IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 347 OF 2012
WITH
CIVIL APPLICATION NO. 2061 OF 2012
IN
FIRST APPEAL NO. 347 OF 2012

Mrs. Vaishali Darshak Ghegadmal
Aged 42 years. Occ. Service R/at
E-31/A, Everst CHS, Sahakar Nagar,
Shell Colony, Chembur (East), Mumbai 71 .. Appellant

Vs.
Mrs. Taibai Santosh Ghegadmal
Adult, Occ. Housewife, R/at
Flat No.79, 4th Floor, Shivjan Society,
Sahakar Nagar No. V, Shell Colony Road,
Chembur, Mumbai – 71 .. Respondent

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Mrs. Vaishali D. Ghegadmal – appellant present in Court

Mr. Gulabrao W. Awasarmol i/b Mr. Viplav Khobragade for the respondent

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CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 3rd AUGUST, 2023
PRONOUNCED ON : 11th AUGUST, 2023

JUDGMENT :-

1. Feeling aggrieved with the judgment and order of the trial Court dated 6th January, 2012, the defendant / appellant has

preferred this appeal. Facts in brief are as under.

2. The respondent is the mother-in-law of the appellant. The respondent had filed a suit against the appellant seeking mandatory and perpetual injunction in respect of Flat No.79, 4th Floor, Shivjan Society, Sahakar Nagar No.5, Shell Colony Road, Chembur, Mumbai 400 071 (hereinafter referred to as “suit flat”). It is the contention of the respondent that the suit flat has been in her exclusive possession, use and occupation and that husband of the appellant and the son of respondent no.1 namely deceased Darshak had gifted the suit flat to the respondent.

3. In the year 2005, deceased Darshak became seriously ill. The appellant refused to attend and take care of her husband. The respondent and her husband took care of their son during his illness. The relations of the appellant and the respondent were strained during those days. They were not on talking terms with each other. The appellant started residing with her parents at Ambernath while her husband continued to reside with the respondent in a bunglow.

4. In the month of December 2004, with the consent of

deceased Darshak, the respondent had given the suit flat to one C.R. Rukmini on leave and license basis. The respondent regularly collected the monthly compensation in respect of the suit flat. Subsequently, on 29th June, 2005, by a registered gift deed, deceased Darshak had gifted the suit flat in favour of the respondent (mother). It is the contention of the respondent that she became owner of the suit flat pursuant to the said gift deed. Physical possession of the suit flat was also handed over to her by Darshak. Unfortunately, Darshak died on 2nd December 2007. The appellant came to stay with the respondent in the respondent's husband's bunglow.

5. By a subsequent leave and licence agreement dated 9th June, 2008, the respondent had again handed over the suit flat in favour of Smt. C.R. Rukmini for a period of two years. She was receiving the compensation of the said suit flat.

6. On 25th October 2009, the licensee had vacated the suit flat before expiry of the licence period. The suit flat was, thereafter, occupied by the respondent and her husband.

7. It is contended that on 30th October, 2009 the appellant

entered into the suit flat against the wish of the respondent and her husband. Inspite of repeated requests, she refused to leave the suit flat. A complaint was registered at Nehru Nagar Police Station on 4th November, 2009. Since the matter was of civil nature, the police refused to interfere. The respondent, therefore, filed a suit in the City Civil Court.

8. The appellant had filed written statement as well as counter claim resisting the claim of the respondent. The appellant admitted execution of the gift deed dated 29th June, 2005 by her deceased husband in favour of the respondent, however, she disputed the circumstances mentioned by the respondent in the plaint. It is the specific contention of the appellant that from the year 2005, her husband was suffering from various serious deceases like brain knot and heart attack. It is further contended that at the time of execution of the gift deed, the deceased was not in a position to understand what was going on and what kind of document was being executed. In short, it is the contention of the appellant that her deceased husband was not of sound mind at the time of execution of the gift deed. In her counter claim, the appellant had prayed for declaring the said gift deed as null and void. In the

written statement to the counter-claim filed by the respondent, it is contended by the respondent that she had shifted to the suit flat with her husband on 25th October, 2009 on the very day when the licensee vacated the suit flat. The respondent had, therefore, prayed for dismissal of the counter-claim with costs.

