

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

+ **RFA No. 797/2017**

% **18th September, 2017**

NUTAN CHADHA & ORS. Appellant
Through: Mr. Abhishek Kumar, Advocate.

versus

MUKESH CHANDER SAINI & ANR. Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. Nos. 34210/2017 & 34212/2017 (for exemptions)

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

C.M. Appl. Nos. 34208/2017 & 34211/2017

These are applications seeking condonation of delay of 80 days in filing the appeal and 46 days in re-filing the appeal.

For the reasons stated in the applications the same are allowed and the delays of filing and re-filing the appeal are condoned.

C.Ms. stand disposed of.

RFA No. 797/2017 and C.M. Appl. No. 34209/2017 (for stay)

1. This regular first appeal under Section 96 Code of Civil Procedure, 1908 (CPC) impugns the judgment of the trial court dated 22.12.2016, as amended by the order dated 20.3.2017 with respect to the correct description of the property, whereby the suit for partition filed by the respondents/plaintiffs has been decreed with respect to the suit property 258, Ram Nagar, Krishna Nagar, Delhi – 110051.

2. The admitted facts are that the suit property belonged to the father Sh. Nand Lal Saini in terms of a registered sale deed dated 30.7.1960. It is further admitted that the father Sh. Nand Lal Saini died intestate on 10.6.1993 and consequently the suit property devolved upon all his legal heirs being the mother of Sh. Nand Lal Saini, his widow and his children. The mother of Sh. Nand Lal Saini as also the daughters of Sh. Nand Lal Saini being the present appellants had executed a registered relinquishment deed dated 9.9.1993 with respect to suit property relinquishing their rights in the suit property in favour of the respondents/plaintiffs and the mother of the respondents/plaintiffs. Parties to the suit and the appeal are the sons and daughters of late Sh. Nand Lal Saini with the appellants being daughters and the respondents/plaintiffs being the sons.

3. Subject suit for partition was therefore filed by the respondents/plaintiffs pleading that they were the owners of the suit property, except to the extent of the share of the mother of the parties which she received in terms of the relinquishment deed dated 9.9.1993, and which share will devolve equally upon the parties to the suit being the children of Sh. Nand Lal Saini and his widow being the mother of the appellants/defendants and the respondents/plaintiffs.

4. Appellants/defendants, the daughters, contested the suit as also filed a counter-claim for cancellation of the relinquishment deed dated 9.9.1993 executed by them in the favor of their mother and the respondents/plaintiffs/brothers. It was pleaded by the appellants/defendants/counter-claimants that they were emotionally blackmailed to relinquish their share in the suit property in favour of their mother and the respondents/plaintiffs/brothers.

5. After pleadings were complete the trial court framed issues, and parties led evidence, and which aspects are stated in paras 6 to 8 of the judgment of the trial court and these paragraphs read as under:-

“ISSUES:-

6. From the pleadings of the parties, following issues were framed:-
 - (1) Whether the suit is not maintainable? OPD

- (2) Whether the plaintiff is entitled to the decree of partition in respect of property i.e Plot No.258, Ram Nagar, Krishna Nagar, Delhi, as prayed for? OPP.
- (3) Whether the counter claimant is entitled for a decree for cancellation of relinquishment deed dated 16.07.1993 qua the defendant no.1 as prayed for? OPC.
- (4) Whether the counter claimant is entitled to be declared as owner of the suit property? OPC.
- (5) Relief.”

PLAINTIFF’S WITNESSES

PW1	Shri Manjeet Saini, AR of the plaintiffs
PW2	Shri Sevajit, Record Attendant, Department of Delhi Archives

7. PW1 Shri Manjeet Singh has proved his affidavit as Ex.PW1/1.

DOCUMENTS RELIED UPON BY THE PLAINTIFF:-

Ex.PW1/A	Power of Attorney executed in favour of Shri Manjeet Saini by both the plaintiffs
Ex.PW1/C	Site plan
Ex.PW1/D	Relinquishment deed
Ex.PW1/E	Legal Notice dated 30.11.2010
Ex.PW1/F	Reply to the legal notice
Ex.PW2/1 (also referred as Ex.PW1/B)	Sale deed dated 30.07.1960 executed by Sh. Mohinder Singh Josh in favour of Sh. Nand Lal Saini registered on 02.08.1960
Mark X	Letter to SHO Krishna Nagar by the defendant no.1

DEFENDANT’S WITNESSES

DW1	Smt. Nutan Chadha, the defendant
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8. DW1 Nutan Chadha has proved her affidavit as Ex.DW1/A.

