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

Date of Decision : 18.02.2020

+ **RSA 29/2020**

VIJAY KUMAR GUPTA & ANR Appellants
Through Mr.Shafiq Khan, Mr.Tariq
Muneer and Ms.Mekhala
Srivastava, Advs.

versus

VINOD AGGARWAL & ORS Respondents
Through Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

CM No.6517/2020 (Exemption)

Allowed, subject to all just exceptions.

RSA 29/2020 & CM Nos.6518-19/2020

1. This appeal has been filed challenging the judgment and order dated 19.09.2019 passed by the learned Additional District Judge-03, South-West, Dwarka Court, New Delhi in Regular Civil Appeal No.54669/2016, titled *Vijay Kumar Gupta & Anr. v. Vinod Aggarwal & Ors.*

2. By the Impugned Judgement and Order, the learned Appellate Court was pleased to dismiss the appeal filed by the appellants herein

against the judgement and order dated 14.12.2015 passed by the learned Civil Judge, South-West, Dwarka Court, New Delhi in Civil Suit No.93/2011, titled ***Vijay Kumar Gupta & Anr. v. Vinod Aggarwal & Ors.***, by which the learned Trial Court was pleased to dismiss the suit filed by the appellants herein.

3. In the suit filed by the appellants, the appellants had *inter-alia* challenged the Sale Deed dated 24.11.2006 executed by the appellant no.2 in favour of the respondent nos.1 and 2, as having been obtained by exercising fraud on the said plaintiffs. It was further asserted that the suit property was in fact owned by the appellants/plaintiffs together having been purchased by a Sale Deed dated 29.09.2006.

4. The learned Trial Court by its judgement and order dated 14.12.2015, dismissed the suit holding the same to be barred by the limitation. The learned Trial Court has observed as under:

“12. I have heard the submissions made on behalf of parties and have also perused the record. A bare perusal of the plaint show that plaintiffs have alleged that they have come to know about the existence of sale deed in question only on 28.12.2010 when Sh. Rajiv Aggarwal has shown the aforesaid sale deed to the plaintiffs. However, during his cross examination dated 12.08.2015 he was found taking contradictory stands in this regard. In the first instance, he has deposed that impugned sale deed was not available with Sh. Rajiv Aggarwal and Sh. Sushil Gahlot on that day. However, subsequently, he changed his stand and deposed that sale deed executed by him in favour of defendants was produced by them on that day. Thereafter, it was deposed by him that they have not informed him in the police station that defendant nos.1 & 2 have further sold the suit property to anyone else on the basis of

impugned sale deed. It is highly improbable as to why a person will show a sale deed executed by plaintiff no.2 in favour of defendant nos.1 & 2, to the plaintiffs when he is not claiming any title through defendant nos.1 and 2. Thus, there was no occasion for Sh. Rajiv Aggarwal to show impugned sale deed executed by plaintiff no.2 in favour of defendant nos.1 and 2 inasmuch as they have not informed plaintiffs that defendant nos.1 and 2 have further sold the suit property to anyone else including to him on the basis of impugned sale deed. The entire plea of plaintiffs regarding acquiring knowledge of existence of impugned sale deed on 28.12.2010 is accordingly an afterthought and seems to have been falsely taken by plaintiffs merely to make out a ground to bring their suit within limitation.

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14. In the present case, plaintiff no.2 has not even denied the execution of sale deed and that he has appeared before the Sub-Registrar for registration of the same. His only explanation is that the defendants have got signatures of plaintiff no.2 on the sale deed under the pretext that defendant no.2 was signing the sale deed as a witness.

15. The deposition of PW1 in para 15 of his affidavit in this regard is beyond pleadings inasmuch as there is not even a single whisper about the aforesaid fact in the entire plaint of plaintiffs. Even otherwise, plaintiff no.2 is admittedly not only a graduate but also a businessman and but for wilful abstention from enquiry or search which he ought to have been made, he would have known that the document he was signing was a sale deed and he was signing the same as a vendor. As has already been observed that plaintiffs have failed to prove that they had come to know about the existence of sale deed on 28.12.2010 as alleged by them and thus it can safely be inferred that they had been aware of

existence of sale deed since the date of its execution and registration.”

