

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

% **Date of decision: 1st August, 2018.**

+ **RSA 402/2014, CM No.21298/2014 (for stay)**

VEENA VERMA & ANR

..... Appellants

Through: Mr.J.K. Sharma, Mr.Ajit Singh,
Advs.

Versus

PARUL VERMA & ANR

..... Respondents

Through: Ms.Alka Ahir, Adv. for R1 & R2
Ms.Sukhbeer Kaur Bajwa, Adv. for
DDA

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Second Appeal under Section 100 of the CPC impugns the judgment and decree [dated 2nd August, 2014 in RCA No.6/2013 of the Court of Additional District Judge-03, North West] allowing the First Appeal under Section 96 of the CPC preferred by the two respondents against the judgment and decree [dated 26th October, 2013 in CS No.284/10/02 (Unique ID No. 02401C0478552003) of the Court of Civil Judge-06, Central] allowing the suit filed by the appellant no.1/plaintiff for:

- (i) declaration that the relinquishment deed dated 20th November, 1984 registered as document No.4076 at pages 106 and 107 in additional book No.1 was null and void as the same had been obtained by playing fraud and deception on the appellant no.1/plaintiff;

- (ii) direction to the DDA to not mutate the property No.205, Block AG, Shalimar Bagh, New Delhi in the name of the respondents/defendants;
- (iii) partition of the aforesaid property; and
- (iv) permanent injunction restraining the respondents/defendants from dealing with the property.

2. This Second Appeal came up first before this Court on 24th December, 2014 and was adjourned to 3rd February, 2015, when the Trial Court record was requisitioned. The appeal was thereafter adjourned from time to time. The counsel for the respondents no.1 and 2/defendants has been appearing on caveat. Vide order dated 19th May, 2016, the substantial questions of law, as proposed in the memorandum of appeal, were framed as follows:

“(i) Whether the First Appellate Court, while reversing the judgment of the Trial Court has passed a verdict which is not based on a proper reading of the evidence of PW1 who is none else but appellant No.1 in this case?”

“(ii) Whether the judgment passed by the First Appellate Court is not based on valid reading and correct appraisal of the evidence furnished before it and whether the same has led to any perversity?”

3. On 27th October, 2016, without prejudice to the rights and contentions of the parties, certain compromise proposals were discussed and vide subsequent order dated 17th January, 2017, the parties referred to Mediation Cell of this Court. Mediation remained unsuccessful.

4. The counsel for the appellants has been heard and the Suit Court record requisitioned, perused.

5. The appellant no.1 / plaintiff instituted the suit aforesaid *inter alia* pleading:

- (i) that the house aforesaid belonged to the father of the appellant / plaintiff who died in March, 1984 leaving the appellant no.1/plaintiff, appellant no.2 / defendant no.3 and the predecessor of the respondents / defendants no.1 and 2 as his daughters and son respectively and a widow i.e. the mother of the appellants/plaintiffs;
- (ii) that the mother of the appellants/plaintiffs died in October, 1984;
- (iii) that the predecessor of the respondents, being the brother of the appellants, in November, 1984, got some papers executed from the appellant no.1 and the appellant no.2, claiming the same to be for the purposes of mutation of the property in the name of himself and the two appellants;
- (iv) that the brother of the appellants died in 2001 leaving the respondents as his widow and son respectively;
- (v) that the appellant no.1/plaintiff is unmarried and residing in the house with the brother's family;
- (vi) that the respondents, prior to the institution of the suit, applied for mutation of the property from the name of the brother of the appellants to their own name and on receipt of a letter in this regard, the appellant no.1 / plaintiff realized that the predecessor of the respondents, exercising undue influence and fraud, had got the appellant no.1/plaintiff and the appellant no.2 to execute and register a deed of relinquishment of their one-third share each in the property in favour of himself.

