

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

+ **RFA No.600/2017**

% **12th July, 2017**

DELHI SIKH GURDWARA MANAGEMENT COMMITTEE
(THROUGH ITS PRESIDENT) Appellant

Through: Mr. Abinash K. Mishra,
Advocate with Mr. Nitish Harsh
Gupta, Advocate.

versus

MANMEET SINGH AND ANR. Respondents

Through: Mr. Sandeep Sethi, Senior
Advocate with Mr. Amarjit
Singh, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

Caveat No.613/2017

1. Counsel appears for the caveators. Caveat accordingly
stands discharged.

C.M. Nos.23724-25/2017 (exemption)

2. Exemption allowed subject to just exceptions.

C.M.s stand disposed of.

RFA No.600/2017 and C.M. No.23723/2017 (stay)

3. This Regular First Appeal under Section 96 of Code of
Civil Procedure, 1908 (CPC) impugns the judgment of the Trial Court

dated 21.4.2017 by which the trial court decreed the suit of the respondents/plaintiffs for possession and *mesne* profits with respect to four suit properties. The relief granted by the impugned judgment is as under:-

“14. **Relief**

In view of my findings given in all the issues, the plaintiffs are entitled to a decree of possession in respect of portion shown in red in the site plan Ex.PW-1/11, PW-1/12 and PW-1/13 in respect of property no.17B/19 WEA DBG Road New Delhi, shop no.5277 and 5398, Sadar Thana road and T 1715, DBG Road, Karol Bagh respectively. The plaintiff is also entitled to decree of permanent injunction restraining defendant, its office bearers etc from selling, disposing, parting with possession or creating any third party interest or interfere with the right of plaintiff to recover rent/possession from the tenants. Plaintiff has claimed mesne profits @ 25000/- per month from March, 2013 of property no.17B/19, WEA DBG Road amounting to Rs.2 lacs till October, 2013 and future damages at the same rate, damages @ Rs.10,000/- per month for the ground floor portion of T1715, DBG Road, New Delhi from March 2013 till October, 2013 and future damages at the same rate and mesne profits @ Rs.25,000/- per month each for the two shops no.5277 and 5398, Sadar Thana road, Sadar Bazar from March 2013 till October 2013 and future damages at the same rate. There is no cross-examination to these rates of mesne profits. The plaintiffs are entitled to recover this amount coming to Rs.6,80,000/- from March 2013 till 31.10.2013. Plaintiffs are also entitled to damages @ Rs.85,000/- per month for all the four properties since November, 2013 till 30.4.2017 on payment of court fees and shall also be entitled to damages at this rate till recovery of possession. Plaintiff shall also be entitled to interest @ 6% per annum on this amount alongwith proportionate cost of the suit.

Decree sheet be prepared.

File be consigned to record room after due compliance.”

4. The suit properties admittedly belonged to Sh. Tirath Singh and his wife Smt. Mehtab Kaur who had only one son Sh. Jaspal Singh. Sh. Jaspal Singh was the father of the plaintiff no.1/respondent no.1 and husband of the plaintiff no.2/respondent no.2. It was pleaded by the appellant/defendant/Delhi Sikh Gurudwara Management Committee that parents of Sh. Jaspal Singh i.e Sh. Tirath Singh and

Smt. Mehtab Kaur had disinherited their son Sh. Jaspal Singh and had executed a Will dated 27.7.2005 in favour of the appellant/defendant, and which was duly registered before the Sub-Registrar, and the suit properties were bequeathed to the appellant/defendant. Accordingly, the appellant/defendant prayed for dismissal of the suit.

5. I may note that it is an undisputed fact that Sh. Tirath Singh and Smt. Mehtab Kaur as also Sh. Jaspal Singh are no longer alive. The court below has decreed the suit by observing that the attesting witness of the Will Mr. B.S. Rawal examined as DW-7 by the appellant/defendant in fact completely denied execution and attestation of the Will. Accordingly, the court below held that the Will was not proved. This is so stated in para 9 of the impugned judgment while discussing issue no.3 with respect to proof of the Will dated 27.7.2005 and this para 9 reads as under:-

“Issue no.3

Whether the Will dated 27.07.2005 propounded by the defendant is the Will of Smt. Mehtab Kaur, if so whether the Will was executed validly and in sound mind? OPD

