

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

+ **RFA No. 816/2006**

% **10th December, 2018**

NATHI LAL @ NATHU RAM & ANR.

..... Appellants

Through: Mr. Ram Kishan Saini,
Advocate. (9868500923)

versus

PREM & ORS.

..... Respondents

Through: Mr. R.K. Sharma, Advocate for
R-1 (9868500923)

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant nos. 1 and 7 in the suit impugning the Judgment of the trial court dated 30.10.2006 by which the trial court has decreed the suit filed by the respondent no.1/plaintiff/sister for partition etc. of the property being H. No. 4, Krishan Nagar, Regharpura, Karol Bagh, New Delhi, and this property

belonged to the father of the parties being respondent no. 1/plaintiff, appellant no.1/defendant no. 1 and the husband of the appellant no.2/defendant no. 7. The suit has been decreed by holding that the father, Sh. Chiranji Lal, had died intestate and that the Relinquishment Deed dated 04.06.1975/Ex.DW1/1, said to have been executed by the respondent no.1/plaintiff in favour of her two brothers being appellant no. 1/defendant no. 1 and husband of appellant no. 2/defendant no. 7, is not executed by the respondent no.1/plaintiff.

2. The facts are in narrow compass and I need not narrate the facts in detail. The suit property is the property being H. No. 4, Krishan Nagar, Regharpura, Karol Bagh, New Delhi. This suit property was admittedly owned by the father of the parties late Sh. Chiranji Lal. Sh. Chiranji Lal as per the case of the respondent no.1/plaintiff expired intestate, and therefore, the legal heirs of late Sh. Chiranji Lal being the two sons: appellant no.1/defendant no. 1 and the husband of the appellant no.2/defendant no. 7 and one daughter being the respondent no.1/plaintiff, will become equal one third owners of the suit property.

3. On behalf of the appellant nos. 1 and 2/defendant nos. 1 and 7, the suit was contested by pleading that after the death of the father Sh. Chiranji Lal, the respondent no.1/plaintiff had executed in favour of the two brothers being the appellant no. 1/defendant no. 1 and the husband of the appellant no. 2/defendant no. 7 a registered Relinquishment Deed dated 04.06.1975, and therefore, the respondent no.1/plaintiff was left with no ownership rights in the suit property on execution of the said Relinquishment Deed dated 04.06.1975.

4. The main issue to be considered by this Court is as to whether the respondent no.1/plaintiff had executed the registered Relinquishment Deed in favour of her two brothers. The respondent no.1/plaintiff has denied that she has executed the document being the registered Relinquishment Deed dated 04.06.1975 in favour of her two brothers being the appellant no. 1/defendant no. 1 and the husband of the appellant no. 2/defendant no. 7. This issue was the subject matter of issue no. 2 and the trial court has decided this issue in favour of respondent no.1/plaintiff by holding that the appellant nos. 1 and 2/defendant nos. 1 and 7 failed to prove that the Relinquishment Deed was executed by the respondent no.1/plaintiff. The trial court has

given exhaustive reasoning and discussion from paras 13 to 25 of the impugned judgment to discard the registered Relinquishment Deed, and these paras read as under:-

“13. ISSUE NO.2:

Whether the plaintiff has no locus standi to file the present suit?
OPD

The onus of this issue has also been placed upon the defendant. The defendants have taken the preliminary objection stating that the plaintiff has no locus standi to file the present suit as she has no right, title or interest in the property in question because she has executed a release/relinquishment deed dated 4-06-75 with her free will and consent and voluntarily released her share in favour of defendant No.1 and 7. It is further alleged that the said release deed was duly registered as document No.2212 in additional book No.1, Vol. No.3523, on page 193 with Sub Registrar III, New Delhi on 6-06-75; and after releasing her interest whatsoever in “the suit property” in favour of defendant No.1 and 7, she was left with no right, title or interest in “the suit property”.

