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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 3rd August, 2018

Date of decision : 9th October, 2018

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RFA 1/2007 & CM APPL.13531/2018

RAMESHWAR DAYAL

..... Appellant

Through: Mr. Joydeep Sharma, Advocate (M-9910035893).

Mr. Manoj Kumar Sharm & Mr. Suresh Kumar Sharma, Advocate for LR.s.(M-9910611005).

versus

SHYAM SUNDER CHOPRA & ORS.

..... Respondents

Through: Mr. Gaurav Mitra, Mr. Kartik Nagarkatti & Mr. Rohan Gangpathy, Advocates for R-1 (M-8826787980).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present appeal has been preferred challenging the final judgment and decree dated 20th September, 2006 by which the suit for possession filed by the Appellant/Plaintiff was dismissed with costs.

2. The Plaintiff – Shri Rameshwar Dayal filed the present suit for possession of property bearing No. A-2/23, Mianwali Nagar, Rohtak Road, New Delhi with recovery of *mesne* profits. Since the Plaintiff himself is of infirm mind and is unable to look after the property, the suit was filed by his paternal uncle Shri Tek Chand as the next friend and guardian of Shri Rameshwar Dayal.

3. The Plaintiff is the son of Late Shri Godha Ram from his first wife. However, upon the death of the first wife, Shri Godha Ram married Smt. Kailash Wati. The couple had no children. One Shri O. P. Taneja being the real brother of Smt. Kailash Wati and Shri Nand Lal Ahalmadi, who are related to each other, are Defendant Nos.2 & 3. Shri Ahalmadi is the father in law of Shri O. P. Taneja. Shri Godha Ram executed a registered Will dated 24th July, 1979 as per which the property was bequeathed to the son Sh. Rameshwar Dayal and the wife only had a right to stay in the property during her lifetime. According to the Plaintiff, Shri Taneja and Shri Ahalmadi, who were related to Smt. Kailash Wati, were in charge of her assets prior to her death. According to the Plaintiff, his step mother was under their influence. The Plaintiff's claim is that the suit property is a self acquired property of his father Shri Godha Ram. It was his own property conveyed by the DDA. Shri Godha Ram passed away on 16th February, 1980. However, as per the Plaintiff, as per the registered Will of Shri Godha Ram, Smt. Kailash Wati had only the right of residence during her lifetime. According to the Plaintiff, Shri Godha Ram had various assets including the bank deposits, jewellery etc. Upon his death, his step mother continued to be on pension as Shri Godha Ram had retired as Deputy Superintendent of Police from Delhi Police. The Plaintiff relies on various terms of the Will and according to the Plaintiff, since he was of infirm mind, the Defendant Nos.2 & 3, in collusion with his step mother, withdrew all the amounts from various bank accounts by duping his step mother. Various blank papers were also got signed by the said relatives of Smt. Kailash Wati and in this manner, the suit property was transferred in the name of Smt. Kailash Wati in the records of DDA by suppressing the Will. According to the Plaintiff,

he had inherited the property as per the registered Will and his step mother also did not have a right to transfer the property.

4. Smt. Kailash Wati passed away on 11th December, 1990. According to the plaint, one Shri Shyam Sunder Chopra – Defendant No.1 along with other two Defendants, got these documents executed on Smt. Kailash Wati and came into the possession of the property. Despite the Plaintiff demanding possession vide legal notice dated 31st August 1992, the same was not given. Mr. Chopra is a nominee of the Defendant Nos.2 & 3 and they played fraud and obtained the property from Smt. Kailash Wati. According to the Plaintiff, Defendant No.1 cannot retain the possession of the property. Thus, the decree for possession along with the *mesne* profits has been sought in the following terms.

“28. Under the facts and the circumstances, as explained hereinbefore and in the interest of justice, it is therefore humbly prayed that a decree for possession in respect of the property bearing No.A-2/23, Miawali Nagar, Rohtak Road, Delhi, may be passed in favour of the plaintiff and against the defendants. It is further prayed that decree for mesne profits may also be passed in favour of the plaintiff and against the defendants, from the date of the filing of the suit till the defendants vacate and handover the vacant and peaceful possession of the property mentioned above. The decree may be passed against all the defendants both jointly as well as severally. The plaintiff may be awarded costs of the proceedings. It is further prayed that decree for mesne profits may also be passed in favour of the plaintiff and against the defendants from 1-1-1992 onwards. It is further prayed that decree for future mesne profits, till the defendants vacate and handover the vacant peaceful possession of the property bearing No.A-2/23, Miawali Nagar, Rohtak

Road, Delhi, belonging to the plaintiff, may also be passed in favour of the plaintiff and against the defendants. The decree may be passed against all the defendants bothly jointly as well as severally. The plaintiff may also be awarded costs of the suit.
.....”

