

\$~10&11.

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

+ **FAO(OS) No. 377/2016**

Date of decision: 22nd August, 2017

MEGHA KAKKAR NEE SETH Appellant

Through Mr. Rajeshwar Kumar Gupta,
Advocate.

versus

RAJNI SETH & ORS. Respondents

Through Ms. Reeta Chaudhary, Advocate
for respondent No. 1.

Mr. Atul Nigam, Mr. Raghav Tibriwal &
Mr. Anil Thakur, Advocates for respondent
Nos. 2 to 4.

RFA (OS) No. 11/2017

MEGHA KAKKAR NEE SETH Appellant

Through Mr. Rajeshwar Kumar Gupta,
Advocate.

versus

RAJNI SETH & ORS. Respondents

Through Ms. Reeta Chaudhary, Advocate
for respondent No. 1.

Mr. Atul Nigam, Mr. Raghav Tibriwal &
Mr. Anil Thakur, Advocates for respondent
Nos. 2 to 4.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL):

CM No. 7626/2017 in RFA (OS) No. 11/2017

This is an application for condonation of delay of 33 days in filing of the appeal. The counsel for the respondent states that he has no objection in case the delay is condoned. However, we clarify that the respondent does not accept the assertions and contentions, which should relate to the merits.

In view of the statement made, the application for condonation of delay is allowed.

FAO(OS) No. 377/2016 & RFA(OS) No. 11/2017

These two intra-Court appeals by Megha Kakkar nee Seth impugn the order dated 29th November, 2016 whereby application filed by the appellant for amendment of the plaint IA No. 11809/2016 has been dismissed. The appellant is also aggrieved by the order dated 29th November, 2016, which allows application IA No. 8863/2016 filed by the defendant No. 2 to the suit, namely, Vikas Seth under Order XII, Rule 6 of the Code of Civil Procedure, 1908 (code for short). This order holds that the second floor with terrace rights of property No. 53/68, Western Extension Area, Ramjas Road, Karol

Bagh, New Delhi having been sold by the predecessors-in-interest cannot become subject matter of the plaint/suit.

2. Property No. 53/68, Western Extension Area, Ramjas Road, Karol Bagh, New Delhi (hereinafter referred to as the property) belonged to one Pushpa Wati Seth. Pushpa Wati Seth expired on 14th September, 1974. Under a Will executed by her the property was inherited by her two daughters-in-law, namely, Ritu Seth and Rajni Seth.

3. The appellant herein is the daughter of Ritu Seth. Vivek Seth and Vikas Seth are the sons of Ritu Seth.

4. Rajni Seth and Ritu Seth vide registered sale deed dated 18th October, 2010 had transferred the second floor with terrace rights above the second floor in the property in favour of Vikas Seth and his wife Sonia Seth.

5. Ritu Seth expired on 29th January, 2014 and as per the appellant has left behind the Will dated 10th January, 2014.

6. The appellant relying upon the Will dated 10th January, 2014, in January, 2016 filed a suit for partition and rendition of accounts, which is registered as CS(OS) No. 137/2016. Rajni Seth is the defendant No. 1 to the said suit and two sons of late Ritu Seth, Vikas Seth and Vivek Seth are defendant Nos. 2 and 3 to the suit. Sonia Seth is not a party to the suit and the present appeal.

7. In the original plaint filed, it is accepted and admitted that late Ritu Seth and Rajni Seth, defendant No. 1, had executed a sale deed dated 18th October, 2010 in favour of the respondent No. 2 (defendant No. 2) Vikas Seth and his wife Sonia Seth in respect of the second floor alongwith roof rights for a meagre amount of Rs.23.50 lacs. This is clear from paragraph 9 of the original plaint, which reads as under:-

“9. That the plaintiff has come to know that Smt. Ritu Seth and the defendant No. 1 Smt. Rajni Seth executed a Sale Deed dated 18.10.2010 in favour of the defendant No. 2 Sh. Vikas Seth and his wife Smt. Sonia Seth in respect of entire Second Floor with roof rights, for a meagre amount of Rs. 23.50 Lacs.”

