

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

FAO 105/2023

Date of Decision: 01.05.2023

IN THE MATTER OF:

SURENDER KUMAR

..... Appellant

Through: Mr. Parikshit Mahipal, Advocate

versus

POORAN CHAND & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL. 21765/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

FAO 105/2023 and CM APPL. 21764/2023 (stay)

1. The present appeal has been preferred by the appellant under Order 43 Rule 1 read with Section 104 CPC against the impugned order dated 17.04.2023 passed by the Trial Court in CS DJ 226/2021 whereby the application under Order 39 Rules 1 and 2 CPC filed by the appellant/plaintiff came to be dismissed.
2. The plaintiff filed the underlying suit seeking cancellation of the registered Relinquishment Deed dated 07.08.2017 with a further relief of

permanent injunction of restraining respondent No.1 from creating third party interest in the suit property as well as seeking relief of permanent injunction thereby restraining the respondents from interfering in the appellant's peaceful possession. Other ancillary reliefs were also sought.

3. In the plaint, it was averred that respondent No.1 is the father of the appellant. While the appellant is residing at the first floor, respondent No.1 resides at the ground floor of the suit property. Respondents No.2 and 3 are the married elder sisters of the appellant living separately in their respective matrimonial homes. Respondents No.4 and 5 are younger brothers who are also living separately in their respective homes. In the year 2017, the parties except respondent No.5 gathered to celebrate *Raksha Bandhan* when at the asking of respondent No.1, the appellant signed on paper believing it to be towards reconstruction of the property. Though the plaintiff asked about the contents, the same were not disclosed. It is only later on that the appellant came to know that the paper signed by him was Relinquishment Deed.

4. Learned counsel for the appellant contended that under the aforementioned circumstances, the appellant was able to make out a prima facie case and the Trial Court erred in rejecting the application filed under Order 39 Rules 1 and 2 CPC.

5. Concededly, the suit property was allotted in the name of respondent No.1 and his wife (mother of the appellant) vide registered lease deed dated 14.11.1991 and Conveyance Deed dated 22.05.2000. The appellant's mother died intestate on 07.11.2012. After a period of 5 years of the death of their mother, apparently all the children executed separate relinquishment deed in favor of their father.

A further perusal of the plaint would show that the Relinquishment Deed signed by appellant allegedly under misrepresentation was in fact duly registered with the Sub-Registrar. Similarly, the relinquishment deeds executed by respondent Nos. 2 to 5 were also registered.

It is discernible from the pleadings that much later, respondent No.1 had filed a police complaint against the appellant. It was alleged that respondent No.1, aged about 85 years, was assaulted and harassed by the appellant. In this regard, the proceedings are statedly pending before the concerned Divisional Commissioner. The respondent No.1 filed written statement wherein it was claimed that though the appellant after his marriage in the year 1987, was living with the respondent No.1 but since the year 1992, he had started living separately in the rented premises initially at *Mitra Vihar, Rani Bagh, Delhi* and later, at *Sector-3 Rohini, Delhi* with his family. It was only in the year 1997, that the appellant came back to live with respondent No.1 and his wife in the suit property.

6. On a *prima facie* consideration of the pleadings placed on record, it appears that the underlying suit has been filed by the appellant after respondent No.1 had filed a police complaint against him. The Relinquishment Deed in question is a registered document and the appellant has not denied its execution. The contention raised that it was executed under misrepresentation without being aware of the contents would need to be established in the trial. In the impugned order, the Trial Court also observed that the appellant has neither denied signing the Relinquishment Deed nor denied its registration. He also did not deny that the relinquishment was executed in presence of his son and other family members as well as that he himself is a graduate.

7. Keeping in view the above narrated facts of the case, this Court concurs with the view taken by the Trial Court and finds no ground to interfere with the same. Accordingly, the impugned order is upheld and the present appeal is dismissed alongwith the pending application.

(MANOJ KUMAR OHRI)
JUDGE

MAY 01, 2023

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