9. After framing issues and recording evidence of the parties, the learned trial Court by the impugned judgment, partly decreed the Suit No. 2535 of 2005 in terms of prayer clauses (a) and (b). The counter claim No.1 of 2010 was dismissed. The trial Court, *inter alia*, extended the order of status-quo for a period of 8 weeks from the date of the judgment.

10. The First Appeal was admitted on 25th November, 2013. Subsequently, by an order dated 19th September, 2014, the appeal came to be expedited in view of the fact that the respondent is a senior citizen.

11. On 16th June, 2023, Mr. Gulabrao Awasarmol, learned Counsel for the respondent submitted that since the respondent is now 91 years old, who has been dispossessed from the suit flat by the appellant despite their being an order of status-quo continued

by this Court, the matter needs to be heard expeditiously and finally.

12. The appellant appeared in person before this Court on 13th July, 2023. She had submitted that her advocate Ms. Usha Purohit had winded up and left for Goa. The appellant further submitted that she does not wish to prosecute the appeal by stating that whatever be the judgment, would be acceptable to her. This Court, however, in the interest of justice, granted one more opportunity to the appellant to reconsider her request as to whether she wish to prosecute the appeal or otherwise and to make an appropriate statement on the next date. The appellant had tendered copy of her Pan Card, Identity card issued by the Municipal Corporation of Greater Bombay as well as identity of the Income Tax Department, in proof her identity.

13. Consequently, on 20th July, 2023 the appellant had tendered a communication dated 20th July, 2023 stating that she does not wish to prosecute the appeal. She again reiterated whatever the judgment which would be passed by this Court, will be acceptable to her. The said communication was taken on record and marked

"X" for identification.

14. The matter was thereafter heard on 3rd August, 2023. The appellant was personally present in the Court and reiterated what she had stated before this Court on the earlier dates.

15. I heard Mr. Awasarmol, learned Counsel for the respondent. I have also meticulously gone through the record and proceedings as well as the impugned judgment.

16. Even if the appellant had declined to prosecute the appeal, it would be expedient to go through the grounds of appeal raised by the appellant. It is stated in the memo of appeal that in order to prove the cordial relations between the appellant with her husband, there was sufficient evidence on record. The evidence adduced by the respondent is not sufficient to prove the contents of the gift deed, since no attesting witnesses has been examined. The next ground in the memo of appeal is that the evidence in the form of gift deed has not been correctly appreciated since the mental condition of the deceased Darshak was not proper at the relevant time. It is also a ground in the memo of appeal that in view of Section 68 of the India Evidence Act, gift deed cannot be admitted

in the evidence as its execution is not proved by two contesting witnesses. Several case laws were cited before the trial Court.

17. In order to substantiate her contention of state of unsoundness of mind of the deceased – Darshak, the appellant had examined 3 medical experts. As already stated hereinabove, the appellant had contended that her husband had executed the registered gift deed dated 29th June, 2005 in favour of his mother while he was not in a sound state of mind.

18. Evidence of DW-4 Dr. Rajat Deb Burman (Exh.75), DW-5 Dr. Sachin Govind Bhosale (Exh.76) and DW-6 Dr. Abdul Samad Ansari (Exh.81) would be relevant as all those witnesses were independent, in the sense, they are neither related to the parties nor had any interest in the subject matter of the suit.

19. DW-4 Dr. R.D. Burman was a doctor on the panel of Air India. He had given medical history sheet of the deceased – Darshak Santosh Ghegadmal which was maintained by the office. Entries in the medical history sheet attached with Exh.52 were made by previous Doctor. His evidence reveals that there is a mention about the infection in the brain. There is also mention of

HIV Positive and that the deceased was taking regular medicines for heart problem. It is the evidence of this witness that the deceased was also suffering from infection of Eoxoenasmosis and Puber phemosis i.e. infection in brain. There is nothing in the evidence of this witness indicating unsoundness of mind of the deceased Darshak.

20. Similarly, DW-5 Dr. Sachin G. Bhosale did not say anything as regards any ailment of the deceased in respect of unsoundness of his mind or as regards his mental fitness.

