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

Reserved on : 8th January 2018
Date of decision : 19th February, 2018

+ **RFA 873/2016 & CM APPL. 41372/2016**

MAHESH CHANDER AHUJA Appellant

Through : Mr. Harish Malhotra, Senior
Advocate with Mr. Rajesh Bhatia,
Advocate.

versus

TILAK RAJ AHUJA Respondent

Through : Mr. Atul Bandhu, Mr. Karan Ahuja,
Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. A suit for partition was filed by Mr. Tilak Raj Ahuja – Respondent/Plaintiff (*hereinafter, 'Plaintiff'*) against his brother Mr. Mahesh Chander Ahuja – Appellant/Defendant (*hereinafter, 'Defendant'*). Both are sons of Late. Sh. Harbans Lal Ahuja (*hereinafter, 'father'*) who was the owner of property No.J-13/9, Rajouri Garden, New Delhi (*hereinafter, 'suit property'*). The mother of the parties is Smt. Chanan Devi Ahuja (*hereinafter, 'mother'*).

2. It is the case of the Plaintiff that his father had passed away on 19th November, 1978 and his mother had passed away on 20th June, 1999. Upon the death of the father, he had left behind three legal heirs, his wife and two sons. During the lifetime of the mother, according to the Plaintiff, a

Relinquishment Deed dated 19th August, 1996 (Ex. PW-1/5) was executed by her in favour of the Plaintiff. The Defendant refused to acknowledge the validity of the Relinquishment Deed which states that the Plaintiff has become owner of 2/3rd portion of the suit property. The Defendant also refused to acknowledge the legal notice dated 3rd December, 2005 (PW1/6), whereby the Plaintiff requested the Defendant to partition the suit property in the ratio of 2:1 in his favour. Hence, the Plaintiff instituted a suit for declaration of ownership of 2/3rd share in the suit property, based on the Relinquishment Deed and a consequential decree of partition.

3. The Defendant challenged the execution of the Relinquishment Deed by pleading that the same was a manipulated and a fabricated document. The Defendant pleaded that the mother was living with him and was being cared for by him and she was also illiterate. The Defendant further claimed that he had spent considerable money in raising the construction on the suit property and getting the completion certificate from the municipal authorities and hence he was entitled to ½ share in the suit property.

4. The Trial Court framed the following issues:

“Issue no. 1: Whether the plaintiff is entitled to a decree of partition, declaration and permanent injunction, as has been prayed for? OPP

Issue no. 2: Whether the mother of the plaintiff and defendant executed any relinquishment deed in favour of the plaintiff, as is being claimed by him? OPP

Issue no. 3: If issue no. 1 and 2 are decided in favour of the plaintiff, what is the extent of share to which plaintiff is entitled in property no. J-13/9, Rajouri Garden, New Delhi? OPP

Issue no. 4. Whether the suit is barred under order II Rule 2 CPC? OPD

Issue no. 5: Relief”

5. Both parties led their respective evidence. The Plaintiff led the evidence of the following witnesses:

- i. Mr. Tilak Raj Ahuja (PW-1), Plaintiff himself;
- ii. Sh. Kishan Kumar, LDC from the office of the Sub-Registrar-II, Janak Puri (PW-2) ;
- iii. Mr. Vikas Gaba, (PW-3) who was also witness to the Relinquishment Deed dated 19th August, 1996.

6. The Defendant led the evidence of Mahesh Chand Ahuja, Defendant himself (DW-1) and of Mr. Kishan Lal Manocha (DW-2)

7. The Trial Court, in its judgement noted the following:

- a) that the father had died intestate;
- b) that the Defendant had not lead any evidence to support his plea that he had spent money on the construction of the property;
- c) that it is the settled law that any addition or improvement made by a co-sharer does not result in any benefit to the said party. The Relinquishment Deed was duly proved by the witnesses from the Sub-Registrar’s office;

The Trial Court then held that the Plaintiff is entitled to 2/3rd share and the Defendant would be entitled to 1/3rd share in the suit property.

Defendant’s Submissions in Appeal

8. In appeal, the main plank of the Defendant is that the mother was

illiterate and she could not make a rational judgment. It was submitted that there was no logic for the execution of the Relinquishment Deed, inasmuch as the mother was residing in the suit property along with both the sons. Counsel for the Defendant submitted that the first floor of the property was constructed after the demise of the father and though the Relinquishment Deed is of 1996 and the mother expired in 1999, the suit was not filed until September, 2006. Since the mother had permitted the Defendant to construct the first floor of the property, she had acquiesced to the fact that the first floor would belong to the Defendant. Reliance is placed on photographs of the mother in the wedding of the daughter of the Defendant to argue that the mother had very good relations with the Defendant. The Defendant also contends that, being the elder brother, he always paid the house tax for the entire property.

