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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No. 834/2018

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5th October, 2018

RUMMA SHYAM SUNDER & ORS

..... Appellants

Through: Mr. S. Krishnaamorthi and Mr.
Manoj Kr. Dwivedi, Advocates
(Mobile No. 8448465768).

versus

SHAMSHER KALRA

..... Respondent

Through: Mr. Jayant Tripathi and Ms.
Nayantara Roy, Advocate
(Mobile No. 9891871186).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CAVEAT No. 926/2018

1. Since counsel for the caveator has entered appearance,
the caveat stands discharged.

C.M. Appl. No. 41167/2018 (for exemption)

2. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 41169/2018 (for delay)

3. For the reasons stated in the application the delays of 39 days in re-filing the appeal stands condoned, subject to all just exceptions.

C.M. stands disposed of.

RFA No. 834/2018 and C.M. Appl. Nos. 41165/2018 (for stay), 41166/2018 (under Order XLI Rule 5), 41168/2018 (permission to file documents)

4. 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 13.04.2018 by which the trial court has decreed the suit for possession, *mesne* profits, etc. filed by the respondent/plaintiff against the appellants/defendants. The suit property is Flat No. 3075, Category-III, First Floor, Sector-D, Pocket-3, Vasant Kunj, New Delhi being a three bedroom flat with a scooter garage on the ground floor.

5. Respondent/Plaintiff pleaded in the plaint that the suit property was originally allotted to his father, Bhai Shyam Sunder, and the possession was taken on 23.05.1988. Appellants/Defendants are the second wife of Bhai Shyam Sunder and the children of appellant no. 1/defendant no. 1, with the respondent/plaintiff being the son from the first marriage of Bhai Shyam Sunder. It was pleaded by the respondent/plaintiff that on account of cruel behaviour of the appellants/defendants, the father Bhai Shyam Sunder transferred the allotment of the suit property in the name of the respondent/plaintiff. This transfer was made by making an application to Delhi Development Authority (DDA) and DDA confirmed this substitution vide its Letter dated 22.04.1998. A Conveyance Deed was thereafter executed and registered in favour of the respondent/plaintiff by the DDA on 24.10.2000. The suit property has been mutated in the name of the respondent/plaintiff in the Municipal Corporation of Delhi (MCD) records and House Tax is also being paid by the respondent/plaintiff. The appellants/defendants were allowed to stay in the suit property on the request of the father Bhai Shyam Sunder, however, since the appellants/defendants failed to vacate the suit

property by December, 2000, hence after serving a Legal Notice dated 06.12.2005, the subject suit came to be filed on 06.02.2006.

6. The appellants/defendants contested the suit by filing a written statement. It was firstly pleaded that the suit was barred by limitation. It was also pleaded by the appellants/defendants that the suit property was no doubt allotted to Bhai Shyam Sunder, however, in terms of an oral family settlement, on account of inability of Bhai Shyam Sunder to pay the installments for the suit property, therefore, it was the appellant no. 1/defendant no. 1 who paid an amount of Rs.5,00,000/- to Bhai Shyam Sunder/her husband and thereupon the suit property was to be transferred in the name of the appellant nos. 2 and 3/defendant nos. 2 and 3 being the sons of the appellant no. 1/defendant no. 1. It was pleaded that Bhai Shyam Sunder however failed to transfer the suit property in the name of appellant nos. 2 and 3/defendant nos. 2 and 3. Suit was hence prayed to be dismissed.

7. After pleadings were complete the trial court framed the following issues:-

“(i) Whether the suit of the plaintiff is barred by law of limitation? OPD.

(ii) Whether the Conveyance Deed was obtained/got executed from DDA in favour of the plaintiff by fraud? OPD.

(iii) Whether the suit is liable to be dismissed on account of non-joinder of the father of the plaintiff as a party to the present suit? OPD.

(iv) Whether there was any agreement between the father of the plaintiff Bhai Shyam Sunder and defendant no.1 and her parents that the suit property would be transferred to them by the plaintiff? OPD.

(v) Whether any amounts were paid by the parents of defendant no.1 in respect of the suit property to the DDA? OPD.

(vi) Whether the defendants were put into the possession of property in their independent rights under the family agreement/settlement? OPD.

(vii) Whether any family arrangement was arrived at between Bhai Shyam Sunder, defendant no.1 and late Mrs. Raj Kumari, mother of defendant no.1 whereunder, upon payment of Rs.5 lakhs by defendant no.1 on behalf of defendants no.2 & 3 to Bhai Shyam Sunder, he was to request the DDA to transfer the suit property in favour of the defendants? OPD.

