

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

+ **RFA No.277/2018**

% **20th March, 2018**

SATINDER KAUR & ORS. Appellants

Through: Mr. Jagjit Singh, Advocate with
Mr. Preet Singh, Advocate.

versus

AMRIK SINGH & ORS. Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Nos.10928/2018 & 10930/2018 (exemption)

1. Exemption allowed subject to just exceptions.
C.M.s stand disposed of.

C.M. No.10929/2018 (for condonation of delay)

2. For the reasons stated in the application, delay of 71 days
in re-filing the appeal is condoned.

C.M. stands disposed of.

RFA No. 277/2018 and C.M. No.10931/2018 (u/s 151 CPC)

3. This Regular First Appeal is filed under Section 96 of the
Code of Civil Procedure, 1908 (CPC) by the plaintiffs in the suit
impugning the judgment of the Trial Court dated 18.7.2017 by which

trial court has dismissed the suit for partition, declaration and injunction filed by the appellants/plaintiffs, who are the widow and children of the deceased Sh. Devinder Singh son of Sh. Harbans Singh. Appellants/plaintiffs had claimed rights in the suit property belonging to Sh. Harbans Singh on the ground that Sh. Harbans Singh expired intestate on 5.6.2003 and appellants/plaintiffs being the branch of the deceased son Sh. Devinder Singh were therefore entitled to 1/6th share in the suit property. Sh. Harbans Singh died leaving behind six legal heirs being the sons and the daughters.

4. Suit was contested by the respondents/defendants jointly by filing a common written statement. The respondents/defendants are the sons and daughters of late Sh. Harbans Singh as also the legal heirs of one deceased son Sh. Surjeet Singh. The case of the respondents/defendants was that Sh. Harbans Singh had sold the suit property to respondent nos. 1 to 3/defendant nos.1 to 3 by executing an Agreement to Sell and General Power of Attorney dated 18.11.1996, and both of which documents were duly registered before the Sub-Registrar. On the basis of such documents, the respondent nos. 1 to 3/defendant nos.1 to 3 had got the conveyance deed executed

in their favour from the L&DO. Suit was hence prayed to be dismissed.

5. The only issue argued before this Court, and which was also the relevant issue before the trial court, was as to whether the deceased Sh. Harbans Singh, father of Sh. Devinder Singh who was predecessor-in-interest of the appellants/plaintiffs, did or did not execute the registered Agreement to Sell and Power of Attorney in favour of respondent nos. 1 to 3/defendant nos.1 to 3.

6. The leading of the evidence by the parties is recorded in paras 11 to 19 of the impugned judgment and these paras read as under:-

“11. In support of her case plaintiff examined herself as PW-1 and relied upon the documents i.e. site plan Ex.PW-1/1, copy of notice dated 14.07.2003 Ex.PW-1/2 and reply dated 19.08.2003 to the said notice Ex.PW-1/3. She was cross examined by Ld. Counsel for defendants.

12. Plaintiff examined one more witness PW-2 Ravinder Nath Abhilashi a Handwriting and Finger Expert and relied upon documents i.e. photographs Ex.PW-2/2(colly.) and negatives Ex.PW-2/3 (colly), detailed report Ex.PW-2/1. He was cross examined at length by Ld. Counsel for defendants. Thereafter plaintiffs closed PE in affirmative.

13. Defendants examined as many as 08 witnesses. DW-1 is Sh. Ajeet Singh who tendered his evidence by way of affidavit Ex.DW-1/A and relied upon the documents i.e. Agreement to Sell Ex.DW-1/1 and GPA Ex DW-1/2 executed by Sh. Harbans Singh, copies of pass book of DW-1 and of defendants no.1 to 3 Ex.DW-1/3, DW-1/4 and DW-1/5 (OSR) respectively, original lease deed executed in favour of late Sh. Harbans Singh Ex.DW-1/6. He was cross examined by Ld. Counsel for plaintiff.

14. DW-2 is Raj Pal, official witness, from Canara Bank, Kalkaji Branch who had brought the summoned record i.e. original cheques

Ex.DW-2/1 to Ex.DW-2/4 and statement of account Ex.DW-2/5. He was also cross examined by Ld. Counsel for plaintiff.

15. DW-3 is Sushil Lakra, customer Care Officer in Punjab National Bank, Kalkaji Branch, New Delhi who had brought the summons record i.e. attested copies of statement of account Ex.DW-3/1 and Ex.DW-3/2 and copy of destroyed record Ex.DW-3/3. He was also cross examined by Ld. Counsel for plaintiff.

16. DW-4 is Harbans Singh, public witness who stated that he had prepared the agreement to sell and GPA i.e. Ex.DW-1/1 and DW-1/2. He deposed that the said agreement to sell and GPA were executed and registered in his presence and he signed as witness. He further deposed that Harbans Singh had signed the Ex.DW-1/1 and Ex.DW1/2 in his presence. He was also cross examined by Ld. Counsel for plaintiff.

17. DW-5 is Virender Kumar, official witness, UDC in Land & Development Office, Ministry of Urban Development who has brought the summoned record and produced the document i.e. attested copy of GPA, affidavit of attorney and indemnity bond and photocopies of residential proof of Sh. Ajit Singh, Amrik Singh and Balbir Kaur which are Ex.DW-5/1 to DW-5/4 respectively, copy of conveyance deed Ex.DW-5/5. He was also cross examined by Ld. Counsel for plaintiff.