5. The learned Appellate Court has affirmed the finding of the learned Trial Court by the Impugned Judgement and Order dated 19.09.2019, observing as under:

“14. It is apt to note that issue No. (ii) and (vi) have been decided against plaintiffs after detailed discussion and Ld. Trial Court has observed that vague allegations of fraud upon plaintiff No.2 was averred in the plaint without stating particulars of alleged fraud as per the requirement of Order VI Rule 4 CPC and plaintiff No.2 in para 15 of his affidavit Ex.PW-1/A has stated for the first time that his signatures were obtained upon sale deed dated 24.11.2006 under the pretext that he was signing the document as witness.

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16. It is also significant to note that plaintiffs (appellants herein) have averred that suit property is a disputed property as various sale deeds have been executed in respect of the property including sale deed executed by Sh. Rajiv Aggarwal in favour of Sh.Pawan Aggarwal and another sale deed executed in favour of Sh. Sushil Gahlot.

17. Plaintiffs' contention that plaintiff No.2 had gone to the office of Sub-Registrar and signed the documents as witness without any intention to execute sale deed in favour of defendants (raised for the first time in para 15 of affidavit Ex.PW-1/A) for alleging fraud has failed to convince Ld. Trial Court who has observed that such averment in the affidavit is beyond pleadings and plaintiffs having failed to produce original sale deed dated 29.09.2006 or place certified copy thereof have failed to discharge the onus to prove that impugned sale

deed was executed in favour of defendant by playing fraud upon plaintiff No.2.

18. It is apt to note that no complaint has been filed against defendants before any authority and plaintiff No.2 having signed each page of sale deed dated 24.11.2006 as vendor cannot feign ignorance about execution of sale deed by claiming that he had signed the document which was registered in the office of Sub-Registrar as witness for claiming that he had no knowledge of existence of impugned sale deed till 28.12.2010 when Sh. Rajiv Aggarwal allegedly came to the property along with sale deed executed in favour of Shri Vinod Aggarwal and Shri Ratan Aggarwal.”

6. The learned counsel for the appellants submits that alongwith the appeal, the appellants had filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’) seeking to bring on record the certified copy of the Sale Deed dated 29.09.2006, the learned Appellate Court, however, without deciding the said application proceeded to dismiss the appeal filed by the appellants. He submits that this would be a procedural impropriety.

7. I have considered the submissions made by the learned counsel for the appellants, however, find no merit in the same.

8. Having perused the application under Order XLI Rule 27 CPC filed by the appellants, I find that there was no reason given by the appellants for not having produced the certified copy of the above stated Sale Deed before the learned Trial Court. Be that as it may, the suit has been dismissed on the ground of limitation. For the purposes of determination of the same, the date of execution of the Sale Deed

dated 24.11.2006 was of no relevance. Both the learned Trial Court as also the learned Appellate Court found the said issue against the appellants holding that the appellant no.2 having admitted of going to the office of the Registrar of Documents and executing the documents, his plea of lack of knowledge of contents of the said document, could not be believed. In that view, the production of the Sale Deed dated 29.09.2006 would have lost all its significance. It must be remembered that the Suit has been filed by plaintiff no. 2, who executed the Sale Deed dated 24.11.2006 claiming himself to be the General Power of Attorney of the person who, even the plaintiffs allege, was the original owner.

9. The learned counsel for the appellants further submits that the sale consideration mentioned in the Sale Deed dated 29.09.2006 is of Rs.16,80,000/- as against only Rs.70,000/- mentioned in the Impugned Sale Deed dated 24.11.2006. It again, in my opinion, would be irrelevant as the suit has been dismissed on the ground of limitation, having disbelieved the story of the appellants that the appellant no.2 was not aware of the contents of the document that he had executed. In any case, inadequacy of consideration cannot be the ground for challenging the contract.

10. The learned counsel for the appellants further submits that from the cross examination of the respondent no.1, it was evident that the respondent no.1 was aware of the execution of the Sale Deed dated 29.09.2006 in favour of the appellants. Having perused the entire cross examination, I do not find any merit in the said submission.

11. I may herein note that the present appeal has been filed with the delay of 37 days in filing. Though, *prima facie* I find sufficient reason having been made out for condoning the delay, for the reasons stated hereinabove, I find no merits in the appeal.

12. In view of the above, the appeal is dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

FEBRUARY 18, 2020/Arya

