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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CMI 2/2022 & CM APPL. 33085/2022, CM APPL. 33086/2022, CM APPL. 33087/2022, CM APPL. 33088/2022

PRAMILA PANDA Petitioner
Through: Mr. Satya Narayan Padhi, Adv.
versus

R. SRINIVAS THROUGH ITS ATTORNEY SMT. LALITA RAGHVAN & ANR. Respondents
Through: Mr. Nitin Saluja, Ms. Shivani Luthra Lohiya, Mr. Anubhav Singh and Mr. Saahil Mongia, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% 28.07.2022

1. This regular first appeal, under Section 96 of the Code of Civil Procedure, 1908 (CPC), accompanied by an application under Order XLIV Rule 1 for permission to file the appeal as an indigent person, assails judgment dated 12th April 2022, passed by the learned Additional District Judge (“the learned ADJ”) in CS 207180/2016 (*R. Srinivas v. Pramila Panda and Anr.*).

Facts

2. CS 207180/2016 (“the suit”, hereinafter), instituted by Respondent 1 R. Srinivas (“Srinivas”, hereinafter) against the



petitioner and Respondent 2, pertained to a flat admeasuring 300 sq. yards, at the ground floor of the property bearing Municipal No. C-60, New Delhi South Extension, Part-I, New Delhi (hereinafter referred to as “the suit property”).

3. Srinivas asserted that the suit property had been purchased by one Kamla Puri from the builders/developers M/s G.M.S Constructions Pvt. Ltd. under a duly executed and registered sale deed dated 27th January 1994.

4. The petitioner (Defendant 1 in the suit and referred to, hereinafter, as “Pramila”) was alleged to have been employed by Lalita Raghavan (“Lalita”, hereinafter) as a housemaid in 2005. Pramila was alleged to have been staying with Lalita in a flat on the ground floor of the suit property and to have been the recipient of a monthly salary from Lalita, who was also alleged to have met the expenses of Pramila’s daughter.

5. The plaint asserted that Kamla Puri had executed a registered Will dated 16th September 1999 in favour of Srinivas, which was duly registered. It was further asserted that, during her lifetime, Kamla Puri had also executed and got registered a Gift Deed in respect of the suit property in favour of Srinivas. These bequests, it was asserted, were owing to the love and affection that Kamla Puri had for Srinivas. The Gift Deed was also duly registered.

6. On the basis of these documents, the plaint alleged that Srinivas



was the owner of the suit property, which was mutated in his favour in the records of the Municipal Corporation of Delhi, in proof whereof the mutation letter dated 11th September 2009 was filed with the plaint. The plaint further asserted that payments against electricity and water connections installed in the suit property were being made by Srinivas.

7. The plaint further alleged that Lalita was residing alone in her flat with Pramila. During working hours, the plaint acknowledged that Pramila was in the suit property and used to take care of both the flats.

8. Srinivas claimed to be aggrieved by the fact that, in 2014, Pramila commenced efforts to grab the suit property, towards which end she also had duplicate keys of the flat prepared. Using the said keys, the plaint alleged that Pramila made away with some of the valuables of Lalita. This constrained Lalita to register a complaint with the police on 6th October 2014. It was also asserted that Lalita had also asked Pramila to vacate the premise, as her services were no more required. Despite this, as Pramila continued to stay in the premises, Lalita registered a fresh complaint with the police authorities on 28th October 2014. Neither of these police complaints having elicited any favourable response, Srinivas filed CS 207180/16, essentially seeking a decree of possession in favour of Srinivas and against Pramila and her daughter, directing them to vacate the suit property and hand over the physical possession thereof to Srinivas.

9. Pramila contended, *per contra*, that she had reached Delhi in



1994-95 with her small daughter-Respondent 2, and started working as a maid in the house of Srinivas. It was asserted that Kamla Puri, who was the neighbour of Lalita, engaged Pramila as her housemaid, seeing the dedicated nature of the services rendered by her to Lalita. As such, it was asserted that Pramila was working as housemaid both with Lalita as well as with Kamla Puri.

10. Pramila asserted, contrary to the assertions of Srinivas and Lalita, that Kamla Puri had executed a Will in favour of Pramila and her daughter and handed over a copy thereof to Pramila, whereunder she was made sole owner of the suit property after the death of her husband. Pramila denied the execution of any Will dated 16th September 1999 by Kamla Puri in favour of Srinivas, whether registered or unregistered. The Will, relied upon by Srinivas, was alleged to be a false, forged and fabricated document. The assertion of Srinivas that Kamla Puri had duly executed a registered gift deed in his favour was also denied. Rather, contended Pramila, Kamla Puri was not mentally or physically of sound mind on 25th May 2009, and could not, therefore, have executed the Will. The Gift Deed was also, therefore, alleged to be fake and fabricated. The mutation of the suit property in the name of Srinivas was also alleged to have been obtained by manipulation and by presenting forged and fabricated documents.

