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

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Reserved on: 19th November, 2019

Delivered on: 21st November, 2019

+ **RFA 525/2019 and CM APPL No.25715/2019**

KAMLESH

..... Appellant

Through : Mr.Nand Kishor Goswami and
Mr.Ankit Tandon, Advocates.

versus

MAYA

..... Respondent

Through : Mr.Jai Gopal Garg, Ms.Mamta
Garg and Mr.Vishal, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This appeal is preferred by the appellant/defendant against the judgment and preliminary decree dated 09.01.2019 passed by the learned Additional District Judge-2/Shahdara District, Karkardooma Courts, Delhi (hereinafter referred as the learned '*Trial Court*') in CS No.892/2016 (Old No.28/2014) whereby the suit of the respondent was decreed against the appellant.

2. The respondent filed the suit for possession, partition, damages/ mesne profits, mandatory injunction and permanent injunction against the appellant in respect of property bearing No.85/92, Bhim Gali No.7, Ganga Sahai Colony, Village Mandoli, Delhi – 110093 admeasuring 50 square yards falling in Khasra No.25, 10/2, Renvenue Estate of village Mandoli, Delhi (hereafter referred as the '*suit property*').

3. The brief facts are:-

- a)* the appellant and respondent jointly purchased the suit property for a consideration of Rs.50,000/-, contributing equal share by way of irrevocable General Power of Attorney dated 25.06.2005 duly registered in the office of the Sub-Registrar – IV, Seelampur, Delhi on 30.08.2005;
- b)* it was alleged the respondent is 50% owner of the suit property and in the year 2008-09 had constructed a room, toilet and bathroom at the first floor of the suit property and gave it to the appellant to use it as a licensee;
- c)* in the first week of October 2013, the respondent along with her husband contacted the appellant and her husband (*Jeth* of the respondent) in the presence of other family members and requested the appellant to hand over her 50% portion and to raise partition wall in the suit property and verbally terminated the license of the upper portion of suit property, but to no avail; and
- d)* on 02.01.2004 she again went to the appellant along with the family members, but nothing was done and the original documents executed by the erstwhile owner were with the appellant and since he even refused to give photostat copy of the irrevocable General Power of Attorney, she had no other option but to obtain the certified copy from the office of the Sub Registrar and finding no other alternative, issued the legal notice dated 22.01.2014 to the appellant through counsel asking her to partition the suit property and hand over 50% of the same; hence the above said suit.

4. The appellant on appearing before the learned Trial Court controverted each and every allegations made in the plaint by filing the written statement. It is stated the suit property was purchased by the respondent for a consideration of Rs.3,07,000/- from the erstwhile and she took loan of only Rs.1.00 lac from the appellant, which she repaid in the year 2008 vide receipt, but since the suit property was in the joint names of the parties, her request fell on deaf ear of appellant qua her request for deleting her name from the property documents.

5. The learned Trial Court framed the following issues:-

- “1. Whether the plaintiff proves that the suit property is jointly purchased in the name of the plaintiff and the defendant? OPP*
- 2. Whether the defendant proves that she had taken a loan without interest of Rs.1 Lakh from the plaintiff for purchase of the property and that in the guise of such loan transaction, the plaintiff had played fraud on the defendant and her husband as stated in the preliminary objection in the WS? OPD*
- 3. Whether the plaintiff is entitled for the reliefs as in the suit for partition and consequential relief? OPP*
- 4. What Relief.”*

6. The respondent examined herself as *PW1* and proved the site plan of the suit property as *Ex.PW1/1*; certified copy of registered Irrevocable General Power of Attorney as *Ex.PW1/2*; copy of legal notice dated 22.01.2014 as *Ex.PW1/3*; copy of written complaint to the SHO dated 13.04.2004 as *Ex.PW1/4*; and copy of written complaint dated 23.04.2014 as *Ex.PW1/5*. The originals of *Ex.PW1/4* and *Ex.PW1/5* were seen and returned by learned Trial Court. She also examined Mr.Veer Singh as *PW2*; Mr.Kishan as *PW3* and Mr.Braham Dutt as *PW4*. On the other hand, the appellant examined herself as *DW1* and besides exhibiting her affidavit of evidence as *Ex.DW1/A* proved documents viz original receipt dated 05.07.2005 as *Ex.DW1/1*; original irrevocable GPA

dated 28.06.2005 registered on 30.08.2005 as Ex.DW1/2; original receipt dated 10.04.2008 as Ex.DW1/3; copy of complaint to SHO, Harsh Vihar as Ex.DW1/4; copy of Aadhaar Card, Ration Card and electricity bill as Ex.DW1/5 to Ex.DW1/7, original were seen and returned to witness and Mark A to Mark C.

