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

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Reserved on: 13th January, 2020

Decided on : 20th January, 2020

+ **RFA 576/2014 & CM APPL Nos.14374/2015, 34821-23/2018, 12147/2019, 22745/2019, 49598/2019**

SARDOOL SINGH (NOW DECEASED)

THR LEGAL HEIRS & ORS

..... Appellants

Through : Mr.Rama Shankar and Mr.Shivam Garg, Advocates.

versus

SURJEET SINGH & ORS

..... Respondents

Through : Mr.R.K.Saini, Mr.Ankit Singh, Ms.Bhavana Jain, Ms.Tavishi Vats, Mr.Inderjeet, Advocates for R-1 and 2.

Mr.Jaswinder Singh, Advocate for R-3.

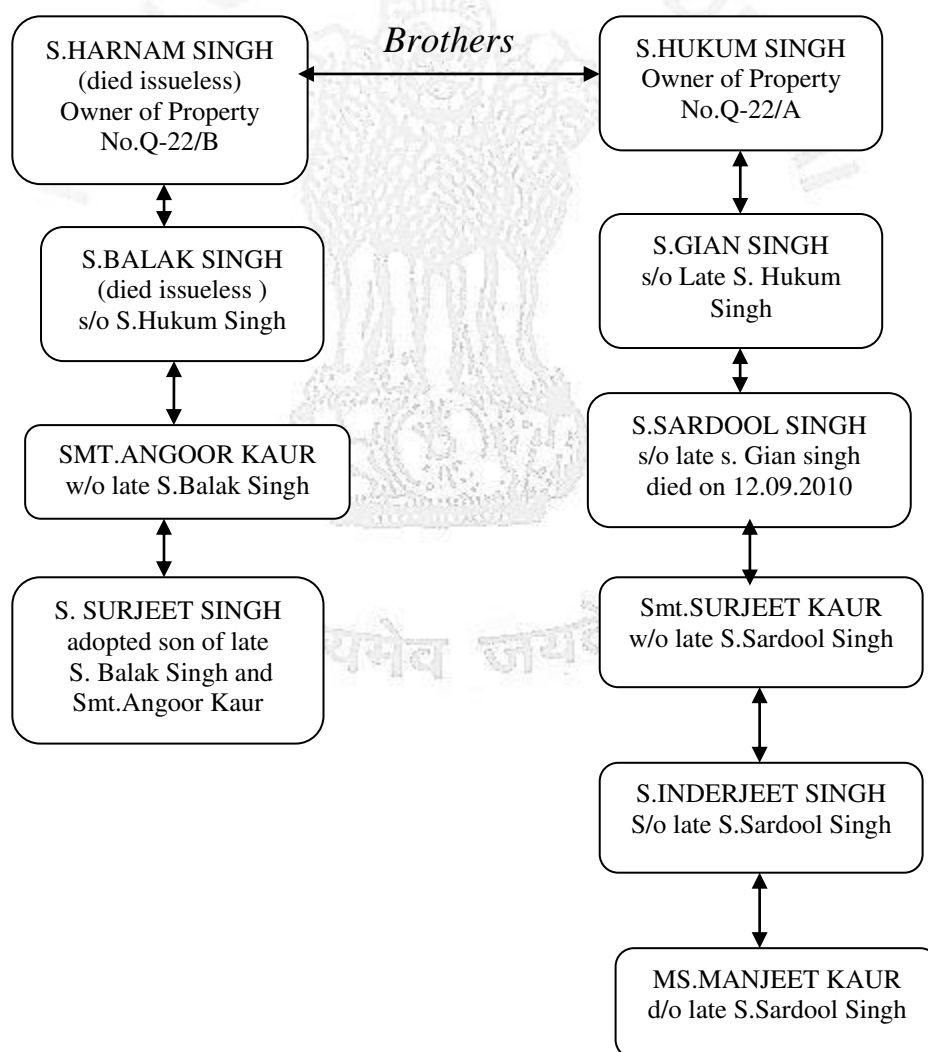
CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This appeal is preferred by the appellants against the judgment and decree dated 30.09.2014 passed by the learned Additional District Judge-VI, South District, Saket Courts, New Delhi (hereinafter referred as the learned '*Trial Court*') in CS No.242/2014 whereby the suit for declaration, eviction, possession, perpetual/permanent injunction and mesne profits to the tune of Rs.25,000/- with interest filed by appellants against respondents was dismissed post trial.

