

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 30th September, 2019

Decided on : 15th October, 2019

+

RFA 346/2019& CM APPL Nos.18268, 32760 of 2019

BABITA JAIN

..... Appellant

Through : Mr.R.K.Jain, Advocate.

versus

MEENA DEVI @ MEENA JAIN

..... Respondent

Through : Mr.Amit Gupta, Mr.Manish Jain,
Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This appeal is preferred by the appellant/defendant against the judgment and decree dated 08.02.2019 passed by the learned Additional District Judge-3/North District, Rohini Courts, Delhi (hereinafter referred as the learned '*Trial Court*') in CS No.1506/2016 whereby the suit of the respondent/plaintiff for possession, permanent injunction, and damages/ mesne profits was decreed in favour of respondent.

2. The brief facts which culminated into filing of this appeal, as alleged by the appellant are the respondent had filed this suit on the premise she is an owner of ground and first floor, admeasuring 75 square yards each, of property bearing No.D-12, Lord Krishna Road, Adharsh Nagar, Delhi - 110033(hereinafter referred as the '*subject property*') by virtue of a registered gift deed executed by Smt.Bimla Jain in her favour on 05.07.2014. The appellant herein, her sister in law (*Bhabhi*) was

permitted to live in the subject property at the sweet will of the mother of the respondent and the respondent has been requesting the appellant to vacate the premises, but since she had refused to vacate, the respondent has filed the abovesaid suit for possession, permanent injunction and damages/mesne profits @ Rs.50,000/- per month for unauthorised use and occupation of the subject property by the appellant herein.

3. The appellant in her written statement before learned Trial Court had taken an objection that Smt.Bimla Jain, her mother-in-law had executed a Memorandum of Understanding(MOU) dated 07.02.2013, duly attested on 27.02.2013 wherein it was agreed the entire property shall be demolished and shall be reconstructed through a builder, with a stilt parking upto the third floor and the appellant would get an ownership of the entire upper ground floor and first floor with apportioned stilt parking along with other terms and conditions. It was also alleged the appellant came into possession of the subject property as per the MOU dated 07.02.2013 and thereafter, Smt.Bimla Jain had no right or authority to execute any alleged Gift Deed of the ground and first floor of the suit property and hence the Gift Deed is a void document as she was also not in *possession* of the subject property and could not have handed over such possession of the subject property to the respondent herein by executing the Gift Deed dated 05.07.2014. Hence such deed is not a valid document, per law.

4. The respondent in her replication had asserted that on enquiries made from her mother, she was told the document viz MOU dated 07.02.2013 was got executed from her by executing undue influence and

coercion. The relations between her mother (Bimla Jain) with the appellant (Babita Jain) and Sanjay Jain, husband of the appellant were strained. Bimla Jain was threatened by her daughter-in-law (appellant) of implicating her in a false dowry case if she would not execute such MOU. Even the contents thereof were never read to her mother and after execution of the MOU, the appellant had disgracefully turned her mother-in-law out of subject property. Heard.

5. Admittedly such MOU is unregistered. Whether it would confer any right upon the appellant in the subject property or if it would be legally enforceable is yet another issue. Admittedly Bimla Jain was an erstwhile owner of the suit property and she continued to be so till she had executed the Gift Deed in favour of respondent, whereinafter the respondent had become an absolute owner of the subject property. The Gift Deed has been proved as *Ex.PW1/1*. The MOU has also been proved as *Ex.DW1/1*.

6. I have also gone through the evidence led by the parties before learned Trial Court. The respondent has examined two witnesses viz herself as *PW1* and an official witness from the Office of Sub Registrar as *PW2* to prove the execution of the Gift Deed *Ex.PW1/1*. On the other hand, the appellant had examined herself and proved the MOU as *Ex.DW1/1*.

7. The learned Trial Court on perusal of the pleadings as also the evidence of the parties had held as follows:-

"9. The defendant has not disputed the fact that the entire property of which the suit property forms part is in the name of Smt.Bimla Jain. The defendant has relied upon one MOU Ex.DW1/1. The said MOU is an unregistered document. The plea of defendant is that pursuant to the

said MOU, the property was constructed from stilt upto 3rd floor and it was agreed that the upper ground and first floor shall come to the share of defendant and her husband Sanjay Jain. It is further pleaded that defendant is in possession of the suit property pursuant to the said MOU and Smt. Bimla Jain had no right to execute the gift deed in favour of plaintiff qua the upper ground and first floor i.e. suit property.

10. I have perused the entire MOD Ex.DW1/1. In the said MOU, it is stated that the property shall be got reconstructed from the builder, however, defendant has neither examined the builder who had constructed the entire property nor has filed any agreement with the builder entered by the parties pursuant to the MOU. DW-2 during his cross-examination has deposed that the property was reconstructed by him, however, there is no such averment that the property was got reconstructed by him in his entire affidavit Ex.DW2/1. In the MOU, it is stated that the other children of Smt. Bimla Jain have relinquished their share through a relinquishment deed dated 12.03.2012, however, no such relinquishment deed has been placed on record by the defendant.