8. Paragraph 10 of the said plaint is equally relevant and states as under:-

“10. That Smt. Ritu Seth mother of the plaintiff in her life time executed a WILL dated 10.01.2014 in favour of the plaintiff at Delhi and handed over the same to her when she visited USA on 15.01.2014. Smt. Ritu Seth died on 29.01.2014 at University of Maryland Medical Center, Baltimore, USA.”

9. We would also like to reproduce here the relevant paragraphs of the Will of Ritu Seth dated 10th January, 2014 relied upon by the appellant, which read:-

“WHEREAS, I and Smt. Rajni Seth by way of a registered Sale Deed dated 18.10.2010 transferred the Second Floor and terrace rights above Second Floor of the residential house being 53/68, Ramjas Road, Karol Bagh, New Delhi-110005, for meagre amount in favour of my son Shri Vikas Seth and in favour of his wife Smt. Sonia Seth, with a view that he shall live in the said portion with his family and shall not claim for his share in future.

WHEREAS Mrs. Megha Kakkar is presently residing at 10101 Baltimore Avenue, 1110, College Park, MD 20740 with her husband and children. At times of visit of my daughter Mrs. Megha Kakkar to India we use to pay meagre amount to her. As such I feel it necessary that my daughter Mrs. Megha Kakkar gets her due share in the properties movable & immovable which may be possessed & left by me at the time of my death.

NOW, therefore, I hereby bequeath that till I am alive I shall remain owner of half share of the said residential house being 53/68, Ramjas Road, Karol Bagh, New Delhi-110005 which is constructed on a plot of 267.7 Sq. Yds. and after my death, my share in the said house be devolve in favour of my younger son Sh. Vivek Seth and my daughter Mrs. Megha Kakkar in their equal share.

I, hereby further declare that after my death my younger son Sh. Vivek Seth and my daughter Mrs. Megha Kakkar shall have their equal share,

absolute rights and title in the said residential house constructed on a plot of 267.7 Sq. Yds. being 53/68, Ramjas Road, Karol Bagh, New Delhi-110005. I also declare that all my rights and interests in all other movables including jewelry(sic), bank account & shares etc. and immovable properties either residential and or commercial, which shall be possessed and owned by me at the time of my death shall be equally shared by my all three children namely Sh. Vikas Seth, Sh. Vivek Seth and my daughter Mrs. Megha Kakkar.”

10. It is clear from the aforesaid paragraphs 9 and 10 and the assertions made in the Will dated 10th January, 2014 that late Ritu Seth and Rajni Seth, defendant No. 1 had sold and transferred their rights in the second floor and the terrace rights above the second floor in favour of the Vikas Seth (defendant No. 2) and Sonia Seth.

11. By the amendment application IA No. 11809/2016, the appellant wanted to amend paragraph 9 of the plaint in the following manner:-

“9. That on 15.01.2014, the plaintiff came to know that Smt. Ritu Seth and the defendant No. 1 Smt. Rajni Seth executed a Sale Deed dated 18.10.2010 in favour of the defendant No. 2 Sh. Vikas Seth and his wife Smt. Sonia Seth the defendant No. 4 in respect of entire Second Floor with roof rights of the said residential house being No. 53/68, (Municipal No. 8208) Ward No. XIV, situated at Western Extension Area, Ramjas Road, Karol Bagh, New Delhi

measuring about 267.7 Sq. Yds., for a meagre amount of Rs.23.50 Lacs.”

12. In addition, the appellant wanted to add paragraphs 13A to 13E to the plaint, which are as under:-

“13A. That as submitted above that on 15.01.2014 when the mother of the plaintiff Smt. Ritu Seth visited USA, handed over the WILL dated 10.01.2014 to her, then the plaintiff came to know about the execution of the Sale Deed dated 18.10.2010 by the defendant No. 1 and Smt. Ritu Seth in respect of entire Second Floor with roof rights of residential house No. 53/68, (Municipal No. 8208) Ward No. XIV, situated at Western Extension Area, Ramjas Road, Karol Bagh, New Delhi, in favour of the defendant Nos. 2 and the defendant No. 4 for a meagre amount of Rs. 23.50Lacs while the property is worth not less than Rs. 5.00 Crores.

