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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 30.05.2019

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FAO No.469/2017 & CM Nos. 43689/2017, 21596/2019

JANAK KAPOOR & ANR.

.....Petitioners

Through: Mr. Anuj Gupta, Advocate with Appellants
in person.

Versus

AMIT KAPOOR & ANR.

..... Respondents

Through: Respondent No. 1 in person.
Mr. Pramod Kumar Ahuja with Mr. J.K.
Jain, Advocates for Respondent No.2 with
Respondent No. 2 in person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns an order dated 06.09.2017 passed by the learned Additional District Judge in dismissing the appellants application under Order 7 Rule 11 CPC, whereby the appellants-defendants had sought rejection of the suit, as being not maintainable. Respondent no.1 – Mr. Amit Kapoor had filed a suit for declaration, cancellation and permanent injunction against his mother – defendant/ appellant no.1 and his sister Ms. Roma Malhotra – defendant/ appellant no 2.

2. The brief facts of the case are that Late Mr. Kewal Krishan Kapoor had purchased a property bearing no.8A/140, WEA, Karol Bagh, New Delhi

(hereinafter to be referred as the 'suit property') from one Mr. Dhruv Kumar in the year 1974. It was his self-acquired property. He had, by a Will dated 22.08.1994, bequeathed it to his wife Ms. Janak Kapoor – appellant no.1, with the observation that if she was not alive at the time of his death, the suit property would be inherited equally by his two sons i.e. Mr. Amit Kapoor and Mr. Rajiv Kapoor, the respondents herein. After his demise, it stood transferred in the name of his widow, Ms. Janak Kapoor with the 'No Objection' from all her children and a Conveyance Deed was executed by the Delhi Development Authority (DDA) on 01.06.2012; basically on the basis of the aforesaid Will and 'No Objection' issued by the children. In effect, by virtue of the said Conveyance Deed, Ms. Janak Kapoor became the absolute owner of the aforesaid property. Since the property was old, appellant no.1 – Ms. Janak Kapoor thought it appropriate to rebuild the same. A property developer was engaged, to whom one floor i.e. the second floor of the proposed new building was allocated. In other words, the entire property comprising a stilt parking, the upper ground floor, first floor, third floor and the roof rights would come to the share of Ms. Janak Kapoor, whereas the second new floor would be appropriated by the builder. After the super structure of the new building was built, due to delay in the completion of the project, the project was taken over and completed by Ms. Janak Kapoor. Nevertheless, the second floor was peacefully handed over to the property developer, who further sold it to a third party. There is no *lis* apropos the second floor. While the building was being constructed, the entire family was accommodated elsewhere, for which the rent was paid by the builder. After the building was completed, her sons Mr. Rajiv Kapoor and Mr. Amit Kapoor occupied the upper ground floor and the first floor at

their own will. The mother gifted the third floor to her married daughter Ms. Roma Malhotra by the Registered Gift Deed dated 04.11.2015 and since the latter was living in her matrimonial home, while leaving the mother to occupy the top floor, much to her dislike, disapproval and discomfort as well as leaving her feeling ostracized. She was already a patient of acute arthritis and was having difficulty in moving about. Now, having been flung to the top floor, her sense of alienation has increased. Albeit, the building has a facility of lift, nevertheless, to her it does not have the same benefit and advantage of being on the upper ground floor that is closer to the earth. She was already 76 years.

In the aforesaid context but for reasons best known to respondent no.1 – Mr. Amit Kapoor, that he filed the suit against his mother and sister seeking the following reliefs:-

“a) To cancel the Gift Deed dated 4.11.2015 executed by Defendant No. 1 in respect of 3rd floor of the suit property No. 8A/140, W.E.A. Karol Bagh, New Delhi-110 005, in favour of defendant no. 2 and registered vide Registration No. 8463 in Book No. 1, Volume No. 16222 on pages 1 to 8 before the sub-Registrar-III, Delhi ;

b) To pass Money Decree in favour of the plaintiff and against the defendant no.1 & 2, thereby directing her to pay to the plaintiff his share of an amount of Rs.20,00,000/- (Rupees Twenty lacs only) with interest @18% per annum for the entire period till its realization and also to pay the amount of joint fixed deposits which she got illegally encashed;

c) To pass a Decree of Permanent Injunction in favour of the plaintiff and against the defendant no.1 and 2 their agents,

assignees and associates, thereby restraining them from dispossessing the plaintiff and also from selling or creating any third party interest in the aforesaid suit property and from encashing the remaining fixed deposits which are in the joint name of the plaintiff and defendant no. 1.

d) To Award the cost of the suit in favour of the plaintiff and against the defendants no. 1 & 2.”