14. The defendant as DW-1 in his affidavit Ex.D-1 deposed that the plaintiff has no right, title or interest in the property in question. Sh. Chiranj Lal was the owner of the property in question and the same was inherited by his two sons namely the deponent, Sh. Kishan Lal and the daughter, the plaintiff. It was on 5-06-1975, that the plaintiff executed a release/relinquishment deed relinquishing her 1/3rd share in the suit property in favour of the defendant No.1 and defendant No.7. The relinquishment deed was executed by her of her own free will and consent in presence of witnesses. She put her thumb impressions on the release deed in presence of the deponent and the witnesses. The witnesses also signed the same in her presence. I was present there at the time of execution. After execution, the relinquishment deed was presented for registration New Delhi by the plaintiff before the Sub-Registrar on 5-06-1975. The Sub-Registrar, New Delhi made inquiry from the plaintiff about the execution of the relinquishment deed and recorded her statement. The plaintiff put her thumb impressions before the Sub-Registrar, New Delhi on the back of the documents. The witness also signed in presence of the Sub-Registrar, New Delhi. The original release deed/relinquishment deed is on the file and the same is already Ex.DW1/1. The same is duly registered.

15. That the defendant No.1 and the defendant No.7 became owner of the share of the plaintiff after the execution of the release deed by her. The defendant No.1 is collecting rent from the tenants in his own rights and the plaintiff cannot restrain him. She is not entitled to claim partition of the suit property. She has also no right to ask for possession or rendition of account of the rent received by the defendant No.1 nor she is entitled to the injunction. The suit of the plaintiff is false.

16. In his cross examination, the DW-1 Nathu Ram deposed that the plaintiff relinquished her share in “the suit property” on 5-06-75 and the release deed was executed on stamp paper of Rs.10/- which was purchased by an advocate namely Sh. Yogender Pal from Asaf Ali Road. It is further stated that the stamp paper was purchased in the name of the plaintiff and at the time of purchase of said stamp paper, the said advocate got thumb impression of the plaintiff on the register of the stamp vendor. It is further deposed that he cannot produce that register and he cannot tell the serial number of the said stamp paper. It is further deposed that the stamp paper was purchased on 4-06-75 and at that time, the plaintiff was residing on Bapa Nagar, Arya Samaj Road, New Delhi. He further deposed that the contents of the release deed were typed on 5-06-75 at Asaf Ali Road by a typist in the presence of plaintiff and at the instructions of the plaintiff by said advocate in English, the plaintiff put her thumb impression on the release deed after it was explained and read over to her by her advocate. He further deposed that nothing was paid to the plaintiff at the time of relinquishing of her share/execution of the release deed. The DW-1 has denied the suggestion that the release deed was a forged document. The DW-2, witness from the Sub-Registrar Office in cross examination deposed that the release deed Ex.DW1/1 was neither executed in his presence nor it was registered in his presence. He further deposed that he cannot identify the signature of any signatory or signature of the Sub-Registrar and in the right side some portion of the document proved by him was torn. He further deposed that he cannot tell when the documents were presented before the Sub-Registrar and as to when the Sub-Registrar signed the said document.

17. The DW-3 Puran Chand who is attesting witness to the release deed deposed in his affidavit Ex.D-3 that on 4-06-75, the release deed was typed on the instructions of Smt. Prem. He further deposed that the same was executed on 5-06-75 and Smt. Prem put her thumb impression on the release deed in his presence and also in the presence of defendant No.1 and one Yogender Pal, advocate. The DW-3 has identified the thumb impression of Smt. Prem Devi alongwith signature of Yogender Pal, advocate on the release deed Ex.PW1/1. In

his cross examination, DW-3 stated that he did not know as to why the plaintiff relinquished her share. He further deposed that the **stamp paper for release deed was purchased by him** and the plaintiff but he cannot tell the name of the stamp vendor. He further deposed that the plaintiff put her thumb impression in the office of the stamp vendor when stamp paper was purchased and he did not sign the register of the stamp vendor. He further deposed that the contents of release were got typed by Sh. Yogender Pal, advocate from a typist sitting at the Office of Sub-Registrar, Asaf Ali Road. It is further deposed that DW-3, plaintiff, Nathu Ram, defendant No.1 and two uncles of the plaintiff contacted Sh. Yogender Pal, advocate who was not earlier known to them. The DW-3 further deposed that on the right side of the bottom of the release deed, the words “drafted by me” are written and is signed by Sh. Yogender Pal, advocate.