11. The following issues were framed by the learned Trial Court on 23rd September 2016:



“(1) Whether the plaintiff is entitled to a decree of possession against the defendants directing the defendants to hand over physical vacant peaceful possession of property described as Flat on the rear side of ground floor of the property bearing municipal No. C-60, South Extension Part I, New Delhi shown in red colour in the site plan on the basis of the grounds taken in the plaint? OPP.

(2) Whether the plaintiff is entitled to recover mesne profits from the defendants for the user and occupation of the suit property w.e.f. 20.10.2014 till the handing over of the peaceful vacant physical possession of property described as bearing municipal no. C-60, South Extension Part-I, New Delhi? OPP.

(3) Whether the registered Will dated 16.09.1999 executed by Ms. Kamla Puri in favour of the plaintiff is a forged and fabricated document ? OPD

(4) Whether the registered Gift Deed dated 25.05.2009 executed by Ms. Kamla Puri in favour of the plaintiff in respect of the property described as bearing municipal no. C-60, South Extension Part-I, New Delhi is a forged and fabricated document? OPD.

(5) Whether the suit for recovery and mesne profits is filed against the defendants by the plaintiff without any cause of action in favour of the plaintiff? OPD



(6) Relief”

12. The learned ADJ has addressed these individual issues, thus:

13. Re. Issue 1

13.1 In support of her plea of ownership, *qua* the suit property, the learned ADJ noted that Lalita had, in her affidavit Ex. PW-1/A, deposed that the suit property was owned and in the possession of Kamla Puri. She had also proved (i) Will dated 16th September, 1999 (Ex. PW-1/3), registered on 14th August, 2000 (Ex. PW-1/4), whereby the suit property was willed by Kamla Puri in favour of Srinivas, (ii) Gift Deed dated and registered on 25th May, 2009, whereby Kamla Puri had gifted the suit property to Srinivas, exhibited as Ex. PW-1/5 and (iii) mutation letter dated 11th September, 2009 (Ex. PW-1/C), whereby the suit property was mutated in favour of Srinivas in the records of the MCD. As PW-1, Lalita had also deposed, in cross examination, that the gift deed Ex. PW-1/5 was signed at the house of Kamla Puri in the presence of the Sub-Registrar, Srinivas (the son of Kamla Puri), PW-2 Manoj Kumar and PW-3 Nachiketa Satapathy. She herself also confirmed, in cross examination, that the Sub-Registrar had visited the residence of Kamla Puri on 22nd May, 2009 along with a photographer and two other officials. She denied the suggestion that the Will of Kamla Puri was executed in 2005.

13.2 The learned ADJ further noted that the testimony of PW-1



Lalita was supported by PW-2 Manoj Kumar, PW-3 Nachiketa Satapathy, PW-4 Dheeraj Kumar and PW-5 Vibhav Kumar.

13.3 PW-2 Manoj Kumar, as one of the attesting witnesses of the Will (Ex. PW-1/3) confirmed, in his examination in chief, that Kamla Puri was in sound and disposing mind till her demise and that, on her request, he, accompanied by S. Raghavan, father of Srinivas, Kailash Kumar Malik and Kamla Puri visited the office of the Sub-Registrar, where the Will executed by Kamla Puri was registered in his presence as well as in the presence of Kailash Kumar Malik. He further testified that she had signed the Will in his presence and identified her signature at three points on the Will (Ex. PW-1/3) as well as his own signature at a fourth point. He further confirmed that Kamla Puri had drafted a fresh Will, as there was some legal infirmity in the Will dated 16th September, 1999, for which purpose she had requested him, in the second week of August, 2000 to visit the office of the Sub-Registrar. Acceding to the request, he accompanied Kailash Kumar Malik to the office of the Sub-Registrar on 14th August, 2000 where, in the presence of the Sub-Registrar, he subscribed his signature to the Will as witness. He identified the points at which Kailash Kumar Malik, Kamla Puri and he himself had appended the signatures on the Will dated 14th August, 2000.