Rs. 20,00,000/- was sought as his share from the amount of Rs.60,00,000/- received from the property developer. The aforesaid suit is premised on the contention that the rights given to his mother by the aforesaid Will was a limited one, that is, she could enjoy the property only in her lifetime, whereafter it would be inherited by the two sons i.e. Mr. Amit Kapoor and Mr. Rajiv Kapoor. Indeed, the suit avers as under:-

“2. That Shri Kewal Krishan Kapoor died on 24.09.1994 and he was survived by his wife (defendant no.1) , two sons (plaintiff and defendant no.3) and one daughter (defendant no.2). During his life time the defendant no. 2 & 3 were got married.

3. That during his life time Shri Kewal Krishan Kapoor, executed a WILL dated 22nd August, 1994, at Delhi in respect of his aforesaid self acquired property i.e. the suit property, according to which he bequeathed the suit property to his wife (defendant no. 1) and after her death or if she is not olive at the time of his death, the property will be inherited by his two aforesaid sons(Plaintiff and Defendant no.3) equally.

4. That in this way, by virtue of the WILL of late Shri Kewal Krishan Kapoor, the Defendant No. 1 was given limited rights in the-property who enjoyed the same during her life time and it

was- specifically mentioned that on her death the property will be inherited by his two sons i.e. plaintiff and defendant no.3, equally. Thus, under the said WILL, Defendant No. 1 was not given any right to sell, transfer, gift or create third party interest in the said property and she did not get absolute right to deal with the aforesaid property in any manner whatsoever by virtue of the said WILL.

5. That after the death of their father Shri Kewal Krishan Kapoor, the plaintiff looked after his mother (Defendant No. 1) properly and he had always been very obedient to her. The defendant no. 1 was living with the plaintiff and he looked after her all needs and comforts. The plaintiff was married in the year 2006 i.e. about twelve years after the death of his father. The wife of plaintiff has also been giving the same respect to the defendant No. 1 all throughout and always treated defendant no. 1 as her mother.

It may be worth mentioning that the plaintiff used to pay a handsome amount to the defendant no. 1 every month so that she may feel herself financially secure in all respect. Not only this, he also used to get prepared fixed deposits in his name jointly with his mother on regular basis and said fixed deposits were always kept with her.

3. The appellants i.e. the mother and daughter had contested the maintainability of the suit and sought its dismissal under Order 7 Rule 11 CPC on the ground that i) the absolute right having been conveyed to the mother in terms of the Will and accepted without any demur by the respondents – Mr. Amit Kapoor and Mr. Rajiv Kapoor, resulting in the Conveyance Deed in favour of the mother, it had extinguished all rights, if any, in favour of the sons; ii) that after the execution of the Conveyance Deed dated 01.06.2012 by the DDA, appellant no.1 – Ms. Janak Kapoor

became the absolute owner of the suit property, it was for her to use, develop or dispose-off as she desired; iii) the Collaboration Agreement with the property developer did not create or suggest any rights in favour of the sons and iv) the mother's share would come to her except for the second floor, which was to be given to the property developer for his investment in developing the property.

4. The learned counsel for the appellants submits that even the farfetched argument, that a limited right was granted to the mother is not made out, because the plain language of the Will. It is argued that therefore, the suit is baseless and should be rejected/dismissed. The Will reads as under:-

“ I, Kewal Kishan Kapoor Son of Shri Babu Lal Kapoor Resident of 8A/ 140, W.E.A., Karoi Bagh, New Delhi - 110005, Aged 59 years, make this Will and Testament on this 22nd August 1994 at New Delhi of my own free will and pleasure and in full possession of my senses.