18. DW-4 is the Senior Scientific Officer, Grade-II of CFSL, CGO Complex, New Delhi. He has proved his report Ex.DW4/1. In his cross examination, he deposed that he has not given any report regarding thumb impression at point A of the release deed Ex.DW1/1 for the reason that it was blurred and smugged and did not contain sufficient number of clear ridge characteristic. He further deposed that if there was a single point of dis-similarities in two thumb impressions, the same shall be deemed to be of different persons. He further deposed that that he has not marked the delta point in the thumb impression at point B and C because it was not required.

19. The plaintiff as PW-1 in her cross examination by the Ld. counsel for defendant No.1 and 7 deposed that she did not execute the release deed dated 4-06-75. She has further denied the suggestion that she has relinquished her share in “**the suit property**” by virtue of release deed in favour of defendant No.1 and 7. She further deposed that she had never appear before the Sub-Registrar.

20. In the written arguments, the Ld. counsel for plaintiff argued that even as per the report of the CFSL with regard to thumb impression of the plaintiff on the release deed, no opinion has been given with regard to the thumb impression at point A. It is further argued that the report with regard to thumb impression at point B and C in the release deed Ex.DW1/1, the report is not correct because the thumb impression at point B and C are loop type and the loop is opening towards the left side and the scar mark in the thumb impression at point B and C is appearing. It is, therefore, argued that the opinion of the CFSL was wrong and incomplete and therefore the testimony of DW-4 is not reliable. It is argued that the defendant has miserably failed to prove that the release deed Ex.DW1/1 was duly executed by the plaintiff. It is also argued that the thumb impression on the alleged

release deed are stated to be of left hand whereas as per the pattern and usage in the relevant times, the woman used to put thumb impression of her right hand and not of left hand.

21. The defendant No.1 and 7 in the written arguments stated that the plaintiff has no locus standi to file the present suit as she has executed a release/relinquishment deed with her free will and consent voluntarily releasing her 1/3rd share in the property in question in favour of defendant No.1 and 7. It is further argued that the release deed was executed and typed on the instructions of the plaintiff and she put her thumb impression on the release deed in the presence of DW-3 Sh. Puran Chand and one Yogender Pal, advocate who are the attesting witnesses of the said documents. It is further argued that the plaintiff herself presented the release deed before the Sub-Registrar who made inquiry from her about the execution of the release deed. It is further argued that in the cross examination, the plaintiff has denied the execution of release deed, therefore, on the request of the defendant, her thumb impressions were sent to the CFSL for comparison and the CFSL report has been proved by the DW-4 as DW 4/1 to DW 4/7. It is, therefore, argued that the report of the CFSL has proved that the release deed Ex. DW1/1 was executed and signed by the plaintiff. It is further argued that the deposition of DW-3, attesting witness to the release deed, has proved that the release deed was executed by the plaintiff voluntarily with her own consent and will.

22. **On consideration of evidence on record and the arguments advanced on behalf of the parties, the thing that emerges is that the CFSL report Ex. DW4/1 has merely established that the thumb impression at point B and C on the release deed Ex. DW1/1 are of plaintiff. These thumb impressions are on the back side of the release deed and are purported to have been taken for the purpose of registration of the release deed. The execution of the release deed is on the main page where it is shown that the thumb impression of the plaintiff is at point A. The report of DW-4, the hand writing expert from the CFSL, has not given any opinion with regard to thumb impression at point A meaning thereby the execution of the release deed is not proved by the deposition of DW-4. Registration of release deed is different transaction whereas the execution of the release deed is a different transaction. It was incumbent upon the defendant to prove by sufficient evidence that the plaintiff has relinquished her share in "the suit property" voluntarily with her own consent.**

23. I have analyzed and scrutinized the deposition of DW-1 and DW-3 to find out whether the evidence is sufficient to prove that the plaintiff has relinquish her share voluntarily by executing release deed

Ex. DW1/1. **The release deed is witnessed by two witnesses namely Sh. Puran Chand and Sh. Yogender Pal, advocate. The defendant has examined only Sh. Puran Chand and has given no explanation as to why Sh. Yogender Pal, advocate was not examined.** The defendant who examined himself as DW-1 in cross examination deposed as under:-