13B. That the plaintiff has also come to know after filing the present suit when the defendant No. 3 filed his written statement and copies of the documents dated 13.07.2016 that a WILL dated 22.05.2012 was also got executed by the defendant No. 3 and his wife Smt. Sweety Seth from Smt. Ritu Seth in respect of entire First Floor of undivided residential house No. 53/68, (Municipal No. 8208) Ward No. XIV, situated at Western Extension Area, Ramjas Road, Karol Bagh, New Delhi, measuring

No. 267.7 Sq.Yds., in favour of Smt. Sweety Seth. It is however, clear from the said Will that the SUIT property was never partitioned and is still joint.

13C. That the real intention of Smt. Ritu Seth, the mother of the plaintiff and of the defendant Nos. 2 & 3 is spelled out in her WILL dated 10.01.2014 wherein she has stated the circumstances in which the Sale Deed dated 18.10.2010 as well as the WILL dated 22.05.2012 were executed. Moreover, the language used in the WILL dated 10.01.2014 demonstrates that the said documents i.e. Sale Deed dated 18.10.2010 while cancelling/revoking the earlier Wills were not executed of her own accord with disposing mind but were unduly-influenced by the defendants and there is clear misrepresentation as well as fraud played upon the government authorities and also on the plaintiff & all other concerned.

13D. That these acts on the part of the defendants are nothing but just to deprive the plaintiff from her proportionate valuable rights, title and interests in the aforesaid immovable residential house besides other rights in bank deposits, cash & jewelry(sic) etc. The plaintiff submits that in view of the last WILL and testament dated 10.01.2014 of Smt. Ritu Seth, the alleged WILL dated 22.05.2012 is void, inoperative & stands revoked.

13E. That in the circumstances as stated above it is thus just necessary that the Sale Deed dated 18.10.2010 registered as document No. 9997, in Book No. I, Volume 13876, on pages 50 to 58 dated 18.10.2010 in the office of Sub-Registrar –III, New Delhi in respect of entire Second Floor with roof rights of residential house No. 53/68, (Municipal No. 8208) Ward No. XIV, situated at Western Extension Area, Ramjas Road, Karol Bagh, New Delhi, measuring No. 267.7 Sq. Yds., be declared as void-ab-initio, ineffective, inoperative and not binding on the plaintiff for various reasons/grounds viz:-

(i) Property is undervalued with a view to cheat and play fraud upon all concerns and to cause loss to government exchequer by escaping the stamp duty as well as the corporation duty;

(ii) No consideration is paid – cash payment stated to have been paid as Rs. 18.50Lacs is nowhere reflected in any books of accounts either of the purchasers or of the sellers in their Income Tax Returns while cheque amount is returned & routed through the daughter of the defendant No. 1 Mrs. Mona Madan;

(iii) Construction which was made on plot after purchase by Smt. Pushpa

Wati in March 1954 is shown as construction prior to 1954;

(iv) The area of land is 223.82 Sq. Mtrs. & sale of plinth area/constructed portion is 190 Sq. Mts. while the cost of land is calculated at 74.606 Sq. Mtrs. and proportionate land area of roof rights of the suit property is not deliberately mentioned for escaping the Stamp & Corporation duty;

(v) The real intention of Smt. Ritu Seth, the mother of the plaintiff and of the defendant Nos. 2 & 3 is spelled out in her WILL dated 10.01.2014 wherein she has stated the circumstances in which the Sale Deed dated 18.10.2010 as well as the WILL dated 22.05.2012 were executed. Moreover, the language used in the WILL dated 10.01.2014 demonstrates that the said documents i.e. Sale Deed dated 18.10.2010 while cancelling/revoking the earlier wills were not executed of her own accord with disposing mind but were unduly-influenced by the defendants and there is clear misrepresentation as well as fraud played upon the government authorities and also on the plaintiff & all other concerned;

(vi) As aforesaid in the present case though property is undervalued and the sale is shown to have been made but in fact there is no consideration to the

alleged transaction of sale by way of Sale Deed dated 18.10.2010;