13.4 PW-2 Manoj Kumar further deposed, in his examination-in-chief that, on 25th May, 2009, he reached the residence of Kamla Puri, at her request, and verified the contents of the gift deed executed by Kamla Puri in the presence of the Sub-Registrar who also reached the



spot. Thereafter, he deposed, Kamla Puri had signed the gift deed in his presence and in the presence of Nachiketa Satapathy. He identified points A to K in the gift deed Ex. PW-1/5 at which Kamla Puri had appended her signatures as well as points L and M at which he and Nachiketa Satapathy had signed the gift deed.

13.5 The aforesaid testimony of Manoj Kumar, noted the learned ADJ, had withstood cross examination.

13.6 The testimony of PW-1 Lalita was further corroborated by PW-3 Nachiketa Satapathy, who was a witness to the gift deed (Ex. PW-1/5). He corroborated the deposition of PW-2 Manoj Kumar, by testifying, in his examination in chief, that the gift deed (Ex. PW-1/5) was witnessed by him at the request of Kamla Puri at her residence in the presence of the Sub-Registrar. He confirmed that, on 22nd May, 2009, Kamla Puri had signed the gift deed in his presence and in the presence of PW-2 Manoj Kumar. He identified the signatures of Kamla Puri on the gift deed (Ex. PW-1/5) at points A to K, as well as the signatures of Manoj Kumar at point L and his own signature at point M. He confirmed that Kamla Puri was in sound and disposing state of mind till her death in 2012.

13.7 The testimony of PW-3 Nachiketa Satapathy also withstood cross examination.

13.8 The aforesaid testimonies of PW-1 Lalita, PW-2 Manoj Kumar and PW-3 Nachiketa Satapathy, it was noted, were corroborated by



PW-4 Dheeraj Kumar, from the office of the Sub-Registrar and PW-5 Vibhav Kumar. The learned ADJ noted that PW-4 Dheeraj Kumar brought, with him, the original gift deed (Ex. PW-1/5) which established that it was registered on 25th May, 2009. PW-5 Vibhav Kumar proved the document relating to the mutation of the suit property (Ex. PW-5/1).

13.9 The testimonies of PW-4 and PW-5 also withstood cross examination.

13.10 As such, the learned ADJ observed that the Wills dated 16th September, 1999 (Ex. PW-1/3) and 14th August, 2000 (Ex. PW-1/4) and been duly proved by Kamla Puri in the manner envisaged by Section 68 of the Evidence Act¹ and Section 63 of the Indian Succession Act². Additionally, the gift deed (Ex. PW-1/5) had been

¹ 68. **Proof of execution of document required by law to be attested.**—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

² 63 **Execution of unprivileged Wills.** —Every testator, not being a soldier employed in an expedition or engaged in actual warfare,¹² [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.



proved by PW-2 and PW-3, who had identified the signatures of Kamla Puri on the said gift deed as well as their own signatures. The gift deed clearly recited that the suit property had been gifted by Kamla Puri to Srinivas without monetary consideration, out of love and affection and that, thereafter, mutation of the property was also done in favour of Srinivas. The mutation, it was observed, had also been proved by PW-5 Vibhav Kumar, who identified the signatures of PW-2 and PW-3.

13.11 PW-2, therefore, clearly identified the signatures of Kamla Puri, Kailash Kumar Malik as well as his own signatures on both the Wills Ex. PW-1/3 and Ex. PW-1/4. The credibility of PW-2 during cross examination remain unimpeached.

13.12 As against this, the learned ADJ notes that the petitioner baldly alleged that the Wills dated 16th September, 1999 (Ex. PW-1/3) and 14th August, 2000 (Ex. PW-1/4) were forged. The manner of forging was unspecified. No evidence, to support the allegation of forgery was led. In this context, the learned ADJ further notes that, though the petitioner had sought to lead the evidence of Kailash Kumar Malik, as the second attesting witness to the Wills dated 16th September, 1999 (Ex. PW-1/3) and 14th August, 2000 (Ex. PW-1/4), they did not summon him to the witness box.

13.13 Following the aforesaid, relying on the judgment of the Supreme Court in *Prem Singh & Ors. v. Virba³*, which holds that a

³ (2006) 5 SCC 353



registered document is presumed to be validly executed and that the onus to prove otherwise would be on the person who disputes the validity of the document, the learned ADJ notes that no credible evidence – in fact, no evidence whatsoever – had been led by the petitioner to question the credibility of the two Wills dated 16th September, 1999 (Ex. PW-1/3) and 14th August, 2000 (Ex. PW-1/4) or of the gift deed dated 25th May, 2009 (Ex. PW1/5).

