

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

+ **RSA No. 419/2015**

% **Judgment reserved on: 26th April, 2017**
Judgment pronounced on: 1st May, 2017

DINESH KUMAR Appellant

Through: Mr. Abhishek Lakhanpal, Advocate
with Mr. S.B. Upadhyay, Advocate.

versus

MAHNGU RAM (DECEASED) THROUGH L.R. & ANR.

..... Respondents

Through: Mr. Davinder N. Grover, Advocate
with Mr. Jay K. Bhardwaj, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the concurrent judgments of the courts below; of the Trial Court dated 30.6.2015 and the First Appellate Court dated 10.11.2015; by which the courts below have decreed the suit for possession with respect to the property being Plot no. 34, Sector 16A, Pocket 2 and 3, Dwarka, New Delhi (hereinafter referred to as 'the suit property'), and as reflected in the site plan Ex.PW1/2. It is required to be noted that when the suit was filed original plaintiff Sh. Mahngu

Ram was alive. Sh. Mahngu Ram died during the pendency of the suit and the present respondent no.1 was substituted as the legal heir of Sh. Mahngu Ram in terms of the Will of Sh. Mahngu Ram dated 7.3.2011. Appellant/defendant was pleaded by Sh. Mahngu Ram to be a licensee in the suit property and who was allowed to stay in the suit property belonging to the plaintiff Sh. Mahngu Ram and since the appellant/defendant failed to vacate the suit property inspite of termination of licence, and the appellant/defendant along with his wife threatened aged Sh. Mahngu Ram hence the subject suit for possession had been filed.

2. The facts of the case are that admittedly Sh. Mahngu Ram was the owner of the suit property. The case of the plaintiff Sh. Mahngu Ram was that he and his wife did not have any issue. The appellant/defendant was allowed by the plaintiff Sh. Mahngu Ram to stay in the suit property as the appellant/defendant was a nephew of his brother-in-law Sh. Ram Sewak. Appellant/defendant asked for some space to live and therefore he was allowed to live in the suit property by the plaintiff Sh. Mahngu Ram. However, over a period of time the appellant/defendant started insulting and harassing the plaintiff Sh. Mahngu Ram and therefore he had to leave the suit property and reside elsewhere. Sh. Mahngu Ram was threatened by the appellant/defendant

to get him killed and for this reason also Sh. Mahngu Ram shifted from the suit property. In the suit plaintiff Sh. Mahngu Ram also pleaded that the appellant/defendant had forged his Will and which therefore should not be taken as giving any benefit to the appellant/defendant. In the plaintiff the plaintiff Sh. Mahngu Ram also mentioned that the appellant/defendant had filed another suit for injunction against the plaintiff Sh. Mahngu Ram and which civil suit was pending. In the subject suit plaintiff the plaintiff Sh. Mahngu Ram also stated that he had already executed the Will cancelling his earlier Wills.

3. Appellant/defendant did not dispute that the suit property was owned by the plaintiff Sh. Mahngu Ram and that he came in the suit property as a licensee of the plaintiff Sh. Mahngu Ram, however, the appellant/defendant claimed that he had spent a sum of Rs.3 lacs in making construction on the property and therefore he had become the owner thereof. In the written statement, the appellant/defendant did not deny that he had filed a different suit for injunction against the plaintiff Sh. Mahngu Ram. The suit was, accordingly, prayed for being dismissed by the appellant/defendant.