The onus of proving this issue is on defendant who has claimed that Smt. Mehtab Kaur left behind a Will dated 27.07.2005. To prove the Will, one of the two attesting witnesses is required to be examined as provided under Section 68 of Indian Evidence Act. Defendant has examined DW-7 Mr. B.S. Rawal as one of the attesting witnesses. The witness however in his examination-in-chief did not support the case of the defendant and was declared hostile by the counsel for defendant and was permitted to ask questions in the cross-examination by the counsel for defendant himself. The witness categorically states that he does not have any knowledge about the signatures of Smt Mehtab Kaur nor about the signatures of Mr G.P. Vashisht, the other attesting witness on the Will. He also states that the Will was not executed in his presence. He also states that his photo impression

and that of Mehtab Kaur were not taken in his presence. He says that it was possible that the person who got the Will registered ask him to put his signatures thereon and he might have put signatures thereon. In the cross-examination conducted on behalf of plaintiff he has admitted that the Will was not read over in his presence and he does not know Smt. Mehtab Kaur. The entire deposition of witness proves that witness never knew Smt. Mehtab Kaur and as such Will has not been proved as per law. Further, it is important to note that the original Will has not seen the light of the day. Only a photocopy was placed on record and none of the witnesses examined by the defendant who are their own witnesses have seen the original Will. Though it is claimed by them that the original Will was given to the defendant by Smt. Mehtab Kaur but they have failed to prove any documents to show that the original Will was handed over by Smt. Mehtab Kaur to defendant. Ld counsel for the defendant in this regard has relied upon a judgment of Hon'ble Supreme Court titled as "*Leela Rajagopal & Ors. v. Kamala Menon Cocharan & Ors. Passed in Civil Appeal no.9282 of 2010 with civil appeal no.9286 of 2010 and Civil Appeal no.7004 of 2012 vide judgment dated 08.09.2014*" whereas counsel for defendant has relied upon following judgments.

1. *AIR 1989 NOC 47 Delhi, titled as Ramesh Dutt Salwan v. State & Ors.*
2. *2014 (144) DRJ 120, titled as "Narender Singh Chawla v. Narain Singh Chawla"*
3. *2007 (9) SCC 728, Benga Behera & Anr. v. Braja Kishore Nanda & Ors.*
4. *2015 (12) SCALE 412, Rakesh Mohindra v. Anita Beri & Ors.*
5. *AIR 1927 Mad 1054 FB titled as Ganshamdoss Narayandoss v. Gulab Bi Bai*
6. *AIR 2016 Karnataka 67 titled as D.R. Lakshmi Narayana Guptha v. K.R. Archana."*

6. As per Section 68 of the Indian Evidence Act, 1872 Will can only be proved by calling at least one attesting witness. Of course, if an attesting witness turns hostile, in accordance with Section 71 of the Indian Evidence Act, the Will can otherwise be proved by leading other evidence, but, a Will has to be proved to be duly executed and attested. In the present case, no other evidence has been led besides the evidence of the witness DW-7 Mr. B.S. Rawal as regards proof of the due execution and attestation of the Will. The attesting witness

DW-7 Mr. B.S. Rawal has denied the execution and attestation of the Will and once no other evidence is led on behalf of the appellant/defendant for proving the Will, then surely the court below was justified in decreeing the suit by disbelieving the Will dated 27.7.2005.

7. In my opinion *dehors* the findings of the court below with respect to the Will dated 27.7.2005, the suit was liable to be decreed on a purely legal proposition and which is contained in Sections 70 and 237 of the Indian Succession Act, 1925. As per these provisions unless and until the original Will is shown and proved to have been destroyed by an unintentional accident, no copy of the Will can be relied upon. This legal issue goes to the root of the matter. I must note that admittedly in the present case the original Will dated 27.7.2005 has not seen the light of the day. Sections 70 and 237 of the Indian Succession Act read as under:-

“Section 70. Revocation of unprivileged Will or codicil.-No unprivileged Will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

Section 237. Probate of copy or draft of lost Will.-When a Will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the Will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it is produced.”

8. A conjoint reading of aforesaid Sections 70 and 237 of the Indian Succession Act shows that one of the methods for revocation of the Will is by destruction of the same. Whenever any reliance is placed upon the Will for grant of the probate or letters of administration etc, it has to be pleaded and proved that either the original has not been destroyed and exists and is with a particular person or at a particular place or in the alternative it has to be pleaded and proved that the Will has been destroyed only by an act of accident or an unintentional act not amounting to revocation.

9. In the present case, admittedly there is no pleading or proof on behalf of the appellant/defendant that the original Will dated 27.7.2005 is not available because it has been destroyed by an unintentional act or unintentional wrong or unintentional accident. Once that is so Court cannot grant any benefit on the basis of the copy of the Will because original Will will have to be taken to have been revoked by destruction of the same.

10. In view of the above discussion, there is no merit in the appeal. Dismissed.

JULY 12, 2017
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VALMIKI J. MEHTA, J