

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

+ **RFA No. 205/2018**

% **27th February, 2018**

KALPANA & ANR.

..... Appellants

Through: Mr. D.S. Paweriya and Mr.
Amrish Kumar, Advocates.

versus

MAYA DEVI SHARMA & ANR.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CAVEAT No. 159/2018

1. Since no one appears for the caveators, the caveat stands discharged.

C.M. Appl. No. 7474/2018 (for exemption)

2. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RFA No. 205/2018 and C.M. Appl. No. 7473/2018 (for stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the judgment of the trial court dated 24.10.2017 by which

the trial court has decreed the suit for possession and recovery of damages with respect to the suit property being two rooms, one tin shed kitchen and common latrine bathroom situated in the rear portion at ground floor of property bearing no. 141, Deepali, Pitampura, Delhi.

4. There were three plaintiffs in the suit. Plaintiff no. 1 was the father Sh. Shiam Behari Lal Sharma. Plaintiff no. 2 was Smt. Maya Devi Sharma, the wife of Sh. Shiam Behari Lal Sharma, and plaintiff no. 3 was Sh. Vivek Sharma who was the son of plaintiff nos.1 and 2. The defendants in the suit, and who are the appellants herein, are the daughter (appellant no.1/defendant no.1) and son-in-law (appellant no.2/defendant no.2) of the plaintiff nos. 1 and 2 in the suit.

5. The case of the plaintiffs was that the suit property was owned by the father/plaintiff no. 1 and in the year 1992 appellant no.1/daughter requested the father/plaintiff no. 1 to give a temporary accommodation in the suit property which was given, however it was found that the appellants/defendants picked up unnecessary quarrels and gave beatings and threats to life to the parents/plaintiff nos.1 and

2. Initially, the license of the appellants/defendants was terminated by legal notice dated 12.4.2006 and the father/plaintiff no. 1 also disowned the appellant no.1/defendant no.1 in terms of public notice dated 22.4.2006 besides executing a registered Will dated 10.7.2006 in favour of the respondents/plaintiff nos.2 and 3 being the wife and son of plaintiff no.1, but since in September, 2006 the appellants/defendants apologized for their mistakes and sought further time to stay, therefore, appellants/defendants were permitted to stay till the end of August, 2007. Even after the expiry of the extended period, since the appellants/defendants failed to vacate the suit property therefore another legal notice dated 11.7.2009 was sent to the appellants/defendants revoking their license and thereafter the subject suit for possession and *mesne* profits was filed.

6. Appellants/defendants filed their joint written statement. They also filed a connected suit which has been dismissed by the self-same impugned judgment whereby the appellant no.1/defendant no.1/daughter had sought specific performance that the suit property be transferred by the father/plaintiff no. 1 to the appellant no.1/defendant no. 1 on account of the fact that when the plot was

purchased by the father/plaintiff no. 1 in his name at that time the appellant no. 1/defendant no. 1 had paid a sum of Rs.20,000/- by cheque and also that appellants/defendants after moving in the semi-constructed suit property had completed the construction work and for which had incurred an expenditure of Rs.50,000/-. Shifting in the suit property by the appellants/defendants was in the year 1995. Appellant no. 1/defendant no.1 also claims right in the suit property as per Section 14 of the Hindu Succession Act, 1956.

7. After pleadings were complete in both the suits, the following issues were framed:-

“5. As per the pleading following issues were framed in the first suit on 22.07.2010:

1. Whether the plaintiff is entitled to a decree of possession of the suit premises as prayed in prayer clause (a) of the plaint? OPP
 2. Whether the plaintiff is entitled to damages/user charges of the suit premises, if any, for what period and what rate? OPP
 3. Whether the defendants are the owners of 60 sq. Yards situated on the back portion of the suit property as alleged in the preliminary objection no. 1 of the WS? OPD
 4. Whether defendant no. 1 has become owner of suit property as per ‘Ghoshan Patra dated 02.08.95’ executed by plaintiff no.2? OPD
 5. Whether the suit is not properly valued for the purposes of court fees and jurisdiction as per PO no. 3 of WS?
 6. Whether the suit is bad on account of mis-joinder of defendant no. 2? OPD
 7. Relief.
6. In the second suit following issues were framed on 03.04.2012:
- i. Whether the suit of the plaintiff is barred by limitation? OPD
 - ii. Whether the suit of the plaintiff is without cause of action? OPD

- iii. Whether the plaintiff is entitled to decree of permanent injunction in her favour and against the defendants as prayed? OPP
- iv. Whether the plaintiff is entitled to decree of mandatory injunction in her favour and against the defendant as prayed? OPP
- v. Whether the plaintiff is entitled to specific performance of agreement to sell as prayed/OPP
- vi. Whether the plaintiff is entitled to recovery of Rs. 03,001,00/- on account of damages? OPP
- vii. Whether the plaintiff is entitled to any interest, if so at what rate and for which period? OPP
- viii. Whether the plaintiff is entitled to any future damages, if so at what rate and for which period? OPP
- ix. Relief.”

