C.R.P. 54/2015 has been preferred by i) Aditya Prasad Dube, ii) Tarun Dube, and iii) Sonali Dube only. Vimmi Dube who was also a defendant in the Suit from which the said C.R.P. arises, has since died and M.C. Gupta who was also a defendant in the Suit from which the C.R.P. arises, has chosen not to challenge the decree.

4. C.R.P. 54/2015 came up before this Court first on 13th April, 2015, when, while issuing notice thereof, Shobha Dube, wife of Sharad Dube who had since died, was restrained from creating any third party interest

in the aforesaid red portion of the property. The said interim order has continued till now.

5. RFA 97/2016 impugns the order [dated 28th August, 2015 in CS No.112/2015 of the Court of Additional District Judge-06 (Central), Tis Hazari Courts, Delhi] of rejection of the plaint in the Suit filed by (i) Tarun Dube, (ii) Archana Beniwal, (iii) Arun Dube, (iv) Anil Prasad Dube, (v) Siddhartha Dube, (vi) Abhimanyu Dube, (vii) Rajeev Prasad Dube, (viii) Bharat Dube; and (ix) Ronnie Dube, against Sharad Dube, Aditya Prasad Dube, Kapil Dube and Government of India, for (i) declaration that the plaintiffs therein are co-owners of the aforesaid property; (ii) permanent injunction restraining the defendants in the Suit from illegally depriving the plaintiffs from their share in the said property, from creating any third party interest therein and from raising any construction on the property; (iii) for declaration that the Relinquishment Deeds, both dated 26th March, 2002, executed by Aditya Prasad Dube and Kapil Dube of their share in the aforesaid property in favour of Sharad Dube were got executed fraudulently and without any legal necessity and cancellation of the said Relinquishment Deeds; (iv) for recovery of possession of red portion aforesaid of the property; and (v) for direction to the Sub Registrar to record the cancellation of the said Relinquishment Deeds.

6. RFA 97/2016 came up first before this Court on 24th February, 2016 when notice thereof was also ordered to be issued and vide order dated 11th May, 2017, the RFA was ordered to be listed before the same Bench before which C.R.P. 54/2015 was pending.

7. Though the Suit from which the RFA arises was filed by as many as nine plaintiffs as named above, but the RFA has been preferred only by Tarun Dube and all the other plaintiffs in the said Suit have chosen not to challenge the order of rejection of plaint having the status of a decree vide Section 2(2) of the CPC.

8. The senior counsel for the Revision Petitioners in the C.R.P. and for the Appellant in the RFA commenced his arguments by first arguing the Revision Petition. On perusal of the issues framed in the Suit from which the Revision Petition arises, I enquired from the senior counsel, whether not the only question to be adjudicated in a Section 6 Specific Relief Act Suit, as the suit from which the Revision Petition arises is, whether Sharad Dube who had instituted the Suit from which the Revision Petition arises was in possession of the said portion of the property six months before the institution of the Suit.

9. The senior counsel for the Revision Petitioners agrees and wants me to go through the FIR dated 17th June, 2008 proved as Ex. PW1/25 in the Suit from which the Revision Petition arises, to contend that the said FIR at the behest of Sharad Dube proves that Sharad Dube was not in possession of the red portion, as claimed by him in the Suit from which the Revision Petition arises. Attention in this regard is also drawn to the statement in the FIR to the effect that the key of the front gate of the property was kept by Sharad Dube as well as Aditya Prasad Dube.

10. The relevant part of the said FIR containing the statement of Sharad Dube is as under:

“I along with my family had- out of station on 20-05-08 and when I returned with my family today early morning at about 3-3.30 AM I found that in the outside gate which had a lock whose keys were with me and as also family of the Aditya Prasad Dube who are staying in separate portion of the house, a new lock had been put preventing me from entering the house. I phoned up Sh. Aditya Prasad at is land line number from outside from my mobile and after making two calls, his daughter in law Smt. Sonali Dube opened the outside gate and inside verandah main entrance door lock. On being asked she said lock had gone out of order and therefore changed. 3. In the morning at about 11.12 am when the front room and verandah which were in my exclusive possession and in which I used to put my lock was approached for cleaning etc. It was discovered that family of Shri Aditya Prasad Dube had occupied the 2 rooms. My lock was broken my furniture was shifted from the room to the front verandah which was also earlier in my exclusive possession a lot of items were missing. List as I am able to direct till now, is enclosed. The family of Shri Aditya Prasad Dube had gained entry in to this portion of house which was in my exclusive possession, lock and key, and put their furniture in it. On enquiry they did not cooperate, became hostile and gone evasive replies. They had broken the lock. 3. They also put new lock in the common portion of the house which was in my common possession with them preventing me and my family from its usage namely main outside gate, main verandah door for entry, partition door in the middle of the house, common court yard in front etc. 4. They also

