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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 24.04.2023**Pronounced on: 02.06.2023*

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RFA 255/2023 and CM APPL. 15474/2023**GEETA****..... Appellant**

Through: Mr. K.K. Kundra, Advocate.

versus

KELA DEVI**..... Respondent**

Through:

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH**

J U D G M E N T

GAURANG KANTH, J.

1. The Appellant in the present Appeal is impugning the judgment & Decree dated 05.12.2022 ("**Impugned judgment**") passed by ADJ-02, North Rohini Court Complex, Delhi in CS DJ No. 309/2020 titled as '*Smt. Kela Devi v. Geeta & Ors.*' Vide the Impugned Judgment, the learned Trial Court, *inter-alia*, decreed the suit in favor of the Respondent and declared that the Respondent is the sole owner of the property bearing Flat no. 33, Pocket A9, Sector 18, Rohini, Delhi ("**the suit property**") and the Appellant has no right, title or interest in the suit property. The Appellant *vide* the present Appeal is praying for setting aside of the Impugned judgment.



2. The Trial Court Record is available with this Court. Learned counsel for the Appellant states that the appeal may be heard today itself and no date for hearing of the appeal be fixed as contemplated by sub-Rule 1 of Rule 11 of Order XLI of the Code of Civil Procedure.

FACTS GERMANE FOR THE ADJUDICATION OF THE PRESENT APPEAL ARE AS FOLLOWS:

3. The Respondent is an old and illiterate lady of about 74 years. The Respondent had one son and four daughters. In October 1997, the Respondent's son passed away. Her husband passed away on 19.07.2014 and she lost her one daughter namely Ms. Saroj in the year 2015. The appellant is her younger daughter.
4. It is the case of the Respondent that after the sad demise of her son, she and her deceased husband wanted to shift from Narela to Rohini. Hence they purchased a flat, i.e, C-124, Millennium Apartments, Sector 18, Rohini, Delhi in the year 2001. In the same year, Respondent also purchased another flat bearing no.3, Pocket A7, Sector 18, Rohini, Delhi in the name of her younger daughter/Appellant herein. It is further the case of the Respondent that they bought a flat for the Appellant in the hope that she will take care of them in their old age.
5. It is further the claim of the Respondent that after the death of her husband, the Respondent was residing alone in the said flat, i.e, C-124, Millennium Apartments, Sector 18, Rohini, Delhi. The Appellant and Original Defendant No.2 (husband of the Appellant) visited the house of the Respondent and told her about the frequent



incidents of theft and murder in the locality, specifically against the older people residing alone. On hearing these narrations, the Respondent got terrified. The Appellant and her husband later convinced the Respondent for disposing of her flat, i.e. C-124, Millennium Apartments, Sector 18, Rohini, Delhi and buy a new flat near the Appellant. The Respondent further states that being old and illiterate, she was totally dependent upon the Appellant. It is further the claim of the Respondent that she has a bank account bearing no. 3279528500 with Central Bank of India, Sector 18, Rohini and the Appellant also has a bank account with the same bank. The Appellant took undue advantage of the fact that the Respondent was an illiterate lady and got thumb impressions of the Respondent on many papers which were typed as well as blank.

6. Thereafter, Flat C-124, Millennium Apartments, Sector 18, Rohini, Delhi was sold for an amount of Rs. 85,00,000/- (Rupees Eighty-Five Lakhs Only) and the Appellant assured the Respondent that the entire amount was kept in the bank account of the Respondent. Thereafter, Appellant along with her husband and one Ms. Renu (original Defendant No.3) bought the suit property. All the dealings and documentation etc. were done by the Appellant and original Defendant Nos.2 to 4 themselves. Pertinently, after the purchase of the suit property, the Appellant rented out her own house and started residing with the Respondent in the suit property.
7. The Respondent further claims that gradually the behavior of the Appellant totally changed towards the Respondent and she started misbehaving and abusing the Respondent. Further, in the month of



August 2018, the Appellant picked up a quarrel with the Respondent and when the Respondent asked the Appellant to vacate the suit property, the Appellant slapped the Respondent stating that the suit property belonged to her. It is further her case that after some enquiries she came to know that the Appellant in collusion with Original Defendant No.3 got the papers of the suit property jointly in the name of Respondent (40% share) and Appellant (60% share).

8. It is further the claim of the Respondent that the Appellant also fraudulently got transferred an amount of Rs. 21,00,000/- (Rupees Twenty-One Lakhs Only) and Rs. 12,50,000/- (Rupees Twelve Lakhs Fifty Thousand Only) from the account of the Respondent to the account of the Appellant. The Respondent was also shocked to know that her FDR for an amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) was also pledged and a loan of Rs.13,50,000/- (Rupees Thirteen Lakhs Fifty Thousand Only) were taken and the said amount was transferred into the account of the Appellant. Further, in the month of July 2017, the Appellant and Original Defendant No. 3 took the Respondent to the Alipur Sub-Registrar Office and procured the thumb impression of the Respondent on several papers.
9. Subsequently, on 11.09.2018, the Respondent filed a complaint with SHO PS Badli. On failure of the police to take appropriate action, the Respondent filed a complaint under Section 200 of Cr.P.C. before the Court. The said complaint case was dismissed,



however, the revision petition against the said order of dismissal is still pending.

