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

+ **FAO(OS) 14/2024**

MANINDER SINGH & ANR.

..... Appellants

Through: Ms. Deepika V. Marwaha, Sr.
Advocate with Mr. Saksham
Maheshwari, Ms. Worthing Kasar and
Ms. Raunika Johar, Advocates

versus

NIRMAL KAUR

..... Respondent

Through:

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Date of Decision: 25th January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T(ORAL)

C.M.No.4860/2024

Keeping in view the averments in the application, the delay in filing the present appeal is condoned.

Accordingly, the application stands disposed of.

C.M.No.4861/2024

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

FAO(OS) No.14/2024

1. The present appeal filed under Order 43 Rule 1 (r) of Civil Procedure Code, 1908 ('CPC') read with Section 10 of Delhi High Court Act, 1966 impugns the order dated 19th October, 2023 passed in CS (OS) 346/2017



titled as “*Nirmal Kaur v. Maninder Singh & Anr.*” (‘impugned order’) whereby the learned Single Judge of this Court has dismissed the Appellants’ application (I.A. No. 7845/2020) filed under Order 39 Rule 4 of CPC for vacation of ex-parte interim order dated 2nd August, 2017. The said order dated 2nd August, 2017 directed the Appellants to maintain status quo as to the title and possession of property bearing No. B-9 Mansarovar Garden, New Delhi (‘suit property’).

1.1. By the impugned order, the learned Single Judge has also allowed the Respondent’s pending application i.e., I.A. 8713/2017 filed under Order 39 Rule 1 & 2 of CPC and made absolute the said ad-interim order.

2. The Appellants are the original defendant nos. 1 and 2. Respondent is the original plaintiff in the civil suit.

2.1. The civil suit has been filed for seeking a declaration that as per the family settlement arrived between the parties, the Respondent (i.e. plaintiff) be declared as the owner of the suit property and consequential directions with respect to handing over of possession and execution of necessary documents be issued in accordance with law.

2.2. Appellant No. 1 was the brother of late Sh. Jasbinder Singh, i.e., the husband of the Respondent. Appellant No. 1 and Appellant No. 2 are married to each other. Thus, Appellant No. 1 and Appellant No. 2 are the brother-in-law and sister-in-law of the Respondent respectively.

2.3. In the plaint, Respondent has pleaded that in pursuance of an oral family settlement she had transferred her two (2) immovable properties located in Ludhiana, Punjab by executing Gift deeds in favour of Appellant No.1 and his daughter, Parneet Kaur respectively. It was stated that however, in exchange Appellants have failed to execute a Gift deed in



respect of their shares in the suit property, in favour of the Respondent. The Appellants filed a written statement and admitted execution of the Gift deeds with respect to the two (2) properties at Ludhiana, Punjab; however, disputed existence of any oral family settlement with respect to transfer of the suit property.

2.4. In the suit, initially learned Single Judge while issuing summons vide order dated 2nd August, 2017 passed an ex-parte interim order (in I.A. No. 8713/2017) directing the Appellants to maintain status quo as to the title and possession of subject property. After the written statement was filed, the issues were framed in the year 2018 and the evidence of the Respondent i.e., the plaintiff stands partially recorded in 2019. While the case was pending at the stage of recording of plaintiff's evidence; the Appellants after six (6) years filed an application under Order 39 Rule 4 CPC on 13th April, 2023 relying inter-alia on the cross examination, for seeking to set aside the ex-parte interim stay order dated 2nd August, 2017.

2.5. After considering the rival claims of the parties in the pleadings, the learned Single Judge returned a finding that the explanation furnished by the Appellants with respect to the reason for execution of the Gift deeds by Respondent in their favour for the properties at Ludhiana, Punjab appeared to be unconvincing. The Court opined that the plea of family settlement set up by the Respondent as the basis of the said Gift deeds appeared to be more plausible. Hence, in view of the said prima facie finding vide impugned order the Appellants' application was dismissed and the status quo order dated 2nd August, 2017 with regard to the suit property was made absolute till the pendency of the civil suit. Aggrieved by the same, the Appellants have preferred the present appeal.



Arguments on behalf of the Appellants

3. Learned senior counsel for the Appellants states that the reliefs claimed in the suit are unenforceable in law. She states that the plaint pleads an alleged oral family settlement as the basis for the relief of seeking a transfer of title of an immovable property (i.e. the suit property) standing in the name of the Appellants. She states that such an alleged oral family settlement is unenforceable in law, as neither it is in writing nor registered as required under Section 17 of the Registration Act, 1908 ('Registration Act'). She relies upon a judgment of the Supreme Court in ***Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors, (2020) 9 SCC 706***. She states that therefore, there exists no prima facie case in the favour of the Respondent.