18. DW-6 is Ravi Trihan, UDC, Sub Registrar Office-V, Mehrauli, who had brought the summoned record and deposed that he has seen the original document Ex.DW-1/1 duly registered in his office. He was also examined by Ld. Counsel for plaintiff. DW-7 is Harbans Singh Chawla, who tendered his evidence by way of affidavit Ex.DW-7/A and he was cross examined by Ld. Counsel for plaintiff.

19. DW-8 is B.N. Srivastava a Handwriting and Fingerprint Expert, who tendered his evidence by way of affidavit Ex.DW-8/A and relied upon report Ex.DW-8/1 and relied upon the documents attached with the report Ex.DW-8/2 to DW 8/31 and negative CD Ex.DW-8/32 (colly). He was cross examined by Ld. Counsel for plaintiff.”

7. The respondent nos. 1 to 3/defendant nos.1 to 3 proved and exhibited the Agreement to Sell and Power of Attorney as Ex.DW1/1 and Ex.DW1/2. DW-6 was the witness from the Sub-Registrar's office who stated that agreement to sell Ex.DW1/1 was a registered document as per the record of the Sub-Registrar and which

record was brought by him. Respondent nos. 1 to 3/defendant nos.1 to 3 also summoned witnesses from Canara Bank as DW-2, and from Punjab National Bank as DW-3 to prove statement of accounts as proof of the making of payments to the deceased Sh. Harbans Singh by the respondent nos. 1 to 3/defendant nos.1 to 3. Both the parties also examined a handwriting expert. The report of the handwriting expert of the appellants/plaintiffs was disbelieved because this witness PW-2 Sh. Ravinder Nath Abhilashi in his cross-examination admitted that he had not done any course in forensic science and nor did he take any practical training in government laboratory and institute. He also admitted that signatures taken by him of late Sh. Harbans Singh were on the basis of a photocopy of the lease deed dated 9.9.1963 and the photograph of the admitted signatures of Sh. Harbans Singh were not taken from the original lease deed.

8.(i) Trial court in my opinion has rightly disbelieved the handwriting expert's report of the witness of the appellants/plaintiffs PW-2 as the so called handwriting expert did not have the necessary qualifications and he had given his report on the basis of taking only one signature of the deceased Sh. Harbans Singh and that too from the

photocopy of the lease deed and not from the original lease deed. Trial court has also in my opinion rightly held the respondent nos. 1 to 3/defendant nos.1 to 3 to be the owners of the suit property on the ground that the only dispute unsuccessfully raised by the appellants/plaintiffs was that the signatures appearing on the registered Agreement to Sell and the registered Power of Attorney dated 18.11.1996 were not the signatures of late Sh. Harbans Singh, and that there was no case of the appellants/plaintiffs that signatures of late Sh. Harbans Singh were obtained by cheating or fraud or undue influence etc.

(ii) The relevant issue no.1 has been decided by the trial court by holding that the deceased father Sh. Harbans Singh had executed the Agreement to Sell and Power of Attorney, Ex.DW1/1 and Ex.DW1/2 in favour of the respondent nos. 1 to 3/defendant nos.1 to 3 and that the appellants/plaintiffs were not entitled to partition because the deceased Sh. Harbans Singh was not the owner of the suit property at the time of his death on 5.6.2003 in view of Sh. Harbans Singh having executed the aforesaid registered documents being the Agreement to Sell and Power of Attorney dated 18.11.1996 i.e documents executed

and registered around 7 years prior to the death of late Sh. Harbans Singh. It may also be noted that the undisputed position which emerges on record is that the predecessor-in-interest of the appellants/plaintiffs being Sh. Devinder Singh son of Sh. Harbans Singh had various litigations with his father Sh. Harbans Singh. In my opinion trial court has therefore rightly relied upon the registered documents being the Agreement to Sell and Power of Attorney dated 18.11.1996 Ex.DW1/1 and Ex.DW1/2 to hold that respondent nos. 1 to 3/defendant nos.1 to 3 were owners of the suit property.

9. Counsel for the appellants/plaintiffs argued that in the Sale Deed Ex.DW1/1 it is written in para 1 that out of the total sale consideration of Rs.2,65,000/- a sum of Rs.2,50,000/- was already paid prior to the execution of the Agreement to Sell on 18.11.1996 and the balance sum paid on execution of the Agreement to Sell was Rs.15,000/-, but this contradicts the affidavit by way of evidence filed by the respondent no.2/defendant no.2/Sh. Ajit Singh which showed payments by cheques to Sh. Harbans Singh spreading from 11.11.1996 to 9.8.1999 i.e it is argued that the factual statement in the agreement to sell is incorrect that consideration of Rs.2,50,000/- was already paid prior to the execution of the Agreement to Sell. No doubt there is discrepancy in the

deposition made on behalf of respondent nos. 1 to 3/defendant nos.1 to 3 inasmuch as respondent no.3/defendant no.3 has given details of payments by cheques which are spread from 11.11.1996 to 9.8.1999, however this can at best be taken as a case of the deposition of the respondent no.3/defendant no.3 being a stretched one to prove payment of consideration, but that cannot take away the fact that the Agreement to Sell is duly proved to have been executed by late Sh. Harbans Singh and also registered before the Sub-Registrar. An important point which is also required to be noted is that once it is held that documents being the Agreement to Sell and Power of Attorney bore the signatures of Sh. Harbans Singh and these facts were not executed out of the fraud or undue influence, then the issue of payment of consideration becomes irrelevant because the aspect of consideration was never challenged by the father/executant Sh. Harbans Singh during his lifetime, and that Sh. Harbans Singh lived for around 7 years after execution of the Agreement to Sell and Power of Attorney.

10. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

MARCH 20, 2018
Ne

VALMIKI J. MEHTA, J