removed my inverter from front verandah and threw it the middle portion of the house. They also disconnected my call bell from front portion of the house. 5. They also occupied the front toilet which was in my physical possession. 6. They also tempered with electrical wiring and telephone wirings the above rooms in my possession. 6. The above portion of the house which is on the left wing of the house as you face the house was in my exclusive possession since 26/3/02. On this day Shri Aditya Prasad Dube and his brother Shri Kapil Dube have relinquished their share in the house property in my favour and given physical possession of the portion of the house property. Two affidavits were also executed by them on this day giving physically possession to me. Area under common usage is also described in the affidavit which was being enjoyed by me till now. 8. The portion of the house forcefully by them and the common usage area they have prevented me from using is part of the area under reference in two registered relinquishment deeds, affidavits dated 26-3-02 described at S.No.7 above. 9. The brother of Shri Aditya Prasad Dube viz Shri Rajiv Dube, Shri Anil Dube, along with others, have filed a suit against me & others, for cancellation of above relinquishment deeds and restoration of physical possession of this portion of the house vide CS(OS) 272 of 2007 in the court of Honourable Shri J.K. Gupta, Addl. Distt. Judge, Tis Hazari Delhi. This is being contested by me on the ground of it being without basis, fabricated false etc. 10. While the above case is going on, they have taken law in their hands broken the locks of part of area in my physical possession,

trespassing in it, denying us entry in it, removing my belongings from it as mentioned above which are missing, preventing me from using common area under my usage. 11. I contacted Shri Rajiv Dube on telephone at Lucknow today but he did not cooperate. Neither he agreed to vacate the above portion or give back my missing items. The above act has been done with his knowledge, concurrence and pre-planning. 12. The persons who have done the above illegal act are Shri Aditya Prasad Dube, his son Shri Tarun Dube, Smt. Vimmi Dube w/o Sh. Aditya Prasad Dube Smt. Sonali Dube w/o Sh. Tarun Dube with knowledge, consent, pre-planning of Shri Rajiv Dube, Shri Anil Dube, Shri Kapil Dube. 13. I earnestly request you to kindly event the above named persons from the aforesaid area under my bonafide exclusive usage, stop them from preventing me to use common areas of the above house, restore my missing items, take appropriate action against the aforesaid persons for committing the above act. 14. I and my family is being put to lot of mental agony, risk of physical violence, inconvenience, and therefore, shall request you to kindly arrange expeditious action. Thank you."

11. Having seen the site plan of the property proved as Ex. PW1/1 in the suit record and copy whereof is filed at Pg.60 of the Revision Petition paper book and which is not in dispute. I have enquired from the senior counsel for the Revision Petitioners/Appellant as to how, from the said statement, it can be held that Sharad Dube had admitted being not in

possession of the red portion of the property for over six months prior to institution of suit under Section 6 of Specific Relief Act.

12. The senior counsel for the respondent/Shobha Dube intervenes at this stage and draws attention to the prayers in the Suit filed by Tarun Dube who is the son of Aditya Prasad Dube and from which the RFA arises and in which Suit, a relief of recovery of possession of red portion of the property was claimed and as also stated by Sharad Dube in FIR aforesaid.

13. On enquiry, it is informed that while the Suit from which the RFA arises was filed on 6th November, 2007, the Suit from which the CRP arises was filed after one year therefrom, on 17th November, 2008.

14. It has thus immediately been enquired from the senior counsel for the Revision Petitioners/Appellant that Tarun Dube and others who had instituted the Suit from which the RFA arises, being the sons, daughters-in-law and grandchildren of Aditya Prasad Dube, having on 6th November, 2007 admitted that Sharad Dube was in possession of the red portion and having sought recovery of possession of the red portion from Sharad Dube, how can Aditya Prasad Dube, controvert that Sharad Dube was not in possession for over six months prior to 17th November, 2008 when the suit under Section 6 of Specific Relief Act from which Revision Petition arises, was filed.

15. The senior counsel for the Revision Petitioners/Appellant contends that it is the case of the Revision Petitioners as well as the Appellant that Sharad Dube, after 6th November, 2007, had delivered possession of the red portion of the property to the Revision Petitioners/Appellant.

16. I have enquired from the senior counsel for the Revision Petitioners/Appellant, whether the Revision Petitioners/Appellant at any time, in the Suit from which the RFA arises, informed the Court that the plaintiffs therein had been delivered the possession of the red portion, for recovery of possession of which the Suit was inter alia filed and withdrawing the Suit, insofar as for the relief of recovery of possession.

17. The answer is in the negative.

18. The aforesaid totally falsifies the defence of the Revision Petitioners in the Suit from which the Revision Petition arises, of Sharad Dube, being not in possession of the red portion of the property for over six months prior to the institution of the Suit and the Suit under Section 6 of the Specific Relief Act being not maintainable for this reason.

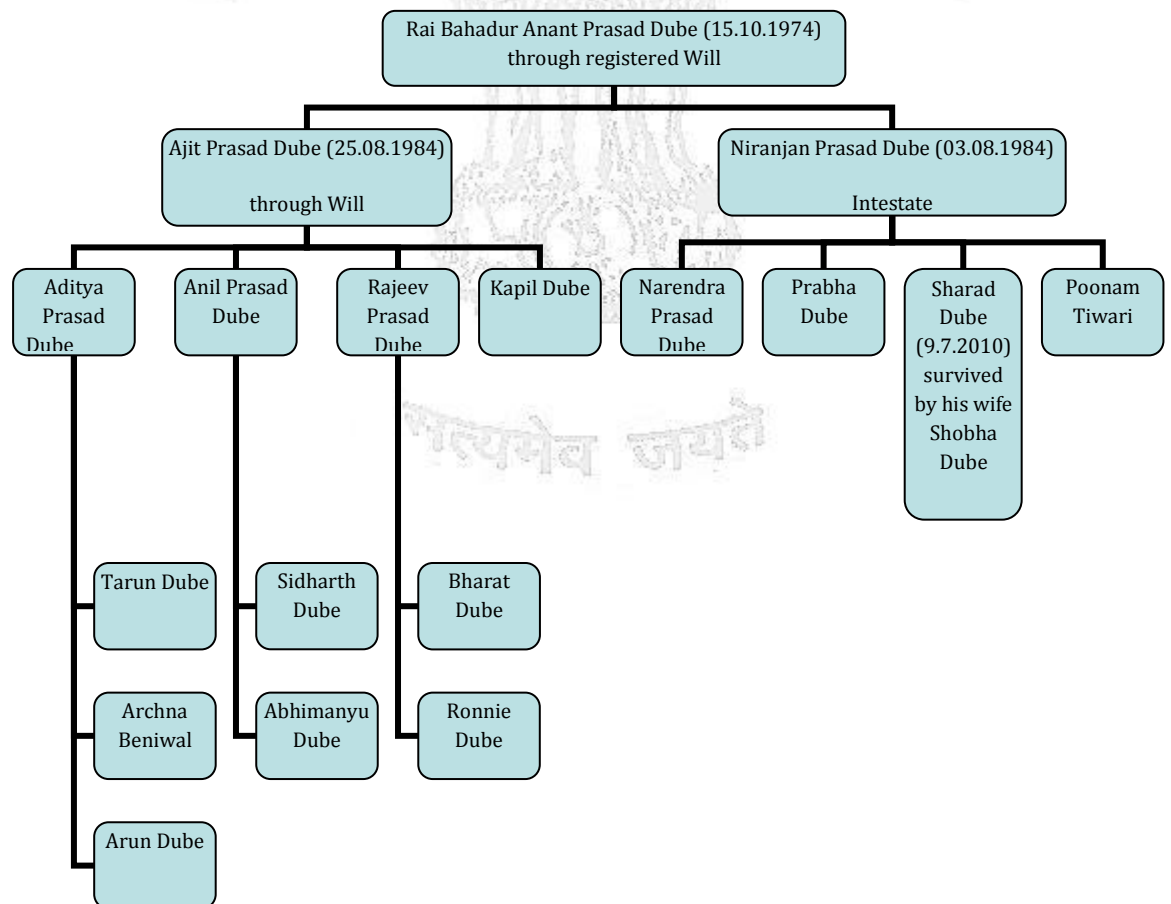
19. I may mention, that in a Suit under Section 6 of the Specific Relief Act, the only question for determination is of prior possession and dispossession within six months prior to the institution of the Suit and else, title is not to be gone into.

20. For this reason alone, need to delve further into the record of the Suit from which the Revision Petition arises, is not felt. I may also record that the Legislature, with respect to a suit under Section 6 of the Specific Relief Act, has barred appeals against decree therein and has permitted only a Revision Petition and the scope of the Revision Petition has to be necessarily within the confines of Section 115 of the CPC and much narrower than that of an appeal and once it is found that the possession of Sharad Dube, from a date prior to the date when he claimed dispossession, was admitted by the Revision Petitioners / their other family members,

need to interfere with the findings in the judgment in the Suit from which the Revision Petition arises, is not felt. The senior counsel for the Revision Petitioners also has not made any other argument with respect to the Revision Petition.

21. Even otherwise, since the RFA is also for adjudication and which entails a dispute as to title of the red portion of the property and in which the relief of recovery of possession of red portion is also claimed, it is felt that the order impugned in the RFA be examined.

22. The family tree, disclosing the relationship of all the parties is as under:



23. It is not in dispute that property No.28, Central Lane, Bengali Market, New Delhi belonged to Rai Bahadur Anant Prasad Dube who died on 15th October, 1974 leaving a Will whereunder he bequeathed the said property to Ajit Prasad Dube and Niranjana Prasad Dube. Thus, on demise of Rai Bahadur Anant Prasad Dube, Ajit Prasad Dube and Niranjana Prasad Dube became owners in equal share of the property.

24. It is also not in dispute that on demise of Ajit Prasad Dube, his 50% undivided share in the property, in terms of his last Will was inherited equally by his four sons namely Aditya Prasad Dube, Anil Prasad Dubey, Rajiv Prasad Dube and Kapil Dube.

25. It is also not in dispute that Aditya Prasad Dube executed and registered a Relinquishment Deed of his 12.5% undivided share in the property in favour of Sharad Dube. Though, in the suit from which RFA arises, challenge was also made to the Relinquishment Deed executed by Kapil Dube also but, as aforesaid, all other plaintiffs in the suit have chosen not to pursue the challenge and the RFA has been filed only by Tarun Dube. The challenge in the Suit, from which the RFA arises, to the said Relinquishment Deeds, is not by Aditya Prasad Dube or by Kapil Dube but by Tarun Dube, son of Aditya Prasad Dube.

26. I have enquired from the senior counsel for the Revision Petitioners/ Appellant as to what is the locus of Tarun Dube to challenge the Relinquishment Deeds executed by his father Aditya Prasad Dube or by his father's brother Kapil Dube.

27. The senior counsel for the Revision Petitioners/Appellant states that Tarun Dube has a share in the property, the property being “ancestral property”.

28. This is yet another case, where instead of remembering and applying the Hindu Succession Act, 1956, the ancient Hindu Law prevalent prior thereto is being remembered and applied.

29. It being not in dispute that Rai Bahadur Anant Prasad Dube, being the paternal great grandfather of Tarun Dube was the owner of the property and died on 15th October, 1974 i.e. much after the coming into force of the Hindu Succession Act, 1956, bequeathing the property to Ajit Prasad Dube and Niranjana Prasad Dube under a Will, the question of Tarun Dube, being the great grandson, getting any share in the property during the lifetimes of his father Aditya Prasad Dube or his grandfather Ajit Prasad Dube, does not arise.

30. The law on the subject, clarified as far back as in ***Commissioner of Wealth Tax, Kanpur Vs. Chander Sen*** (1986) 3 SCC 567 and ***Yudhishter Vs. Ashok Kumar*** (1987) 1 SCC 204, in the recent past has been repeatedly discussed in ***Harvinder Singh Chadha Vs. Saran Kaur Chadha*** 2014 SCC OnLine Del 3413, ***Jai Narain Mathur Vs. Jai Prakash Mathur*** (2016) 228 DLT 515, ***Satyawati Vs. Suraj Bhan*** 2017 SCC OnLine Del 7961, ***Sunny (Minor) Vs. Raj Singh*** (2015) 225 DLT 211, ***Surender Kumar Vs. Dhani Ram*** (2016) 227 DLT 217, ***Sagar Gambhir Vs. Sukhdev Singh Gambhir*** (2016) 231 DLT 247, ***Neelam Vs. Sada Ram*** 2013 SCC OnLine Del 384, ***Bala Devi Vs. Chhotu Ram*** 2013

SCC OnLine Del 1159 and *Rajat Khanna Vs. R.P. Khanna* (2013) 200 DLT 203 for anything further to be said on the subject.