10. Being aggrieved, the Respondent preferred a 'Suit for declaration, recovery, possession with subsequent relief of permanent injunction', being CS DJ No. 309/2020, before the learned Trial Court with the following prayer:

"a. Pass a decree of declaration thereby declaring the plaintiff to be the absolute owner of entire suit property i.e. Flat No. 33, Pkt-A-9, Sector-18, Rohini. Delhi and to further declare that the defendant No. 1 has no right, title or interest in respect of suit property;

b. Or in alternative pass a decree for recovery of money of Rs. 33,50,000/- along with interest @ 12% per annum in favour of the plaintiff and against the defendant No. 1;

c. Pass a decree for possession directing the defendants to handover the peaceful and vacant possession of entire suit property i.e. Flat no. 33, Pkt-A-9, Sector 18, Rohini, Delhi, to the plaintiff.

d. Pass a decree of permanent injunction in favour of the plaintiff and against the defendants, restraining to the defendants, their agent, associates etc. from their illegal acts and not to disturb the peaceful possession of the plaintiff and not to dispossess the plaintiff from suit property i.e. Flat no. 33, Pkt-A-9, Sector-18, Rohini, Delhi, and defendants may further be restrained from creating third party interest in the suit property, which is specifically shown in the site plan, in favour of the plaintiff and against the defendants.

e. The cost of the suit may also be awarded in favour of the plaintiff and against the defendants.

f. Any other relief or remedy which this Hon'ble Court may deem fit and proper may also be passed in favour of the plaintiff and against the defendants."



11.The Appellant filed a written statement in Civil Suit No. 309/2020 and denied the averments made by the Respondent.

12. From the pleading of the parties the learned Trial Court framed the following issues for its consideration *vide* its order dated 09.06.2022:

*“1. Whether the consideration amount for the purchase of suit property to the extent of 60% paid by the plaintiff was share/savings of the defendant No.1? OPD1
2. Relief.”*

13.The Respondent, in order to prove her case, examined two witnesses. She examined herself as PW1 and Sh. Raj Bhushan, record keeper from Central Bank of India, Sector 18, Rohini, Delhi as PW2. Whereas the Appellant examined herself as DW1. Original Defendant No.3/Ms. Renu has examined herself as D3W1 and Original Defendant No.4/Parvesh Kumar has examined himself as D4W1.

14.Learned Trial Court *vide* the Impugned judgment, decreed the suit in favor of the Respondent and declared the Respondent as the sole owner of the suit property.

15.Aggrieved by the same, the Appellant preferred the present Appeal, challenging the Impugned judgment.

SUBMISSIONS ON BEHALF OF THE APPELLANT

16. Learned counsel for the Appellant, Mr. K.K. Kundra, initiated his arguments by submitting that the learned Trial Court passed the impugned Judgment based on the erroneous assumption of both law and facts.



17. Learned counsel for the Appellant submits that the Respondent's case is based on the premise that the Appellant instigated the Respondent to sold her Flat, C-124, Millennium Apartments, Sector 18, Rohini, Delhi and persuaded her to buy the suit property. It is an admitted position that after the death of the Respondent's husband in the year 2014, she was staying alone in the said flat till 2017. During these years, the Appellant was looking after her old, aged mother. Hence, as per the decision of the other family members, the Respondent sold her Flat, C-124, Millennium Apartments, Sector 18, Rohini, Delhi, and bought the suit property which was situated near to the Appellant's flat. Further, during negotiations, it was decided by all the family members that the Appellant will take care of the Respondent during her old age and out of love and affection, the Appellant will get 60% and the Respondent will get 40% share in the suit property. Accordingly, a sale deed dated 14.07.2017 was executed by Shri Rakesh Kukreti and his wife, Smt. Deepa Kukreti in favor of the Respondent and Appellant to the extent of 40% and 60% respectively. The Respondent was well aware of this fact.
18. It is the contention of the learned counsel for the Appellant that the plaint filed by the Respondent was vague. From the reading of the plaint, it is evident that the Respondent failed to mention the necessary particulars regarding the various incidents as alleged in the Plaint, It is his contention that the Respondent did



not even examine the relevant witnesses to substantiate her bald allegations.