13.14 In view of the aforesaid, Issue 1 was decided by the learned ADJ in favour of Respondent 1 and against the petitioner.

14. Re. Issue 2

14.1 Issue 2 dealt with the entitlement of Srinivas to recover *mesne* profits from the petitioner for user and occupation of the suit property with effect from 20th October, 2014, till handing over of possession of the suit property to Srinivas.

14.2 The learned ADJ notes that Lalita, as PW-1 had deposed, in her examination-in-chief, that the suit property could easily fetch ₹ 20,000/- per month, in support of which she had examined PW-7 Neeraj Verma, a clerk from the office of the Sub-Registrar who proved two lease deeds of properties in the same locality and of similar size, which were commanding rents of ₹ 46,000/- per month and ₹ 36,000/- per month respectively. Though PW-7 Neeraj Verma was cross examined on the aspects of damages and *mesne* profits, he was not cross examined on the aspect of the monthly rent that such



properties would fetch. As such, the learned ADJ holds, unexceptionably, that the plaintiff had proved, sufficiently, the rate of rent on the basis of which *mesne* profits could be awarded. This issue, was also, therefore, decided in favour of the Respondent 1 and against the petitioner.

15. Re. Issue 3

15.1 Issue 3 addresses the allegation, of the petitioner, that the Will dated 16th September 1999 was forged and fabricated. The learned ADJ notes that, barring a bald allegation, no specifics regarding the manner in which the Will dated 16th September 1999 was forged or fabricated, were forthcoming from the petitioner. *Per contra*, he observes that PW-2, as an attesting witness to the Will dated 16th September 1999, had proved the Will. No cogent evidence or material was produced by the petitioner, on the basis of which it could be held that the Will was not signed in the presence of the witnesses thereto. The petitioner had also not chosen to examine the Sub-Registrar or call for a certified record or register from the office of the Sub-Registrar. The signatures of Kamla Puri on the Will were not disputed by the petitioner. No evidence was led by the petitioner to show that the signature was fraudulently obtained. Despite citing Kailash Kumar Malik, the second attesting witness to the Will, as one of her witnesses, the petitioner did not choose to lead his evidence or call him to the witness box. Nor did the petitioner object to the exhibiting of the Will dated 14th August 2000 as Ex. PW-1/4.



15.2 In such circumstances, the learned ADJ holds that the burden to prove the Wills dated 16th September 1999 and 14th August 2000 were forged or fabricated, which was on the petitioner, had not been discharged by her. The petitioner could not impeach the credibility of PW-2 Manoj Kumar, the attesting witness to the Wills, who, in cross-examination, provided satisfactory answers to all questions pertaining to executions and registrations of Wills. In such circumstances, Issue III was also decided in favour of Respondent 1 and against the petitioner.

16. Re. Issue 4

16.1 Issue 4 dealt with the allegation, by the petitioner, that the registered Gift Deed dated 25th May 1999 was forged and fabricated.

16.2 The learned ADJ correctly notes that the onus to prove the allegation of forgery or fabrication was on the petitioner. The learned ADJ observes that the petitioner had not led any evidence to show that, on 25th May 2009 Kamla Puri was not in a position to execute the Gift Deed. Nor had they been able to satisfactorily dispute the signatures of Kamla Puri on the Gift Deed. Though it was sought to be submitted, on behalf of the petitioner, that, after executing two Wills, there was no occasion for Kamla Puri to execute a Gift Deed, the learned ADJ noted that no question, on this aspect, was put to Kamla Puri, during her cross examination. Apropos the medical documents, on which the petitioner sought to place reliance to dispute the state of mind of Kamla Puri at the time of execution of the Gift Deed on 25th



May 2009, the learned ADJ notes that the medical documents were of the years 2007 or 2010, whereas the Gift Deed was executed on 25th May 2009. That apart, the petitioner had made no attempt to summon, in the witness box, the doctors who had treated Kamla Puri and had allegedly executed the said medical documents. In the absence of any evidence, from the doctors, vouchsafing to the medical documents, the learned ADJ holds, correctly, that the medical documents could not be said to have been proved as reliable evidence.

16.3 The reliance, by the petitioner, on the evidence of DW-6 Sister Fidelia from Marian Ashram was also found to be of no relevance as the said deposition did not have anything to do with the health of Kamla Puri or the contents of Gift Deed dated 25th May 2009.