4. In the written statement filed on behalf of the Defendant Nos.2 & 3, it is alleged that the Plaintiff has no right, title or interest in the property and that Shri Tek Chand served his own self interest. In the written statement, the litigation pending before the Commercial Sub-Judge filed by the Defendant No.2 against Shri Tek Chand is referenced. The allegations are denied. Various allegations have been made against the guardian of the Plaintiff. It is also alleged that Shri Tek Chand was ill-treating the Plaintiff. The Defendant Nos.2 & 3 claim complete ignorance of the property in dispute but Defendant No.1 on the other hand filed his written statement and claimed by the Defendant No.1 that Smt. Kailash Wati was the owner of the property. That she had sold the property on 2nd June, 1989 to one Smt. Ramesh Kumari and Smt. Sunita Kumari. Then the said two purchasers sold the suit property to Shri Sanjeev Bajaj on 10th April, 1990 who thereafter erected some construction on the property. However, the Defendant No.1 and his family purchased the property from Shri Sanjeev Bajaj on 14th October, 1991. According to the Defendant No.1, if the Plaintiff was aware of the Will dated 24th July, 1979, there was no reason for the same having not been enforced till filing of the present suit on 1st February, 1995. The Defendant No.1 pleaded that Smt. Kailash Wati was a member of the Mianwali District Cooperative House Building Society and the said society gave her possession of the said land. The Defendant No.1 denied that the

property belongs to Shri Godha Ram.

5. Following issues were framed on 27th April, 2004.

- “1) Whether the suit is barred by time? OPD*
- 2) Whether the suit has been valued properly for the purpose of court fee and jurisdiction? OPP*
- 3) Whether the suit is bad for non-joinder of necessary and proper parties? OPD*
- 4) Whether the Plaintiff is of infirm mind and is unable to look after himself and his property? OPP*
- 5) Whether Shri Godha Ram, father of the Plaintiff executed a registered Will dated 24.7.79? OPP*
- 6) Whether Godha Ram was absolute owner of the suit property having paid its entire price of the consideration? OPP*
- 7) Whether the Plaintiff inherited the suit property and has become sole owner on the death of his father Late Shri Godha Ram? OPP*
- 8) Whether the defendant no.1 is owner of the suit property? OPD1*
- 9) Whether Smt. Kailash Wati has any right, title or interest in the suit property? OPD1*
- 10) Whether Smt. Kailash Wati has sold the suit property? OPP*
- 11) Whether plaintiff is entitled to the decree of possession of the suit property as prayed? OPP*
- 12) Whether plaintiff is entitled to pendentelite and future mesne profits as prayed? OPP*
- 13) Relief. ”*

6. An application came to be filed by one Shri Lekh Raj under Order XXII Rules 2 & 3 CPC. The Plaintiff had passed away by then and since he was of infirm mind, it was not clear as to whether he was married. Vide order dated 25th May, 2005, Shri Lekh Raj was allowed to be substituted in place of the Plaintiff. Thereafter, the evidence of PW-1 Shri Ravinder Kumar S/o Shri Tek Chand was recorded. Other witnesses, who appeared

for the Plaintiff, were Shri Javed, Ahlmad – PW-2 from the Court of Commercial Civil Judge, Delhi who produced the court file of suit *no.318/1992* titled *Rameshwar Dayal v. O. P. Taneja*, PW-3 A. Rehman from the office of Sub-Registrar, Kashmere Gate He proved the registered Will dated 24th July, 1979 of Shri Godha Ram and Mr. H. R. Banga – PW-4, from the Society's office deposed about the nomination of Smt.Kailashwati. On behalf of the Defendants, Shri Shyam Sunder Chopra – DW-1 led his evidence. Evidence was recorded by the Local Commissioner. Learned Additional District Judge, thereafter decided the present suit. The finding on the various issues are as under:

Issue No.5 - Whether Godha Ram, father of plaintiff executed a registered WILL dated 24/7/79? OPP

7. In respect of this issue, learned Trial Court held that PW-3 official from the Sub-Registrar's office did appear to prove the Will, however, since no attesting witness was produced to prove the execution of the Will, the same cannot be read in evidence.

