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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 20th January, 2022

+ C.R.P. 22/2020 & CM APPL. 4451/2020

ANISHA BEGUM

..... Petitioner

Through: Mr. Harsh Kumar & Ms. Sikha
Gogoi, Advocates (M-8076772278)

versus

ZAHID AHMED

..... Respondent

Through: Mr. Naushad Alam, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging the impugned order dated 10th December, 2019 in *Suit No.269/19* titled *Anisha Begum v. Zahid Ahmed*, by which an application under Order XII Rule 6 CPC filed by the Plaintiff/Petitioner (*hereinafter "Plaintiff"*) has been rejected by the Trial Court. The Plaintiff - Ms. Anisha Begum is the mother of the Respondent (*hereinafter 'Defendant'*) - Mr. Zahid Ahmed. Her husband Late Mr. Sharif Ahmed passed away on 1st August, 2013.
3. The dispute between the parties is with respect to the property bearing No.B-270, Gali No.2, Mandawali, Fazalpur, Delhi-92 (*hereinafter "suit property"*), where the Defendant is living on the second floor and the Plaintiff resides on the ground floor. The Plaintiff filed the suit for permanent and mandatory injunction and *mesne* profits on the premise that prior to the death of her husband, vide document dated 10th January, 2000 he



had transferred the suit property in her favour. The case in the plaint is that the Plaintiff's husband had purchased the suit property on 10th February, 1999 through unregistered General Power of Attorney, Agreement to Sell, Indemnity Bond and Affidavit. A similar set of documents were executed by her husband in the Plaintiff's favour, including a gift agreement, on 10th January, 2000. The prayers in the said suit are as under:

"It is therefore, humbly prayed that this Hon'ble Court may kindly be pleased to:

a) Pass a decree of Mandatory Injunction in favour of Plaintiff, and against the Defendant and their agents, servants, relatives, associates, attorney, etc., thereby directing them to handover the peaceful possession of the B-270, 2nd Floor, Gali No.2, Mandawali Fazalpur, Delhi- 110092 to the plaintiff in the interest of justice, more specifically shown in the red colour in the site plan annexed herewith.

b) Pass a decree of Permanent Injunction in respect of the property bearing no. the B-270, 2nd Floor, Gali No.2, Mandawali Fazalpur, Delhi- 110092 in favour of the Plaintiff and against the Defendant, thereby restraining the Defendant and their agents, servants, relatives, associates, attorney, etc. to create any third party interest, alienating, dispossessing the plaintiff, disposing, selling, altering, damaging or constructing the suit property bearing no. the B-270, 2nd Floor, Gali No.2, Mandawali Fazalpur, Delhi- 110092, more specifically shown in the red colour in the site plan annexed herewith.

c) Direct the Defendant to pay the mesne profit of Rs.8,000/- per month from the date of filing of the present suit, till the realization of the possession of the property bearing no.B-270, Gali No.2, Mandawali Fazalpur, Delhi- 110092 to



the Plaintiff, in the interest of justice.”

4. In so far as admission under Order XII Rule 6 CPC is concerned, the Plaintiff's case is that in the written statement before the Trial Court, the Defendant merely claims to be a co-sharer of the suit property, however, the documents executed in favour of the plaintiff dated 10th January, 2000 are not denied and neither any challenge has been raised in respect of the said documents. Moreover, the Defendant admits the ownership of Late Mr. Sharif Ahmed and claims his right through such ownership, even though Late Mr. Sharif Ahmed's ownership was also based on unregistered documents, similar to those executed in favour of the Plaintiff. The relevant excerpts from the written statement are as under:

“2. That the plaintiff is not owner of the property bearing No. B-270, Gali No. 2, Mandawali Fazalpur, Delhi-110092 as plaintiff produced the forged documents before this Hon'ble Court is liable to be prosecuted U/s. 340 Cr.P.C. It is also submitted that the plaintiff as well as defendant is co-sharer in the suit property, hence the suit is liable to be dismissed with heavy cost in favour of the defendant.

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1. That the contents of para no. 1 of the suit are false, wrong and denied. It is submitted that the defendant is not owner of the suit property. The documents of ownership are forged. It is also submitted that the plaintiff is the co-sharer in the suit property.”