19. Mr. K.K. Kundra, learned counsel for the Appellant further averred that the Respondent raised similar allegations as in the plaint before the Police authorities. However, after thorough investigation, the police officials did not find any substance in the allegations raised by the Respondent against the Appellant and original defendant Nos.2 to 4 and dropped the proceedings. Dissatisfied with the action of the police officials, the Respondent filed a complaint under Section 200 Cr.P.C. along with an application under Section 156(3) Cr.P.C. against the Appellant and original defendant Nos.2 to 4. However, the learned MM *vide* order dated 08.11.2019, dismissed the complaint filed by the Respondent holding that there is no evidence to substantiate her allegations. Pertinently, during the pendency of the proceedings before the learned MM, the Respondent lodged a complaint in the office of District (North), Alipur, Delhi on 27.07.2019 and *vide* order dated 27.07.2019 passed by the Office Kanoongo, it was stated that the Respondent and the Appellant are joint owners of the suit property and *prima facie* the case appears to be of property dispute and the Respondent was directed to approach the Civil Court.

20. Learned counsel for the Appellant further argued that the Appellant is still taking care of her old mother, i.e. the Respondent. It is also his argument that the Appellant's husband



(Original Defendant No.2) left her in the year 2015 due to temperamental differences between them and the allegations levelled by the Respondent against the original Defendant No.2 is baseless as he has no concern with the Appellant and her family since 2015.

21. Learned counsel further submits that the learned Trial Court erred in holding that the Respondent has been able to prove on record that the Appellant was in a fiduciary relationship with the Respondent as the Appellant was having the power to dominate the will of the Respondent, who is an old and illiterate lady. Learned Trial Court further erred in holding that by taking undue advantage of her position, the Appellant got executed the sale deed in respect of the suit property to the extent of 60% share. It is the contention of the learned counsel for the Appellant that it was not within the domain and jurisdiction of the learned Trial Court to employ its own wisdom by traveling and making a complete departure from the material available on record.
22. In view of the above, the learned counsel for the Appellant prayed for setting aside of the Impugned judgment.

LEGAL ANALYSIS

23. This Court had heard the arguments advanced by the learned counsel for the Appellant and perused the documents placed on record.
24. It is an admitted position that the Respondent and Appellant are co-owners of the suit property. Appellant is holding 60% share



whereas the Respondent is holding 40% share in the suit property. As per the sale deed (Exhibit PW1/A), the total sale consideration was Rs. 46,50,000/-. From the bank statements of the Appellant and the Respondent (Exhibit PW2/A& PW2/B), it is evident that the Respondent transferred Rs.21,00,000/- to the Appellant on 07.07.2017. Appellant on the same day, transferred Rs. 23,00,000/- to the seller of the suit property. In another transaction dated 10.07.2017, the Respondent transferred Rs. 23,50,000/- to the seller directly. Hence from the bank statement of the Appellant and Respondent, it is evident that the Respondent paid the complete sale consideration for the purchase of the suit property. In addition, the Respondent transferred Rs.12,50,000/- to the Appellant on 10.07.2017. The Appellant in her written statement admitted these transactions and stated as follows:

“It is submitted that the plaintiff transferred the amount of Rs.21,00,000/- in the account of defendant No.1 through RTGS. The defendant No. transferred Rs.23,00,000/- in the account of seller namely Shri Rakesh Kukreti and Deepa Kukreti for the sale consideration. In addition to this, plaintiff has taken a loan of Rs.12,50,000/- against her own FDR of Rs. 15,00,000/- and this amount has been transferred by the plaintiff in the account of defendant No.1 for payment of stamp duty and renovation of the flat. The defendant No.1 has spent Rs.2,00,000/- on stamp duty and the rest of the amount was spent on the renovation of the flat”.

25. In view of the clear admission from the Appellant, the learned Trial Court rightly decided the issue No. 1, i.e, ‘Whether the consideration amount for the purchase of suit property to the extent



of 60% paid by the plaintiff was share/savings of the defendant No.1' in favour of the Respondent.

26. It is the case of the Respondent that she was all through under the impression that the suit property was purchased in her sole name. However, later it was revealed to her that it was purchased in the joint name of the parties. As and when she realized it, she filed police complaints and approached the civil Court challenging the same. Whereas it is the case of the Appellant that with the consent of the family members, the Respondent on her own will asked her to execute the sale deed in the joint names of the parties 'out of love and affection'. It is her case that the Respondent is an old lady, and she is the one who is taking care of her ailing mother, hence 60% of the suit property was given to her 'out of love and affection'. This fact was strongly disputed by the Respondent.
27. The 80-year old Respondent (then she was) appeared before the learned Trial Court as PW-1 and reiterated her case. She has been cross-examined extensively by the learned counsel for the Appellant. During her cross-examination, PW-1 categorically stated that she cooks her own food and goes to Ganga Ram Hospital by herself for her medical treatments. She specifically denied that the Appellant or her sons supports her in any manner. The Appellant failed to produce any family members to establish the fact that the sale deed was executed in the joint name of the parties with the knowledge and consent of the Respondent. The 80-year-old Respondent at the fag end of her life, took all the pain to approach the Court when she realized that she has been cheated by



her own daughter. There is no reason to disbelieve the testimony of the Respondent.