3.1. She states that the contents of the said Gift deeds executed by Respondent in favour of the Appellant No.1 and his daughter also do not substantiate the plea of oral family settlement as alleged in the plaint. She states that the plaint suppresses material facts with respect to the existence of partnership firms between Respondent's sons and the brother of late Jasbinder Singh i.e., the Appellant No.1 herein. She states that the said partnership firms were dissolved and re-constituted in March, 2014 and the Appellant No. 1 had surrendered his rights in the said partnership firms in favour of the sons of the Respondent. She states that it was in lieu of the said transactions pertaining to partnership firms which led to the execution of the Gift deeds dated 29th May, 2014 and 10th May, 2015 by the Respondent in favour of Appellant No. 1 and his daughter respectively. She states that the aforesaid dissolution of the partnership businesses and release of partnership share by Appellant No. 1 has not been disclosed in the plaint.



3.2. She states that the claims in the plaint are time barred as the Gift deeds executed by the Respondent for the Ludhiana, Punjab properties in favour of Appellant No. 1 and his daughter was in the year 2014 and 2015 respectively, whereas the present suit has been filed in the year, 2017.

3.3. She states that Respondent who is presently in the witness box as PW-1 and has been cross-examined by the Appellants in the year 2019 has admitted the defence raised in the written statement.

3.4. She states that lastly, the Respondent in the application (more specifically at paragraph 8) had sought permission to let out the suit property, which plea has not been dealt with in the impugned order.

Findings of this Court

4. This Court has considered the submissions of the learned senior counsel for the Appellants and perused the record.

5. It is stated in plaint that the suit property was initially owned by one Mr. Kartar Singh from whom the parties herein purchased their respective portion(s) vide separate sale deeds dated 25th March, 1994. It is stated that Respondent and Appellant No. 2 purchased 128 sq. yards each respectively and rest of the portion i.e. 225 sq. yards was purchased by the Appellant No.1. It is stated by Appellant No. 1 in his written statement that (after the institution of the suit) he transferred his share in the suit property to Appellant No. 2 by way of a Gift Deed dated 04th August, 2017.

6. It is stated in the plaint that the Respondent had two (2) properties standing in her name at Ludhiana, Punjab. It is stated that in view of an oral family settlement the Respondent transferred her half share in the 1st property bearing Municipal Corporation no. B-15-692/A/692, Industrial



Area-B, Ludhiana, Punjab vide Gift Deed dated 29th May, 2014 in favour of Appellant No.1; and further the 2nd property as well bearing Plot No. 927 – 928 situated at Dhandra - 2 Hadbast No. 274, Abadi Basant Avenue Extension - 3, Tehsil and District – Ludhiana was transferred and gifted in favour of Ms. Parneet Kaur, daughter of Appellant Nos. 1 and 2. For this purpose, the Respondent executed a General Power of Attorney in favour of Appellant Nos. 1 and 2 and a gift deed for the 2nd property as well stands executed on 10th February, 2015 in favour of the daughter of the Appellants.

7. It is further stated that parties had arrived at an oral family settlement wherein in lieu of the aforesaid transfer of two (2) properties of Ludhiana, the Appellant Nos. 1 and 2 undertook to relinquish their respective portions of the suit property in favour of the Respondent herein. It is stated as the Appellant Nos. 1 and 2 failed to perform their part of the obligation, the Respondent, therefore, filed the aforesaid civil suit for the relief of declaration and consequential directions.

8. The suit was instituted in the year 2017 and the learned Single Judge vide order dated 2nd August, 2017 passed an ex-parte ad-interim order in favour of the Respondent directing the Appellants to maintain status quo as to the title and possession of the suit property. The pleadings were completed, and issues were framed in the suit vide order dated 18th September, 2018. The Respondent filed her evidence affidavit dated 16th January, 2019 and the same was tendered in evidence on 01st October, 2019. The Respondent has been examined as PW-1 and was extensively cross-examined by the Appellants on 01st October, 2019 and 07th November, 2019 before the learned Joint Registrar.



9. The matter was thereafter placed before the Court on 04th December, 2019 for further proceedings and was listed from time to time for adjudication of miscellaneous application filed by the parties. The suit remains pending at the stage of recording of plaintiff's evidence.

10. As is apparent from the record, since 2nd August, 2017 until 2023, the ad-interim order continued to operate and bind the parties without any objection from the Appellants. Thereafter, on 13th April, 2023 [six (6) years later], the Appellants herein filed an application under Order 39 Rule 4 CPC seeking vacation/variation of the ad-interim order dated 2nd August, 2017 primarily on the ground that the claims in the plaint are not sustainable in law and relying upon the cross examination of PW-1 recorded in the year 2019.

