*   IN THE HIGH COURT OF DELHI AT NEW DELHI

\+   RFA No. 358/2017

%   23rd August, 2018

JAI PRAKASH ..... Appellant

Through: Mr. Gagan Mathur, Advocate (Mobile No. 9811143077).

versus

SUB- REGISTRAR IV-A & ANR ..... Respondents

Through: Mr. Harshbir Singh Kohli, proxy Advocate (Mobile No. 9810658944).

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 plaintiff in the suit impugning the Judgment of the Trial Court dated 21.12.2016 by which the trial court has dismissed the suit as time barred by dismissing an application under Section 5 of the Limitation Act, 1963.

2. The subject suit was filed by the appellant/plaintiff under Section 77 of the Indian Registration Act, 1908 challenging the Order

dated 3.1.2015 passed by the Registrar under the Registration Act,1908 refusing registration of the Gift Deed dated 21.10.2014, pleading that he was the owner of the suit property bearing no. 1/11277-A/1, Gali No. 1, Subhash Park Extension, Village Uldhanpur, Naveen Shahdara, Delhi-110032, having total Land Area 195.096 sq. meters and Plinth Area 166 sq. meters, inasmuch as the property was purchased by him by means of usual documentation being Agreement to Sell, Power of Attorney, Will, etc. dated 19.8.1983. The documents dated 19.8.1983 were executed by the seller Sh. Hari Chand who was the owner of the subject property in terms of the registered Sale Deed dated 18.10.1968. Appellant/plaintiff pleaded that his name was mutated as owner of the suit property in the records of Municipal Corporation of Delhi and the appellant/plaintiff has been paying house tax of the suit property from time to time. The appellant/plaintiff executed a duly stamped Gift Deed dated 21.10.2014 in favour of his eldest son Sh. Subod Kumar and this Gift Deed was presented for registration before the concerned Sub-Registrar IV A for registration vide Registration Receipt no. 6113. Registration was however refused by the Sub-Registrar by holding that the Will which is relied upon by the appellant/plaintiff from Sh. Hari Chand was not registered. This impugned order of the Sub-Registrar dated 25.10.2014 reads as under:-

"OFFICE OF THE SUB REGISTRAR-IVA, NAND NAGRI D.C. OFFICE COMPLEX, DISTRICT SHAHDARA/SEEMAPURI, DELHI-110093

No. F.SR-IVA/Refusal/6113/2014/1536 Dated 25/10/2014

ORDER

Whereas a document in the name & style of Article 33 Gift was presented in the office of Sub-Registrar-IVA for registration vide receipt No. 6113 dated 21.10.2014 in respect of property PMPL No. 1/11277-A/1, Gali No.1, Subhash Park Ext. Naveen Shahdara, Delhi was executed by Sh. Jai Prakash in favour of his son Sh. Subodh Kumar.

And whereas on perusal of the deed, it is mentioned at pages 4, 5 & 6 that Sh. Hari Chand, in his lifetime executed an UN-REGISTERED WILL dated 19th day of August, 1983 in favour of Sh. Jai Prakash, in respect of western portion of plot of land No. 14 area 33.34 Sq. Yards out of entire area 200 Sq. Yards and area of 200 Sq. Yards of Plot no. 13. Further, Sh. Hari Chand expired on 7th day of February, 1984 leaving behind his LAST UNREGISTERED WILL dated 19th day of August, 1983 executed in favour of Sh. Jai Prakash, And thus, Sh. Jai Prakash became absolute and exclusive owner of the aforesaid western portion of plot of land no. 14, area 33.34 Sq. Yards out of entire area of 200 Sq. Yards and Plot no. 13, area 200 Sq. Yards total area becomes 233.34 Sq. Yards situated in area of village Uldhanpur at Subhash Park Extension, Shahdara, Delhi-32.

