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

+ RFA 1050/2017

LAXMI RANA & ANR

..... Appellant

Through: Mr.M.N. Kural, Ms.Pushpa
Sharma, Advocates

versus

BUDH SINGH & ORS

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

18.12.2017

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CM No.46125/2017

1. Delay in re-filing is condoned.
2. CM stands disposed of.

RFA No.1050/2017 & CM No.46124/2017 (stay)

3. This Regular First Appeal is filed challenging the impugned judgment of the trial court dated 11.10.2017 by which the trial court has rejected the plaint under Order 7 Rule 11 of Civil Procedure Code, 1908 (CPC).
4. Trial court has rejected the plaint and in effect dismissed the suit even on merits by holding that if the predecessor of the appellants Budh Singh, being the grandfather of the appellants, had sold the suit property during his lifetime by means of documents dated 18.03.2005 and 12.01.2005 in favour of defendants No.3 to 5 in the suit, and that therefore the appellants cannot be owners of the suit property which did not continue in ownership of the grandfather Budh Singh. Trial court also notes that appellants cannot now in

the year 2017 challenge documents executed by Budh Singh on 18.03.2005 and 12.01.2005 as challenge to such documents would be barred by time. I may note that suit would in this regard be barred by time in view of Article 59 of the Limitation Act. Trial court in the impugned judgment in para 26 notes that appellants did not dispute execution of the documents dated 18.03.2005 and 12.01.2005 by Budh Singh in favour of defendants No.3 to 5 in the suit and it is only argued that Budh Singh had no authority to execute the documents executed by him. Para 26 of the impugned judgment in this regard reads as under:

“26. During the course of arguments, the Ld. counsels for the plaintiffs have argued that Sh.Budh Singh S/o Madwa had sold his share of the property without any authority and the documents executed by him, are not binding on the plaintiffs and these documents do not create any right, title or interest, in favour of the defendants. But, he has not disputed the execution of the documents dated 18.03.2006 and 12.01.2005, executed by Sh.Budh Singh, in favour of the defendant Sh. Tara Singh, on 12.01.2005 and in favour of the defendants Sh.Vijay Kumar and Sh. Arun Kumar, on 18.03.2005. Furthermore, it is an admitted case of the plaintiffs that no declaration has been sought by the plaintiffs in respect of the aforesaid documents, to declare these documents as null and void, or not binding on the plaintiffs.”

5. In my opinion, once a factual statement is made by the trial court in para 26 of the impugned judgment that the appellant did not dispute execution of the documents dated 18.03.2006 and 12.01.2005 by Budh Singh in favour of defendants No.3 to 5 in the suit, consequently challenge to such documents would be time barred under Article 59 of the Limitation

Act, and this Court has to take as correct the statement made on behalf of the appellants as stated in para 26 of the impugned judgment in view of the ratio of the judgment of the Supreme Court in ***State of Maharashtra vs. Ramdas Shrinivas Nayak***, AIR 1982 SC 1249.

6. Since learned counsel for the appellants argues that the counsel for the appellants did not make any such concession as recorded in para 26 of the impugned judgment, such an argument cannot be raised before this Court as an Appellate Court in view of the ratio in ***Ramdas Shrinivas Nayak*** (*supra*) and such an argument can only be raised before the trial court who recorded the concession in para 26 of the impugned judgment, and therefore, the appellants necessarily have to approach the trial court for declaring that the appellants did not make the concession as stated in para 26 of the impugned judgment. It is only thereafter can the appellants succeed in this appeal, otherwise if para 26 of the impugned judgment stands, this appeal would be liable to be dismissed.

7. At this stage, at the request made on behalf of learned counsel for the appellants, this appeal is allowed to be withdrawn with liberty to the appellants, of course in accordance with law, to approach the trial court for the appellants filing an application to question the factual statement recorded in para 26 of the impugned judgment since the case of the appellants is that the appellants did not make the concession of not disputing the execution of the documents dated 18.03.2005 and 12.01.2005 as stated in para 26 of the impugned judgment.

8. Appeal is accordingly disposed of as withdrawn with the aforesaid liberty as stated above.

VALMIKI J. MEHTA, J

DECEMBER 18, 2017
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