2. The brief facts as alleged by the appellants are in the year 1954 a property bearing No.Q-22, Jungpura Extension, New Delhi was allotted in the name of Hukum Singh, under the rehabilitation scheme, after the partition of the Country. It was alleged Hukum Singh was the principal purchaser /lessee of the Government of India and he partitioned the property in two portions i.e. Q22A and Q22B, and gave portion Q-22B to his brother Harnam Singh - under a family arrangement. The pedigree of the both the brothers; Harnam Singh and Hukum Singh is as under:-



3. It is alleged Smt.Angoor Kaur died intestate and issueless as such the property devolved upon her legal heirs viz Smt.Ram Kaur, Smt.Jeet Kaur (sisters) and Sh.Sardool Singh and Harjeet Singh, the appellants herein and after her death they came in the possession of the whole property bearing No.Q-22, Jungpura Extension, New Delhi. It is alleged in the year 1995 both the sisters namely Smt.Ram Kaur and Smt.Jeet Kaur had relinquished their shares in property bearing No.Q-22A in favour of their brothers namely Sardool Singh and Harjeet Singh and on 23.06.2009 i.e. after the death of Smt.Angoor Kaur, a family settlement was entered into between these brothers and sisters and the sisters rather had relinquished their shares in property No.Q-22B in favour of their brothers viz appellants herein. Hence, the entire property is thus owned by the appellants.

4. It is alleged the respondents No.1 & 2 used to take care of Smt.Angoor Kaur and they got executed documents viz General Power of Attorney, Agreement to Sell etc forging the thumb impression/ signatures of Smt.Angoor Kaur to create right/ interest in property No.Q-22B (supra) and such documents are all forged documents and need to be declared as null and void. Hence, this suit was filed for declaration thereby holding the plaintiffs / appellants as absolute owners of the property No.Q-22B, Jungpura Extension, Delhi and to declare the documents viz GPA, ATS, Will, Affidavit, Undertakings / Conveyance Deed, Indemnity Bond etc in respect of the property allegedly executed by Smt.Angoor Kaur as null and void and further a decree of injunction restraining the defendants/ respondents to dispose of the property and to hand over its peaceful and vacant possession to the appellants therein

and to pass a decree of damages @ Rs.50,000/- along with interest @ 18% per annum, as mesne profits was prayed.

5. The respondents No.1 and 2 filed written statement wherein they alleged the respondent No.2 Smt.Jitender Kaur is an absolute owner of the subject property vide a conveyance deed, duly registered with the office of the Sub-Registrar, New Delhi per document at Sr.No.14590 in Addl. Book No.1, Volume No.5405 on pages 101 to 103, and respondent No.1 has nothing to do with the property. The defence of the respondents is specifically mentioned in para No.2 of their reply on merits (written statement) i.e. the respondent No.1 was taken in adoption by late Smt.Angoor Kaur and this fact is rather mentioned in Will dated 14.05.1996 of Smt.Angoor Kaur and also in the GPA executed on the same date. Both the Will and GPA were got registered by Smt.Angoor Kaur and during her lifetime the conveyance deed was executed by the L & DO in favour of the respondent No.2 herein. The documents viz GPA/ Will etc were executed before the Sub-Registrar and alleged forgery was never proved by the appellants herein.

6. It is alleged the subject property was actually owned by Smt.Angoor Kaur vide a letter dated 16.12.1986 of L& DO/PS.1/2668 and the suit property was substituted in the books of respondent No.3 in the name of Smt.Angoor Kaur. It is alleged the GPA executed in favour of respondent No.1 is registered as document No.3635 in Addl. Book No.I, Vol.No.2437 on pages 62 to 65 dated 14.05.1996 and thereafter an Agreement to Sell was executed between respondents No.1 & 2 for sale of this property to respondent No.2, his wife. The respondent No.2 then

submitted the original lease deed, undertaking, affidavits etc and the office of L & DO made a conveyance deed dated 16.09.2005 in favour of respondent No.2. It was denied the properties No.Q-22A and Q-22B are one single property as alleged by the appellants herein, there being separate lease deeds in respect of each of such properties and both these properties were separately assessed for the purposes of house tax, water and electricity charges. Reference was also made to a ration card No.APLO5090844 dated 02.08.2005 wherein both respondents No.1 & 2 were shown as family members of Smt.Angoor Kaur, which fact was concealed by the appellants in their plaint.

