

IN THE COURT OF SH. ARUN SUKHIJA,
ADDITIONAL DISTRICT JUDGE – 07, (CENTRAL DISTRICT)
TIS HAZARI COURTS, DELHI.

SUIT NO.:- 41/2019

UNIQUE CASE ID NO.:- 616366/2016

IN THE MATTER OF :-

1. **Sh. Lekh Ram Saini**
S/o Late Sh. Satnarain Saini
2. **Sh. Kishan Chand Saini**
S/o Late Sh. Satnarain Saini
3. **Sh. Panna Lal Saini**
S/o Late Sh. Satnarain Saini

All R/o 4420-22, Subzi Mandi,
Delhi.
4. **Smt. Krishna**
D/o Late Sh. Satnarain Saini
W/o Sh. Shiv Narain
5. **Smt. Madhu**
D/o Late Sh. Satnarain Saini
W/o Sh. Mridul Saini
Both R/o 3907, Pahari Dheeraj,
Khari Kuan, Delhi.
6. **Smt. Gesu Saini**
W/o Sh. Anil Kumar

7. **Smt. Vashu Saini**
W/o Sh. Vikas Saini

Both D/o Late Smt. Kiran
(D/o Late Sh. Satnarain Saini)
Both R/o 3907, Pahari Dheeraj,
Khari Kuan, Delhi.

....Plaintiffs

VERSUS

1. **Sh. Vikas**
S/o Sh. Ratan Singh
R/o 1806/30, Tri Nagar, Delhi.

2. **Sh. Sunil Nagar**
S/o Sh. Jai Kishan
R/o 1815B, Joor Bagh,
Tri Nagar, Delhi-110035.

....Defendants

SUIT FOR DECLARATION AND CANCELLATION OF SALE DEED
DATED 30.11.2011

Date of institution of the Suit : 09/07/2012
Date on which Judgment was reserved : 15/07/2020
Date of Judgment : 28/07/2020

::- J U D G M E N T -::

By way of present judgment, this Court shall adjudicate upon suit for declaration and cancellation of Sale Deed dated 30.11.2011 filed by the plaintiffs against the defendants.

CASE OF THE PLAINTIFF AS PER PLAINT

Succinctly, the necessary facts for just adjudication of the present suit, as stated in the plaint, are as under:-

- (a) The plaintiffs are the legal heirs of Late Smt. Prem Devi, W/o Sh. Satnarain, who was the daughter of Sh. Anant Ram. Sh. Anant Ram was the owner of property bearing no. 1508/107, Ganesh Pura, Tri Nagar, Delhi-110035, admeasuring 180 sq. yds.
- (c) Sh. Anant Ram was having two daughters i.e. Smt. Prem Lata and Smt. Laxmi Devi. The plaintiffs are the legal heirs of Smt. Prem Lata, who has already expired and all the property rights, which were held jointly by Smt. Prem Lata with Smt. Laxmi Devi, were inherited by the plaintiffs to the tune of half share, as per entitlement.
- (d) The plaintiffs being the legal heirs of one of the daughters of Late Sh. Anant Ram inherited the half undivided share in the property bearing no. 1508/107, Ganesh Pura, Tri Nagar, