

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

+ **RSA No. 136/2017**

% **16th May, 2017**

RAJEEV SINGH & ANR. Appellants

Through: Mr. S.K.Bhattacharya and
Mr. Suresh Bharti, Advocates.

versus

KUNWAR SINGH Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant/son in the suit for possession *mesne* profits and injunction, against the concurrent judgments of the courts below; of the Trial Court dated 31.10.2015 and the First Appellate Court dated 9.12.2016; decreeing the suit filed by the respondent/plaintiff/father.

2. The respondent/plaintiff filed the subject suit pleading that he was the owner of the suit property bearing no.RZ-F-777/25B, Gali No.16, Raj Nagar Part-II Extension, Palam Colony, New Delhi-110077 situated on a plot of 100 sq. yds. Respondent/plaintiff had purchased

the property vide documents date 25.3.1996 from the erstwhile owner Sh. Rajinder Parshad. It was pleaded that the appellants, and who are the defendants in the suit, were the son and daughter-in-law of the respondent/plaintiff and they were harassing the respondent/plaintiff in his old age and had also beaten him up. Respondent/plaintiff asked the appellants/defendants to vacate the one room set on the first floor of the suit property and which the appellants/defendants failed to do, and therefore, after serving the legal notice dated 26.6.2014, the subject suit was filed.

3. Appellants/defendants contested the suit and denied that the respondent/plaintiff was the owner of the suit property. Appellants/defendants pleaded that the owner of the suit property was Smt. Lakhpati Devi being the wife of the respondent/plaintiff (and the mother of the appellant no.1/defendant no.1) as she had purchased the suit property from Sh. Rajinder Parshad on 21.3.1996. It was further pleaded by the appellants/defendants that after the death of Smt. Lakhpati Devi, the appellant no.1/defendant no.1 being a son and class one legal heir under the Hindu Succession Act, 1956 became the co-owner of the suit property alongwith the respondent/plaintiff. Appellants/defendants pleaded that the respondent/plaintiff had manipulated the documents dated 25.3.1996 in his favour from the

erstwhile owner Sh. Rajinder Parshad, and therefore, the respondent/plaintiff was not the owner of the suit property. Suit was hence prayed to be dismissed.

4. After pleadings were complete the following issues were framed by the trial court:-

- “1. Whether the defendants have any right, title or interest in the suit property? ... OPD
2. Whether the plaintiff is entitled to recover possession of the suit property from the defendants?... OPP
3. Whether the plaintiff entitled to recover damages from the defendants, if so at what rate and for what term? ... OPP
4. Whether the plaintiff is entitled to the permanent injunction prayed for? ...OPP”

5. The courts below have held that it is the respondent/plaintiff who is the owner of the suit property because he has proved the documents dated 25.3.1996 executed by the erstwhile owner Sh. Rajinder Parshad in favour of the respondent/plaintiff. These documents in favour of the respondent/plaintiff executed by Sh. Rajinder Parshad were proved and exhibited before the trial court as Ex.PW1/C (colly) and are the agreement to sell, general power of attorney, Will, affidavit and a receipt. Out of the aforesaid documents, the Will executed by Sh. Rajinder Parshad in favour of the respondent/plaintiff was duly registered with the Sub-Registrar. The

registration of the Will was proved by calling the witness from the office of the Sub-Registrar as PW-2. The copy of the Will brought by the clerk from the office of the Sub-Registrar was exhibited as Ex.PW2/1. The courts below have disbelieved the alleged documents dated 21.3.1996 said to have been executed between Sh. Rajinder Parshad and Smt. Lakhpatti Devi, and for holding so the courts below have held that the appellant no.1/defendant no.1 in earlier litigation filed by him had pleaded in the plaint in the earlier suit, Ex.PW1/H, that the appellant no.1/defendant no.1 was the owner of the suit property alongwith the respondent/plaintiff. Para 3 of the plaint in the earlier suit reads as under:-

“3. That the plaintiff alongwith his father purchased property bearing No.RZ-F-777/25B, Gali No.16, Raj Nagar 11 (Extn.), Palam Colony, measuring 100 sq. yards (hereinafter called the suit property) on 25.03.1996 for a total sum of Rs.80,000/- (Rupees Eighty Thousand Only) in the name of the defendant.”

6. I completely agree with the findings and conclusions of the courts below because the findings and conclusions are one possible and plausible view as per the evidence of the parties which existed on record. There is a ring of truth and genuineness about the documents of ownership of the property executed in favour of the respondent/plaintiff being Ex.PW1/C (colly) inasmuch as one of the documents being the Will was duly registered with the Sub-Registrar and was proved by calling through the witness of the Sub-Registrar as

PW-2 and the copy of the registered Will as Ex.PW2/1. I reject the argument urged on behalf of the appellants/defendants that the registration of the Will is fabricated simply because the respondent/plaintiff made an oral admission in his cross-examination on 11.3.2015 that there was no registered Will with the Sub-Registrar and the Will was only registered by notary public. Oral statements made under a wrong impression and which contradict unimpeachable public record being the record of the Sub-Registrar showing due registration of the Will, need not be believed by the courts, and therefore, the courts below have rightly held that the set of documents Ex.PW1/C (colly) dated 25.3.1996 executed in favour of the respondent/plaintiff are valid and genuine documents and hence the respondent/plaintiff is the owner of the suit property. It may be noted that appellants/defendants claim of documents dated 21.3.1996 was rejected by the courts below because no evidence was led which would give credibility to these documents as none of these documents are registered and thus it cannot be known when they actually came into existence. Appellants/defendants also did not lead evidence of the witnesses to the alleged documents dated 21.3.1996 and nor led evidence that stamp papers of the documents dated 21.3.1996 were

actually purchased on 21.3.1996 and which could have been done by summoning the record of the Registrar of Stamps.

7. Learned counsel for the appellants/defendants sought to argue that the trial court has wrongly placed onus of issue no. 1 on the appellants/defendants inasmuch as it was upon the respondent/plaintiff to prove ownership of the suit property, however, this argument is misconceived because onus of issue no. 2 which was on respondent/plaintiff and which issue framed was as regards the entitlement of the respondent/plaintiff to recover possession of the suit property. This issue no.2 would include the issue of respondent/plaintiff being or being not the owner of the suit property. In fact, issue no. 1 was framed because it was the case of the appellants/defendants that it was the mother Smt. Lakhpati Devi who was the owner of the suit property by virtue of the alleged documents dated 21.3.1996, Ex. DW-1/1 (colly), and that after the death of Smt. Lakhpati Devi the appellant no. 1/defendant no.1 being the son and natural legal heir became one of the co-owners of the suit property along with his father the respondent/plaintiff. I therefore reject the argument that any wrong issue has been framed or that onus has been wrongly put on the appellants/defendants. In any case, issue of onus pales into insignificance once evidence is led by both the parties

because courts have after evidence is lead to come to a conclusion on the preponderance of the probabilities.

8. A second appeal under Section 100 CPC lies only if any substantial question of law arises. Arriving at conclusions on the basis of evidence falls into the realm of the jurisdiction of the trial court and the first appellate court, and this court is not entitled to interfere with the findings and conclusions of the courts below once the courts below have taken one possible and plausible view as per the evidence which is on the record of the trial court. The courts below, in my opinion, have committed no illegality or perversity in decreeing the suit filed by the respondent/plaintiff/father and the courts below have rightly held that it was the respondent/plaintiff/father who was the owner of the suit property and not Smt. Lakhpati Devi.

9. No substantial question of law arises. Dismissed.

MAY 16, 2017
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VALMIKI J. MEHTA, J