8. At the outset, it be noted that appellants/defendants inspite of repeated opportunities did not lead evidence and therefore evidence of the appellants/defendants was closed. Therefore, there is no evidence on record of the appellants/defendants whereas the respondents/plaintiffs proved their case by leading evidence. The relevant issues were issue nos. 3 and 4 in the suit filed by the father, mother and son/plaintiffs against the appellant no. 1/defendant no.1/daughter, and the connected issues were issue nos. (iii), (iv) and (v) in the suit for specific performance filed by the appellants/defendants. These issues were taken up for discussion together and the trial court has held that not only no evidence has been led by the appellants/defendants to substantiate their case of their

becoming owners of the suit property allegedly on account of paying Rs.20,000/- to the father/plaintiff no. 1 and by further incurring expenditure of Rs.50,000/- towards construction, in any case such a plea would be a plea barred by law because a transfer of right in an immovable property can only be by means of a registered instrument. Though, the trial court has not mentioned Section 17(1)(b) of the Registration Act, 1908, obviously it is this provision which would apply besides the provision of Section 54 of the Transfer of Property Act, 1882 which is mentioned by the trial court and which provides that transfer of an immovable property can only be by means of a registered sale deed.

9. Once appellants/defendants led no evidence and respondents/plaintiffs led evidence, trial court has rightly decreed the suit because respondents/plaintiffs proved their case and appellants/defendants failed to substantiate their case by leading evidence.

10. It was then argued on behalf of the appellants/defendants that appellant no. 1/defendant no.1/daughter had right under Section 14 of the Hindu Succession Act, however trial court has rightly

rejected this argument noting that Section 14 of the Hindu Succession Act would only apply if the property is inherited by a person as an ancestral property and which is not the case of the appellants/defendants as per their stand/defence/contention. I may also add that entitlement under Section 14 of the Hindu Succession Act is for converting a life estate into a full estate but appellant no. 1/defendant no.1 who is a married daughter has no right in the suit property by virtue of Section 14 of the Hindu Succession Act because there is no document transferring title of a life estate in the suit property to her on account of her alleged right of maintenance. For this reason also, the appellants/defendants could not have succeeded on a case under Section 14 of the Hindu Succession Act.

11. I may note that after conclusion of the final arguments in the suit and fixing the suit for final orders and clarifications on 29.9.2012, the father/plaintiff no.1 expired on 6.9.2014. An application was moved by the respondents/plaintiff nos. 2 and 3 being the widow and the son of the deceased plaintiff no. 1/father/husband to bring them on record and this application was allowed by the trial court because there were averments in the application that the

father/plaintiff no. 1 died leaving behind a registered Will dated 10.7.2006 in favour of the respondents/plaintiff nos. 2 and 3. It is also important to note that in the suit itself the father/plaintiff no. 1 when he was alive, he had mentioned the execution of his registered Will dated 10.7.2006 in favour of his wife and son being the plaintiff nos. 2 and 3 in the suit. Trial court by its order dated 17.8.2017 allowed the application by observing that Order XXII Rule 6 CPC will apply once the stage of final arguments had been completed and the case was only reserved for judgment/clarification on 29.9.2012 and that the father/plaintiff no. 1 expired only thereafter on 6.9.2014. Though, in my opinion, possibly the order dated 17.8.2017 substituting the plaintiff nos. 2 and 3 in place of plaintiff no. 1 may not be correct, however, it is seen that there is no prayer clause urged by the appellants/defendants in this appeal directing that the order dated 17.8.2017 be set aside though there is a ground urged with respect to the same. Also, there is no specific ground urged by the appellants/defendants that the order dated 17.8.2017 has to be set aside because by the same order the suit was fixed for final arguments again on 16.9.2017. In any case, in my opinion, once the existing

defence of the suit for possession had to be rejected and suit had to be decreed then the defence had to be substituted by pleading existence of subsequent events of appellant no. 1/defendant no.1 being a legal heir of the father/plaintiff no. 1 and so as to be entitled to succeed to the estate of the father/plaintiff no. 1 and for this purpose the appellants/defendants should have after the death of the father/plaintiff no. 1 moved an application to amend the written statement for dismissing the suit for possession on the ground that the deceased father/plaintiff no. 1 died without the Will and did not leave behind his registered Will dated 10.7.2006 (which in any case was even mentioned in the plaint), and only if such a cause of action was pleaded for dismissal of the suit, the Court had to consider such a defence as a defence to the suit for possession on account of change of circumstances. Even in equity I do not find that this Court should consider the plea of the suit for possession filed by the father, mother and the brother of the appellant no. 1/defendant no.1 should be dismissed because the plaintiffs in the suit were forced to file the suit on account of harassment by the appellants/defendants in not vacating the property of the father/plaintiff no.1 and the father/plaintiff no.1 in

fact had very much mentioned about his registered Will executed in favour of the respondents/plaintiff nos. 2 and 3 being the wife and son in the plaint itself, and therefore except a convenient stand of the father/plaintiff no.1 dying intestate really in law and equity appellant no. 1/defendant no.1 may not have any legal and factual validity.

12. After arguments, I put it to counsel for the appellants/defendants as to whether appellants/defendants would like to file a suit to seek rights in the suit property on the ground that there is no determination on merits of the issue yet as to whether the father/plaintiff no. 1 died intestate or died leaving behind the Will, inasmuch as, the order dated 17.8.2017 passed by the trial court only allows the application by applying Order XXII Rule 6 CPC and not on the ground that the deceased father had died leaving behind a registered Will dated 10.7.2006, however the counsel for the appellants/defendants seeks that a judgment be passed by this Court.

13. In view of the aforesaid discussion, there is no merit in the appeal, and the same is hereby dismissed.

FEBRUARY 27, 2018

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VALMIKI J. MEHTA, J