21. The evidence of DW-6 Dr. Abdul Samad Ansari reveals that the deceased was a patient of Ischemic Heart Disease for one year. His angioplasty was done a year before. According to this witness, in the month of March, 2005 deceased was admitted in Nanavati Hospital with complaint of slurring of speech, blurred vision and difficulty in walking. The Doctor, on thorough investigation, noticed that the deceased was suffering from cerebral toxoplasmosis in the left temporo-occipital region. According to this witness, toxoplasmosis is a brain infection which occurs most commonly in immune comprised individuals. It was informed by the wife of the

deceased to this witness that the patient had taken discharge against the medical advice from Nanavati Hospital and got admitted in Lilavati Hospital. From Lilavati Hospital, he was discharged on 16th April, 2005.

22. Having considered the evidence of the aforesaid three expert witnesses, there is nothing to indicate that the deceased, though was suffering from cerebral toxoplasmosis, was of unsound mind as contended by the appellant.

23. Even from the exhibited documents i.e. Exh.57 and 58, which are the health record for serving employee as well as from the papers of Lilavati Hospital, there is nothing to indicate about the unsoundness of mind of the deceased - Darshak.

24. DW-6 Dr. Abdul S. Ansari in his cross-examination had specifically deposed that it would be unfair on his part to say that the patient was of unsound mind as he was not a neurologist. Essentially, in order to establish unsoundness of mind of the deceased, the best witness or evidence would have been that of a Neurologist, which is not on record. The evidence adduced on behalf of the appellant is, therefore, cannot be accepted as the

proof indicating unsoundness of mind of her deceased husband.

25. Interestingly, it has come in the evidence of DW-6 Dr. Abdul S. Ansari that the appellant had not informed the doctors of any such mental illness while giving history of her husband. This speaks volumes as regards conduct of the appellant.

26. The learned trial Court has, therefore, rightly observed that the appellant had failed to discharge the burden of proof of the alleged unsoundness of mind of her husband.

27. There is no legal necessity to examine at least one attesting witness in case of registered gift deed as Section 68 of the Indian Evidence Act only contemplates examination of at least one attesting witness for proving execution of the document, if a document is required by law to be attested. Mostly, in case of a Will, such examination of at least one witness is essential to prove the execution of the Will. The learned trial Court has, therefore, rightly observed that since it was a registered gift deed as per Section 17(1)(a) of the Registration Act, 1908 there was no legal necessity to examine the attesting witness as gift deed is a compulsorily registrable document. The appellant had not disputed

the execution of the gift deed. The only ground raised by the appellant is unsoundness of mind of her husband.

28. As such, the evidence of all the medical experts is not helpful to the appellant in establishing her case as regards mental illness of her husband. Even in her evidence, there was nothing from which it can be inferred that any fraud or undue influence had been played upon the deceased by the respondent at the time of executing the gift deed. A suggestion appears to have been given to the respondent that due to illness deceased was not able to sign, which she had denied. There is no specific evidence as regards alleged fraud played upon the deceased by the respondent. It is difficult to accept as to why a mother would play a fraud upon her ailing son in order to grab the suit flat. Be that as it may.

29. It has been admitted by the appellant in the written statement that the suit flat was given on leave and licence to one C.R. Rukmini and was vacated by her on 25th October 2009. It was, therefore, obvious that the appellant was not in possession during the period of license. As regards the possession of the respondent and her husband over the suit flat is concerned, the police report

(Exh.50) lodged by the appellant with Nehru Nagar Police Station on 24th May, 2009 itself indicates that she sought protection from the police for entering into the suit flat as according to the appellant, it was owned by her husband. It is apparent that she had entered into the suit flat only after the death of her husband and was not in occupation of the suit flat prior to his death.

30. The trial Court has rightly appreciated the evidence of the witnesses in that regard. It has been rightly concluded that the appellant is not entitled for any relief as claimed in her counter-claim No.1 of 2010 and, therefore, the trial Court had partly decreed the respondent's suit.

31. I, therefore, do not see any reason to interfere in the impugned judgment and decree passed by the trial Court.

32. Consequently, the appeal is devoid of merits and hence, it stands dismissed with costs.

33. In view of the dismissal of the appeal, the Civil Application, does not survive and the same is also disposed of.

(PRITHVIRAJ K. CHAVAN, J.)