DOCUMENTS RELIED UPON BY THE DEFENDANT

Ex.DW1/1	Ration Card
Ex.DW1/2	Passport of Smt. Nutan Chadha, the defendant
Ex.DW1/3	Passport of Shri Vikram Chadha (husband of defendant No.1)
Ex.DW1/4	Voter I Card of the defendant No.1
Ex.DW 1/5	Voter I card of husband of the defendant No.1
Ex.DW1/6	Bank Passbook of husband of the defendant No.1
Ex.DW1/7	Birth Certificate of daughter of the defendant No.1
Ex.DW1/8	Death Certificate of mother of the defendant No.1

6. Trial court has held that the relinquishment deed dated 9.9.1993 cannot be challenged by the appellants/daughters after nineteen years of execution of the same, inasmuch as, the suit and

counter-claim was of the year 2011 whereas the registered relinquishment deed was of the year 1993. Though the trial court has held the claim of cancellation of the relinquishment deed Ex.PW1/D as barred by limitation, but it has not referred to the relevant Article of the Limitation Act, 1963 but it is noted that this relevant Article would be Article 59 of the Limitation Act. Article 59 of the Limitation Act provides a period of three years for cancellation of a document from the date of knowledge of the document. Document being the relinquishment deed Ex.PW1/D, being a registered relinquishment deed, was and can be said to be known to the appellants/defendants in the year 1993 itself and therefore by a suit and counter claim of the year 2011, challenge to the relinquishment deed of the year 1993 would be barred by limitation as per Article 59 of the Limitation Act.

7. Accordingly the trial court decreed the suit for partition by granting the appellants/defendants $1/5^{\text{th}}$ share out of $1/3^{\text{rd}}$ share which fell to the mother i.e. $1/15^{\text{th}}$ share in the suit property. It may be noted that the two respondents/plaintiffs/sons were the two owners of the suit property along with the third owner being the mother and who would have $1/3^{\text{rd}}$ share in the suit property. This $1/3^{\text{rd}}$ share was to be divided between the 5 parties being the three

appellants/daughters and two plaintiffs/respondents/sons. Accordingly, a partition decree was passed giving each appellants/defendants/daughters 1/15th share in the suit property i.e a total of 3/15th share in the suit property to the appellants/defendants and holding respondents/plaintiffs to be the owners of the rest of the share of the suit property.

8. Before the trial court the appellants/defendants had raised an issue with respect to non-stamping of the Power of Attorney dated 2.2.2011 executed by the respondents/plaintiffs in favour of their attorney holder Sh. Manjeet Saini. Trial court has decided this argument by directing that the document in question since it is not adequately stamped, can be impounded, and accordingly the trial court impounded the document and directed payment of duty and penalty. The relevant paras of the impugned judgment of the trial court in this regard are paras 13.1 to 13.4, 13.7 to 13.9 and 14.2, and which paras read as under:-

“13.1 PW1 Manjeet Saini has filed the power of attorney Ex.PW1/A executed by Mukesh Chander Saini and Anil Kumar, the plaintiff no.1 and 2 in his favour to institute the present suit and to depose before the court. The document was marked as Ex.PW 1/A subject to the objections of the defendant. The document in question was executed in USA and the document is unstamped.

13.2 Ld. Counsel for the defendant has challenged the document on the ground that the document is unstamped. He has referred to Section 18(1) of the Indian Stamp Act, 1899, which provides that:

“every instrument chargeable with duty executed only out of {India}, and not being a bill of exchange {or promissory note, may be stamped within three months, after it has been first received in {India}.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefore, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the {State Government} may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.”

13.3 It has been contended by Ld. Counsel for the defendants that if a power of attorney has been executed in a foreign country, the signatures of the notary or Judge before whom it is executed are required to be legalized by an accredited representative of Indian Embassy in that country. Further a power of attorney executed in a foreign country need not be stamped at the time of execution; however, it is to be stamped adequately within three months from the date of its receipt in India.

13.4 In the present case, the power of attorney filed on behalf of the plaintiffs in favour of Mr. Manjeet Saini is not stamped as per provisions of Section 18 of the Indian Stamp Act, 1899. According to Section 35 of the Indian Stamp Act, the same is not admissible in evidence for any purpose. As such, since the power of attorney dated 02.02.2011 is not admissible in evidence, the same cannot give any authority to the power of attorney holder to exercise the power/authority given thereunder.

13.7 I find force in the contentions of Ld. Counsel for the plaintiff that the fact that the document Ex.PW1/A is unstamped is not fatal to the admissibility of the document. The perusal of the provisions of the Stamp Act do not suggest that production of a document not duly stamped is fatal to its admissibility in evidence as the procedure for curing the defect has been provided for. A document can be impounded and on payment of duty and penalty thereon, the same becomes admissible in evidence. In *Hindustan Steel Ltd. Vs. Dilip Construction Co.* MANU/SC/0474/1969:{1969} 1 SCC 597, the Hon’ble Supreme Court opined that the Stamp Act is merely a fiscal statute to secure revenue for the State on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. Learned Counsel for the petitioner had categorically stated that the petitioner is ready and willing to pay the stamp duty and the penalty.

