

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

+ **RFA No. 750/2018**

% **7th September, 2018**

ANIL KUMAR & ANR

..... Appellants

Through: Mr. Anil K. Pruthi, Advocate
with appellant no. 1 in person
(Mobile No. 9891176191).

versus

HANS RAJ AZAD & ANR

..... Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 36287/2018 (for exemption)

1. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RFA No. 750/2018 and C.M. Appl. Nos. 36286/2018 (for stay) & 36288/2018 (for delay)

2. 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 27.11.2017 by which

the trial court has decreed the suit filed by the respondents/plaintiffs/parents against the appellants/defendants/son and daughter-in-law with respect to ground floor of the property bearing no. B-250, Prashant Vihar, Delhi-110085.

3. One is not surprised these days in finding such litigations, where the children have connections with their parents only for the property of the parents, and the present case is once again symptomatic and reflection of this malaise which is prevalent in the society today.

4. The facts of the case are that respondents/plaintiffs/parents have filed the subject suit for possession and injunction with respect to the suit property pleading that they are the owners of the entire property in terms of a Conveyance Deed dated 23.7.2002, Ex.PW2/1. Appellants/defendants/son and daughter-in-law have been mistreating their parents and consequently the respondent no. 2/plaintiff no. 2/mother was suffering from mental disturbance and humiliation on account of frequent harassment meted out to the parents. The appellants/defendants/son and daughter-in-law were disowned by the parents in terms of the insertion in the newspaper

dated 2.9.2010. In fact, a police complaint was also lodged on 12.9.2011/Ex.PW1/1 against the appellants/defendants/son and daughter-in-law. Ultimately, the respondents/plaintiffs/parents were forced to send a Legal Notice dated 14.9.2011/Ex PW3/D and Ex PW3/E (alongwith the postal receipts) and thereafter the subject suit for possession was filed.

5. The appellants/defendants/son and daughter-in-law contested the suit and stated that since the mother being the plaintiff no.2 is not of a mentally sound mind, and this is reflected from the fact that an application under Order XXXII Rule 3 CPC which was filed by the plaintiff no.1/father in the suit, and therefore, the suit for possession is not maintainable in the absence of consent from the mother. It was also pleaded that the suit property is an HUF property on account of purchase of the same from receipt of funds from sale of ancestral land in Gannur, Haryana.

6. The following issues were framed by the trial court:-

- (1) Whether plaintiff is entitled for decree of possession, as prayed for? OPP.
- (2) Whether plaintiff is entitled for decree of permanent injunction, as prayed for? OPP

- (3) Whether the suit is not valued properly for the purpose of court fees and jurisdiction? OPD
- (4) Whether there is no cause of action in favour of plaintiff as suit property is HUF property and plaintiff is not the exclusive owner of the suit property? OPD
- (5) Relief, if any?

7. After issues were framed, parties led evidence and which aspects are recorded in paras 6 and 7 of the impugned judgment, and these paras read as under:-

“A) PLAINTIFF’S EVIDENCE

6. The plaintiffs examined 03 (three) witnesses.

PW1 Const. Parminder proved the police complaint Ex.PW1/1 dated 12.09.2011.

PW2 N.S. Bhatti from DDA proved the Conveyance Deed Ex.PW2/1 of the plaintiffs.

PW3/plaintiff in his affidavit Ex.PW3/1 reiterated the plaint.

All these witnesses were duly cross-examined and then the PE was closed on 15.04.2013.

B) DEFENDANTS EVIDENCE

7. The defendants examined only defendant No.1/DW1 as a witness vide affidavit Ex.DW1/A reiterating their WS.

He was duly cross-examined and then the DE was closed on 21.08.2014 which concluded the trial.”

8. Trial court has rightly dismissed the case put up by the appellants/defendants/son and daughter-in-law that the suit property was an ancestral property because except making self-serving

statements nothing was shown that the suit property was purchased from ancestral funds. Trial court has rightly held that the respondents/plaintiffs/parents were the exclusive owners in terms of the Conveyance Deed Ex.PW2/1. Also, I may note in law that no longer receipt of ancestral property will entitle a son of a person who receives an ancestral property to claim a right in the ancestral property, because after 1956 if a person receives an ancestral property which is a self-acquired property of the ancestor, then the person who receives an ancestral property receives the property as self-acquired property and not as an HUF property vide *Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, (1986) 3 SCC 567* and *Yudhishter Vs. Ashok Kumar, (1987) 1 SCC 204*. Therefore, trial court has rightly rejected the case set up by the appellants/defendants/son and daughter-in-law of the suit property being an HUF property.

9. The next aspect which was very vehemently argued on behalf of the appellants/defendants/son and daughter-in-law is that since the mother is of unsound mind, and therefore, consent of the mother being not there, the subject suit for possession could not be

filed. In the facts of the present case, I refuse to accept the argument because of the fact that the mother had by the newspaper insertion dated 2.9.2010 alongwith the father disowned the appellants/defendants/son and daughter-in-law.

10. Once the father is the co-owner, and admittedly there is no partition, in the facts of the present case since the appellants/defendants/son and daughter-in-law have no title to the property, thus they cannot claim any entitlement to stay in the suit property. I reject the argument urged on behalf of the appellants/defendants/son and daughter-in-law before this Court as being atrocious, that if the mother being of unsound mind dies then appellant/son would become a legal heir of the mother and hence a co-owner to the suit property, and therefore notice be issued in this appeal. If this Court allows such appeals to be continued, it would put premium to the illegal and malicious actions of children who harass their aged parents in their ripe old age, and when in fact the parents need help and not harassment.

11. In view of the aforesaid discussion, this appeal being totally malafide and without any legal basis, and an abuse of process

of law, is accordingly dismissed with costs of Rs.2,50,000/-. Costs of Rs.2,50,000/- will be paid by the appellants/defendants/son and daughter-in-law to the respondents/plaintiffs/parents within six weeks from today.

SEPTEMBER 07, 2018

VALMIKI J. MEHTA, J

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