4. As already noted above that Sh. Mahngu Ram had expired during the pendency of the suit and therefore the present respondent no.1 was substituted as plaintiff in place of Sh. Mahngu Ram in terms

of the registered Will dated 7.3.2011 of Sh. Mahngu Ram. At this stage itself it is also required to be noted that if the original plaintiff Sh. Mahngu Ram had been alive then the suit would have been decreed forthwith inasmuch as there was no dispute that plaintiff Sh. Mahngu Ram was the owner of the suit property. The only defence of the appellant/defendant of being entitled to stay in the suit property on account of making construction was not proved by the appellant/defendant in the trial court by leading any documentary evidence, and therefore oral evidence cannot be believed for giving any rights in the suit property to the appellant/defendant. Also the courts below have rightly held that making of construction by spending of moneys by the appellant/defendant will still not make the appellant/defendant anything more than a licensee. On account of death of the plaintiff Sh. Mahngu Ram the issue now which requires determination narrows down to whether late Sh. Mahngu Ram had executed the registered Will dated 7.3.2011 in favour of the present respondent no.1/Sh. Pawan Kumar. Though the appellant/defendant pleaded execution of an earlier Will dated 14.11.2003 in his favour, and this Will dated 14.11.2003 was not proved, but even if this Will is not proved, the respondent no.1 in order to succeed to be the owner of the suit property had to prove the registered Will dated 7.3.2011. This

Will dated 7.3.2011 in favor of the respondent no.1 was proved as Ex.PW1/1 as per the deposition of the two attesting witnesses Sh. Hari Ram Dubey and Sh. Subhash Chaurasiya who deposed as PW-2 and PW-3. This Court therefore essentially has to examine the validity of the registered Will dated 7.3.2011 in favour of the respondent no.1.

5. Respondent no.1 has proved the Will by calling the two attesting witnesses Sh. Hari Ram Dubey and Sh. Subhash Chaurasiya as PW-2 and PW-3. Both these witnesses have deposed that they were called by Sh. Mahngu Ram for attesting the Will and that Sh. Mahngu Ram got the Will prepared in their presence in the office of the Sub-Registrar of Janakpuri, New Delhi and that Sh. Mahngu Ram executed the Will in their presence and they signed as attesting witnesses on the Will. In the cross-examination both these witnesses have stood their ground and denied that they were not called by Sh. Mahngu Ram or that Sh. Mahngu Ram did not get the Will prepared in their presence. Attesting witnesses also denied that the Will was forged and fabricated by them in collusion with the respondent no.1. The attesting witnesses also reiterated their statement in the examination-in-chief. Therefore, in the opinion of this Court, the respondent no.1 has succeeded in proving the registered Will dated 7.3.2011 in his favour and proved as Ex.PW1/1.

6. In my opinion, there is also no reason to doubt the Will dated 7.3.2011 in favour of the respondent no.1 inasmuch as bad relations between the appellant/defendant and late plaintiff Sh. Mahngu Ram stood well established on record. The fact that Sh. Mahngu Ram was not living in the suit property, and the appellant/defendant was living in the suit property is in proof itself of bad relations of the plaintiff Sh. Mahngu Ram. No doubt, Sh. Mahngu Ram was 90 years when the present suit was filed however, the suit plaint cannot be disputed as having been filed by Sh. Mahngu Ram, more so because the bad relations between the appellant/defendant and late Sh. Mahngu Ram is proved from the fact that the appellant/defendant had filed a civil suit bearing no. 285/2008 against Sh. Mahngu Ram. Not only in the written statement, the appellant/defendant admitted of the filing of the said suit, but in his cross-examination also the appellant/defendant admitted his signatures on the plaint and the application in the suit no. 285/2008 filed by him against late Sh. Mahngu Ram and certified copy of which was proved and exhibited as Ex.DW1/X1. Therefore, there was no reason why Sh. Mahngu Ram would not execute the Will dated 7.3.2011 in favour of the respondent no.1 who was said to be taking care of Sh. Mahngu Ram in his old age and after the death of wife of Sh. Mahngu Ram.