11. The learned Single Judge after considering the facts pertaining to the admitted execution of the two (2) Gift deeds for the properties at Ludhiana, Punjab by the Respondent in favour of Appellant No. 1 and his daughter took a prima facie view that the plea of oral family settlement set out in the plaint is credible vis-à-vis the explanation furnished by the Appellants in their written statement for the execution of the said Gift deeds.

12. Even before this Court, learned senior counsel for the Appellants has admitted that though the Gift deeds executed by Respondent in the year 2014 in favour of the Appellant's record that it was out of love and affection; however, there was an underlying understanding pertaining to relinquishment of shares by Appellant No. 1 in the existing partnership businesses. Therefore, even as per the pleaded case of the Appellants the execution of the Gift deeds for Ludhiana, Punjab properties was in 'consideration' of a settlement of the shares of the parties in joint businesses



and not purely out of love and affection (as recorded in the said Gift deed). Thus, the Appellants are also contending defences which are not recorded in the registered Gift deeds and have to be proved by them in accordance with law after leading evidence.

13. We are of the considered opinion that considering the fact that the suit is at an advance stage of recording of evidence and the interim order has been in operation since the year 2017, the application filed for vacation of the said *exparte* interim order dated 2nd August, 2017 in the year 2023, without any change in circumstance, has been rightly dismissed in the facts of this case. The suit as well has remained pending at the stage of recording of evidence since year 2019; the reason for its lack of progress is not discernible from the record. The appropriate relief in these facts would have been to seek an expeditious trial and final adjudication of the suit itself rather than parties being embroiled in proceedings for vacation of interim relief. The present appeal has also been filed with delay (C.M. APPL. No. 4860/2024) and this further shows that there is no urgency in the relief sought.

14. The pleas of the Appellants for seeking vacation of the interim order that the claims in the plaint are not maintainable in law under the Registration Act or barred by limitation will be determined at the stage of final arguments on the basis of the pleadings and evidence led by the parties. The issue with respect to limitation has been specifically framed in the proceedings and will be decided after the parties have concluded their evidence. It appears to this Court from the grounds of the appeal as well as arguments addressed during the hearing that the Appellants are seeking



rejection of the plaint as opposed to vacation of the interim order of status quo.

15. The scope of interference by the Division Bench against the exercise of discretion by the Single Judge has been succinctly set out by the Supreme Court in the case of ***Wander Ltd. v. Antox India (P) Ltd.***,¹. It has been observed in paragraph 14 of the judgment which reads as under:

*“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court’s exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)*

*“... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton* [1942 AC 130] ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”*

(Emphasis Supplied)

16. We find that the exercise of discretion by the learned Single Judge is neither arbitrary nor capricious. The conclusion formed by the said Court is

¹ 1990 Supp SCC 727



reasonable and plausible on an appraisal of the facts set out in the plaint and the defences pleaded in the written statement. None of the tests set out by the Supreme Court in the aforesaid judgment are satisfied in these proceedings to justify any interference in appeal and therefore, in our considered opinion the impugned judgment does not call for our interference.

17. Needless to say, the observations both in the impugned order and those made by us, herein above are prima facie in nature and would thus have no impact whatsoever at the stage of final adjudication of the suit.

18. The learned senior counsel has contended that the prayer for variation of the exparte interim order to seek the relief of letting out the suit property in possession of Appellant No. 2 has not been considered by the learned Single Judge though there were pleadings in this regard in the application. In this regard, we note that there was no specific prayer seeking permission for letting out. We have perused the reply filed by the Respondent to I.A. No. 7845/2023 and find that the plea for letting out was also vehemently opposed by the Respondent. In the facts of this case, the suit property is an undeveloped open piece of land; we are therefore unable to appreciate the terms of the proposal for letting out the suit property. The said prayer, therefore, cannot be maintained in the absence of specific particulars of the proposal of letting. Accordingly, we grant liberty to the Appellants to move an appropriate application before the learned Single Judge for seeking permission to let out with details of the proposal so that the same can be appreciated and safeguards incorporated. It is made clear that we have not expressed any opinion on the merit of the said relief and the same will be decided by the learned Single Judge in accordance with law.



19. In view of the fact that the matter has remained pending at the stage of plaintiff's evidence since 2019, we direct the learned Single Judge for passing appropriate directions for expeditious disposal of recording of evidence of both the parties.

20. The Appellant has filed C.M. APPL. No. 4860/2024 for condonation of delay of 53 days in filing of the present appeal. The grounds mentioned therein do not furnish sufficient cause for the delay.

21. Consequently, the present appeal is dismissed both on delay and merits.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 25, 2024/hp/ms