16.4 I may note, at this juncture, that the only contention advanced by Mr. Padhi, learned Counsel for the petitioner, by way of challenge to the impugned judgment dated 12th April 2022 of the learned ADJ, before me, was that Kamla Puri was not in a sound and disposing state of mind at the time of execution of the Gift Deed on 25th May 2009. He also invited my attention to the medical documents.

16.5 I find, from a perusal of medical documents, that the learned ADJ is correct in his finding that there are no documents of 25th May 2009 or of any period proximate thereto, on the basis of which it could be inferred that, on 25th May 2009, Kamla Puri was not in a sound and disposing state of mind. It is also well-settled that medical documents,



in the absence of the evidence of the doctors who had issued the documents, are of little value. There is no explanation forthcoming as to why the petitioner did not summon, to the witness box, the doctors who had allegedly issued the medical documents on which the petitioner sought to place reliance. In these circumstances, I find no reason, whatsoever, to differ with the finding of the learned ADJ insofar as the value, to be attached to the medical documents, is concerned.

16.6 The position that emerges, on a holistic examination of the case is, therefore, thus:

- (i) Lalita, as PW-1, deposed that
 - (a) the suit property was owned by Kamla Puri,
 - (b) Kamla Puri and the father of Srinivas were very close, like sister and brother,
 - (c) Kamla Puri had executed the Wills dated 16th September 1999 and 14th August 2000,
 - (d) the Wills were registered in the presence of the Sub-Registrar,
 - (e) Kamla Puri had also executed the Gift Deed dated 25th May 2009 in the presence of Srinivas, PW-2 and PW-3,
 - (f) the Gift Deed was registered by the Sub-Registrar at the residence of Kamla Puri and
 - (g) the suit property was subsequently mutated in favour of Srinivas,



(ii) PW-2 Manoj Kumar, as an attesting witness to the Will, had deposed that

(a) Kamla Puri was always in sound and disposing mind,

(b) the Wills were signed and registered in the office of the Sub-Registrar in his presence and in the presence of Kailash Kumar Malik,

(c) the Wills were re-executed in the presence of Sub-Registrar by Kamla Puri before Kailash Kumar Malik and himself and

(d) the Gift Deed was signed by Kamla Puri in his presence and in the presence of Nachiketa Satpathy at the residence of Kamla Puri and registered by the Sub-Registrar,

(iii) PW-3 Nachiketa Satpathy had proved that

(a) Kamla Puri was in sound and disposing mind till her death and

(b) the Gift Deed dated 25th May 2009 was executed at her residence in his presence and in the presence of Manoj Kumar and the Sub-Registrar,

(iv) PW-4 Dheeraj Kumar, from the office of the Sub-Registrar had produced the relevant records dealing with the original Gift Deed, which proved that the Gift Deed had been registered,

(v) PW-5 Vibhav Kumar had also proved the document relating to the mutation of the suit property,



- (vi) the testimonies of the DWs remain undisturbed in cross-examination,
- (vii) both the Wills, therefore, stood proved in accordance with Section 68 of the Evidence Act and Section 63 of the Indian Succession Act,
- (viii) despite alleging that the Wills were forged, the petitioner was unable to specify the manner of forgery, and
- (ix) no evidence was led by the petitioner to substantiate the pleas advanced by them or to throw any doubt on the credibility of the two Wills dated 16th September 1999 and 14th August 2000, the Gift Deed dated 25th May 2009, or the documents whereunder the suit property stood mutated in favour of the respondent.

17. For the aforesaid reasons, the learned ADJ decreed the suit in favour of Respondent 1 and against the petitioner and directed the petitioner to vacate the suit property and to hand over the vacant and peaceful possession to Respondent 1. Further, damages/*mesne* profits @ ₹ 20,000/- per month from the date of filing of the suit till the delivery of actual and physical possession of the suit property with interest were also awarded along with costs.

18. Having perused the records, the impugned judgment and heard learned Counsel for the petitioner, who merely sought to challenge the credibility of the Gift Deed dated 25th May 2009, on the ground of alleged incapacity of Kamla Puri to execute the Gift Deed on 25th May 2009, I am of the opinion that no case is made out, whatsoever, to



entertain the present appeal against the impugned judgment and decree dated 12th April 2022 of the learned ADJ, which is well reasoned and examines the entire evidence holistically.

19. The appeal is accordingly dismissed *in limine* with no orders as to costs.

20. Miscellaneous applications also stand disposed of.

C. HARI SHANKAR, J.

JULY 28, 2022

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