7. The respondent No.3/L & DO also filed its written statement wherein it stated the Government built single storeyed quarter No.Q-22B, Jungpura Extension, New Delhi, admeasuring 100 square yards was allotted to Harman Singh and on his death, it was mutated / transferred in the name of Balak Singh, who also died on 05.02.1986 leaving behind his widow Smt.Angoor Kaur and that she executed GPA dated 14.05.1996 in favour of respondent No.1. The respondent No.1 then entered into an Agreement to Sell dated 9.08.2005 with his wife i.e. respondent No.2 and she later applied for the conversion of such property from lease hold to free hold in her name, which was converted on 16.09.2005.

8. Both the parties led their evidence before the learned Trial Court. From the side of the respondent – an attesting witness of the Will was examined, who deposed the Will and GPA were executed and registered by Smt.Angoor Kaur on the same date. A bare perusal of the Will dated 14.05.1996 would reveal the respondent No.1 was considered by

Smt.Angoor Kaur as her adoptive son. Admittedly, no adoption deed was proved to have been executed by Smt.Angoor Kaur in favour of respondent No.1, but per settled law the adoption may even be oral. Even otherwise, a bare perusal of defence of the respondents would reveal the respondent No.2 has not claimed the ownership of the subject property by virtue of the Will, but is, rather on transfer of the title on the basis of GPA dated 14.05.1996 and the conveyance deed of the year 2005. It is an admitted fact Smt.Angoor Kaur was alive till 2009 and never in her lifetime had raised any objection qua validity of Will and GPA, both duly registered, nor had filed any suit qua any illegality in executing of Will, GPA or the conveyance deed.

9. During trial following issues were framed by learned Trial Court:-

"1. Whether the plaintiff have locus standi/right to file the present suit in respect of property bearing No.Q-22-B, Jungpura Extension, New Delhi against the defendant?OPP

2. Whether the suit is bad for mis-joinder of defendant no.1 Sh. Surjeet Singh, if so, its consequences?OPD1 &2

3. Whether the suit is without cause of action?OPD1 &2

4. Whether the plaintiff filed suit on the basis of forged and fabricated documents, if so, what are the documents and its consequences?OPD1 &2

5. Whether the plaintiff is entitled for decree of declaration, as prayed in prayer clause (a) to declare them equal co-owners of property/plot bearing No.Q-22B, Jungpura Extension, New Delhi against the defendants? OPP

6. Whether the defendants no.1 and 2are trespasser in the suit property NO.Q-22B, Jungpura Extension, NewDelhi?OPP

7. Whether the plaintiff are entitled for decree of declaration to declare the documents, enumerated in prayer clause (b), as void, forged and illegal against the defendants no. 1,2 and 3? OPP

8. Whether the plaintiffs are entitled for decree of permanent injunction against the defendants no.1 and 2, as prayed in clause(c) to restrain I them from selling, disposing, wholly or partly the suit property?OPP

9. Whether the plaintiffs are entitled for decree of possession against the defendants no.1 and 2, as prayed in clause (d) of the plaint ?OPP

10. Whether the plaintiffs are entitled for decree of mesne profits of Rs.50,000/- against the defendants no.1 and 2, pendent-lite and future? OPP

11. Whether the plaintiffs are entitled for interest@18% per annum against the defendants no.1 and 2?OPP

12. Relief."

10. However, on 01.05.2014, after analyzing the contentions of the parties it was held that if respondents are able to prove the execution of Will and GPA in their favour, then the entire controversy would be set at rest and all the reliefs claimed by the appellants would then be redundant and thus the matter was fixed for respondents' evidence and a following additional issue was framed:-

"Whether late Smt. Angoor Kaur had executed a Registered GPA and Will dated 14.05.1996 in favour of defendant no.1 ? OPD-1"