Issue No.6 – Whether Godha Ram was absolute owner of the suit property having paid its entire price of the consideration? OPP

8. On the basis of the evidence of PW-4, Mr. H. R. Banga, deposed that Shri Godha Ram was the original member of the society since 1966. The Trial Court held that Shri Godha Ram was the absolute owner of the suit property. On the strength of the Will, the Plaintiff had contended that he had become the sole owner of the suit property. The Trial Court noted that in paragraph 11 the Plaintiff had clearly averred that after the death of his father, he and his step mother inherited the property. Thus, the Trial Court

held that the Plaintiff was not the sole owner of the property. PW-4, who has appeared on behalf of Mianwali Group Housing Society, had deposed that Smt. Kailash Wati was the nominee of Shri Godha Ram and thereafter, the DDA had also mutated the property in her name but since the Plaintiff had not challenged the conveyance deed executed by the DDA in favour of Smt. Kailash Wati, the Trial Court held that Smt. Kailash Wati had the right, title and interest in the property in question.

Issue No.10 - Whether Smt. Kailash Wati had sold the suit property?

OPP

9. In view of the finding on issue no.9, the Trial Court held that Smt. Kailash Wati had the right to sell the property and deal the property. The Trial Court, thereafter, analyzed the documents on record i.e. Ex.DW-1/3 and Ex.DW-1/4 and held that Smt. Kailash Wati had sold the plot in question for Rs.3 crores and had also purchased another property bearing No.B-3/22, Mianwali Nagar, Delhi which she purchased from Shri Nand Lal for a sum of Rs.3.5 Crores. Thus, the Trial Court concluded that Smt. Kailash Wati was sold the plot in question.

Issue Nos.1 – Whether the suit is barred by time? OPD & Issue No.2 – Whether the suit has been valued properly for the purpose of court fees and jurisdiction? OPP

10. Both these issues were not pressed.

Issue No.3 – Whether the suit is bad for non-joinder of necessary and proper parties? OPD

11. The Trial Court held that there is no non-joinder or mis-joinder of the

properties.

Issue No.4 - Whether the Plaintiff, who was of infirm mind, was unable to look after the property.

12. This issue was decided in favour of the Plaintiff as infirmity is not fatal to his case as he had also signed the plaint.

Issue Nos.11 – Whether plaintiff is entitled to the decree of possession of the suit property, as prayed? OPP & Issue No.12 – Whether plaintiff is entitled to pendentelite and future mesne profits, as prayed? OPP

13. The Trial Court held that since Smt. Kailash Wati had rights in the property and that since she has sold the property, the decree for possession is not liable to be granted.

Appeal proceedings

14. In the present appeal, notice was issued on 9th January, 2007. On 9th May, 2007, an injunction order was passed in the following terms:

*“..... The respondent No.1 shall not sell, transfer, alienate, part with possession or create third party interest in respect of property bearing No.A-2/23, Mianwali Nagar, Delhi, during pendency of this appeal.
.....”*

15. During the pendency of this appeal, Shri Nand Lal Ahlamadi passed away and his legal heirs were impleaded. Thereafter, Shri Lekh Raj also expired on 19th June, 2014 and his legal heirs were brought on record. Further, another application was filed by the class II legal heirs of Shri Rameshwar Dayal. Further, Shri Ravinder Kumar, who is a class II legal heir, also passed away on 22nd December, 2017. Thus, further legal heirs

were to be impleaded. All the parties were heard from time to time as per the order dated 26th February, 2018. On the said date, two sets of legal heirs claiming to appear on behalf of the Plaintiff, have been heard, namely legal heirs of Shri Lekh Raj and Shri Ravinder Kumar. Shri Ravinder Kumar was the son of Shri Tek Chand who was next friend of Shri Rameshwar Dayal. On the other hand the present occupants/purchasers of the property tracing their title back to Smt. Kailash Wati were heard on behalf of the Respondents.

