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

+ **RSA 1/2024**

VIVEK GUPTA

.....Appellant

Through: Mr. H.D. Thanvi, Adv.

versus

ALOK GUPTA & ANR.

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **04.11.2024**

1. I have heard learned counsel appearing for the appellant on framing of the substantial questions of law.
2. The suit filed by the original plaintiff came to be dismissed under Order 7 Rule 11 *vide* order dated 11.10.2017 by the Court of ACJ-cum-CCJ-cum-ARC(E), KKD Courts, Delhi holding that the suit property had already been transferred by the plaintiff to defendant No.1 and, therefore, the original plaintiff did not have any right to sue in respect of the said property and, therefore, in absence of there being any cause of action accruing in favour of the plaintiff, the suit was not maintainable.
3. It is the aforesaid order which came to be challenged before the first Appellate Court. It is seen that during the pendency of the civil suit, original plaintiff Smt. Urmila Gupta died and her younger son Sh. Vivek Gupta continued with the proceedings. The first Appellate Court *vide* impugned



judgment dated 29.05.2023 concurred with the findings arrived at by the trial court, and has dismissed the appeal. Therefore, the appellant has preferred the instant second appeal.

4. The first Appellate Court in its judgment dated 29.05.2023 has noted that the original plaintiff Smt. Urmila Gupta died during the pendency of the suit on 16.04.2015, even before her evidence could be recorded. It is, thus seen that Smt. Urmila Gupta did not appear as a witness and therefore, whether any fraud has been played upon her by defendant No.1 at the time of the execution of the gift deed dated 13.04.2006, cannot be adjudicated. The appellant, Vivek Gupta, was not a witness to the gift deed dated 13.04.2006 and, therefore, he would also not be in a position to depose and prove that the gift deed dated 13.04.2006 was obtained by defendant No.1 by playing fraud upon the Donor/Smt. Urmila Gupta.

5. In paragraph No.21, the first Appellate Court has rendered the following findings:

“21. It is seen that the plaintiff Smt. Urmila Gupta has not been examined and, therefore, whether any fraud has been played upon her by defendant no.1 at the time of execution of gift deed dated 13.04 2006 in question cannot be proved. This thing could have been proved only by the donor herself and now she is not alive. The appellant Vivek Gupta is not the witness to the gift deed dated 13.04 2006. Therefore, he would also be not in a position to depose and prove that the gift deed dated 13.04.2006 has been obtained by defendant no. 1 by playing fraud upon the donor/Smt Urmila Gupta. Apart from this, a registered gift deed can be canceled only by as per law as discussed herein above. The said procedure has not been followed by donor/ Urmila Gupta while she got registered deed of declaration dated 13.04 .2006 whereby, she allegedly canceled the gift deed dated 13.04.2006. This was not the correct procedure. Therefore, once the gift deed has been registered, the property under the gift has been delivered to the donee, the gift deed could not have been canceled. No declaration as prayed for by the plaintiff can be granted by the Court.”



6. In view of the aforesaid, the Court does not find any substantial question of law to be adjudicated upon in exercise of its jurisdiction conferred under Section 100 of the CPC and, accordingly, the instant appeal stands dismissed.

PURUSHAINDR KUMAR KAURAV, J

NOVEMBER 4, 2024/p