31. The property, inherited by Ajit Prasad Dube and Niranjan Prasad Dube, under the Will of their father Anant Prasad Dube, was not “ancestral” in the hands of Ajit Prasad Dube and Niranjan Prasad Dubey and was held by them as their personal, individual property. Similarly, on death of Ajit Prasad Dube on 25th August, 1984, his 50% share in the property, under his Will was inherited by his sons Aditya Prasad Dube, Anil Prasad Dube, Rajiv Prasad Dube and Kapil Dube and was held by them as their personal, individual property and not as “ancestral property” for Tarun Dube son of Aditya Prasad Dube to have a share therein. Without Tarun Dube having any share or interest in the property, he has no locus to seek any of the reliefs in the suit from which the RFA arises.

32. To be fair to the senior counsel for the Revision Petitioners/Appellant, he has not pressed the matter further.

33. The learned Additional District Judge has rejected the plaint in the Suit from which the RFA arises, also on the ground of claim therein, on averments in the plaint, being barred by time. Tarun Dube is admittedly a witness to the Relinquishment Deed executed by Aditya Prasad Dube. Tarun Dube thus had knowledge of execution of the said Relinquishment Deed on the date of its execution, that is, 26th March, 2002. The suit filed on 6th November, 2007 for declaration with respect thereto and for execution thereof was held to be time barred in view of Article 58 of the Schedule to the Limitation Act, 1963.

34. However, once it is found that Tarun Dube has no locus to challenge the Relinquishment Deed executed by his father and which the father though alive has chosen not to challenge, the need to go into the said question does not arise. Suffice it to say that the learned ADJ in the impugned order has dealt sufficiently with the said aspect.

35. The only other argument of the senior counsel for the Revision Petitioners/Appellant is that the Relinquishment Deed is without consideration.

36. A perusal of the Relinquishment Deed shows the same to be for consideration of natural love and affection and which in law has been recognized as sufficient consideration. Reference in this regard can be made to ***Ranganayakamma Vs. K.S. Prakash*** (2008) 15 SCC 673 reiterating that renunciation, in the Indian context, may be for consideration or may not be for consideration; property can be transferred without consideration—such transfer is a gift; a registered instrument releasing the right, title and interest of releasor without consideration operates as a transfer by way of a gift if the document clearly shows an intention to effect the transfer and is signed by or on behalf of the releasor and attested by at least two witnesses. It was further reiterated that when a property is owned by two parties or co-owners, the releasee has already an undivided share in the property and what the releasor purports to do by the document is to effect himself, in respect of both his title and his right to possession in favour of the releasee. It was yet further reiterated that love and affection is also a consideration within the meaning of Sections 122 and 123 of the Transfer of Property Act, 1882.

37. The senior counsel for the Revision Petitioners/Appellant then, referring to *State Vs. Alokik Jain* AIR 1998 Raj 348 and *M. Krishna Rao Vs. M.L. Narasikha Rao* AIR 2003 AP 498, states that Relinquishment Deed could have been executed only in favour of a person having a pre existing share in the property and not in favour of somebody who had no share in the property.

38. Even if the same were to be accepted, Niranjana Prasad Dube, father of Sharad Dube, died on 3rd August, 1984 i.e. prior to the date of execution of the Relinquishment Deed on 26th March, 2002 and Sharad Dube, on demise of Niranjana Prasad Dube, inherited his share in the property. Thus Sharad Dube, on the date of execution of Relinquishment Deed, had a share in the property.

39. The senior counsel for the Revision Petitioners/Appellant then contends that the property stood partitioned and for this reason there could be no release/relinquishment of share and the partitioned portion could only be transferred.

40. The senior counsel for the respondent has drawn attention to the copy of the Agreement dated 18th September, 1986 between the parties, at Pg.56 of the paper book of the Revision Petition, which records the division to be only for the purposes of having convenient usage, residence/ dwelling in the house. The same does not acquire the status of a partition in law.

41. There is thus no merit, neither in the Revision Petition nor in the appeal.

42. Both are dismissed, however, without any order as to costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 14, 2017

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(corrected & released on 6th January, 2018)



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