

* HIGH COURT OF DELHI : NEW DELHI

EX. F.A.No. 19/2009 & CM No. 18225/09

% Judgment reserved on: 16th December, 2009

Judgment delivered on: 21st December, 2009

1. Shri Naeem Ahmed,
S/o Late Haji Zahoor Ahmed,
R/o 3321, Ward No. XVII,
Ranjit Nagar, Delhi.
2. Smt. Zainab,
W/o Naeem Ahmed,
R/o 3321, Ward No. XVII,
Ranjit Nagar, Delhi.

....Appellants

Through: Mr. H. S. Phoolka, Sr. Adv. with
Mr. Jasmeet Singh and Mr. Saurabh
Tiwari, Adv.

Versus

1. Shri Uggar Sain Jain,
S/o Shri G. C. Jain,
B-116, Shakti Apartments,
Sector-9, Rohini,
New Delhi-85
2. Shri Inderjeet Singh,
S/o Late Sardar Mohinder Singh,
R/o 3321, Ward No. XVII,
Ranjit Nagar,
Delhi.

....Respondents.

Through: Nemo

Coram:
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

V.B.Gupta, J.

1. Present appeal has been filed against orders dated 25th August, 2009 and 23rd October, 2009, passed by Additional District Judge, Delhi, in execution petition.
2. Vide impugned order, the Court has dismissed the objections of the objectors.
3. Decree holder had filed suit for recovery in which preliminary decree was passed on 17th March, 2004. Later on, final decree was passed on 24th March, 2005. In the final decree, it was directed that if the respondent defaulted in making payment, then the Decree holder would be at liberty to apply for final decree for realization of decretal amount by sale out of mortgaged property bearing no. XVII/3321, Ranjit Nagar, Patel Nagar, New Delhi, measuring 50 Sq. yards.
4. The objectors (Appellants- herein), are claiming themselves to be the legal owner of the property having purchased the same from its previous owner Smt. Satwant Kaur, vide sale deed dated 26th April, 2005. As per appellants, property was inherited by Smt. Satwant Kaur by virtue of Will dated 11th July, 1995 executed by Sh. Mahender Singh in her favour.
5. Decree-holder in its reply stated that objectors have no right, interest or title in the property. The objections have been filed in connivance with judgment debtor and his mother. According to the decree holder, sale deed dated 26th April,

2004 is nothing but a sham document. Smt. Satwant Kaur was given only lifetime interest in the property in question and said property was ultimately to be fallen and owned by Sardar Inderjeet Singh. Smt. Satwant Kaur had no right, title and interest in the property as she was never an absolute owner of the property and the sale deed dated 26th April, 2004, executed by her has no sanctity. Sardar Mahender Singh, the original owner of the property, in his lifetime executed Will dated 20th November, 2000, after which Sardar Inderjeet Singh had become the owner of the property, after the death of Sardar Mahender Singh.

6. It is contended by learned counsel for appellants that trial court wrongly held that Smt. Satwant Kaur merely had a life interest in the property and was not competent to alienate the same. The words of the Will in unambiguous terms bring out the intention of the testator to create an absolute interest in the property in favour of Smt. Satwant Kaur. The intention to create a mere life interest in favour of Smt. Satwant Kaur can by no stretch of imagination be culled out from the wording of the Will. As per Will, Smt. Satwant Kaur is the sole and absolute owner of the properties. This makes abundantly clear that the interest created by testator in favour of Smt. Satwant Kaur, was absolute and not limited.

7. Other contention is that even if the Will is interpreted to mean that Smt. Satwant Kaur has had a life estate in the property, the said life estate has enlarged into an absolute estate by virtue of Section 14 (1) of the Hindu Succession Act, 1956 (for short as 'Act'). Smt. Satwant Kaur was the wife of the testator therefore, testator had an obligation to maintain her and as such Smt. Satwant Kaur had a pre-existing right in the property.

8. Lastly, it is contended that the Will dated 11th July, 1995 is not hit by Section 14 (2) of the Act. The Will confers an absolute interest on Smt. Satwant Kaur in respect of the property giving her thereby all powers to deal with the said property, in any manner whatsoever.

9. In support of its contentions, learned counsel for appellants referred the following judgments;

- (i) ***Mangat Mal (dead) and another Vs. Smt. Punni Devi (dead) and others, AIR 1996, Supreme Court 172.***
- (ii) ***Smt. Palchuri Henumayamma Vs. Tadikamalla Kotlingam (D) by LRs and Others, AIR 2001 Supreme Court 3062.***
- (iii) ***Balwant Kaur and another Vs. Chanan Singh and others; AIR 2000 Supreme Court 1908, and;***
- (iv) ***Santosh & Ors. Vs. Saraswathibai & Anr; AIR 2008 Supreme Court 500.***

10. Trial court framed following issue while disposing the objections of the appellants;

“1. Whether the plaintiff /objectors have any independent right, title or interest in the property bearing no. XVII/3321, Ranjeet Nagar, Patel Nagar, New Delhi? is so, its effects”.

11. Relevant portion of Will dated 11th July, 1995, executed Sardar Mahinder Singh, read as under:

“Whereas the Testator is the owner of property bearing No. 3321, situated in the abadi of Ranjit Nagar, near Pusa Gate, New Delhi.

Whereas I the Testator is also owner of property No. C-89, situated in the abadi of Vishnu Garden, near Punjabi Market, New Delhi and also owner of tenancy rights of one shop No. 2995/38 situated in the abadi of Beadonpura, Karol Bagh, New Delhi on a monthly rent of Rs.150/-.