11. The evidence of DW1 Sh.Harvinder Singh, - an attesting witness of the Will was led and he filed his affidavit deposing that Smt.Angoor Kaur was in a fit state of mind to execute the Will. DW1 was cross examined wherein he deposed Smt.Angoor Kaur accompanied him to the office of the Sub Registrar and the respondents did not accompany them and that he had come to the residence of Smt.Angoor Kaur and from there he along with others had left for the office of Sub Registrar in a taxi. Smt.Angoor Kaur had spoken earlier to the father of DW1 about her intention to execute Will i.e. about 4-5 days prior to 14.05.1996 and the documents were got prepared at the office of Sub Registrar by typist sitting outside who was instructed by Smt.Angoor Kaur herself qua the matter to be typed. He denied Smt.Angoor Kaur never accompanied them to the office of Sub Registrar or never got typed anything on her own.

The said witness deposed both the GPA and Will were executed by her and got registered before the Sub Registrar and he also signed the Will as an attesting witness. Though this witness was alleged to be an interested witness as it was mentioned in the Will *in case the respondent No.1 predeceased Smt.Angoor Kaur, the property shall go to the attesting witness*, but this event did not happen, hence has no meaning.

12. Learned Trial Court examined the appellant Smt.Sureinder Kaur as PW1 who proved documents namely SPAs as Ex.PW1/1 and Ex.PW1/2; site plan as Ex.PW1/3; relinquishment deeds executed by Ms.Ram Kaur and Ms.Jeet Kaur as Ex.PW1/4 (colly); family settlement dated 23.06.2009 as Ex.PW1/5; Ex.PW1/6-D3/1, Ex.PW1/6/D3/2 and other documents as mentioned in the impugned judgment.

13. The appellant also examined PW2 Sh.S.K. Sharma, LDC from the office of Sub Registrar-III, Delhi to prove Smt.Angoor Kaur was not present in the office of Sub Registrar on 14.05.1996. However, the said official witness deposed the initials and thumb impressions of the testator and witnesses were obtained on the documents itself on the same date when it was registered on 14.05.1996.

14. The learned Trial Court held both the properties viz Q22A and Q22B are separate properties as shown and proved by documents Ex.D1, Ex.D2 and Ex.D4. The Court observed the marriage card of respondents No.1 & 2 dated 02.02.1996 showing the departure of *baraat* from property No.Q22B, Jungpura Extension, New Delhi and the invitation given by Smt.Angoor Kaur rather show the relationship of the deceased with respondent No.1 viz more like of mother/parent. Further, the

receipt of the dead body of Smt.Angoor Kaur dated 23.03.2009 being in the name of respondent No.1; the receipt of material purchased for her cremation on 23.03.2009 being in favour of respondent No.1 along with other documents concerning her death and last rituals etc. The receipt Ex.D7 of Kiratpur Saheb, Anandpur of performance of last rites and death ceremony of Smt.Angoor Kaur and the ration card of Smt.Angoor Kaur, admittedly, reveal respondent No.1 was a part of her family. The GPA dated 14.05.1996 executed by Smt.Angoor Kaur in favour of Surjeet Singh/ respondent No.1 is rather an admitted document Ex.P7 and further the affidavit, undertakings, indemnity bonds are all proved as Ex.P8 to Ex.P10 respectively relating to conversion of the suit property. The election photo identity card dated 30.03.1995 of respondent No.1 also show him a son of Balak Singh, proved as Ex.P12.

15. The documents relied upon and proved on record show **a)** both the properties i.e. Q22A and Q22B are separate properties; **b)** Smt.Angoor Kaur was an absolute owner of property No.Q22B; and **c)** she treated respondent No.1 as her own son and the respondent No.1 had performed her last rites as her son.

16. DW1 had proved the Will and GPA, both dated 14.05.1996 duly registered in favour of respondent No.1 and on its basis the subject property was sold by respondent No.1 to respondent No.2 in the year 2005. The appellant has rather failed to prove any suspicious circumstance relating to execution of Will or GPA in favour of respondent No.1. There is no fact / evidence led by the appellant to disprove the due execution of Will or GPA. The averments contained in

plaint do show the appellants were well aware of the deceased having executed a Will and a GPA etc in favour of respondent No.1 and instead pleaded ignorance in plaint.