“The plaintiff relinquished her share in “the suit property” on 5-06-75. The release deed was executed on stamp paper of Rs.10/- which was purchased by an advocate namely Sh. Yogender Pal from Asaf Ali Road. It was purchased in the name of the plaintiff. At the time of purchase of said stamp paper, the said advocate got thumb impression of the plaintiff on register of stamp vendor. I can produce that register. I cannot tell the Sl. No. of said stamp paper. It was purchased on 4-06-75. At that time, plaintiff was residing at Bapa Nagar, Arya Samaj Road, New Delhi-----
--The contents of release deed Ex.DW1/1 were typed on 5-06-75 at Asaf Ali Road by a typist in the presence of plaintiff at instructions of plaintiff by the said advocate in English. The plaintiff put her thumb impression on the said deed after it was explained and read over to her by her advocate. -----It is correct that plaintiff refused to visit us after her marriage. Nothing was paid to the plaintiff at the time of relinquishing of her share/execution of release deed.” The DW-3, attesting witness Puran Chand, in his cross-examination deposed that “the stamp paper of release deed was purchased by me and the plaintiff at the cost of plaintiff which is of green colour and is of Rs. 10/- denomination. I cannot tell the name of the stamp vendor from whom it was purchased. The plaintiff put her thumb impression in the office of stamp vendor when stamp paper was purchased. I did not sign register of stamp vendor. ----
--- The contents of the release were typed by Sh. Yoginder Pal, advocate from a typist sitting at office of Sub-Registrar, Asaf Ali Road. We all I, Prem the plaintiff, Nathu Ram, two uncles of plaintiff contacted Sh. Yogender Pal, advocate, we did not know that advocate prior to it. -----
It is correct that release deed was got typed by the advocate on instructions of the plaintiff and defendant. ----- It is correct that the document was typed in English. ----- On the right side in the bottom of this document, it is written “drafted by me” and is signed by Yogender Pal, advocate.”

24. The above deposition of DW-1, defendant and DW-3, the attesting witness, shows that it was Yogender Pal, advocate who has drafted the release deed and signed it as attesting witness. It is also clear in the cross examination of DW-3 that the contents of the release deed were got typed by Yogender Pal, advocate from a typist sitting at the Office of Sub-Registrar. The plaintiff does not know English and it is the case of the defendant that the contents of the release deed were read over and explained to her by advocate Yogender Pal. It is also clear from the cross examination of DW-3 that Yogender Pal, advocate was not engaged by plaintiff only as he was approached by defendant, two uncles of plaintiff alongwith DW-3 and was not known to them prior to that date. The stamp vendor and his register containing thumb impression of the plaintiff at the time of alleged purchase of stamp paper has not been examined as a witness by the defendant to prove that plaintiff has purchased the stamp paper herself for execution of release deed in favour of defendant No.1 and 7. In order to prove that the release deed was executed voluntarily by the plaintiff, the examination of Yogender Pal, advocate and stamp vendor was must. In the absence of evidence of Yogender Pal, advocate who drafted, got typed the release deed and has explained its contents to the plaintiff, the defendant cannot be stated to have proved the execution of release deed Ex.DW1/1 by the plaintiff voluntarily by her own consent. Unless and until, the execution of release deed by her own will and consent is not proved, there is no purpose of proving the registration of release deed Ex.DW1/1.

25. Moreover, the DW-2, the witness from Sub-Register Office, was unable to identify the signature of Sub-Registrar on Ex.DW1/1, therefore, the deposition of defendant that the sub-registrar recorded the statement of the plaintiff at the time of registering the release deed cannot be believed. Because of the above discussion, the defendant has failed to prove that the release deed Ex. DW1/1 was executed by the plaintiff in favour of defendant no.1 and 7 voluntarily with her consent. Since the father of the plaintiff and defendant No.1 and father-in-law of defendant No.7 died intestate, the plaintiff is, therefore, entitled to her share in “**the suit property**” as legal heir of Late Sh. Chiranji Lal. She has, therefore, locus standi to institute the present suit against the defendants. The issue No.2 is accordingly decided against the defendant and in favour of the plaintiff.”