So far I the Testator is alive, I am the owner and will be the owner of the above mentioned property and shop on tenancy rights. After my death the above mentioned property no. 3321, Ranjit Nagar, near Pusa Gate, New Delhi, property no. C-89, Vishnu Garden, near Punjabi Market, New Delhi and Shop No. 2995/38 Beadonpura, Karol Bagh, New Delhi, shall go and devolve to my wife Smt. Satwant Kaur. She will be the sole and absolute owner of the above mentioned properties and tenancy rights of the said shop after my death.

After the death of my wife Smt. Satwant Kaur, the property No. 3321, Ranjit Nagar, near Pusa Gate, New Delhi shall go and devolve to my son Shri Inderjeet Singh and property no. C-89, Vishnu Garden, near Punjabi Market New Delhi, shall go and devolve to my son Sh. Iqbal Singh and tenancy rights of Shop No. 2995/38 Beadonpura, Karol Bagh, New Delhi, shall go and devolve to my both sons namely, Shri Inderjeet Singh and Iqbal Singh both in equal shares. They will be the sole and absolute owners of the above mentioned properties and tenancy rights of shop as mentioned above after the death of my wife Smt. Satwant Kaur. My above named both the sons Shri Inderjeet Singh and Shri Iqbal Singh will give a sum of Rs.600/- per month to my wife Smt. Satwant Kaur, during her life time.”

12. Section 14 of the Act which is relevant in this case, read as under:

“14. Property of a female Hindu to be her absolute property-(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation-In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever,

and also any such property held by her as *stridhana* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

13. In the various judgments cited by learned counsel for the appellants principle laid down is that;

“Property given to widow in lieu of her maintenance, after coming into force of Hindu Succession Act, ripens into full estate and widow becomes absolute owner in view of Section 14(1) of the Act.”

14. However, sub section (2) of Section 14 of the Act, must be read as a proviso or exception to sub section (1) of Section 14 of the Act. As per recital in the Will, Sardar Mahinder Kumar, the owner of property, only gave life interest of the property in question to his wife Smt. Satwant Kaur. The testator made specific provision for the maintenance of his wife, as in the Will it is mentioned;

“After the death of my wife Smt. Satwant Kaur, the property No. 3321, Ranjit Nagar, Near Pusa Gate, New Delhi shall go and devolve to my son Sh. Inderjeet Singh.”

The Will further states;

“My above named both the sons Sh. Inderjeet Singh & Sh. Iqbal Singh will give a sum of Rs.600/- per month to my wife Smt. Satwant Kaur, during her life time.”

15. Thus, the testator of the Will has made provisions for maintenance of his wife, separately.

16. A similar question arose before Supreme Court in *Bhura & Ors. Vs. Ghasi Ram (AIR) 1994 SUPREME COURT 1202*. There the controversy was whether Will conferred only a limited estate or an absolute estate on the wife of deceased testator? Supreme Court held;

“6. The limited estate conferred upon Sarjabai by the Will (W.P. 4) could not even be enlarged into an absolute estate under the Hindu Succession Act, 1956, even though she was possessed of that property at the time of the coming into force of the Hindu Succession Act, 1956. S. 14(2) of the Act mandates that nothing contained in sub-sec. (1) of S. 14 of the Hindu Succession Act, 1956 shall apply to any property acquired by way of gift or under a Will or by any other instrument prescribing a restricted right in such property. In view of our finding that the Will (Ex P.4) itself prescribed a restricted right or life-estate in the property in favour of Sarjabai, that estate could not be enlarged into an absolute estate in view of the express provisions of the Hindu Succession Act, 1956.”

17. Trial court in this regard held;

“I have gone through the contents of Ex. AW1/A which shows that only a lifetime interest had been granted in favour of Satwant Kaur in the property mentioned therein and that the testator had stated that he was the owner of the property mentioned therein and after his death, the property would devolve upon his wife Satwant Kaur and after her death the property would devolve to his son Inderjeet Singh. It is an admitted case of the objector that they are not in possession of the Sale Deed rather AW2 has admitted that he has only seen the certified copy of the sale deed and Satwant Kaur had never shown the sale deed to him. Therefore under these circumstances, Smt. Satwant Kaur was only having lifetime interest of the property and could not have executed any document of sale in favour of present objector and therefore under these circumstances the seller Satwant Kaur could not have conveyed a better right or title than

what she had which was only a life interest in the property. Surprisingly, Satwant Kaur is still alive but she has not been produced before this court. She is the best witness who could have thrown some light on the documents on which the objectors now seeking to place their reliance. Admittedly, the sale of the property has been affected only after the final decree was passed and therefore the attempt, it appears is only to overreach the decree of the Ld. Trial Court. This court being a execution court cannot go beyond the decree. It is settled law that it is only in exceptional circumstances when the execution court can go beyond the decree. The objectors before this court have neither alleged nor pleaded any fraud nor any evidence has been lead on the said aspect.”

18. Since, testator has already made provisions for maintenance for his wife Smt. Satwant Kaur, that both the sons of the testator will give a sum of Rs.600/- per month to Smt. Satwant Kaur, during her life time, it goes on to show that Smt. Satwant Kaur had only life time interest in the property and after her death the property has to devolve on Sh. Inderjeet Singh. Various Judgments (Supra) cited by learned counsel for appellants, are not at all applicable to the facts of the present case.

19. There is no reason to disagree with the findings given by the trial court and no infirmity or ambiguity is there in the impugned order.

20. Present appeal is thus not maintainable and same is hereby dismissed.

CM No. 18225/2009

Dismissed being infructuous.

21st December, 2009
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V.B.Gupta, J.