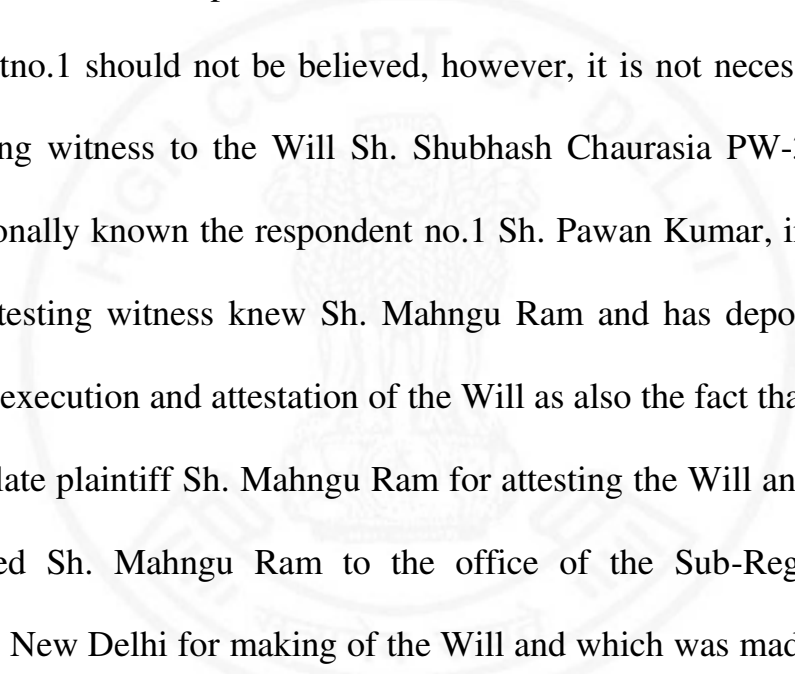
7. Learned counsel for the appellant/defendant argued that appellant/defendant had become the owner of the suit property on account of having spent a sum of Rs.3 lacs and that construction was proved by calling in evidence the mason D1W6 Sh. Pappu, however, mere oral evidence cannot prove incurring of expenditure of Rs. 3 lacs and also that the alleged mason Sh. Pappu constructed the suit property for the appellant/defendant. This argument of the appellant/defendant is rejected.

8. Learned counsel for the appellant/defendant then sought to argue that PW-2 Sh. Hari Ram in his cross-examination dated 14.5.2013 denied that respondent no.1/Sh. Pawan Kumar is not the person in whose favour property was bequeathed by late plaintiff Sh. Mahngu Ram, and therefore, this shows that there is no Will executed in favour of the respondent no.1. However, this argument is not only misconceived but amounts to misleading this Court inasmuch as besides the respondent no.1 having the name of Sh. Pawan there was another boy Sh. Pawan who was working in the Pan Shop which was being run by Sh. Mahngu Ram. The cross examination of PW-2 on 14.5.2013 refers to the said boy Sh. Pawan who was working in the Pan shop of Sh. Mahngu Ram and not to Sh. Pawan Kumar who is the respondent no.1. In fact, Sh. Hari Ram in his cross-examination on

6.9.2013 clarified this aspect with respect to Sh. Pawan Kumar the respondent no.1 whom he identified as being present in the Court on 6.9.2013. This argument of the appellant/defendant is also therefore rejected.

9. The last argument urged on behalf of the appellant/defendant was that PW-3 admitted that he did not know Sh. Pawan Kumar, the respondent no.1, and therefore the case of the respondent no.1 should not be believed, however, it is not necessary that the attesting witness to the Will Sh. Shubhash Chaurasia PW-3 should have personally known the respondent no.1 Sh. Pawan Kumar, inasmuch as, this attesting witness knew Sh. Mahngu Ram and has deposed with respect to execution and attestation of the Will as also the fact that he was called by late plaintiff Sh. Mahngu Ram for attesting the Will and he had been called Sh. Mahngu Ram to the office of the Sub-Registrar at Janakpuri, New Delhi for making of the Will and which was made by Sh. Mahngu Ram in the presence of the attesting witnesses.

10. In view of the above discussion it is seen that no substantial question of law arises for this Regular Second Appeal to be entertained under Section 100 CPC and accordingly this second appeal is dismissed, leaving the parties to bear their own costs.

MAY 1, 2017/ib/**/AK**

VALMIKI J. MEHTA, J