(Emphasis Supplied)

5. At the outset, it is required to be noted that the date, time and year when the Relinquishment Deed, which is set up in this case, is that time when in certain cases there used to be confusion found with regard to registration and this was because on the registered document there neither used to be affixed any photographs of the executant, nor of the witnesses, and nor was any documentary identification seen by the Sub-Registrar of the executant of the document. It is in light of the position then prevailing, when the facts of the case are seen, it is seen that the trial court has rightly held against the appellant nos. 1 and 2/defendant nos. 1 and 7 on various counts. The first count is that it has been found that on the place of execution of the single page Relinquishment Deed, at the right hand side at the bottom of the front page, the one thumb impression which exists has not been proved to be the thumb impression of the respondent no. 1/plaintiff because the CFSL report which was filed and proved through the concerned officer of the CFSL, showed that this thumb impression was smudged and blurred and hence no opinion could be given with respect to the thumb impression on the front of the Relinquishment Deed dated 04.06.1975. Trial court has

exhaustively referred to these aspects of the CFSL report in paras 18 and 22 of the impugned judgment, and I completely agree with the reasoning and conclusions given in these paras that the CFSL report proved as Ex.DW4/1 will not help the appellant nos. 1 and 2/defendant nos. 1 and 7 to prove the execution in the absence of the CFSL report having established the thumb impression existing on the front page of the Relinquishment Deed to be of the executant respondent no. 1/plaintiff on the place of the execution of the Relinquishment Deed.

6. As already stated above, there is no photograph which is found of the executant or of the witnesses on the Relinquishment Deed for that matter.

7. Also, it is the admitted fact on record that the Relinquishment Deed is said to have been drafted and got typed by Sh. Yogender Pal, Advocate but this advocate, who was the second attesting witness to the Relinquishment Deed, has not been summoned. No explanation has been given by the appellant nos. 1 and 2/defendant nos. 1 and 7 for not summoning Sh. Yogender Pal, Advocate.

8. Another aspect is that the trial court has rightly held that if the case of the appellant nos. 1 and 2/defendant nos. 1 and 7 was that the stamp paper for the Relinquishment Deed was purchased by the respondent no.1/plaintiff, and register of the stamp vendor contained the thumb impression of the respondent no.1/plaintiff, then there was no reason why the appellant nos. 1 and 2/defendant nos. 1 and 7 would not have summoned the register of the stamp vendor as evidence to show that the said register had the relevant entry containing the thumb impression of the respondent no.1/plaintiff.

9. The trial court has also rightly held that there are discrepancies in the depositions of DW-1 and DW-3 because DW-1 deposed that the stamp paper was purchased by Sh. Yogender Pal, Advocate on 04.06.1975 and the Relinquishment Deed was typed on 05.06.1975 but DW-3 deposed that stamp paper was purchased by DW-3 and the respondent no. 1/plaintiff (not Sh. Yogender Pal) and the deed was typed on 04.06.1975 and not on 05.06.1975 as was deposed by DW-1.

10. I adopt the detailed discussion, reasoning and conclusions contained in paras 13 to 25 of the impugned judgment of the trial court which are already reproduced above.

11(i). Ld. counsel for the appellant nos. 1 and 2/defendant nos. 1 and 7 firstly argued that the thumb impressions of the respondent no.1/plaintiff as per CFSL report are in fact found on the back of the single page Relinquishment Deed, and this shows that the respondent no.1/plaintiff was in fact present before the Sub-Registrar, and no doubt there is a presumption that the respondent no.1/plaintiff did appear before the Sub-Registrar, however the fact that the thumb impressions of the respondent no.1/plaintiff exist at the back of the single page Relinquishment Deed, the same will not show that the respondent no.1/plaintiff knew or had executed the subject document as a relinquishment deed because the thumb impression at the front of the Deed, at the place of signing by the executant, has not been proved to be the thumb impression of the respondent no. 1/plaintiff. After all, the issue is as to whether the respondent no. 1/plaintiff had or had not executed the Relinquishment Deed knowing that she was in fact executing a relinquishment deed and this could only have been proved

in terms of the thumb impression being found to be of the respondent no. 1/plaintiff in the front of the deed at the place of execution, and which is not so.