And whereas, at page 4 (para 3 & 4) of the deed, the executant/Donor has mentioned the approx area under gift, which should be in exact for calculation of stamp/duty/transfer fee etc. and for other purposes too.

And Whereas, the Circular no.F1(92)/Regn. Br./Div.Com/HQ/2013/815 dated 22/07/2013 states that immovable property can be legally and lawfully transferred only by a registered deed like sale, gift conveyance etc. Transportation i.e. execution of general power of attorney/special power of attorney/Will etc., in respect of immoveable property do not convey any title, and, thus, are not legally recognized valid modes of transfer of immovable property as per the existing provisions of the law.

An Whereas in the instant deed of Gift the executant has shown his ownership by virtue of UNREGISTERED WILL and thus the executant i.e. Sh. Jai Prakash do not possess Valid Title of the property under Gift in view of the Circular Dated 22/7/13.

In view of above the instant instrument of Gift does not deserve its registration. Hence the registration of Deed of Gift is hereby Refused.

If the parties concerned feel aggrieved of the said order they may file an appeal u/s 72 of the Registration Act, 1908 with the Registrar/DC (Shahdara) Nand Nagri DC Office Complex, Delhi-110093 within stipulated time as per the provisions of the Registration Act-1908.

SUB-REGISTRAR-1V A
DISTRICT SHAHDARA/SEEMAPURI"

3. An appeal was filed by the appellant/plaintiff against the order of the Sub-Registrar under Section 72 of the Registration Act, , but this appeal was also dismissed by Sh. Devesh Singh, Registrar vide his non-speaking order dated 3.1.2015, and which order reads as under:-

"OFFICE OF THE DISTRICT MAGISTRATE/REGISTRAR
NAND NAGRI D.C. OFFICE COMPLEX
DISTRICT SHAHDARA, DELHI-110093

No.F. Appeal/SR –IVA/2014/1801-1802 Dated 3.1.2015

APPEAL NO. 11/2014

IN THE MATTER OF
SH. JAI PRAKASH APPLICANT
VS.
SUB REGISTRAR IV A RESPONDENT/DEFENDANT

APPEAL ON BEHALF OF THE APPLICANT
U/S 72 OF THE REGISTRATION ACT 1908

ORDER

The present order shall dispose off the appeal dated 3.11.2014 filed by Sh. Jai Prakash in the matter titled as 'Sh. Jai Prakash Vs. Sub Registrar IV A'.

Appellants content that they had presented a Gift Deed for registration before the Respondent on 21/10/2014 in r/o PMPL No. 1/11277-A/1, Gali No. 1, Subhash Park Extn. Naveen Shahdara, Delhi.

That the respondent refused to register the said Gift Deed vide Refusal order no. F. SR-IVA/Refusal/6113/2014/1534-37 dated 25/10/14 on the ground that the Executant has shown himself absolute owner of the aforesaid property and whereas in the deed at page 4,5 & 6 mentioned that Sh. Hari Chand, in his lifetime executed an UN-REGISTERED WILL dated 19th day of August 1983 in favour of Sh. Jai Prakash. And whereas, the Circular no. F. 1(92)/Regn. Br./Div.com/HQ/2013/815 dated 22/07/2013 issued by IGR, Delhi states that immovable property can be legally and lawfully transferred only by a registered deed like sale, gift conveyance etc. Transaction i.e. execution of general power of attorney/special power of attorney/Will etc., in respect of immovable property do not convey any title, and, thus, are not legally recognized valid modes of transfer of immovable property as per the existing provisions of the law.

Further, the area shown in the deed is in 'approx', which should be in exact for calculation of stamp duty/transfer fee etc.

After examining the documents & oral arguments of both the parties and after going through the Circular as mentioned above and contents of the deed, this court is of the opinion that the order passed by the Respondent Sub Registrar IV A is maintainable. The Refusal order dated 25/10/2014 is valid and upheld.

Ordered accordingly.