16. According to the Appellants, nomination in a society does not by itself decide the title to a property. It is argued that the nominee merely holds the property in trust. All the sale transactions undertaken by Smt. Kailash Wati are bad as irrespective of the existence of the Will, Shri Rameshwar Dayal had right on the suit property being the son and one of the legal heir of Shri Godha Ram and that his permission was not taken before entering into the sale transaction. Further, it is submitted that since Shri Rameshwar Dayal was admittedly the legal heir of Shri Godha Ram and nomination in the society does not confer title, the Respondents, who claim through Smt. Kailash Wati, do not have any rights.

17. On the other hand, Mr. Mitra, Counsel appearing for the Respondents submits that the entire case of the Plaintiffs is based on the Will and since the attesting witness was not produced as required under the Evidence Act, the Will cannot be read in evidence. Thus, in the absence of a Will Smt. Kailash Wati being a widow of Shri Godha Ram was half owner of the property. Thereafter, mutation was carried out by DDA in favour of Smt. Kailash Wati and the same having not been challenged and no declaration having been sought, a simple suit for possession is not maintainable. It is

further submitted that the Defendants having purchased the property bonafidely from the persons who had acquired title through Smt. Kailash Wati, ought not to be dispossessed.

18. On analysis of the submissions and evidence on record, it can be seen that the Will of Shri Godha Ram has not been proved, in accordance with law. Though the official from the Sub-Registrar office produced and confirmed the certified copy of the Will, since no attesting witness was produced, the Will cannot be held to be valid and proved. Under these circumstances, Smt. Kailash Wati and Shri Rameshwar Dayal are held to be the legal heirs of Shri Godha Ram. The question then arises is whether Shri Rameshwar Dayal was of infirm mind. He himself has not appeared in the witness box though he has signed the plaint.

19. The legal position in respect of nomination in a Society, is quite well settled. A Nominee holds the property in trust but issues as to title and succession are not decided on the basis of the said nomination. The person, who is a nominee, gets a right to obtain transfer, membership of the cooperative society in her or his own name, however, the same would have no relevance to the title and possession of the property. This is clear from the judgment of the Supreme Court in **Indrani Wahi v. Registrar of Coop Societies (2016) 6 SCC 440** wherein the Supreme Court held as under:

“22. Having recorded the above conclusion, it is imperative for us to deal with the conclusion recorded in para 6 (already extracted above at p. 448f-h and p. 449a-b) of the judgment of this Court in Usha Ranjan Bhattacharjee case [Usha Ranjan Bhattacharjee v. Abinash Chandra Chakraborty, (1997) 10 SCC 344]. In this behalf, it is necessary to clarify that transfer of share or interest, based on a

nomination under Section 79 in favour of the nominee, is with reference to the cooperative society concerned, and is binding on the said society. The cooperative society has no option whatsoever, except to transfer the membership in the name of the nominee, in consonance with Sections 79 and 80 of the 1983 Act (read with Rules 127 and 128 of the 1987 Rules). That, would have no relevance to the issue of title between the inheritors or successors to the property of the deceased.

23. Insofar as the present controversy is concerned, we therefore hereby direct the Cooperative Society to transfer the share or interest of the Society in favour of the appellant Indrani Wahi. It shall however, be open to the other members of the family (presently only the son of Biswa Ranjan Sengupta, Dhruba Jyoti Sengupta; we are informed that his mother Parul Sengupta has died), to pursue his case of succession or inheritance, if he is so advised, in consonance with law.”

20. While in paragraph 17, the Court thus held that the right of inheritor or successor is a subservient right to that of nominee, the nominee may be entitled to get possession and to get immediate rights to use the property, however, this would not determine the succession or inheritance. This is also the view in ***Promila Sharma v. State & Ors TEST.CAS.61/2014 decided on 6th July, 2018*** wherein it was held as under:

“8. Further, in Manmohan Kishan Malik Vs Avtar Kishan Malik [CS(OS) 426/2008 decision dated 13th October, 2009], a Ld. Single Judge of this Court considered the question as to whether the view held by the Supreme Court in Sarbati Devi v. Usha Devi AIR 1984 SC 346 continued to be good law in the light of the dicta in Zorastrian Cooperative Housing Society Ltd. v. District Registrar Co-operative Societies

(Urban) AIR 2005 SC 2306 The Ld. Single Judge then went on to hold as under:

“6. The senior counsel for the defendant No.1 has contended that since it is borne out / admitted that defendant No.1 had been nominated by Shri Malik Arjun Dass as his nominee, the defendant no.1 alone is entitled to and the owner of the aforesaid plot and the plaintiff or any of the other defendants, who are the other natural heirs of Malik Arjun Dass will have no share in the said plot.

