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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 09.10.2024

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CS(OS) 315/2014

ANUPA ABROL

.....Plaintiff

Through: Mr. Mahesh K. Chaudhary and Ms. Sushmita Chaudhary, Advs. along with plaintiff in person. (Mob. 9811211232).

versus

MULKH RAJ GROVER & ORS

.....Defendants

Through: Mr. Tushar Sannu and Mr. Sahaj Karan Singh, Advs. for D-4/Sub-Registrar.

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J. (ORAL)**

1. The present suit has been filed by the plaintiff praying, *inter alia*, for the following reliefs:

- (i) *Pass a Decree of Declaration declaring the documents i.e. Conveyance Deed dated 24.02.2011 and Sale Deed dated 27.07.2011, more particularly detailed in para 11 of the plaint, as null & void ab-initio and as a consequence of the same, the necessary directions be issued to defendants No. 4 for cancelling the registration of Conveyance Deed dated 24.02.2011 registered as document No. 3617 in book No. 1, Volume No. 10979 on pages 63 to 66 on 03.03.2011 and also for cancelling the registration of Sale Deed dated 27.07.2011 registered as document No. 11814 in Book No. 1, Volume No. 11345 on pages 89 to 94 on 28.07.2011.*

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- (ii) *Pass a Decree of Declaration declaring the third party interest, charge or lien created by Defendants No. 1 to 3 on the basis of Conveyance Deed dated 24.02.2011 and Sale Deed dated 27.07.2011, as null and void.*
- (iii) *Pass a Decree of Permanent Injunction restraining the defendants No. 1 to 3 from claiming / creating any right, title and interest in the suit property bearing House No. A-283, Shivalik, Near Malviya Nagar, New Delhi - 110 017 and the necessary Cancellation Stamp be ordered to be put on the above documents i.e. Conveyance Deed dated 24.02.2011 and Sale Deed dated 27.07.2011 and the said documents with Cancellation Stamp be ordered to be placed on the Court file of the present case with in the period fixed by this Hon'ble Court.*

2. The case of the plaintiff is that she is the absolute and exclusive owner of the property bearing no. A-283, Shivalik, Near Malviya Nagar, New Delhi – 110017 built over land ad-measuring 197 sq.yrds [hereinafter referred to as “suit property”], by virtue of Conveyance Deed dated 12.11.2013, issued by the Office of Land and Development (L&DO), New Delhi, arrayed as defendant no.5 in the suit.

3. The plot underneath the suit property was allotted by the Rehabilitation Ministry Employees’ Co-operative House Building Society Ltd. [hereinafter referred to as “Employees’ Society”] to one of its members, namely, Shri Pitamber Dutt, *vide* letter dated 04.11.1986. Later on, a lease deed dated 28.08.1989 was executed between the President of India and Employees’ Society.

4. Sh. Pitamber Dutt being the allottee and one of the members of the Employees’ Society had sold the said plot of land to the plaintiff on



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05.12.1989 for a consideration of Rs.5,34,000/-. The possession of the said plot of land was also handed over to the plaintiff as mentioned in possession letter, agreement, Will, affidavit and other documents executed by Shri Pitamber Dutt on 05.12.1989.

5. The Settlement Officer-cum-Managing Officer, Rehabilitation Division (Settlement), Jaisalmer House, New Delhi had executed a perpetual sub-lease deed 15.10.1990 in respect of the aforesaid plot, in the name of Shri Pitamber Dutt. After the execution of above sub-lease deed, Shri Pitamber Dutt had executed a General Power of Attorney in the name of the plaintiff on 07.01.1995 and got the same registered on 04.04.1995 in the office of Sub-Registrar-III, New Delhi.

6. The plaintiff raised construction on the said plot with her own funds. The construction so raised comprised of basement and the ground floor. It is alleged in the plaint that the plaintiff is making payment of house tax to the Municipal Corporation of Delhi for the last more than 30 years. Further, the plaintiff is also making the payment of ground rent and service charges to the Employees' Society.

7. In the month of September 2011, the plaintiff visited the suit property and came to know that the defendant no.1, i.e., Shri Mulkh Raj Grover, resident of A-81, Deerawali Nagar, New Delhi had fabricated a Conveyance Deed dated 24.02.2011 in respect of the suit property alleged to have been executed by the L&DO.