9. The Defendant further contended that the draftsman who drafted the Relinquishment Deed was not called as a witness. Specifically in respect of the Relinquishment Deed the following objections are raised:

- That the mother was illiterate and hence she had only put her thumb impression on the deed;
- That the contents of the Relinquishment Deed were not read over to her and no affidavit to this effect had been filed;
- No photographs were taken in the Sub-Registrar's office, as is the practice currently, and therefore it is not even clear if the mother had actually gone to the Sub-Registrar's office. Even the Sub-Registrar does not appear to have read over the Relinquishment Deed to her;
- The Relinquishment Deed was not executed of her own volition, free will and desire;

- An illiterate woman has to be treated on par with a *Pardanashin* woman.

Plaintiff's Submissions in Appeal

10. On the other hand, the counsel for the Plaintiff submits that the Defendant is deliberately creating a haze over the validity of the Relinquishment Deed. The Plaintiff strongly refutes the allegation of manipulation on the ground that the same is a registered document. Strong reliance is also placed on the provisions of the Registration Act, 1908 (*hereinafter, 'Registration Act'*). The counsel for the Plaintiff submits that the requirements for registration and proof of a Relinquishment Deed are different from that of a Will. He submits that under Section 17(1)(b) of the Registration Act, a Relinquishment Deed is a registrable document and all the particulars as required under Section 58 of the Registration Act are duly complied with. He further submits that under Section 60(2) of the Registration Act, a document registered with the proper endorsement of the registering authority has a lot of sanctity. While for a Will, the attesting witnesses are needed, the same is not true of a Relinquishment Deed. He submits that there is no other defence except the challenge to the Relinquishment Deed on the ground of manipulation led by the Defendant, but no evidence has been lead in support of such a plea.

11. The witness in the Relinquishment Deed, Mr. Vikas Gaba, duly appeared and proved the Relinquishment Deed and has confirmed that it has been read over to the mother. Under Section 68 of the Indian Evidence Act, 1872 (*hereinafter, 'Evidence Act'*) even if one witness is produced, it is sufficient proof of the contents of the document. However, the proviso to

Section 68 of the Evidence Act is relied upon to argue that once a document is registered, an attesting witness is not even required to prove a document which is not a Will.

12. Further reliance is also placed on Section 34 of the Registration Act to contend that the Registrar does not register a document until an enquiry is conducted as per the Act. It is, thus, submitted that there is no dispute as to the effect of the Relinquishment Deed and the entire share of the mother having been relinquished in favour of the Plaintiff, the suit is liable to be decreed in favour of the Plaintiff for $2/3^{\text{rd}}$ share in the suit property.

Analysis and Findings

13. There is no serious dispute that the property is liable to be partitioned. The only question is as to whether the Plaintiff is entitled to $2/3^{\text{rd}}$ share or $1/2$ share. There is also no doubt that in the absence of the Relinquishment Deed, both the sons would have been entitled to one half share each in the suit property. Therefore, the question as to what should be the share of the Plaintiff depends on the existence, validity and proof of the Relinquishment Deed.

14. The original Relinquishment Deed is on record and is exhibited as Ex.PW-1/5. It bears the right hand thumb impression of the mother and the signatures of the beneficiary i.e. the Plaintiff and two witnesses, namely, Mr. K.N. Dawar and Mr. Vikas Gaba. The stamp paper was purchased on 16th August, 1996 and the purpose is specified as Relinquishment Deed. The rear side of the first page of the deed contains the left hand thumb impression and the right hand thumb impression of the mother. The witnesses have also put their thumb impressions along with their signatures. The deed records

that the property was mutated in the name of the mother and the two sons after the death of the father. The Relinquishment Deed is crystal clear that the share of the mother is being relinquished in favour of the Plaintiff. This is a registered document. It is correct that the photographs of the mother and the Plaintiff are affixed on the Relinquishment Deed by tape and staple and are not part of the document as is the current practice. However, that by itself does not render the document manipulated, inasmuch as, a perusal of the original does show that the document is a genuine one.