5. Thus, he submits that a decree is liable to be passed in favour of the Plaintiff. In so far as the non-registration of the Plaintiff's title documents is concerned, Mr. Harsh Kumar, Id. Counsel appearing for the Plaintiff, also



submits that both sets of documents dated 10th February, 1999 and 10th January, 2000 are unregistered. However, on the strength of the judgment in ***Santosh Kumari v. Mahendri & Ors. [RFA No.100/2018, decision dated 12th September, 2018]***, he submits that prior to 29th September, 2001, i.e. the date of the amendment to Section 53-A of the Transfer of Property Act, 1882 along with amendment of the Stamp Act, 1899 and Registration Act, 1908, when the requirement of stamping and registration of documents was made mandatory, registration of these documents was not insisted upon for recognition of title or ownership. The relevant extract of the said judgement is as under:

“6. In my opinion, the trial court has committed a gross illegality in rejecting the documents Ex.PW1/2 (colly) dated 03.05.1989 allegedly on the ground that these documents are illegal documents as they are not stamped and registered. The reasoning and conclusion of the trial court is clearly faulty because these documents are of the year 1989, i.e. much prior to 24.09.2001 when by Act 48 of 2001, the provision of Section 53-A of the Transfer of Property Act, 1882 was amended alongwith related provisions of the Stamp Act, 1899 and Registration Act, 1908, and only as per these provisions, after 24.09.2001, there was a requirement for stamping and registration of the documents. It is only an Agreement to Sell and related documents which are executed after 24.09.2001 which require stamping and registration and these aspects I have considered in detail by reference to relevant paras of the judgment of the Supreme Court in the case of Suraj Lamps & Industries Pvt. Ltd. (supra) in the judgment in the case of Ramesh Chand v. Suresh Chand and Anr., 188 (2012) DLT 538 and the



relevant paras 1 to 3 of which judgment read as under:

...

3. A reference to the aforesaid paras shows that unless there is a proper registered sale deed, title of an immovable property does not pass. The Supreme Court has however reiterated that rights which are created pursuant to Section 53A of the Transfer of Property Act, 1882 dealing with the doctrine of part performance (para 12), an irrevocable right of a person holding a power of attorney given for consideration coupled with interest as per Section 202 of the Contract Act, 1872 (para 13) and devolution of interest pursuant to a Will (para 14). Therefore, no doubt, a person strictly may not have complete ownership rights unless there is a duly registered sale deed, however, certain rights can exist in an immovable property pursuant to the provisions of Section 53A of the Transfer of Property Act, 1882, Section 202 of the Contract Act, 1872. There also takes place devolution of interest after the death of the testator in terms of a Will.”

6. Thus, it is submitted that such documents do confer valid title upon the Plaintiff. In any event, Id. counsel, also submits on the strength of the decision of a Id. Single Judge of this Court in **Ramesh Chand v. Suresh Chand, 188 (2012) DLT 538**, that in a civil suit for mandatory injunction, it is only the balance of probabilities that is to be seen to ascertain who has a better title. Relying on these two judgments, and the fact that no challenge has been raised to documents which were executed in the Plaintiff's favour, in the year 2000, decree is sought in favour of the Plaintiff.

7. On the other hand, Mr. Naushad Alam, Id. Counsel for the Defendant, submits that it is his case in his written statement that the documents



executed in favour of the Plaintiff are forged and fabricated documents and that the Defendant is a co-sharer in the suit property, by virtue of being the son of Late Mr. Sharif Ahmed. Mr. Alam further submits that even the GPA in favour of Late Mr. Sharif Ahmed, has been incorrectly claimed in paragraph I of the present revision petition, as registered.

8. Both counsels have also brought to the notice of this Court that there is another suit for specific performance, *mesne* profits, damages and specific injunction, being ***Civil Suit No.2418/2016*** titled ***Sh. Sanjay Singh v. Zahid & Ors.***, which was filed earlier before the Id. Civil Judge, East District, Karkardooma Courts, Delhi, by one Shri Sanjay Singh, against the children of Mr. Sharif Ahmed, on the ground that Shri Sanjay Singh had entered into a collaboration agreement dated 11th February, 2013, with Mr. Sharif Ahmed, with respect to the development of the suit property. In this regard, Mr. Harsh Kumar, Id. Counsel for the Plaintiff, points out that Mr. Sharif Ahmed had in fact passed away on 1st August, 2013 and therefore the payment which has been alleged to be made in the said suit, by Sh. Sanjay Singh to Mr. Sharif Ahmed, in September, 2013, is completely false. He further submits that even in the said suit, the Plaintiff had not been impleaded and instead some other lady has been impleaded as the wife of Mr. Sharif Ahmed. He therefore, submits that the said suit is a collusive suit.

