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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 23.05.2023

+ MAT.APP.(F.C.) 150/2023 & CM APPL. 27723-24/2023

TARA SINGH

..... Appellant

versus

JASVINDER KAUR & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Pankaj Kumar, Advocate (through VC)

For the Respondents: None.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 25.02.2023 whereby the suit filed by the appellant seeking a declaration that the registered sale deed dated 01.06.2004 in favour of the respondent is null and void being without any consideration.
2. Appellant and respondent no. 1 were married and their marriage has been dissolved by a decree of divorce dated 19.05.2015.
3. A sale deed was executed by the appellant in favour of the respondent no. 1 on 01.06.2004.

4. Appellant had taken a loan and the sale deed was deposited with the respondent no. 2, the bank as a security. After the discharge of the loan, the bank refused to return the sale deed to the appellant and as such respondent no. 2 bank was impleaded as a party. It is informed by learned counsel for the appellant that after the passing of the impugned judgment, the sale deed has already been released to the respondent no. 1 by the bank.

5. A civil suit was filed on 16.03.2013 by the appellant under Section 31 of the Specific Relief Act seeking a declaration /cancellation of the sale deed dated 01.06.2004. The said suit was dismissed on the ground of limitation on 30.05.2016.

6. Appellant impugned the order before the Addl. District Judge but the appeal was dismissed on 19.09.2019 holding that that the suit was filed when the marriage between the parties was subsisting and as such the suit was barred under Section 7 of the Family Court Act, 1984. Pursuant thereto, the subject suit was filed on 24.09.2019.

7. This Suit has also been dismissed on 25.02.2023 by the impugned order holding that the suit is barred by limitation.

8. Learned counsel for the appellant contends that since the sale deed was without consideration, it was null and void and thus, there was no limitation prescribed for filing such a suit and thus the Court had erred in holding that the suit is barred by limitation.

9. Perusal of sale deed dated 01.06.2004 clearly shows that the sale deed was executed for a consideration of Rs. 60,000/-. The sale

deed records that the amount of Rs. 60,000/- was paid to the appellant by the respondent prior to execution of the sale deed. In the sale deed, appellant has acknowledged the receipt of the entire sale consideration.

10. The contention of the appellant that the sale deed was without consideration is ex-facie incorrect as the same is not borne out from the sale deed. On the contrary, the sale deed records that the consideration of Rs. 60,000/- was fixed and which had been paid to the seller i.e., appellant. In the sale deed, appellant has also admitted the receipt of the said amount.

11. Clearly the contention of the appellant that the sale deed was executed without consideration is contrary to record and as such cannot be accepted.

12. The reliance placed by the appellant upon the decision of the Supreme Court in “*Kewal Krishan v. Rajesh Kumar 2021 SCC Online 1097*” to content that since the sale deed was without consideration, no limitation would apply, is not sustainable. The said judgment is distinguishable on the facts of the case.

13. In *Kewal Krishan (supra)*, the issue was that Kewal Krishan and his brother Sudarshan Kumar were joint owners of the property. Kewal Krishan had also executed power of attorney in favour of his brother – Sudarshan Kumar. Acting on the said power of attorney, Sudarshan Kumar transferred the property to his wife and his minor sons by two sale deeds. This sale was challenged by Kewal Krishan.

14. The defence of Sudarshan Kumar was that he was employed in Muscat and had transferred money to his brother for the purposes of purchasing the properties and that his brother was a mere *Benamidar* and it was in these circumstances that the Kewal Krishan had executed power of attorney in favour of Sudarshan Kumar and consequently Sudarshan Kumar had executed sale deed in favour of his wife and his children and as such the same were valid.

15. The trial court held that Sudarshan Kumar was the only owner of the suit properties and that appellant was disentitled to any relief.

16. On an appeal, the District Court accepted the plea of Kewal Krishan and held that both were joint owners of the properties. The High Court in an appeal confirmed the finding of the District Judge.

17. The Supreme Court noticed that Sudarshan Kumar had not stepped into the witness box and had not led any evidence that either his wife or his children had any independent source of income and it was in that context, the Court held that the sale deed was void being without consideration.

18. In the present case, the sale deed was executed on 01.06.2004 and the first suit was filed on 16.03.2013 which was beyond the prescribed period of limitation prescribed by Article 58 of the Schedule to the Limitation Act, 1963 i.e., three years.

19. Subject suit was filed on 24.09.2019.

20. In the instant case, sale deed categorically mentions the sale

consideration which is stated to have been paid and received by the appellant.

21. Furthermore, we may notice that Section 92 of the Indian Evidence Act, 1872 precludes the court from taking oral evidence of the contents of a document.

22. There is no dispute that the subject sale deed dated 01.06.2004 was executed by the appellant. There is also no dispute that sale deed contained a speculation that consideration of Rs. 60,000/- was agreed upon and that the same has been duly receipt by the seller i.e. appellant. Accordingly, in terms of Section 92 of the Indian Evidence Act, the appellant would be precluded from bringing any oral evidence to contradict the contents of the sale deeds.

23. Even if, it was assumed that appellant was entitled to the benefit of Section 14 of the Limitation Act and the period between the filing of the first suit i.e. 16.03.2013 till 19.09.2019 when the District Judge held that the suit was not maintainable in a civil court in terms of the Section 7 of the Family Courts Act, this suit is still barred by limitation as the first suit was instituted on 16.03.2013 after nearly eight years and nine months of the execution of the sale deed.

24. The Family Court in our view has rightly held that the suit is barred by limitation.

25. In view of the above, we find that no infirmity in the judgment dated 25.02.2023 of the family court in dismissing the suit of the plaintiff on the ground that the same has been filed beyond the period

of limitation of three years. Consequently, we find no merit in the appeal.

26. The appeal is accordingly dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

MAY 23, 2023
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