DEVESH SINGH
DISTRICT MAGISTRATE/REGISTRAR (SHAHDARA)"

4. Appellant preferred a review petition and this was also rejected by the Sh. Azimul Haque, Registrar vide its Order dated 13.4.2015, and which reads as under:-

"IN THE COURT OF DEPUTY COMMISSIONER & REGISTRAR
DISTRICT SHAHDARA, E-BLOCK
D.C. OFFICE COMPLEX, NAND NAGRI, DELHI-110093

No. F-DC/Shah./01/2015 Dated 13/04/2015

APPEAL NO. 01 DATED 11.02.2015
(Under Section 72 of the Registration Act, 1908)

In the matter of:-

Sh. Jai Prakash Appellant

V/s

SR-IV A (Shahdara/Seemapuri) Respondent

ORDER

A review petition has been filed by Sh. Jai Prakash S/o Lt. Sh. Babu Ram R/o 559/6C, Gali No -10, Vijay Park, Maujpur, Garhi Mendu, Bhajan Pura, Delhi-110053, against the order passed by the DM/Registrar Shahdara.

The issue as to whether a registrar is empowered to review his own order was discussed and it was observed that no provision exists in the Registration Act, 1908 in this regard. As per Section 76(2) of the Act, no appeal lies from any order by a Registrar u/s 72 of the Act.

In view of above, I am not inclined to hear the review application. The appellant may institute a suit u/s 77 of the Act, if he so desires.

(Azimul Haque)

DM/Registrar (Shahdara)

No. F.DC/DC/Shah./01/2015/1643-44 Dated: 13/04/2015"

5. A reference to the orders passed by the Sub-Registrar and the Registrar shows that refusal has been made by the Sub-Registrar on the ground that the documents in favour of the appellant/plaintiff are unregistered documents especially the Will dated 19.8.1983.

6. In my opinion the competent authorities being Sub-Registrar and the Registrar have grossly misdirected themselves because once neither Sh. Hari Chand the seller of the property to the appellant/plaintiff, and after the death of Sh. Hari Chand his legal heirs, did not and are not disputing the title of the appellant/plaintiff, then it was not open to the Sub-Registrar or the Registrar to refuse the registration of the Gift Deed on the ground that the documents by which the appellant/plaintiff was claiming title were unregistered

documents. I have had an occasion to examine the aspect of requirement of registration of an agreement to sell etc executed prior to 24.9.2001 and have held that such documents do not require *ad valorem* stamping and registration once the documents are executed prior to 24.9.2001, and on which date by Act 48 of 2001, the provisions of the Transfer of Property Act, Registration Act and Stamp Act as applicable to Delhi were amended and by which an Agreement to Sell in the nature of part performance under Section 53A of the Transfer of Property Act required *ad valorem* appropriate stamping and registration. As already stated above, the subject documents are dated 19.8.1983 i.e. much prior to 24.9.2001. The relevant paragraphs of the judgment in the case of ***Ramesh Chand Vs. Suresh Chand and Anr., 188 (2012) DLT 538*** are paras 1 to 3, and the same read as under:-

> "1. This Regular First Appeal was dismissed by a detailed judgment on 28.2.2011. A Special Leave Petition was filed in the Supreme Court against the judgment dated 28.2.2011 and the Supreme Court has remanded the matter back for a fresh decision by its order dated 31.10.2011. The order of the Supreme Court dated 31.10.2011 is based on the issue of the Supreme Court passing the judgment in the case of ***Suraj Lamps & Industries Pvt. Ltd. Vs. State of Haryana and Anr. 183 (2011) DLT 1 (SC),*** and as per which judgment the Supreme Court overruled the Division Bench judgment of this Court in the case of ***Asha M. Jain Vs. Canara Bank 94 (2001) DLT 841.*** Since the judgment of this Court dated 28.2.2011 had relied upon the Division Bench judgment in the case of ***Asha M. Jain (supra),*** and which judgment was over ruled the Supreme Court in the case of ***Suraj Lamps & Industries Pvt. Ltd. (supra),*** the

matter was therefore remanded back to this Court.