17. Even though the registered adoption deed was not proved, yet there are many documents viz Ex.P12 an election photo identity card of respondent No.1; Ex.D5 – marriage card of respondents No.1 & 2; deposit receipt of dead body vehicle, deposit receipt of the material purchase for cremation of Smt.Angoor Kaur, the information certificate of death of cremation of Smt.Angoor Kaur, the receipt of immersion of ashes of Smt.Angoor Kaur at Kiratpur Sahib Ex.D7; copy of Ration Card of Smt.Angoor Kaur etc. All these documents are sufficient to prove respondent No.1 was being treated as a son by late Smt.Angoor Kaur. Learned Trial Court had rightly noted the respondent No.1 did not claim the suit property on inheritance, but on the basis of rights created in his favour per registered GPA dated 14.05.1996 and he sold the subject property to his wife – respondent No.2 during the lifetime of Smt.Angoor Kaur and she never raised any hue and cry. The appellants though alleged the documents executed by Smt.Angoor Kaur were forged as it contain forged thumb impressions and/or signatures, but no efforts were made to got the alleged forged thumb impressions and signatures compared with her admitted signatures / thumb impressions, and the appellant rather tried to create suspicion on the basis of contents of such documents. The learned Trial Court rather noted:-

"26. I have perused these two judgments, these judgments have been passed under altogether different facts and circumstances and have no application in the present case. Having regard to the above mentioned discussion, I am of the opinion that defendant has successfully proved the execution and registration of GPA and Will dated 14.05.1996. The property in question was transferred during the lifetime of Smt. Angoor

Kaur, therefore the Will never came into operation and the defendant No.1 was required to prove the GPA only on the basis of which he got the suit property transferred in favour of his wife i.e. defendant no.2 and which is a registered document and in terms of Proviso to Section 68 of Indian Evidence Act, the same could have been proved even without examining an attesting witness being a registered document as its execution was never denied by Smt. Angoor Kaur during her lifetime and the same was rather proved by examining the attesting witness. Hence this issue is decided in favour of defendant and against the plaintiff.

27. Issue No.1, 3,5,6,7,8,9,10 and 11 are decided together as all are interconnected to each other.

28. In view of decision of the above mentioned issue. Issue No.1,3,5,6,7,8,9,10 and 11 are decided against the plaintiff."

18. The learned counsel for the appellant then argued that in reply dated 13.05.2009-Ex.PW1/28 to their legal notice issued, the respondent alleged the possession of the property remained with Smt.Angoor Kaur till her death and it shows she was never aware of GPA/Agreement to Sell etc; thus were all forged. I am not inclined to accept this argument, such documents were already registered in the year 1996 and admittedly Smt.Angoor Kaur stayed in subject property till her death, hence such averment in reply Ex.PW1/28 was not incorrect.

19. Lastly, it was urged respondent No.1 was a married man on the date of his alleged adoption and was more than 15 years of age and even a custom qua adoption of a married man or of above 15 years of age was never proved. Suffice is to say the claim of respondent Nos.1 & 2 over the subject property is not based upon his alleged adoption or Will. It is rather based upon GPA-Ex.P-7 executed in favour of respondent No.1. The said GPA Ex.P7 is proved not only by DW1 an attesting witness to the Will but also by PW2, the appellant's witness. PW2 rather denied the suggestions that the testator was not present on the day of execution of the Will/GPA. The vital fact is the GPA and the Will both were executed

on 14.05.1996 and the testator expired in the year 2009 after about 13 years. If there was any forgery she could have disclosed this fact to her other family members. It shows she was not inclined to disclose it as it may have agitated the appellant's family, hence to keep peace in her life she kept quite. The appellant could not prove on record the deceased was never aware of execution of GPA – Ex.P7. Since various documents on record viz photo identity card Ex.P12, her cremation documents, marriage card all show her relations with respondent No.1, hence, there is no cogent ground to suspect the execution of Will and GPA by her in favour of respondent No.1 as it was her natural act for respondent No.1 whom she treated as her son. Hence GPA is free from any suspicion.

20. In view of above, there is no force in the arguments of the appellant. The appeal has no merit and is accordingly dismissed. The pending application(s), if any, also stands dismissed. LCR be remitted forthwith. No order as to costs.

YOGESH KHANNA, J.

JANUARY 20, 2020

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