7. The counsel for the plaintiff has contended that the aforesaid plea is no longer *res integra*. Reliance is placed on –

i. *Smt Sarbati Devi Vs Smt Usha Devi* AIR 1984 SC 346 where in relation to a nomination qua the benefits of the LIC policy, the Supreme Court held that Insurance Act whereunder the nomination was made was not intended to alter the law of succession and nomination does not make the nominee the sole heir qua the insurance proceeds. It was held that a nominee is not equivalent to a heir or a legatee.

ii. *Ashok Chand Aggarwala Vs Delhi Administration* 1998 VII AD (Delhi) 639 DB

iii. *Gopal Vishnu Ghatnekar Vs Madhukar Vishnu Ghatnekar* AIR 1982 Bombay 482

iv. *Priya Nath Mehta Vs Manju Aggarwal* 54(1994) DLT 34

v. *Sushila Devi Bhaskar Vs Ishwar Nagar Cooperative House Building Society Ltd* 45(1991) DLT 528.

In all of which, qua nomination in a Cooperative society also, it has been held that the nominee does not take as a sole heir and the principles as laid down in *Smt Sarbati Devi* (supra) apply. The counsel for the plaintiff has thus contended that merely because there is a nomination by the common predecessor of the parties, Malik Arjun Dass in favour of the defendant No.1, does not make the defendant No.1 the sole owner of the property.

11. Though during the hearing I had entertained certain doubts whether the judgments aforesaid of this court continue to be good law in the light of the dicta in *Zorastrian Co-operative Housing Society Limited Vs District Registrar Co-operative Societies (Urban)* AIR 2005 SC 2306 and *Greater Bombay Cooperative Bank Ltd Vs United Yarn Tex Pvt. Ltd.* AIR 2007 SC 1584, though not cited by either of the counsels, but nevertheless giving a special status to the cooperative laws. However, on carefully perusing the said two subsequent dicta of the Supreme Court, I am unable to, on the basis thereof hold that the consistent dicta of this court distinguishing a nominee from a successor requires any reconsideration. I also find that Division Bench of the Bombay High Court in *Om Siddharaj Cooperative Housing Society Ltd Vs State of Maharashtra* and a recent Division Bench judgment of this court in *Abhay Sapru Vs Chitrlekha Bukshi* have also taken the same view and with which I am respectively bound and concur.

12. There is yet another reason for not disturbing the aforesaid consistent dicta. The Supreme court in *Smt Sarbati Devi (supra)* has also held that when all along the High Courts have taken the view that mere nomination does not deprive the heirs of their rights and when inspite thereof the Parliament has not chosen to make any amendment to the act, in such situation unless there are strong and compelling reasons to hold all these decisions to be erroneous, the court should be slow to take a different view.

13. Another contention of the senior counsel for the defendant No.1 on the basis of para 11 of *Smt Sarbati Devi (supra)* must also be noticed. He has contended that while the Supreme Court, qua the proceeds of the policy, has held the nomination to not interfere with the general law of succession, qua the commission of insurance agent under Section 44(1) of the Insurance Act, the nomination prevails. The reason there for

given is that there is no right in common law to such commission and since right has been created under Section 44 itself, the same was also held entitled to provide for the beneficiary of such right. Senior counsel for the defendant No.1 has contended that the right of transfer of membership is also not a right under the common law but a right created in the Cooperative Societies Act and thus the said Act is entitled to provide for the beneficiary thereof also.

14. I am however unable to accept the said position. Though the right of membership of a society may be a right governed by the Cooperative Societies Act but once such right has resulted in acquisition of an immovable property by a member, the devolution of such immovable property will be governed not by the Societies Act but by the general law of succession as aforesaid.