2. Before I proceed to dispose of the appeal, and which would turn substantially on the judgment in the case of ***Suraj Lamps & Industries Pvt. Ltd. (supra),*** it is necessary to reproduce certain paras of this judgment of the Supreme Court, and which paras are paras 12, 13, 14 and 16, and which read as under:-

> "12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (**<u>except to the limited right granted under Section 53A of Transfer of Property Act</u>**). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.
>
> **<u>Scope of Power of Attorney</u>**
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> 13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time **<u>unless it is made irrevocable in a manner known to law</u>**. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In State of Rajasthan v. Basant Nehata MANU/SC/0547/2005 : 2005 (12) SCC 77 this Court held:
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>> "A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favor of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.
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>> Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the done to act on his behalf. **<u>Except in cases where power of attorney is coupled with interest</u>**, it is revocable.

The done in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

Scope of Will

14. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivo. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the life time of the testator. It is said that so long as the testator is alive, a will is not be worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see Sections 69 and 70 of Indian Succession Act, 1925). Registration of a will does not make it any more effective.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales." (emphasis added)

3. A reference to the aforesaid paras shows that unless there is a proper registered sale deed, title of an immovable property does not pass. The Supreme Court has however reiterated that rights which are created pursuant to Section 53A of the Transfer of Property Act, 1882 dealing with the doctrine of *part performance* (para 12), an irrevocable right of a person holding a power of attorney given for consideration coupled with

> interest as per Section 202 of the Contract Act, 1872 (para 13) and devolution of interest pursuant to a Will (para 14). Therefore, no doubt, a person strictly may not have complete ownership rights unless there is a duly registered sale deed, however, certain rights can exist in an immovable property pursuant to the provisions of Section 53A of the Transfer of Property Act, 1882, Section 202 of the Contract Act, 1872. There also takes place devolution of interest after the death of the testator in terms of a Will."

7. The present is a classic case where because of illegal actions of the competent authorities acting under the statutory powers under the Registration Act, the appellant/plaintiff has suffered grave prejudice and losses including not only time and money but also of mental harassment on account of non-registration of an otherwise valid Gift Deed.

8. Though, therefore the impugned judgment of the trial court is sustained that the suit was barred by limitation inasmuch as there is no provision for condonation of delay in filing of the suit as per Section 5 of the Limitation Act and which has been filed beyond period of 30 days as provided in Section 77 of the Registration Act, however, this appeal is disposed of with the following directions:-

(i) The appellant/plaintiff will be entitled within one month from today seek refund of the stamp duty amount from the Collector of Stamps after depositing the Gift Deed dated

21.10.2014 typed on the non-judicial stamp duty papers, and the Collector of Stamps will refund the amount of non-judicial stamp duty minus the normal charges deducted when stamp duty is sought to be refunded within the statutory period of six months.

(ii) Appellant/plaintiff will now be entitled to get a fresh Gift Deed executed on appropriate stamp duty, and the statutory authorities acting under the Registration Act, including the Sub-Registrar, are directed to register this Gift Deed if otherwise the Gift Deed is in order as regards the stamp duty, and the registration of the Gift Deed should not be refused on the ground that the appellant/plaintiff is not the owner of the subject property bearing no. 1/11277-A/1, Gali No. 1, Subhash Park Extension, Village Uldhanpur, Naveen Shahdara, Delhi-110032, having total Land Area 195.096 sq. meters and Plinth Area 166 sq. meters.

(iii) A copy of this judgment be sent to all the Sub-Registrars functioning in Delhi for information and compliance.

9. The appeal is accordingly disposed of with the aforesaid directions.

AUGUST 23, 2018 **VALMIKI J. MEHTA, J**

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