8. The plaintiff also came to know that the suit property has been sold twice by the defendant no.1, once to Shri Irshad Qureshi and again to defendant nos.2 and 3. The defendant no.1 had firstly created sale



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documents such as agreement to sell, GPA, Will, affidavit, etc. – all notarized on 15.04.2011, in the name of Shri Irshad Qureshi son of Shri Nawab Qureshi showing sale consideration amount of Rs.21,50,000/-. The defendant no.1 subsequently manufactured a Sale Deed dated 27.07.2011 in favour of defendant nos.2 and 3 showing sale consideration of Rs.98,50,000/-. It is alleged that the Sale Deed is actually without consideration, as the payment of three cheques towards sale consideration as mentioned in the Sale Deed dated 27.07.2011 was never made by the defendant nos.2 and 3 to the defendant no.1.

9. The plaintiff approached the L&DO (defendant no.5), with a letter dated 02.11.2011 alongwith a photocopy of fake Conveyance Deed dated 24.02.2011 in order to verify the veracity of the same. The L&DO *vide* its letters dated 06.02.2012 and 19.08.2013 had certified that the Conveyance Deed dated 24.02.2011 was never issued by them in the name of the defendant no.1 and the same was a fake document. In fact, the letter dated 19.08.2013 was addressed by the L&DO to the Office of Deputy Commissioner (South), New Delhi wherein a request had been made to initiate necessary action for cancellation of Conveyance Deed dated 24.02.2011 in respect of the suit property. A copy of this letter was marked to the plaintiff as well.

10. The plaintiff also filed a complaint before the Economic Offences Wing (EOW) and FIR No.1/2013 dated 01.01.2013 was registered by the EOW against defendant nos.1 to 3 and other accused persons.

11. The L&DO *vide* its letter dated 19.11.2014 addressed to the Office of EOW also confirmed that they had not issued any Conveyance Deed on

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24.02.2011 in respect of the suit property and that the said Conveyance Deed is a fake document.

12. It had also come to the knowledge of the plaintiff that the defendant nos.2 and 3 had created an equitable mortgage in respect of the suit property in favour of Punjab & Sind Bank and HDB Financial Services Ltd., on the basis of the Sale Deed dated 27.07.2011.

13. The plaintiff had earlier filed a civil suit for possession, *mesne* profits and permanent injunction against defendant nos.1 to 3 which was registered as CS(OS)No.2765/2011. The plaintiff got the possession of suit property in February 2012 during the pendency of the said suit.

14. In the backdrop of the aforesaid factual matrix, the present suit came to be filed by the plaintiff praying for the reliefs, as noted in para 1 above.

15. The defendants were served in the suit. However, the suit stood abated against the defendant no.1, as recorded by this court *vide* order dated 16.12.2016.

16. The defendant nos.2 and 3 were proceeded *ex parte vide* order dated 10.05.2019. However, *vide* order dated 24.09.2019, the said order was set aside subject to payment of costs of Rs.35,000/-. As the cost was paid belatedly, a further cost of Rs.10,000/- was imposed on the defendant nos.2 and 3 *vide* order dated 18.02.2020. It was further observed in the order dated 18.02.2020 that in the event the defendant nos.2 and 3 failed to pay further cost of Rs.10,000/- by the following day, the order dated 10.05.2019, setting them *ex parte* will revive.

17. As further cost of Rs.10,000/- was not paid, this court *vide* order dated 28.07.2022 observed that the defendant nos.2 and 3 shall be deemed to have



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been proceeded *ex parte*. It was also noted that the plaintiff has filed *ex parte* evidence and accordingly, the matter was directed to be placed before the Joint Registrar for marking of exhibits and thereafter before the court in the category of “Finals”.