(viii) Whether the payments made by cheques bearing no.832027 and 832028 dated 10.02.1994 and 03.03.1994 of Rs.3,00,000/- and Rs.1,50,000/- by defendant no.1 in favour of M/s Shammi Motors was on account of any family arrangement for transfer of the suit property in favour of the defendants? OPP.

(ix) Whether the amount of Rs.50,000/- was paid by defendant no.1 to Bhai Shyam Sunder in cash, and if so on what account? OPD.

(x) Whether the defendants came into possession of the suit property in part performance of the alleged agreement? OPD or they were put into possession as family members of the father of the plaintiff? OPP.

(xi) Whether the defendant no.1 being the wife of plaintiff's father and step-mother of the plaintiff is entitled to retain possession of the suit property? OPD.

(xii) Whether the plaintiff is entitled to award of damages? If so, at what rate and for what period? OPP.

(xiii) Relief.”

8. The evidence which has been led by the respondent/plaintiff, the documents proved by the respondent/plaintiff, and the depositions of the other witnesses summoned by the respondent/plaintiff from the DDA, House Tax Department of MCD, etc. are those as stated in paragraphs 7-12 of the impugned judgment, and these paras read as under:-

“7. I have gone through the file. Plaintiff in support of his case has examined himself as PW1 and his sister as PW2. PW1 has deposed on the lines of the averments made in the plaint. He has proved the site plan of the suit property as Ex.PW1/1; letter dated 26.02.1998 written by late Bhai Shyam Sunder to DDA for transfer of the suit property in the name of the plaintiff as Ex.PW1/2; letter dated 22.04.1998 by the DDA confirming transfer/substitution of the suit property in favour of the plaintiff as Ex.PW1/3; letter dated 19.07.2005 from the MCD confirming mutation of the suit property in the name of the plaintiff as Ex.PW1/4; Conveyance Deed dated 24.10.2000 in favour of the plaintiff by the DDA as Ex.PW1/5; property tax receipt dated 24.03.2005 as Ex.PW1/6. The plaintiff has also proved Lease Deed dated 28.10.2005 as Ex.PW1/7 in respect of property No.A19, C.R. Park, New Delhi; letter dated 07.07.2005 written by Delhi Commission for Women to SHO, C.R. Park as Ex.PW1/8; legal notice dated 06.12.2005, postal receipts, UPC receipts and AD card bearing acknowledgment of defendant no.2 as Ex.PW1/9 to Ex.PW1/12; the original postal envelope containing notices sent to the defendant no.1 and 3 along with AD Card as Ex.PW1/13 to Ex.PW1/17. The original envelope containing notice received back from the defendant no.1 and 3 as Ex.PW1/18-Ex.PW1/19. He has also proved the news article dated 07.03.1995 published in Indian Express, Chandigarh as Ex.PW1/21 and complaint dated 19.06.2006 to the Crime Branch for offences of forgery and cheating as Ex.PW1/22.

8. Ms. Shyamlee (PW2) has deposed about the strained relation of her father-late Sh. Bhai Shyam Sunder with the defendant no.1 and

also the discord between the defendant no.1 and the defendants no.2 and 3. She has supported the case of the plaintiff and has affirmed the facts stated in the plaint.

9. PW3 Prerna Seemar Kalra, wife of plaintiff was dropped as a witness on 24.11.2011.

10. The plaintiff has also examined Sh. Sunil Srivastav, LDC, Sub-Registrar-VII, Vikas Sadan, Delhi as PW4. He brought the original record pertaining to the registration of the Conveyance Deed dated 24.10.2000 registered at their office and has proved the same as Ex.PW1/5.

11. PW5 Sh. Ramesh Kumar, Head Clerk, Property Tax (South Zone), MCD R.K. Puram, New Delhi has proved the letter dated 19.07.2005 as Ex.PW1/4 regarding mutation of the suit property in the name of the plaintiff.

12. PW6 Sh. Khadag Singh, UDC, LAB Housing, DDA, Vikas Sadan, Delhi has proved the applications as Ex.P1, P7, P8 and Ex.PW1/2 for transfer of the flat in the name of the plaintiff. He has proved the copies of the Conveyance Deed (Ex.PW1/5) and the letter dated 22.04.1998 (Ex.PW1/2) confirming transfer of the suit property in the name of the plaintiff by the DDA on the request of late Bhai Shyam Sunder. He has also proved that indemnity bonds were obtained from the transferor and the transferee. He has also proved the file containing copies of allotment, payment details and transfer documents as Ex.PW6/A.”