15. Once the Relinquishment Deed is registered, mere raising of a haze or cloud around it would not be sufficient to dispute the same. Thus, the Relinquishment Deed appears to be a genuine document and the doubts raised by the Defendant are not valid. Moreover, the official from the Sub-Registrar's office also confirms the contents of the Relinquishment Deed by matching the original with the copy which is in the Registrar's record. The Defendant's challenge to the testimony of Mr. Vikas Gaba (PW-3), that he could not remember several facts such as the exact date or month of the execution deed and the fact as to whether it is read over to the mother, does not by itself render the said deed to be a manipulated one. PW-3 mentions several facts in his cross examination relating to the day on which registration of the Deed was done. The same reads:

"On that day, Smt. Channan Devi along with the plaintiff and plaintiff's brother in law had come to my office and thereafter, I accompanied them to the Office of the Sub-Registrar. We have gone there in a car. I am not able to recall as to whose car was it. I am not able to recall as to where did we meet the second witness, who had signed as an attesting witness to the relinquishment deed. I know the name of the second

witness. He is Mr. Minocha again said He was on Mr. Dawar. I do not remember his initials. I cannot say what was the relationship of the plaintiff with the second witness Mr. Dawar. I am not acquainted with/or known to the maternal aunt (massi) of the plaintiff.

I do not remember as to how many signatures were appended by me on the deed in question or as to in whose presence the same were appended. The deed was signed by me in the Office of the Sub-Registrar. Same is my answer in respect to the second witness. However, he had signed in my presence (Vol. both of us had signed the documents simultaneously). By the time, I signed the document as a witness, the thumb impressions of Smt. Channan Devi were already taken on the document. No cuttings or alterations were made in my presence (Vol. I am not very certain). I cannot say whether the alterations or cuttings were made in the presence of Smt. Channan Devi or the second witness Mr. Dawar. Smt. Channan Devi was a home-maker.”

16. The Defendant specifically relies on the fact that the witness did not identify the thumb impression of the mother and on the following suggestions:

“Q. Can you identify the signatures of Smt. Channan Devi?

A. As far as I remember, she used to put her thumb impression which I cannot identify as of now.

(Witness is put to the rear portion of page 1 of Exhibit PW1/5)

I cannot identify her thumb impression from a mere look (Vol. her name must be written under her impressions). Same is my answer in respect of other pages of Ex.PW1/5.

I cannot identify the signatures of Mr. Dawar on Exhibit PW1/5. It is incorrect to suggest that I cannot identify the signatures of Mr. Dawar for the reason that he did not sign in my presence. (Vol. as a matter of fact, he had signed the document in my presence). I cannot say as to whether Smt. Channan Devi had cordial relations with the defendant, all through out till she remained alive.

Q. I put it to you that Smt. Channan Devi did not execute the relinquishment deed out of her own volition, free consent and desire? what do you say?

A. I do not know.”

17. From a reading of deposition of PW-3, it appears quite natural that he did not remember many details of date of execution of the Relinquishment Deed. This fact, however, adds to the credibility of the witness rather than destroying it. It is not normal for witnesses to remember or recall minute details of events which transpired 15 years ago. PW-3 was 25 years old when the deed was executed and was 40 years old when he was called for cross-examination. It is quite normal for him not to recall or give his opinion about the thumb impressions or as to whether the deed was of the mother's own volition free consent. The witness says

“.....I cannot recall as to whether Ex.PW1/5 was read over by me before signing. (Vol. It is an incident pertaining to the period almost 15 years back). I cannot tell the exact date or month of the execution of Exhibit PW1/5. (Vol. it was in the year 1996). As far as I re-collect, the same was read over to Smt. Channan Devi in my presence. I am aware about its contents ((Vol. as per the same, the share of Smt. Channan Devi was relinquished in favour of the plaintiff). By the time I signed as a witness, I was aware of its contents. The person who has drafted the document has told us about

its contents (Vol. he had also explained the same to Smt. Channan Devi)."

18. As against the Plaintiff's evidence, the Defendant (DW-1) admitted that he had filed a suit for partition in the District Courts which had been withdrawn by him as the Plaintiff had already filed a suit for partition in the High Court. The Defendant could not recall the amount spent on construction or any documents to confirm the same. The Defendant also could not produce any medical record to show that the mother was unwell. DW-2, Mr. Kishan Lal Minocha was a friend of the father who stated that the Defendant had constructed the first floor after death of the father. He also confirmed that mother had very good relations with the Defendant. It was his stand that the Relinquishment Deed is forged as the parents of the parties used to discuss their family affairs with him and the execution of this deed was not within his knowledge. The cross-examination is not very satisfactory and only suggestions have been put to him. However, the Court has to go by the evidence on record.