18. The plaintiff, in order to prove her case, examined herself as PW-1. The plaintiff/PW-1 led the evidence on 05.09.2022 and supplementary evidence on 08.01.2024. The plaintiff tendered her affidavit-in-evidence and has proved the following documents:

- (i) Perpetual Sub Lease dated 15.10.1990 in favour of Shri Pitamber Dutt, PW1/A-1.
- (ii) Conveyance Deed dated 12.11.2013 in favour of plaintiff, Mark-Z1 also filed by defendant No. 5 - L&DO (Admitted document).
- (iii) Conveyance Deed dated 24.02.2011 (fabricated document) – Mark-Y.
- (iv) CFSL Report dated 30.01.2015, PW1/C.
- (v) Sale Deed dated 27.07.2011 (fabricated document), Mark-X.
- (vi) Letter dated 06.02.2012 issued by L&DO, PW1/5.
- (vii) Letter dated 19.08.2013 issued by L&DO, PW1/6.
- (viii) Order dated 03.03.2016 passed in CS(OS) No. 2765/2011, PW1/F.
- (ix) FIR No. 1/2013 dated 01.01.2013 registered by EOW against Defendants No. 1 to 3, PW1/7.
- (x) Letter dated 19.11.2014 issued by L&DO, PW1/D.
- (xi) Status Report dated 25.08.2014 filed by EOW in CS(OS) No. 2765/2011, PW1/G.
- (xii) Order dated 28.08.2014 passed in CS(OS) No. 2765/2011, PW1/B.
- (xiii) Order dated 23.02.2015 passed in CS(OS) No. 2765/2011, PW1/E.



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(xiv) Order dated 25.06.2019 passed by D.R.T-I, Delhi, in S.A. No. 102/2013, PW1/9.

19. Mr. Mahesh K. Chaudhary, the learned counsel appearing on behalf of the plaintiff invites attention of the court to the letters of the L&DO dated 06.02.2012 (Ex.PW1/5), dated 19.08.2013 (Ex.PW1/6) and dated 19.11.2014 (Ex.PW1/D), to contend that it is unequivocally borne out from the said letters that the Conveyance Deed dated 24.02.2011 is a fake document as no such Conveyance Deed was issued by the L&DO.

20. Mr. Chaudhary submits that when the fact of the equitable mortgage having been created with regard to the suit property on the basis of the fabricated title documents came to the notice of the plaintiff, she had filed S.A. No.102/2013 before the DRT-1, Delhi against Punjab & Sind Bank as well as HDB Financial Services Ltd. He has drawn attention of the court to the order dated 25.06.2019 (Ex.PW1/9) passed by the DRT-1, Delhi to contend that the said S.A. filed by the plaintiff was allowed by the Tribunal returning a finding that the defendant nos. 2 and 3 have played a fraud upon the Punjab & Sind Bank as well as HDB Financial Services Ltd. and, thus, claim of the banks and the said financial institution on the suit property based on such fraud will not survive. He, therefore, urges that the suit of the plaintiff be decreed

21. I have heard Mr. Mahesh K. Chaudhary, the learned counsel for the plaintiff and have perused the record. As noted above, the suit stood abated against the defendant no.1 and the defendant nos.2 and 3 were set *ex parte*. The plaintiff had led evidence *ex parte* and there is no cross-examination of the plaintiff. The testimony of the plaintiff has remained unrebutted and the



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documents proved and exhibited by her, have also gone unchallenged.

22. A perusal of the evidence on record reveals that when the plaintiff approached the L&DO with her letter dated 02.11.2011, the L&DO *vide* its letter dated 06.02.2012, Ex.PW1/5, confirmed that the impugned Conveyance Deed dated 24.02.2011 in respect of the suit property was not executed by the L&DO.

23. Likewise, the L&DO *vide* its letter dated 19.08.2013, Ex.PW1/6, addressed to the Deputy Commissioner (South), GNCTD, Mehrauli – Badarpur Road, Saket, New Delhi-110017 confirmed that the suit property was originally sub-leased out in the name of Sh. Pitamber Dutt *vide* perpetual sub-lease executed on 15.10.1990. It was also confirmed in the said letter that the L&DO has not issued any Conveyance Deed in respect of the suit property on 24.02.2011 in the name of Sh. Pitamber Dutt through its attorney Shri Mulkh Raj Grover, in favour of the purchaser Mulkh Raj Grover. The said letter also mentions that Shri Pitamber Dutt had sold out the property in question to the plaintiff, Ms. Anupa Abrol, by executing a GPA registered on 04.04.1995 and that she has applied for conversion of leasehold rights into freehold in her name *vide* conversion application dated 03.10.2011, which is under consideration and no Conveyance Deed as yet been issued in respect thereof. The L&DO also stated in no uncertain terms that it has not issued any Conveyance Deed on 24.02.2011 in respect of the suit property. Further, *vide* same letter the L&DO made a request to the Deputy Commissioner to take necessary action for cancellation of the Conveyance Deed dated 24.02.2011 immediately.