I have made this testamentary or deposition of any kind as far as any assets are concerned but in case any such deposition has been made the same is hereby revoked and cancelled. My family consist of myself, wife and my following children:

Wife - Smt. Janak Kapor

Sons :

1. Shri Rajeew Kapoor

2. Shri Amit Kapoor

Daughter: Mrs. Roma Malhotra

I have been living all along with my wife and sons who have been looking after me.

I own following assets and after my death these assets shall be given as follows :-

I own a house no. 8A/140, W.E.A. Karol Bagh/ New Delhi - 110005 which is my self acquired property which I bequeath to my wife after my death and after her death or if she is not alive at the time of my death the property will be inherited by my two sons equally.” (emphasis supplied)

5. The language of the bequeathal is clear and unambiguous. The plain reading of the same implies that the self acquired property i.e. the suit property of the Testator Mr. Kewal Krishan Kapoor would be inherited, after his death, by his wife and in the event that she predeceased him, it would go in equal share to his sons. In other words, the sons would inherit the suit property only if their mother was not alive. Fortunately, the mother is alive and she would inherit the suit property. The sons would have no rights at all. The aforesaid bequeathal does not give the mother a limited right but an absolute right and she would be free to utilise the same and dispose it off at her free will. The impugned order refers to the Will, which in any case was superseded and had an implicit acceptance of the plaintiff inasmuch as he had given his consent to the DDA for transferring the property exclusively in the name of the mother, which resulted in the Conveyance Deed in her favour. The Conveyance Deed is not disputed and is not under challenge. Therefore, once the suit property has been conveyed to the mother and then she transferred a portion thereof to her daughter by way of a Registered Gift Deed, the same cannot be challenged. That she is the absolute owner of the suit property stands duly established and accepted by the plaintiff himself.

That being the position, the plaintiff would have no cause of action or basis to file the suit. In the circumstances, the suit would not be maintainable.

6. Mr. Pramod Ahuja, the learned counsel for respondents, relies upon the judgment of the Supreme Court in *P.V. Guru Raj Reddy vs. P. Neeradha Reddy & Ors.*, (2015) 8 SCC 331, which held, *inter alia*, that the plaint could be rejected only if it *ex facie* did not disclose a cause of action or on the reading thereof, the suit appears to be barred by any law. Indeed, that is the position in this case because the plaint itself discloses that the Conveyance Deed dated 01.06.2012 had been issued to the mother after 'No Objection' by the plaintiff – Mr. Amit Kapoor and the other son Mr. Rajiv Kapoor, who were the purported beneficiaries of the Will i.e. they knew the import of the Will and voluntarily gave consent of issuance of the aforesaid Conveyance Deed in favour of the mother. Having done so, reference to the Will or any other document prior thereto would be of no consequence. Therefore, once the absolute right of the mother has been accepted by the sons, there will be no cause of action for filing the suit.

7. Mr. Anuj Gupta, the learned counsel for the appellants, submits that that the rights of a Hindu woman are secured under section 14 (1) of the Hindu Marriage Succession Act, 1956, which reads as under:-

“14. Property of a female Hindu to be her absolute property

(1) Any property possessed by a Female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation: In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act."

8. In other words, once the DDA had executed the Conveyance Deed, the right of appellant no. 1 – Ms. Janak Kapoor in the said suit property becomes absolute.

9. Mr Ahuja further submits that the mother has filed a suit for mandatory injunction for possession of suit property from her sons, Mr. Amit Kapoor and Mr. Rajiv Kapoor. The suit is pending. He refers to section 14(2) of the Hindu Marriage Succession Act, 1956, to claim right of residence in the suit property. However, the right of residence would commence only if it was a joint property, whereas the suit property was self acquired by late Shri Kewal Krishan Kapoor and bequeathed absolutely to his wife Ms. Janak Kapoor. This fact has already been accepted by the respondent including the plaintiff. He cannot resile from it, just to manufacture a cause of action.

10. In view of the above, the impugned order is set aside. The suit discloses no cause of action, hence, it is rejected. The injunction against the appellants from creating any third party rights in this suit property stands vacated. Accordingly, in view of the order passed in the present appeal, the Civil Suit No. CSDJ; 1400/2017 pending in the Trial Court is dismissed.

11. The appeal is allowed and stands disposed-off. The pending applications also stand disposed-off.

NAJMI WAZIRI, J.

MAY 30, 2019

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