13.8 It would be also pertinent to refer to **Javer Chand vs. Pukhraj Surana, AIR 1961, SC 1655**. Relevant portion of which is reproduced as under:-

“That Section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceedings on the ground that the

instrument had not been duly stamped. The only exception recognized by section is the class of cases contemplated by Section 61 which is not material to the present controversy. Section 36 does not admit of other exceptions. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped it has to be decided then and there when the document is tendered in evidence. Once the Court rightly or wrongly, decides to admit the document in evidence so far as the parties are concerned the matter is closed. Section 35 is in the nature of a penal provision and has far reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case.”

13.9 In view of the discussion, I am of the view, that the fact that document Ex.PW1/A is unstamped is not fatal to the admissibility of power of attorney filed by Shri Manjeet Saini, Authorised Representative of the plaintiffs. PW1 Sh. Manjeet Saini has stated that the suit property no. 258, Ram Vihar, Krishna Nagar, Delhi-110051, was originally purchased by Sh. Nand Lal Saini, father of the parties vide registered sale deed dated 30.07.1960, which are Ex.PW1/B and Ex.PW1/C respectively. Subsequent to the death of their father, legal heirs specifically daughters and mother of Late Sh. Nand Lal Saini executed relinquishment deed dated 16.07.1993, which was registered on 09.09.1993, relinquishing all their rights, title and interest in the suit property in favour of other legal heirs vide Ex.PW1/D. The plaintiffs Mukesh Chander Saini and Anil Kumar along with their mother Bimla Devi became owner of the suit property in equal shares. Mother of the parties died on 10.10.2001. It is stated that mother of the parties during her life time repeatedly made her intention clear to all members of the family that her 1/3rd share in the property after her death should devolve upon her two sons only. It is stated that if any of the defendants challenged the wish of their mother, the plaintiffs are ready to accept them as legal heirs to the 1/15th share in the property.

14.2. However, since power of attorney Ex.PW1/A is unstamped. I order impounding of the original of the power of attorney Ex.PW1/A and direct the plaintiffs to deposit stamp duty and the penalty as provided under Indian Stamp Act. The power of attorney on record be sent to the Collector of Stamps. The plaintiffs would deposit the amount and only on receipt of information regarding deposition of stamp duty and penalty, the decree sheet shall be drawn. Copy of this order be also kept in counter-claim registered as CS No. 813/16. File be consigned to record room.”

9. In my opinion no fault can be found in the aforesaid reasoning of the trial court, inasmuch as, the Power of Attorney which is not adequately stamped can be impounded by the Court under Section 33 of the Indian Stamp Act, 1899 and the Power of Attorney thereafter can be looked at on payment of the relevant stamp duty and penalty as per Sections 35 and 38 of the Indian Stamp Act.

10. Learned counsel for the appellants/defendants then argued that Power of Attorney is not signed by the notary public, however, it is seen that no such argument was raised before the trial court because the impugned judgment does not deal with this aspect.

11. I also reject the argument urged on behalf of the appellants/defendants that Power of Attorney should not be looked into because it was not forwarded to the High Commissioner of India through USA, inasmuch as, Power of Attorney can always be privately sent and thereafter the same has to be accordingly stamped in accordance with the provisions of the Stamp Act, 1765.

12. In any case all the aforesaid technical arguments urged on behalf of the appellants/defendants with respect to invalidity with respect to deposition of the Power of Attorney holder Sh. Manjeet

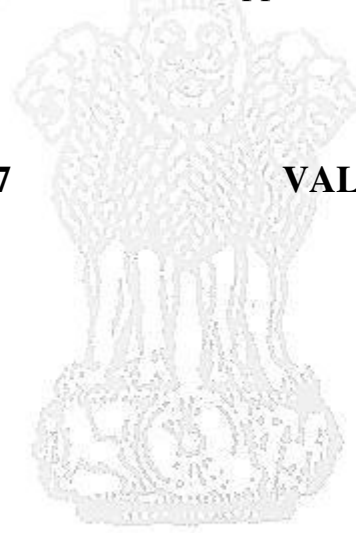
Saini do not have substance because all the necessary facts for passing of the preliminary decree are admitted facts in the present case with the aspect that challenge to the Relinquishment Deed dated 9.9.1993 Ex.PW1/D was barred by limitation, and therefore, in my opinion nothing turns upon the deposition of the Power of Attorney holder Sh. Manjeet Saini in the facts of the present case.

13. There is no merit in the appeal and the same is hereby dismissed.

SEPTEMBER 18, 2017

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VALMIKI J. MEHTA, J



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