11. It is well settled law that a bonafide family settlement, if acted upon would bind the parties and even if partition is under an unregistered document, the document is evidence of conduct of the parties and estoppel can be invoked to estop a party from urging to the contrary (Reliance placed on the judgment of Amarjeet Lai Suri Vs. Moti Sagar Sufi and Others 119 (2005) DLT 295). In the present matter, defendant has failed to prove that the property was reconstructed pursuant to the MOU and she had got her share in the property as per the MOU. As discussed above, she has neither examined the builder who constructed the property nor has examined any independent person to prove that the construction was carried out pursuant to the MOU. No reliance can be placed upon the testimony of DW-2 who is an interested witness being the relative of defendant. Further, the signatures of Smt. Bimla Jain on the MOU is entirely different from her signatures on the registered gift deed. In the registered gift deed, she had signed as 'Bimla Jain in Hindi' while in the MOU, the signatures are 'Bimla Devi in Hindi'. Though DW-2 during his cross-examination has deposed that Bimla Jain used to sign as Bimla Devi also, however, no document has been filed by defendant to prove that Bimla Jain used to sign as Bimla Devi also. The defendant has miserably failed to prove the document Ex.DW1/1, hence no reliance can be placed upon the unregistered MOU Ex.DW1/1.

12. On the contrary, plaintiff has duly proved the registered gift deed Ex.PW1/1. She has examined the concerned officer from the office of Registrar to prove that the gift deed was registered and that her mother Smt. Bimla Jain had executed the same and gifted the suit property to her out of love and affection. It has been argued by the counsel for defendant that the possession of the property was never handed over to the plaintiff after the execution of the gift deed, hence, the gift was not complete.

13. Under Section 123 of the Transfer of Property Act, a gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

Section 123 does not make the delivery of possession of the gifted property essential for validity of a gift. Thus, it is settled law that delivery of possession of gift deed property is not an essential requirement for making a valid gift of immovable property. Reliance placed upon the judgment of Hon'ble Supreme Court of India in Renilcuntia Rajamma Vs. K.Sarwanamma (2014) 9 SCC 455). The argument of the Ld. Counsel for the defendant is thus untenable and without any basis."

8. In this appeal, learned counsel for the appellant has again raised same contentions namely **a)** Gift Deed Ex.PW1/1 is void since Smt. Bimla Jain i.e., the mother of the respondent had no authority to execute it as she had already executed the MOU Ex.DW1/1 in favour of the appellant herein; **b)** MOU in fact is a family settlement and it does not require any registration and is admissible in law, if is executed to maintain harmony and goodwill/peace in the family; and **c)** Gift Deed, even otherwise, is an invalid document since the possession of the subject property was never with the donor, hence could not have been delivered with the execution of alleged Gift Deed – Ex.PW1/1.

9. On the other hand, the learned counsel for the respondent contends the MOU was got signed from the mother of the respondent even without allowing here to read the same as is evident from its contents which state the subject property originally belong to Rajender Prasad, husband of Smt.Bimla Jain and upon his death the subject property devolved upon Smt.Bimla Jain, his widow, both sons and one daughter. All three siblings then executed relinquishment deed dated 12.03.2012 and relinquished their shares in the subject property in favour of their mother Smt.Bimla Jain and it was only then she had executed the MOU Ex.DW1/1 and that such document Ex.DW1/1 was executed only to

maintain harmony and goodwill/peace in the family, hence even if not registered, is admissible in evidence.

10. In support of the contentions, the learned counsel for the appellant has relied upon *Kale and Others vs Deputy Director of Consolidation and Others* AIR 1976 SC 807; *Amarjeet Lal Suri vs Moti Sagar Suri & Others* 119 (2005) DLT 295; *Vijay Kumar Jain vs Sanjay Kumar* AIR 2003 Delhi 168; and *Pal Singh vs Dershan Singh* 2011 RLR (Note) 24.

11. The crux of above decisions is an oral settlement between the family members *if* later reduced into writing by way of family settlement, such family settlement shall not be required to be registered and *if* the parties have acted upon the contents of such family settlement, it would then become admissible in evidence. There is no dispute to the law propounded in above decisions. However, the foremost question here is if the document Ex.DW1/I is a family settlement or not. Admittedly Ex.DW1/I does not bear signatures of *all* members of the family. In the decisions cited by the learned counsel for the appellant, all executants of such family settlement(s) therein had some share in the properties, which they had settled in such family settlements. However the MOU Ex.DW1/I was signed only by Smt Bimla Jain, Sanjay Jain and the wife, the appellant, to the exclusion of other children of Smt. Bimla Jain.

