

\$~24

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

Date of Decision: 18th August, 2021

+ **RSA 63/2021 & CM APPLs. 26872-73/2021**

SATISH CHAND & ORS.

..... Appellants

Through: Mr. Anil Kumar Tripathi and Mr.
Rahul Sharma, Advocates.

versus

DALBIR SINGH

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present second appeal has been filed challenging the impugned judgment and decree dated 3rd February, 2021 by which the judgment and decree passed by the Trial Court dated 20th July, 2020 has been upheld by the Appellate Court.
3. The property in question is property bearing No.P-24, Pandav Nagar, Mayur Vihar Phase-I, New Delhi-110091 (*hereinafter*, “*suit property*”). Mr. Dalbir Singh - the Respondent/Plaintiff (*hereinafter*, “*Plaintiff*”) had filed a suit for mandatory injunction, permanent injunction and *mesne* profits against the Defendants/Appellants (*hereinafter*, “*Defendants*”), who are the elder son, daughter-in-law and grandchildren of the Plaintiff.
4. The case of the Plaintiff is that he is the owner of the third floor with terrace in the suit property. According to the Plaintiff, he had purchased the suit property in 1987. In 1996, he transferred ownership of the suit property in favour of his wife - Smt. Nepali. The case of the Appellants is that upon

the death of the Plaintiff's wife, the son executed a relinquishment deed in favour of the father under the assurance that the suit property would be bequeathed equally upon the two sons. The said relinquishment deed was registered on 27th July, 2015. However, the father changed his mind and the earlier Will dated 11th August, 2015, which was executed giving both the sons an equal share in the suit property was cancelled and a new Will was executed by the Plaintiff-father on 25th July, 2016. On the basis of this new Will and the fact that the Plaintiff has disowned the Appellants herein by issuing a public notice, the Plaintiff-father sought a mandatory and permanent injunction against the Appellants for eviction of the Appellants herein from the suit property.

5. In the suit, the impugned order was passed on 20th July, 2020 in the application under Order XII Rule 6 CPC. The findings of the Trial Court are that the Defendants in the suit did not dispute the fact that the father was the owner of the suit property; the only defence is that the relinquishment deed was executed under the clear assurance by the father that half of the suit property would devolve upon Appellant No.1. The Trial Court, however, clearly observed that the relinquishment deed having been executed, the decree is liable to be passed. The relevant findings of the Trial Court are as under:

“15. In the present case, relinquishment deed and admission by the defendant manifestly proves that no right vests with any of the defendants in the suit property and consequently, plaintiff is the sole owner of the suit property. Being the owner of the suit property, the plaintiff is at liberty to remove the defendants from the suit property. Furthermore, in my view, the defendants have failed to raise any

substantial defence which requires trial of the suit.

16. Accordingly, the application moved by the plaintiff under Order 12, Rule 6 CPC is allowed and judgment on admission is passed in favour of the plaintiff and against defendant no.1 in respect to mandatory and permanent injunction. Defendants are directed to vacate and handover the peaceful possession of the terrace and third floor of property bearing no. P-24, Pandav Nagar, Mayur Vihar, Phase I, Delhi - 110009 (as shown in the site plan) to the plaintiff. Site plan shall form part of the decree. The defendants are also hereby permanently restrained from creating any third party interest, alienating, dispossessing the plaintiff, selling, altering, damaging or constructing upon the suit property.”

6. The Appellate Court has upheld the said decree vide the impugned order dated 3rd February, 2021. The relevant findings of the Appellate Court are as under:

“6. Insofar as appellants’ contentions about their right, title or interest in the aforesaid property is concerned, the same are without any merit. It is an undisputed fact that the property in question belonged to Smt. Nepali. It is also not in dispute that Smt. Nepali passed away on 01.05.2015 leaving behind the appellant no.1, respondent and Rakesh as her legal heirs in terms of section 15(1)(a) of Hindu Succession Act, 1956. It is also not in dispute that subsequent thereto Rakesh and appellant no.1 had executed registered relinquishment deed dt. 27.07.2015 in favour of the respondent. In terms of this relinquishment deed, Rakesh and Satish had released their rights in favour of the respondent voluntarily without any undue pressure or coercion and after fully understanding the implications. By virtue of this registered relinquishment deed (clause

2 thereof), respondent became the absolute owner of the property in question. The relinquishment deed also states that Rakesh and the appellant no.1 Satish shall not make any claim or right in the property in question and they will neither raise any objections at the time of mutation. Thus, the contention of the appellants that the relinquishment deed was executed with certain pre-conditions is without any merit. This contentions about pre-conditions for executing the relinquishment deed is contrary to its written text and in contravention of sections 91/92 of Evidence Act. As such, this Court cannot accept the contention that the relinquishment deed was executed with the pre-condition that the respondent shall partition the property in question.

7. The Will dt. 27.07.2015 was to take effect after the demise of the testator (respondent). Under the law, testator can revoke his Will at any time. Given this, there can be no objection from any quarter in respondent's act in revoking his Will dt. 27.07.2015. In any case, a Will takes effect only after the demise of the testator. Thus, the appellants can legally not raise any objection to the respondent revoking his Will dt. 27.07.2015.

8. For the foregoing reasons, there is no merit in the contentions of the appellant regarding their right, title and interest in the property in question. Respondent, under the law, has to be taken to be the title holder of the property in question."

7. The Appellate Court observed that there is no dispute as to the execution of the relinquishment deed and the deed itself is clear that the Respondent/Plaintiff is the absolute owner of the suit property. In view of this, the Appellants' contention that the relinquishment deed was executed with the pre-condition that the Respondent shall partition the property in question cannot be accepted as the same is contrary to the written text of the

relinquishment deed and in contravention of Sections 91 and 92 of Indian Evidence Act, 1972.

8. Mr. Rahul Sharma, Id. counsel submits that the assurance given by the Plaintiff-father has not been honoured by him and therefore, he should be bound by his assurance as, if not for the assurance, the relinquishment deed would not have been executed.

9. The relinquishment deed being a registered document, Appellant No.1 has given up his rights in the suit property, in favour of his father. An alleged oral assurance, which the father is stated to have given in favour of both of his sons, would not hold any value in the face of a registered relinquishment deed.

10. Under these circumstances, since the relinquishment deed is admitted by Appellant No.1 and during the lifetime, the father cannot be legally faulted for changing his Will, this Court is of the opinion that no substantial question of law arises. The Court notes that the relationship between the Appellant and the Plaintiff also seems to have deteriorated, leading to the Plaintiff seeking eviction by filing of the suit. The Court is also informed that the Appellant and his family have vacated the suit property. The view of the Trial Court and the Appellate Court cannot be faulted.

11. In view of the above, there are no substantial questions of law that arise in the present appeal. The impugned judgements do not warrant interference. Accordingly, the appeal is dismissed. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 18, 2021/dk/T
(corrected & released on 23rd August, 2021)