(Underlining Added)

9. Appellants/Defendants led evidence and these aspects are recorded in paragraphs 13-18 of the impugned judgment, and these paras read as under:-

“13. In their defence, defendants have examined seven witnesses. DW1 (defendant no.1) and DW2 (defendant no.2) have deposed on the lines of the averments made in their written statement.

14. DW (defendant no.3) was given up as a witness on 22.11.2013. Defendants have also examined Sh. S.K. Sharma Assistant Manager, SBI, Miranda House, Delhi as DW3 to prove the transaction of Rs.1 lakh. However, he has deposed that the records pertaining to the said account are not traceable. He has proved the letter dated 08.01.2014 in this regard as Ex.DW1/3.

15. DW4 Sh. Suresh Maan from Canara Bank has proved the statement of account of Raj Kumari Verma for the year 1994 as Ex.DW4/A.

16. DW5 Sh. Bhagwan, Assistant Legal, Times of India has proved the newspaper-Economic Times dated 06.01.2014 as Ex.PW5/A.

17. DW6 Sh. R.K. Bhatia from LIC has proved the pension record of late Sh. Hari Inder Pal Verma as Ex.DW6/A (collectively). As per the documents produced by this witness, late Sh. Hari Inder Pal Verma had furnished the address of the suit property for correspondence.

18. DW7 Sh. Ashok Shardha, Service Manager, Citi Bank, New Delhi has deposed that the record pertaining to account no.0066636003 in the name of defendant no.1 for the year 1994 is not available as the same pertains to more than 10 years old record.”

10. The trial court has decreed the suit by holding that the father Bhai Shyam Sunder wrote a Letter dated 26.02.1998 to DDA/Ex.PW1/2 for transfer of the allotment of the suit property in the name of the respondent/plaintiff, and the DDA by its Letter dated 22.04.1998/Ex.PW1/3 confirmed the substitution of the name of the respondent/plaintiff from Bhai Shyam Sunder. The Conveyance Deed executed in favour of the respondent/plaintiff was proved and exhibited as Ex.PW1/5 and the property tax receipts showing payment of property tax by the respondent/plaintiff for the suit property was

proved as Ex.PW1/6. I may note that the mutation of the property in the name of the respondent/plaintiff by MCD was also proved as per the official witness PW-5, Sh. Ramesh Kumar, who was summoned from the Property Tax Department of MCD, who also proved the Mutation Letter dated 19.07.2005, exhibited as Ex.PW1/4, and the factum of the Conveyance Deed being executed and registered in the name of the respondent/plaintiff dated 24.10.2000/Ex.PW1/5 was proved by the witness of the Sub-Registrar Sh. Sunil Srivastav who deposed as PW-4. The witness PW-6 from DDA brought the original record and proved the factum of the Conveyance Deed dated 24.10.2000/Ex.PW1/5 and various documents showing transfer of allotment to the respondent/plaintiff. In my opinion, therefore, in view of the aforesaid evidence, the trial court has rightly held that the respondent/plaintiff was the owner of the suit property.

11(i). The case of the appellants/defendants was that the suit property was to be transferred in the name of the appellant nos.2 and 3/defendant nos. 2 and 3 on account of an oral family arrangement of the year 1994, and in this regard reliance is placed upon the payments made by appellant no. 1/defendant no.1 to Bhai Shyam Sunder to his

firm namely M/s Shammi Motors. It is also argued before this Court that in the cross-examination of the PW-1, Sh. Shamsheer Kalra/respondent/plaintiff, on 03.09.2007 and 06.12.2007, the respondent/plaintiff admitted receipt of Rs.4,50,000/- by the father in the name of his firm M/s Shammi Motors, and hence it is argued that trial court has erred in holding that the family arrangement has not been proved.

11(ii). I however cannot agree with this argument because not only the appellants/defendants have failed to show that these payments made to M/s Shammi Motors were for the alleged family arrangement, but also the fact that respondent/plaintiff/PW-1 in his cross-examination on 06.12.2007 clarified that such payment was not in any manner related to so-called family arrangement/agreement pleaded by the appellants/defendants. I may note that there is not a single sheet of paper or a single document proved by the appellants/defendants to show even remotely that there existed a family arrangement as contended by the appellants/defendants. The mere fact that certain payment of Rs.4,50,000/- was made in the year 1994 to Bhai Shyam Sunder by the appellant no. 1/defendant no.1 would not mean that it