11(ii). I may also note that in the year 1975 when the documents were registered, no doubt a presumption had to be raised of execution, but the presumption was a rebuttable presumption, and in the facts of the present case, once the main thumb impression appearing at the single-point on the front page of the Relinquishment Deed being the point stated to contain the thumb impression for execution of the Relinquishment Deed, has not been proved to be that of the respondent no.1/plaintiff, therefore in my opinion, the presumption in favour of the appellant nos. 1 and 2/defendant nos. 1 and 7 gets rebutted that the respondent no.1/plaintiff had executed the Relinquishment Deed. This is all the more so because it is not the case of the appellant nos. 1 and 2/defendant nos. 1 and 7, and as noted by the trial court, that though there was a second witness in the Relinquishment Deed, and who was none other than the Advocate who had drafted the subject Relinquishment Deed and signed as an attesting witness, was not summoned to prove the contents of the Relinquishment Deed, and it is

not the case of the appellant nos. 1 and 2/defendant nos. 1 and 7 that Sh. Yogender Pal, Advocate was untraceable and not available to depose for execution of the Relinquishment Deed.

12(i). Ld. counsel for the appellant nos. 1 and 2/defendant nos. 1 and 7 then sought to argue that respondent no. 1/plaintiff had moved an application under Order VI Rule 17 CPC at the stage of final arguments (and which was dismissed by the trial court) to plead an alternative case that the document which was got signed/thumb impression, was not a relinquishment deed, but was only a power of attorney and this application was dismissed by the trial court vide its Order dated 28.08.2006, and therefore, the admissions made by the respondent no. 1/plaintiff in her application for amendment under Order VI Rule 17 CPC that she had signed/thumb-marked the document be read against the respondent no. 1/plaintiff.

12(ii). I however cannot agree with this argument urged on behalf of the appellant nos. 1 and 2/defendant nos. 1 and 7 and in fact this argument goes against them because if the contents of the application under Order VI Rule 17 CPC have to be accepted, they have to be accepted as a whole. If the contents of the application

under Order VI Rule 17 CPC are accepted as a whole, the same would show that the respondent no. 1/plaintiff never intended to and in fact did not execute any relinquishment deed. In fact, even if the so called admission of the document being thumb-marked by the respondent no. 1/plaintiff is seen, it is seen that really this case was set up in the alternative to the main plea of the respondent no. 1/plaintiff that she had not executed the Relinquishment Deed dated 04.06.1975. In my opinion, therefore, appellant nos. 1 and 2/defendant nos. 1 and 7 cannot argue that there are any admissions made by the respondent no. 1/plaintiff that she has put her thumb impressions on the Relinquishment Deed dated 04.06.1975, and therefore, this admission has to be conclusively read against the respondent no. 1/plaintiff that the Relinquishment Deed is executed by respondent no. 1/plaintiff knowing the execution to be a Relinquishment Deed.

13(i). Ld. counsel for the appellant nos. 1 and 2/defendant nos. 1 and 7 finally argued that the suit was bad for non-joinder of necessary parties because only one legal heir of the deceased brother being the husband of the appellant no. 2/defendant no. 7 was impleaded, being his wife who is the appellant no. 2 in this appeal, and

in the absence of the other legal heirs of the deceased brother, Sh. Kishan Lal, the suit was liable to be dismissed.

13(ii). This issue was issue no. 4 in the trial court, and the trial court has rightly decided this issue in favour of the respondent no. 1/plaintiff by holding that the estate of the deceased Sh. Kishan Lal is properly represented through his widow and who was the defendant no. 7 in the suit, and the appellant no. 2 in this appeal. In a case like the present, it was enough in law for the estate of the deceased brother, Sh. Kishan Lal, to be effectively represented and this is being done through his widow, and especially because it is not the case of the appellant no. 1/defendant no. 1 that the appellant no. 2/defendant no. 7 had in any manner committed negligence in representing the estate of the deceased brother Sh. Kishan Lal. In any case, it is seen that appellant no. 2/defendant no. 7 is in fact prosecuting even the present appeal, besides defending the subject suit, as an effective representative of the estate of the deceased brother Sh. Kishan Lal.

14. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

DECEMBER 10, 2018/ib

VALMIKI J. MEHTA, J