12. Admittedly, the relinquishment deed dated 12.03.2012 allegedly executed by all the legal heirs of Rajender Prasad in faovur of Smt.Bimla Jain was also not proved on record. A bare perusal of the Gift Deed Ex.PW1/I would rather reveal the subject property was infact purchased in the name of Smt.Bimla Jain and it never stood in the name of her

husband late Rajinder Prasad, as suggested by the MOU Ex.DW1/1. It rather goes on to show such document apparently was never shown nor read over to Smt.Bimla Jain while obtaining her signatures on it.

13. Though, it is the contention of the learned counsel for the appellant that Smt.Bimla Jain was never examined by the respondent to prove Gift Deed Ex.PW1/1, but suffice to say she was neither called by her daughter-in-law/appellant to prove her MOU Ex.DW1/1. Smt.Bimla Jain is still alive and has not challenged the Gift Deed Ex.PW1/1 executed by her in favour of her daughter/respondent herein. Thus fact alone goes against the appellant.

14. The learned Trial Court has also held there is no evidence on record if the subject property was got constructed through the builder as was recorded in MOU Ex.DW1/1. DW2, examined by the appellant herein, did not utter a single word qua construction of the building through a builder, hence, it cannot be urged if the terms and conditions of the MOU were ever acted upon by the parties either.

15. In *Promila Gulati vs Anil Gulati* 2015 (149) DRJ 195 where an the oral family settlement was pitted against a registered document, it was held Gift Deed being a registered document needs to be relied upon and it note:-

"14. Having gone through the pleadings of the parties and the entire gamut of the case, it is admitted position that the father of the plaintiff has gifted the suit property in favour of the plaintiff. The defendant has not disputed the fact that it is a registered document. In nutshell, the case of the defendant is that there was an oral family settlement by virtue of which the suit property has come into the favour of the defendant. Admittedly, the Gift Deed is registered Gift Deed which is dated 3rd September, 1984. On the basis of the registered Gift Deed, a conveyance deed dated 12th October, 2000 was also registered in favour of the plaintiff undisputedly. Defendant did not take any steps

for cancellation of the said documents neither any proceedings are pending in this regard.

15. Defendant has not initiated any proceedings i.e. suit for implementation of an oral family settlement or any other claim raised by the defendant in the written statement. Therefore, this Court is unable to accept the contention of the defendant in view of the fact that it is a registered document in favor of the plaintiff since more than 30 years. The defendant in order to confuse the real issue involved in the matter is trying to raise the defence which is totally out of context and afterthought. In case the defendant is claiming any right in the suit property, he ought to have initiated the appropriate remedy in accordance with law. The defendant has admitted in his pleading that the father of the plaintiff was the owner of the suit property which has been admittedly gifted to the plaintiff by her father. In case any amount is spent for the purpose of construction of the suit property as alleged by the defendant, the suit for recovery of said amount ought to have been filed. There is no written document at all between the two families of any nature. On the otherhand, the gift deed is a registered document which is within the knowledge of the defendant and other family members. All the pleas raised by the defendant are dishonest defence, which has no bearing in the eyes of law. The entire defence is moonshine which are raised in order to confuse the Court. Hence, no trial in the matter is required. In the present case, as the defendant is merely a licensee, the suit filed by the plaintiff for mandatory injunction is maintainable in view of peculiar facts and circumstances. Thus, the objection of the defendant is rejected."

16. Admittedly the appellant did not take any step to get the gift deed dated 5.7.2014 cancelled nor had filed any suit for implementation of the alleged MOU Ex.DW1/I. The decisions, cited by the learned counsel for appellant only goes on to show an oral settlement *if* recorded in writing, does not require any registration. However, the MOU Ex.DW1/I *if* read in toto, does not speak of any oral settlement recorded in writing. Firstly Ex.DW1/I is not signed by *all* the family members; secondly it nowhere records it was executed to maintain harmony in the family; thirdly, it creates right in favour of the appellant in the subject property, hence require registration, per Section 17 of the Indian Registration Act.

17. Qua contention (c), *viz* possession was never delivered to the respondent at the time of Gift Deed, I may refer to *Sehdev Singh Verma*

vs *J.P.S. Verma & Another* 223(2015) DLT 235 (DB) wherein it was noted:-

"46. We note that an argument was advanced on behalf of appellant before the Single Judge that gift in question was not complete in the instant case as the deceased had not delivered the possession of the suit property to the defendant No.2 at/after the time of making the gift. In this regards, suffice would it be to note the dictum of law laid down by three- Judge Bench of Supreme Court in the decision reported as (2014) 9 SCC 445 Renikuntla Rajamma vs. K. Sarwanamma that delivery of possession of gifted property is not an essential requirement for making a valid gift of the immovable property."

18. In view of above, there is no illegality in the impugned judgment and decree passed by the learned Trial Court and hence there is no cogent reason to set aside the decree or take a divergent view than the view taken by the learned Trial Court. The appeal stands dismissed, being devoid of any merits. No order as to costs.

OCTOBER 15, 2019

M

YOGESH KHANNA, J.