15. I thus hold the defendant No.1 to have not acquired any exclusive rights in the property subject matter of the suit by virtue of nomination in his favour and the rights of the other heirs of the deceased Malik Arjun Dass would not be defeated by such nomination.

Thus, it is the settled position that nomination does not decide the right to claim inheritance based on the law of succession. 9. Going by the affidavit of nomination which is the best case the Respondent No.7 has, no legal rights vest in the property of the deceased."

On this issue the Trial Court has erred in holding that since Smt. Kailash Wati was nominee of Shri Godha Ram, she became the sole owner of the property. As per the settled law, nomination does not thus decide title to the property succession and title is to be determined independent of nomination.

21. Insofar as the next question as to whether Shri Rameshwar Dayal was of infirm mind, PW-1 in his deposition as stated as under:

"..Sh. Rameahwar Dayal was married. He is now

divorced as he is mentally weak...”

From the above, it can be seen that though Shri Rameshwar Dayal was already married, his first wife did not live with him as he was of infirm mind. In fact the *pairvi* of this suit has not been done by him but by persons who are legal representatives of persons who claim to be his next friend.

22. The Respondents trace back their rights to Smt. Kailash Wati. Though she was initially a nominee of Shri Godha Ram in the Society, the DDA mutated the property in her name in the year 1981. Though the nomination or mutation, by itself, may not confer legal rights or take away the legal rights of Shri Rameshwar Dayal, but may be due to his infirm mind, it is clear that he never asserted any rights towards the suit property either by himself or through his next friend.

23. The property having been mutated by the DDA in favour of Smt. Kailash Wati and the Respondents having derived title from her, the question is as to whether the said transaction is deserved to be set aside under these circumstances. Admittedly, Shri Rameshwar Dayal didn't assert his rights in the property until the issuance of legal notice to Shri Shyam Sunder Chopra dated 31st August, 1992. The property had changed several hands during that period. It is to protect bonafide purchasers in such circumstances that Sec 41 of the Transfer of Property Act, 1882 has been enacted. The Supreme Court has held that if any person expressly or impliedly consents to the sale by an ostensible owner to a third party, then the said sale would not be voidable. In the present case, the inaction of Shri Rameshwar Dayal from 1989, until 1995 when the suit came to be filed clearly shows that he had never raised any objection or asserted his rights on

the property prior to the said date. Further, Smt. Kailash Wati was not just an ostensible owner but was in fact half owner of the property. Thus, the parties who purchased from her believed her to be the true owner of the entire property and thus, entered into the sale transactions. Such circumstances would be protected under Section 41 of the TPA, which reads as under:

“41. Transfer by ostensible owner – Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it:

Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.”

24. In ***Hardev Singh v. Gurmail Singh (2007) 2 SCC 404*** the Supreme Court held:

“9. Application of Section 41 of the Act is based on the law of estoppel to the effect that if a man has represented that the transferor consents to an act which has been done and that he would not offer any opposition thereto, although the same could not have been lawfully done without his consent and he thereby induces others to do that from which they might have abstained, he could not question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

10. The ingredients of Section 41 of the Act are:

(1) the transferor is the ostensible owner;

(2) he is so by the consent, express or implied, of the real owner;
(3) the transfer is for consideration;
(4) the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.”

25. The Respondents having done due diligence to the extent possible and having traced their rights to Smt. Kailash Wati, the setting aside of the sale at this stage would not just be improper it would also be unequitable. Moreover, on behalf of the Plaintiff also, none of the original claimants are alive. Shri Rameshwar Dayal the plaintiff has passed away. The next friend Shri Tek Chand has passed away. His son Ravinder Kumar has also passed away. Shri Lekh Raj who was the brother of Sh. Godha Ram, has also passed away. Thus all the near and dear family of the Plaintiff is no longer alive. The property having been sold and having passed hands 30 years ago, none of the original owners and their direct legal heirs being alive, the suit for possession is liable to be dismissed.

25. Though the finding of the Trial Court on issue Nos. 4 & 9 is reversed, conclusion of the Trial Court on the remaining issues in respect of possession is upheld. The suit for possession is rightly dismissed.

26. Appeal is accordingly dismissed with no orders as to the costs. All the pending applications also stand disposed of.

PRATHIBA M. SINGH, J.
JUDGE

OCTOBER 9, 2018/dk