24. Though the Conveyance Deed dated 12.11.2013 executed by the



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L&DO in favour of the plaintiff is only marked as “Mark Z-1” and has not been exhibited for want of the original document but there is cogent evidence available on record which establishes that the said Conveyance Deed was issued in favour of the plaintiff. The letter dated 19.11.2014, PW1/D, written by the L&DO to the Sub-Inspector, EOW, Mandir Marg, New Delhi clearly states that the original allottee Shri Pitamber Dutt had sold the suit property to the plaintiff by executing a GPA registered on 04.04.1995. Thereafter, the plaintiff applied for conversion of leasehold rights into freehold in her name *vide* conversion application dated 03.10.2011, after which a Conveyance Deed has been issued on 12.11.2013. In Ex.PW1/D, the L&DO has also reiterated that the impugned Conveyance Deed dated 24.02.2011 in respect of the suit property is a fake Conveyance Deed.

25. Notably, the defendant nos.2 and 3 had created an equitable mortgage in respect of the suit property in favour of Punjab & Sind Bank and HDB Financial Services Ltd., on the basis of fabricated Sale Deed dated 27.07.2011. When the said fact came to the notice of the plaintiff, she had filed S.A. No.102/2013 before the DRT-1, Delhi against Punjab & Sind Bank as well as HDB Financial Services Ltd. and the DRT-I *vide* its order dated 25.06.2019, Ex.PW1/9, allowed the said S.A. of the plaintiff and returned a finding that the defendant nos. 2 and 3 have played a fraud upon the Punjab & Sind Bank as well as HDB Financial Services Ltd., therefore, their claim on the suit property based on such fraud will not survive. It appears that the aforesaid order of DRT-I in S.A. No.102/2013 has attained finality.



26. From the evidence discussed above, it is clear that no Conveyance Deed had been issued by the L&DO on 24.02.2011 in favour of defendant no.1-Sh. Mulkh Raj Grover and the same is a fake document. Consequently, the Sale Deed dated 27.07.2011 purportedly executed by the defendant no.1 in favour of defendant nos.2 and 3 on the basis of the Conveyance Deed dated 24.02.2011 purported to be registered on 03.03.2011 is also a fabricated document and the same will automatically fall through.

27. Since the plaintiff is not an executant of the Conveyance Deed dated 24.02.2011 and the Sale Deed dated 27.07.2011, therefore, it is not obligatory for the plaintiff to pray for cancellation of the said documents. The plaintiff can avoid the said documents by suing for a declaration that the said documents are invalid/void and non-est/illegal and she is not bound by it.¹

28. In view of the above discussion, the suit is decreed as under:

- i) the Conveyance Deed dated 24.02.2011 registered as document No. 3617 in book No. 1, Volume No. 10979 on pages 63 to 66 on 03.03.2011 and Sale Deed dated 27.07.2011 registered as document No. 11814 in Book No. 1, Volume No. 11345 on pages 89 to 94 on 28.07.2011, are declared illegal, null & void and non-est and the same are held to be not binding on the plaintiff.
- ii) the third party interest, charge or lien created by Defendants No. 1 to 3 on the basis of Conveyance Deed dated 24.02.2011 and Sale Deed dated 27.07.2011, are declared as null and void.

¹ *Suhrid Singh @ Sardool Singh v. Randhir Singh & Anr.*, (2010) 12 SCC 112



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iii) the defendants No. 1 to 3 are restrained by a decree of Permanent Injunction from claiming / creating any right, title and interest in the suit property bearing House No. A-283, Shivalik, Near Malviya Nagar, New Delhi - 110 017.

29. Decree sheet be drawn accordingly.

VIKAS MAHAJAN, J

OCTOBER 9, 2024

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