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

\+ **RFA No. 279/2018**

% **Reserved on: 21st March, 2018**
Pronounced on: 23 rd March, 2018

REKHA GUPTA ..... Appellant
Through: Mr. Sanjay Beniwal, Adv.

versus

ASHOK KUMAR & ANR. ..... Respondents.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. 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 18.9.2017 by which the trial court has rejected the plaint under Order VII Rule 11 CPC in the suit filed for recovery of possession, *mesne* profits and damages. The suit property is a flat bearing no. D-192, Gali No.2, West Vinod Nagar, Delhi-110092.

2. The facts of the case are that the appellant/plaintiff claims ownership of the suit property in terms of the documentation being the Agreement to Sell, Power of Attorney, Will etc dated 20.7.2013 executed by Sh. Rameshwar Dayal. Appellant/plaintiff is the daughter-in-law of Sh. Rameshwar Dayal being the wife of Sh. Mukesh Gupta who is the son of Sh. Rameshwar Dayal. Defendant no.1 in the suit Sh. Ashok Kumar, is the other son of Sh. Rameshwar Dayal, and the defendant no.2 is the wife of the defendant no.1. Appellant/plaintiff has pleaded that on 9.8.2015 the respondents/defendants dispossessed the appellant/plaintiff from the suit property. By the subject suit therefore the appellant/plaintiff by pleading that she is the *bonafide* purchaser of the suit property who has been dispossessed by the respondents/defendants, had sought the reliefs of possession, *mesne* profits and injunction.

3. Written statement was filed by the respondents/defendants. It was pleaded in the written statement that there is no set of documentation dated 20.7.2013 executed by Sh. Rameshwar Dayal in favour of the appellant/plaintiff and in fact Sh. Rameshwar Dayal had bequeathed the suit property in favour of his

two sons being the respondent no.1/defendant no.1 and the husband of the appellant/plaintiff in equal shares in terms of the Will dated 7.5.2014. The documents relied upon by the appellant/plaintiff dated 20.7.2013 were pleaded to be forged, fabricated and a sham transaction including for the reason that no payment of money was ever made by the appellant/plaintiff to Sh. Rameshwar Dayal.

4. By the impugned judgment the trial court has rejected the plaint under Order VII Rule 11 CPC by holding that unregistered documents being the Agreement to Sell, Power of Attorney etc do not confer title of the suit property on the appellant/plaintiff because the documents have been executed on 20.7.2013 and such unregistered documents cannot be looked into in view of the judgment of the Supreme Court in the case of ***Suraj Lamp Industries Pvt. Ltd Vs. State of Haryana. (2012) 1 SCC 656.*** Order VII Rule 11 CPC *inter alia* provides that a plaint which is barred by law can be rejected.

5.(i) In addition to the reasoning of the trial court, this Court would like to add that Section 53-A of the Transfer of Property Act, 1882 which contains the doctrine of part performance was amended w.e.f 24.9.2001 by Act 48 of 2001 whereby the benefit of an agreement to sell in the nature of part performance could not be given unless the agreement to sell was stamped for the value of 90% of the sale consideration of the property and was also registered before the Sub-Registrar. Therefore, after 24.9.2001 if a person claims right on the basis of an agreement to sell, such an agreement to sell to invoke the doctrine of part performance contained in Section 53-A of the Transfer of Property Act, must be duly stamped and registered. Admittedly, the documentation relied upon by the appellant/plaintiff dated 20.7.2013 are unregistered documents.

(ii) It is relevant to note that, though it is not material with respect to decision of this appeal, the Agreement to Sell and the Receipt dated 20.7.2013 talk of payment of sum of Rs.16,80,000/- in cash to Sh. Rameshwar Dayal, and which payment in cash beside being prohibited by the relevant provisions of Income Tax Act, is not supported by any corresponding documents as to how appellant/plaintiff or her husband had this huge amount of Rs.16,80,000/- for being paid to Sh. Rameshwar Dayal. In any case, this Court has to make no final observations with respect to the aspect of validity of the documentation dated 20.7.2013 on merits except that even assuming for the sake of arguments such documents have been executed by Sh. Rameshwar Dayal in favour of the appellant/plaintiff, no legal rights flow to the appellant/plaintiff in terms of this documentation as already discussed above.

6. Learned counsel for the appellant/plaintiff could not argue anything in support of the issue as to how the documentation dated 20.7.2013 can in any manner be legal on account of the bar contained in the amended provision of Section 53-A of the Transfer of Property Act w.e.f. 24.9.2001.

7. At the conclusion of arguments I put it to counsel for the appellant/plaintiff that whether the appellant/plaintiff is interested either to withdraw this appeal and file a suit for partition in view of the fact that the admitted position is that the suit property is jointly owned by the husband of the appellant/plaintiff and the respondent no.1/defendant no.1, the two brothers, in view of the Will dated 7.5.2014 of Sh. Rameshwar Dayal, and as stated by the respondents/defendants in the written statement, and for which purpose, the counsel for the appellant/plaintiff after concluding arguments on 20.3.2018 got the matter listed on 21.3.2018, but on

21.3.2018 only adjournment was asked through a counsel without stating whether any instructions were received from the appellant/plaintiff or not. Accordingly, this Court has proceeded to reserve judgment in the appeal.

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

MARCH 23, 2018 **VALMIKI J. MEHTA, J**

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