19. The Relinquishment Deed having been proved beyond any doubt, being a registered document, there is no reason to believe that the same was manipulated. Various suggestions have been placed on record to show that the father had carried out the construction in the property. Obviously, it is not clear as to whether it was the ground floor or the first floor. Photographs do show that the mother has been participating in the family functions and even the wedding card of the Defendant's daughter was printed in the name of the mother i.e. the girl's grand-mother. There are also photographs placed on record which also show that the mother has been living with the Plaintiff. All these documents point to the fact that the mother was living with both

the parties. However, the shares of the brothers cannot be determined simply on the basis of the cordiality between the mother and her sons, in the light of the Relinquishment Deed. The reasons for the execution of the Deed are best known to the mother, who is no more. However, the Relinquishment Deed has been exhibited on record. The attesting witness has appeared and confirmed its execution and so have the officials from the Sub-Registrar's office. The provisions of the Registration Act are clear to the effect that the endorsement made by the registrar is presumed to be correct. It is the settled position that a Relinquishment Deed or a release deed does not need to be proved by an attesting witness. In **Ramesh Chand v. R.S. Aggarwal & Others 22 (1982) DLT 356**, a learned Single Judge of this court held;

“4. The next question raised by the appellant's counsel is that the Release deed dated 12th May, 1969 has not been duly proved. His submission is that the release deed is attested by the witnesses but no marginal witness was produced to prove the release deed. His argument is that under Section 68 of the Evidence Act production of the marginal witness to prove a document required to be attested is essential. There is no dispute about this proposition of law but the question is whether the release deed is required to be attested under any law. A gift deed is required to be attested under Section 123 of the Transfer of Property Act. Similarly, a mortgage deed is required to be attested by the witnesses under Section 59 of the Transfer of Property Act. A will is required to be attested by the witnesses under Section 63 of the Indian Succession Act. No provision has been brought to my notice to show that the release deed is required to be attested by the witnesses. The release deed Ex. A.W.1/1 is not required to be attested and therefore Section 68 of the Evidence Act is not applicable. Learned counsel has referred to Naresh Chandra Bose v. State of West

Bengal and others, AIR 1955 Calcutta 398, Jadeja Natwarsinghji v. Thacker Arjan Sundarji, AIR 1950 Kutch 17, Radha Ballab and another v. Deoki Nandan and others, AIR 1932 Allahabad 320 and Zaharul Hussain v. Mahadeo Ramji Deshmukh and others, AIR 1949 Nagpur 149. All these authorities lay down that if a document is required by law to be attested by witnesses, production of such a witness was necessary to prove the document. These judgments do not help the appellant.

.....
6. *The release deed is a registered document and all endorsements of the Su-Registrar are presumed to be correct under Section 60 of the Indian Registration Act. The executants J.N. Gupta appeared before the Sub Registrar and admitted its execution in the presence of witnesses including the respondent who appeared before the Sub-Registrar at the time of presentation and registration of the document by a Sub-Registrar."*

20. Again in ***Prem Singh v. Birbal 2006 (5) SCALE 191***, it was held by the Supreme Court as under:

"28. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent No.1 has not been able to rebut the said presumption."

21. The reliance of the Defendant on the meaning of the word manipulation does not assist the case of the Defendant. The definition of manipulation as relied upon by the Defendant is read as under:

"MANIPULATION

"The word 'manipulation' is a wide and comprehensive term, defined generally as handling or

treating, especially with skill, and I am unable to read it so as to exclude the work of a dresser of stone. According to the ordinary use of language such dressing, whether it be rough-dressing or fine-dressing, can properly be described as manipulation.” Milne (Alexander) & Son v. Maclean & Son (1935). 28 B.W.C.C. Supp. 44, per the Lord Justice-Clerk, at p.52.”

22. There is not even a remote assertion that the document has been rough dressed or fine dressed. It being a registered document, nothing more is needed. The allegation of manipulation is therefore not made out. The Trial Court has rightly decreed the suit in favour of the Plaintiff.

23. The appeal is dismissed with no order as to costs. All pending applications also stand disposed of.

PRATHIBA M. SINGH, J.
Judge

FEBRUARY 19, 2018/dk