28. In this regard, it is profitable to refer the law laid down by the Hon'ble Supreme Court in the matter of **Krishna Mohan Kul v. Pratima Maity**, reported as (2004) 9 SCC 468:

“12...The court was dealing with a case where an old, ailing illiterate person was stated to be the executant and no witness was examined to prove the execution of the deed or putting of the thumb impression. It has been rightly noticed by the High Court that the courts below have wrongly placed the onus to prove execution of the deed by Dasu Charan Kul on the plaintiffs. There was challenge by the plaintiffs to the validity of the deed. The onus to prove the validity of the deed of settlement was on Defendant 1. When fraud, misrepresentation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation. But when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position, and he has to prove that there was fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bona fide. In such a case the burden of proving the good faith of the transaction is thrown upon the dominant party, that is to say, the party who is in a position of active confidence. A person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the court watches with jealousy all transactions between such persons so that the protector may not use his influence or the confidence to his advantage. When the party complaining shows such relation, the law presumes everything against the transaction and the onus is cast upon the person holding the position of confidence or trust to show that the



transaction is perfectly fair and reasonable, that no advantage has been taken of his position. This principle has been ingrained in Section 111 of the Indian Evidence Act, 1872 (in short “the Evidence Act”). The rule here laid down is in accordance with a principle long acknowledged and administered in the Courts of Equity in England and America. This principle is that he who bargains in a matter of advantage with a person who places confidence in him is bound to show that a proper and reasonable use has been made of that confidence. The transaction is not necessarily void ipso facto nor is it necessary for those who impeach it to establish that there has been fraud or imposition, but the burden of establishing its perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed. The rule applies equally to all persons standing in confidential relations with each other. Agents, trustees, executors, administrators, auctioneers, and others have been held to fall within the rule. The section requires that the party on whom the burden of proof is laid should have been in a position of active confidence. Where fraud is alleged, the rule has been clearly established in England that in the case of a stranger equity will not set aside a voluntary deed or donation, however improvident it may be, if it be free from the imputation of fraud, surprise, undue influence and spontaneously executed or made by the donor with his eyes open. Where an active, confidential or fiduciary relation exists between the parties, there the burden of proof is on the donee or those claiming through him. It has further been laid down that where a person gains a great advantage over another by a voluntary instrument, the burden of proof is thrown upon the person receiving the benefit and he is under the necessity of showing that the transaction is fair and honest.

13. In judging the validity of transactions between persons standing in a confidential relation to each other, it is very material to see whether the person conferring a benefit on the other had competent and independent advice. The age



or capacity of the person conferring the benefit and the nature of the benefit are of very great importance in such cases. It is always obligatory for the donee/beneficiary under a document to prove due execution of the document in accordance with law, even dehors the reasonableness or otherwise of the transaction, to avail of the benefit or claim rights under the document irrespective of the fact whether such party is the defendant or plaintiff before the court.

14. It is now well established that a Court of Equity, when a person obtains any benefit from another imposes upon the grantee the burden, if he wishes to maintain the contract or gift, of proving that in fact he exerted no influence for the purpose of obtaining it. The proposition is very clearly stated in Ashburner's Principles of Equity, 2nd Edn., p. 229, thus:

“When the relation between the donor and donee at or shortly before the execution of the gift has been such as to raise a presumption that the donee had influence over the donor, the court sets aside the gift unless the donee can prove that the gift was the result of a free exercise of the donor's will.”

17. The logic is equally applicable to an old, illiterate, ailing person who is unable to comprehend the nature of the document or the contents thereof. It should be established that there was not mere physical act of the executant involved, but the mental act. Observations of this Court, though in the context of a pardahnashin lady in Kharbuja Kuer v. Jang Bahadur Rai [AIR 1963 SC 1203] are logically applicable to the case of old, invalid, infirm (physically and mentally) and illiterate persons.”

29. Learned Trial Court had given cogent reasons to conclude that the Appellant was in a fiduciary relationship with the Respondent and was having the power to dominate the will of the Respondent who is an old and illiterate lady and by taking undue advantage of her position, she got executed the sale deed in respect of the suit



property to the extent of 60%. As discussed herein above, the total sale consideration was paid by the Respondent from her own fund. There is no evidence to prove that the Respondent ever agreed to execute the sale deed with 60% share in the name of the Appellant.

30. In view of the above discussion, there is no substance in the present Appeal. The same is, therefore, dismissed. All the pending applications are disposed of. No order as to costs.

GAURANG KANTH, J.

JUNE 02, 2023

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