has to be held that there was a family settlement whereby the suit property was to be owned by the appellant nos.2 and 3/defendant nos.2 and 3 on transfer of the said property in their names. This is all the more so, because the father on 26.02.1998. i.e. much later than the year 1994 had written this letter Ex.PW1/2 to DDA to transfer the allotment in the name of the respondent/plaintiff and the DDA vide its Letter dated 22.04.1998/Ex.PW1/3 had consequently transferred the allotment in the name of the respondent/plaintiff by substituting the respondent/plaintiff in place of Bhai Shyam Sunder. If there was any family arrangement as alleged by the appellant no. 1/defendant no.1, then, there was no reason why the father as many as four years later had applied to DDA for transfer of allotment of the suit property in the name of the respondent/plaintiff. It is also noted that the father Bhai Shyam Sunder was admittedly alive on the date when the suit was filed by the respondent/plaintiff, and that right from the year 1998 till filing of the suit in the year 2006, and noting that a Conveyance Deed dated 24.10.2000 was in the meanwhile executed in the name of the respondent/plaintiff duly registered with the Sub-Registrar, yet no action whatsoever was ever taken by the father, Bhai Shyam Sunder,

for getting the allotment of the suit property in the name of the respondent/plaintiff cancelled. The same would have been done by Bhai Shyam Sunder if by the allotment of respondent/plaintiff was wrongly substituted by DDA. I, therefore, reject the arguments urged on behalf of the appellants/defendants of an existing family arrangement and of the suit property being owned by the appellant nos.2 and 3/defendant nos.2 and 3.

12(i). Learned counsel for the appellants/defendants then argued that appellant no.1/defendant no. 1 pleaded that she was residing in her own right in the suit property since around the year 1998, and therefore, such possession which is of the appellant no.1/defendant no.1 in her own right should translate into a full ownership as per Section 14(1) of the Hindu Succession Act, 1956.

12(ii). However, I find this argument to be misconceived for various reasons. Firstly there is no specific case pleaded of the suit property being of the appellant no. 1/defendant no.1 on account of Section 14(1) of the Hindu Succession Act. Also, no such issue was framed and therefore not decided by the trial court. Secondly the pre-condition for applicability of Section 14(1) of the Hindu Succession

Act is that there is a transfer of an immovable property with possession in favour of the wife of a person, and such transfer though is an acquisition only as a life estate, however, such life estate converts into a full estate as per Section 14(1) of the Hindu Succession Act. In the present case, there is no case made out, by the appellants/defendants, of the suit property being in any manner acquired by the appellant no.1/defendant no.1/wife by Bhai Shyam Sunder for the alleged maintenance claim of the appellant no.1/defendant no.1 and in fact a totally contradictory plea is raised of the suit property being the property of appellant nos.2 and 3/defendant nos. 2 and 3, on account of payment of price of Rs.5,00,000/- by the appellant no.1/defendant no. 1 to her husband, Bhai Shyam Sunder, under a family arrangement. Obviously, mutually destructive pleas of entitlement to a property on account of maintenance or on account of having purchased the same by paying price under a family settlement, does not further the case of the appellants/defendants. Also, the property would have vested in appellant no. 1/defendant no. 1, if Bhai Shyam Sunder was the owner and thus entitled to give it for maintenance to appellant no. 1/defendant no. 1, but the fact is that

Bhai Shyam Sunder was not the owner of the suit property and the said property was owned by the respondent/plaintiff under the Conveyance Deed dated 24.10.2000. I, therefore, reject the argument urged on behalf of the appellants/defendants by placing reliance upon Section 14(1) of the Hindu Succession Act.

13. Learned counsel for the appellants/defendants then argued that the appellants/defendants have become owners of the suit property by adverse possession inasmuch as the defence was raised that the suit filed was time barred, and which is subject matter of Issue no.(i). However, even this argument urged on behalf of the appellants/defendants is again a misconceived argument because there is a difference between possession and adverse possession. Unless possession is accompanied by the assertion of a hostile title, which is proved to the satisfaction of the judicial conscience of a court, a person cannot become owner of an immovable property by adverse possession. Admittedly, there is no document which is filed and proved on record by the appellants/defendants asserting their title in the suit property, whether the same is in the form of a letter to Bhai Shyam Sunder, or to any public authority such as the MCD or the

Income Tax Department or for that matter even to the DDA to assert a claim of title on the suit property, considering that DDA had executed a registered Conveyance Deed dated 24.10.2000 in favour of the respondent/plaintiff. This argument urged on behalf of the appellants/defendants of becoming owners of the suit property by adverse possession is also also rejected.

14. In view of the aforesaid discussion, there is no merit in the appeal. The appeal and the pending applications are accordingly dismissed.

OCTOBER 05, 2018

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VALMIKI J. MEHTA, J

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