9. Heard the counsels for the parties and perused the record. For the purpose of the present revision petition, this Court has to only consider as to whether the suit is liable to be decreed under Order XII Rule 6 CPC or not. The ownership of Late Mr. Sharif Ahmed over the suit property is not in dispute. It is on the strength of such ownership that the Defendant claims to be the co-sharer in the suit property, being the son of Shri Sharif Ahmed.



However, the documents dated 10th January, 2000, which have been placed on record, being the General Power of Attorney, Agreement to Gift, Affidavit and the Will in favour of the Plaintiff, are notarized but not registered. In the written statement filed by the Defendant, he merely argues that these documents are forged and fabricated. Therefore, the only question that would have to be considered is whether the said documents in favour of the Plaintiff were genuinely executed by the father of the Defendant or not.

10. Moreover, the question as to whether these documents confer a title on either of the parties or not would have to be considered at trial since the mere averment made in the written statement is that the documents filed by the Plaintiff are forged. There is no unequivocal admission or inference that can lead to a decree being passed under Order XII Rule 6 CPC. Therefore, in the present case, this Court is of the opinion that the question as to whether the Plaintiff has proper title in the suit property would be adjudicated upon at the time of trial when evidence is adduced. Notably, the non-registration of the documents, would not be detrimental to the Plaintiff's case in view of the judgment relied upon by the counsel for the Plaintiff i.e., ***Santosh Kumari (supra)*** and ***Ramesh Chand (supra)***.

11. The parties to the lis are mother and son. This Court has considered the facts in this case, especially that the Defendant is also claiming title from his father/Plaintiff's late husband, and he has not filed any suit challenging the documents executed in favour of his mother. He continues to reside in the second floor of the same suit property where his mother is residing. Ld. counsel submits that the Defendant does not pay any maintenance and also causes lots of harassment to the Plaintiff-mother. This Court is also conscious of the provisions of the Maintenance and Welfare of Parents and



Senior Citizens Act, 2007 and that the Plaintiff in this case is a widow. In this view of the overall facts and circumstances of this case, this Court deems it appropriate to issue the following directions:

- (i) The Defendant shall pay use and occupation charges at the rate of Rs.2500/- per month to the Plaintiff, i.e. his mother. Subject to the said payment being made, the Defendant is permitted to continue to occupy the second floor of the suit property, subject to final adjudication by the trial court;
- (ii) The Defendant shall also ensure that he does not cause any harassment to the Plaintiff in any manner whatsoever.
- (iii) In respect of **Civil Suit No. 2418/2016** which has been filed by Sh. Sanjay Singh, relating to the same suit property, the Plaintiff is permitted to seek consolidation/ transfer of both the suits in accordance with law by filing an application before the Id. ADJ where the **Civil Suit No. 2418/2016** titled **Sh. Sanjay Singh v. Zahid & Ors.** is pending, so that there are no conflicting judgments rendered in these two suits.
- (iv) The third and fourth floor of the suit property are stated to be lying vacant in view of the disputes between the Plaintiff and Defendant. It is made clear that during the pendency of the suit, the Plaintiff would be free to give the third and fourth floor of the property on rent and enjoy the rent paid by the said tenants subject to further orders. The Defendant shall not cause any hindrance or obstruction in this regard.

12. It is clarified that the above directions would be completely without prejudice to the rights and contentions of the parties concerned.



NEUTRAL CITATION NO: 2022/DHC/000277

13. The present petition, along with all the pending applications, is disposed of in the above terms.

14. Copy of today's order be sent to the Court of Id. Sr. Civil Judge, East District, Karkardooma Courts, Delhi in *Suit No.269/19* titled *Anisha Beum v. Zahid Ahmed* and to the Court of Id. ADJ where *Civil Suit No. 2418/2016* titled *Sh. Sanjay Singh v. Zahid & Ors.* is stated to be pending.

PRATHIBA M. SINGH
JUDGE

JANUARY 20, 2022/Aman/MS