(vii) It is submitted that when the consideration of the subject property is of such a nature that, if permitted, it would defeat the provisions of law prevailing to Indian Stamp Act, 1899 (as inforce in Delhi), The Delhi Stamp (Prevention of Under-valuation of Instruments) Rules, 2007 and the Registration Act, 1908 and as such the Sale Deed dated 18.10.2010 deserves to be declared as void-ab-initio, in-operative, ineffective and of no consequence;

(viii) It is submitted that the said sale instrument i.e. the registered Sale Deed dated 18.10.2010 is void and if the same is left outstanding, the same shall cause serious injury and needs to be adjudged by the Hon'ble Court and ordered it to be delivered up and cancelled;

(ix) The execution of the above subject instruments is nothing but a fraudulent act which makes the same void and are liable to be declared as such by the Hon'ble Court;

(x) The transfer of the property by way of said fraudulent Sale Deed dated 18.10.2010 implies involvement to cause injury/ loss to the plaintiff's rights in the property;

(xi) The transfer of the property by way of said fraudulent Sale Deed dated 18.10.2010 is immoral and opposed to the public policy; AND

(xii) Since the transfer of the property by way of said fraudulent Sale Deed dated 18.10.2010 which directly and indirectly causes losses/injury to the plaintiff's rights & title is unlawful and is void in the eye of law which needs to be declared as such by this Hon'ble Court."

13. The appellant had also sought amendments to the prayer clause in the suit.

14. As noticed above, by the impugned order dated 29th November, 2016 the application for amendment has been dismissed.

15. The purported Will relied upon by the appellant itself records that the deceased-Ritu Seth alongwith defendant No. 1 had transferred and sold her rights on the second floor alongwith terrace rights above the second floor. The deceased-Ritu Seth, through whom the appellant claims her rights, had also acknowledged and stated that the said transfer or sale was for a meager amount and not at the market value. The deceased-Ritu Seth and the defendant No. 1 had not challenged and questioned the said sale. Even today the defendant No. 1 does not question the said sale. We do not think, in these circumstances, the appellant can be and should be permitted to amend the plaint to challenge and question the sale, which was accepted and

admitted by her predecessor-in-interest through whom the appellant claims her rights.

16. The learned single Judge has also referred to Explanation 2 to Section 25 of the Contract Act, 1872, which stipulates that an agreement to which consent is freely given, would not be void merely because the consideration is inadequate; but inadequacy of consideration may be taken into account in determining the question whether the consent was freely given. We agree with the said observation and finding. Grounds raised in paragraphs 13A to 13E of the amendment application are per se and ex facie a pernicious and tetchy attempt to widen and expand the estate of the deceased – Ritu Seth. Normally, we do not examine merits, but this does not prevent the court from rejecting amendments raising senseless and inane pleas, on mere asking. Value of consideration, in an otherwise valid and legal transaction between mother and son and daughter-in-law to which the aunt had agreed, would not justify a challenge by a third person who in original plaint had accepted the transaction.

17. Learned counsel for the appellant submits and claims that the appellant was not aware of the sale deed dated 18th October, 2010. The appellant is the daughter of the deceased and sister of the defendant No. 2. She is the niece of defendant No.1. We have also reproduced paragraph 10 of the plaint in which the appellant has stated that her mother Ritu Seth had handed over the Will dated 10th January, 2014 to her when she had visited USA on 15th January, 2014. In fact, late Ritu Seth died on 29th January, 2014 in USA.

18. We have quoted the Will dated 10th January, 2014 relied upon by the appellant. The said Will records that her share in the property would devolve on the appellant and the defendant No. 3 in equal share.

19. We do not think the appellant should be permitted to raise the closed and settled issues by the amendment application. The application for amendment, therefore, was rightly dismissed.

20. For the aforesaid reasoning, the appeal filed by the appellant impugning the order dated 29th November, 2016 allowing the application filed by the defendant No. 2 for exclusion of the second floor with terrace rights has to be dismissed. Once the second floor with terrace rights is treated and not regarded as subject matter of the suit, the same cannot become a part of the property, which can be divided or partitioned in the suit for partition.

21. Consequently, the two appeals are dismissed. However, there would be no order as to costs.

न्यायमेव जयते

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

AUGUST 22, 2017

VKR