7. The finding on issue No.1 was given in favour of the respondent by the learned Trial Court observing the plaintiff has proved an irrevocable GPA Ex.PW1/2 and also a receipt and even had examined the erstwhile owner Mr.Braham Dutt, who had executed the irrevocable GPA dated 28.06.2005 and he rather deposed the sale consideration of the suit property was Rs.3,07,000/- and Mahipal Singh, husband of the appellant never told him he had borrowed a sum of Rs.1.00 lac from Vir Singh, husband of the respondent. He also deposed the possession of the suit property was handed over to both the brothers in presence of their wives i.e. front portion room was given to Mahipal Singh and back portion was given to husband of respondent namely Vir Singh. Since the documents Ex.PW1/2 and Ex.DW1/2 pertaining to the subject property were in the joint names of both the parties, the issue No.1 was decided in favour of the respondent.

8. Qua Issue No.2, whether an amount of Rs.1.00 lac was received by defendant as loan or whether it was repaid vide receipt Ex.DW1/3; PW3 Kishan, a witness has deposed against the appellant stating, *interalia*, his signatures were obtained on receipt Ex.DW1/3 which receipt did not contain signatures of any another witness or of the respondent.

9. The learned Trial Court had dealt with the evidence of parties in detail and had come to a conclusion - the receipt Ex.*DW1/3* i.e. Ex.*PW1/DA* is a forged one and neither an alleged loan of Rs.1.00 lac was ever given to the appellant nor its repayment was ever proved by the appellant. Thus a preliminary decree of partition was passed by learned Trial Court as also of permanent injunction against the appellant.

10. The learned counsel for the appellant argues there being an unexplained delay in filing of this suit for possession and it goes to show the respondent had an evil eye on the suit property. This contention is not tenable. As alleged, the respondent made certain construction on the first floor and allowed the appellant to use such portion on licence basis. It was only when the appellant had refused to vacate the said portion, the respondent issued notice Ex.*PW1/3* and immediately thereafter filed this suit for partition, possession, damages and injunctions.

11. Rather on the other hand, if the case of the appellant is the suit property was purchased by her and the respondent despite promises did not come forward to get her name deleted from the ownership documents or that appellant had repaid alleged loan amount of Rs.1.00 lac, *per* receipt Ex.*DW1/3* of the year 2008, then she ought to have filed suit for specific performance or a suit for declaration or for seeking deletion of the name of the respondent from ownership documents, at least within three years of alleged repayment of loan, which she had miserably failed, hence this contention has no merits.

12. It was then argued by the learned counsel for the appellant that it is difficult to understand a person contributing equal amount to purchase the property was not aware about its sale consideration amount as the respondent in her plaint averred she had purchased the suit property for Rs.50,000/-, but whereas when in the written statement it was contended the suit property was purchased for a sum of Rs.3,07,000/-, the respondent admitted such consideration in the replication, hence the respondent was telling a lie and had filed a false suit.

13. I have gone through the documents. It appears an amount of Rs.50,000/- was alleged in the plaint only because the documents of purchase mention the purchase price as Rs.50,000/-. The balance amount probably was paid in cash and was never mentioned in the purchase documents, may be, for saving tax etc.

14. Lastly, it was argued even if receipt Ex.PW1/DA was not proved then also the respondent was only entitled to receive her loan amount and not a share in the property. I disagree with the same as the non-proving of such receipt would wash away its entire contents, including any alleged admission of the respondent of receipt of Rs.1.00 lac or her promise to get her name deleted from ownership document. In fact no credence could be given to such receipt and rightly held so by the learned Trial Court. Admittedly, the second witness to the receipt was never examined. The witness Mr.Kishan who was examined, admittedly did not support the appellant and rather disproved the truthfulness of receipt.

15. In view of above, I see no reason to differ from the findings of the learned Trial Court. There is no illegality in the impugned judgment passed by learned Trial Court. Accordingly, the appeal has no merits and stands dismissed. The pending application, if any, also stands dismissed. No order as to costs

YOGESH KHANNA, J.

NOVEMBER 21, 2019

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