

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

+ **RFA No.107/2018**

% ***5th February, 2018***

SANJEET TANEJA Appellant

Through: Mr. Pramod Kumar Ahuja,
Advocate.

versus

RAVINDER KUMAR TANEJA AND ANR. Respondents

Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.4236/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.4238/2018 (for condonation of delay)

2. For the reasons stated in the application, delay of 25 days

in re-filing the appeal is condoned.

C.M. stands disposed of.

RFA No.107/2018 and C.M. No.4237/2018 (stay)

3. 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 31.10.2017 whereby trial court with respect to the subject suit for partition for two properties situated at Mumbai and Delhi has decreed the suit only as regards the Mumbai property by holding the appellant/plaintiff to be the half owner thereof but has dismissed the suit qua the second property by holding that the appellant/plaintiff has no co-ownership right in the property situated at Delhi being B-7/54/1, DDA Flats, Safdarjung Enclave, New Delhi.

4. The case set up by the appellant/plaintiff was that he was the owner of the Delhi property because this Delhi property was purchased by the respondent no.1/defendant no.1/father from the property which was owned by the appellant's/plaintiff's grandfather at Jangpura, New Delhi. It was also pleaded by the appellant/plaintiff that the Delhi property was purchased in the name of both the appellant/plaintiff and the respondent no.1/defendant no.1, and therefore, appellant/plaintiff was co-owner by means of title documents with respect to Delhi property. Hence the appellant/plaintiff prayed for a decree for partition qua the Delhi property.

5. I may note that in the suit there were two properties in issue, with the first property being situated at I-9, Dattaguru Society, Deonar, Mumbai and the second property at Delhi and with respect to property at Mumbai, trial court has granted the decree for partition holding the appellant/plaintiff to be a co-owner of the Mumbai property. Thus the dispute to be decided in this appeal is only as to whether the appellant/plaintiff is a co-owner of the Delhi property.

6. Before the trial court, the case of the appellant/plaintiff was that the Delhi property was purchased by the respondent no.1/defendant no./father from the sale proceeds of the property of the grandfather at Jangpura, New Delhi, but except making self-serving statements, nothing was filed on record which could be believed by the Court that the suit property was purchased by the respondent no.1/defendant no.1/father by selling the property of the grandfather situated at Jangpura, New Delhi. Even if the case of the property at Jangpura, New Delhi being of the grandfather of the appellant/plaintiff and having been sold by the respondent no.1/defendant no.1/father for purchase of the Safdarjung Enclave property at Delhi is correct yet the appellant/plaintiff would not have any right in the Safdarjung Enclave

property at Delhi inasmuch as now it is settled law that by virtue of the judgment of the Supreme Court in the cases of *Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, (1986) 3 SCC 567* and *Yudhishter Vs. Ashok Kumar, (1987) 1 SCC 204* that after passing of the Hindu Succession Act, 1956 if a person inherits property from his paternal ancestors then the inherited property in the hands of the person who has inherited the same is not an HUF property but is a self acquired property of the person who inherits the same. Therefore, it would have made no difference even if the respondent no. 1/defendant no. 1/father had purchased Safdarjung Enclave property at Delhi from the funds of the property of the father of respondent no.1/defendant no. 1 i.e grandfather of the appellant/plaintiff situated at Jangpura , New Delhi.

7. Trial court has held that respondent no.1/defendant no.1/father is the owner of the Safdarjung Enclave property in terms of the documents Ex.DW1/1 and Ex.DW1/2 and which are registered General Power of Attorney and an affidavit executed by the seller Smt. Tara Bansal in favour of respondent no.1/defendant no. 1. It is seen that these documents are of the year 1989. In the present case it

is seen that the rights which the defendant no.1/respondent no.1/father claims are pursuant to an irrevocable General Power Of Attorney which arise in terms of Section 202 of the Indian Contract Act, 1872. In terms of Section 202 of the Contract Act, a General Power Of Attorney given for consideration becomes irrevocable as regards the immovable property for which it is executed. Even Supreme Court has protected rights of an irrevocable General Power Of Attorney holder in terms of the judgment in the case of ***Suraj Lamp Industries Pvt. Ltd Vs. State of Haryana. (2012) 1 SCC 656*** and which judgment only holds rights cannot be created by virtue of documents executed which under law require to be stamped and registered, and in the present case it is seen that documents in question whereby rights are claimed are on the basis of irrevocable power of attorney as provided under Section 202 of the Indian Contract Act. I have also discussed this aspect in detail in the judgment in the case of ***Shri Ramesh Chand Vs. Suresh Chand and Anr., 188 (2012) DLT 538*** by referring to the judgment of the Supreme Court in the case of ***Suraj Lamp (supra)***.

8. Therefore it is seen that appellant/plaintiff failed to prove any right, title or interest in Safdarjung Enclave property and therefore the trial court has rightly dismissed the suit with respect to the Delhi property.

9. Counsel for the appellant/plaintiff argued before this Court that this Court should protect the possession of the appellant/plaintiff and as proved from the various documents filed on record, however I cannot agree with this argument urged on behalf of the appellant/plaintiff because the subject suit is not a suit for protecting possession of the appellant/plaintiff on the ground of appellant/plaintiff being in settled possession because the suit was only for partition of the property, and therefore for determination of the legal rights/title of the appellant/plaintiff in the suit property at Delhi, and therefore this Court cannot decide cases with respect to issues which were never in question and which have not been decided by the trial court.

10. There is no merit in the appeal. Dismissed.

FEBRUARY 05, 2018
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VALMIKI J. MEHTA, J