6. As aforesaid, the Suit Court passed a decree, cancelling the relinquishment deed and declaring the two appellants to be having one-third share each in the property and the respondents together to be having the remaining one-third share in the property.

7. The First Appellate Court, on appeal preferred by the respondents, set aside the said decree and dismissed the suit.

8. On enquiry, the counsel for the appellant states that the appellant no.2 was impleaded as defendant no.3 in the suit and did not file written statement and did not appear as a witness also in the suit.

9. I have enquired from the counsel for the appellants that the appellant no.2, though a signatory to the relinquishment deed, having not sued for setting aside of the same or having not pleaded any reason for the same to be cancelled / set aside qua her, be an appellant in this appeal.

10. The counsel for the appellants agrees that the appellant no.2 did not seek setting aside / cancellation of the relinquishment deed, in so far as relinquishing her one-third share in the property in favour of the predecessor of the respondents.

11. I may mention that though the relief of partition was also claimed and in which all parties enjoy the same status, but the grant of said relief of partition was dependent upon the grant of relief of cancellation / setting aside of the relinquishment deed inasmuch as if the relinquishment deed stands, neither of the appellants would have any share in the property. The appellant no.2, having not sought the relief of setting aside of the relinquishment deed to the extent of her share, even in the event of the appellant no.1 / plaintiff succeeding, cannot get any share in the property inasmuch as the relinquishment deed qua her stands.

12. The counsel for the appellants agrees.

13. Finding the judgment of the First Appellate Court to be lucid and well reasoned, I have enquired from the counsel for the appellants, that once the appellant no.2, who is also a signatory along with the appellant no.1/plaintiff of the relinquishment deed and has not stepped forward to say that the predecessor of the respondents, who was their brother, had got the relinquishment deed signed and registered by practicing deception, fraud and undue influence, how can the relinquishment deed qua the appellant no.1/plaintiff be set aside.

14. The counsel for the appellants, after consultation with both the appellants present in Court, states that the appellant no.1 / plaintiff will withdraw this appeal and be bound by the decree of the First Appellate Court if the respondents agree to allow the appellant no.1 / plaintiff to continue residing in the property, as she has been residing till now, for her lifetime. It is further stated that the appellant no.2 does not claim any right, title or interest or share in the property and the appellant no.1 will have no right to alienate, encumber or part with possession of the portion of the property in her occupation. It is further stated that the respondents were willing for the aforesaid during mediation.

15. The counsel for the respondents, on enquiry has fairly stated that the respondents are still willing for the aforesaid.

16. On enquiry, it is informed that the property comprises of one room and kitchen on the ground floor and one room on the first floor. Though the counsel for the respondents states that the appellant no.1/plaintiff eats along with the respondents, but the counsel for the appellants states that the

appellant no.1/plaintiff, though uses the same kitchen as the respondents, but cooks her meals separately.

17. It is also informed that the appellant no.1 / plaintiff generally lives in the room on the first floor which is used in common with the respondents. The counsel for the respondents also states that the appellant no.1 / plaintiff normally lives with the appellant no.2 and spends little time only in the property.

18. In the aforesaid circumstances, this appeal is dismissed as withdrawn but binding the parties to the aforesaid and it is further directed:

- (i) that the appellant no.1/plaintiff, for her lifetime, shall continue in use of the aforesaid property, as she has been doing till now, and the respondents shall not interfere in such use of the appellant no.1 / plaintiff of the property;
- (ii) that the respondents shall not sell, alienate or part with possession of the property, save with consent in writing of the appellant no.1/plaintiff;
- (iii) that the appellant no.1 / plaintiff shall be entitled to so continue to reside in the property for her lifetime only and will not induct any other person into possession of the property or deal in any manner whatsoever with the property and will not be entitled to Will her aforesaid rights in the property in favour of any other person, such right being personal to her.

19. The appeal is disposed of.

RAJIV SAHAI ENDLAW, J

AUGUST 01, 2018
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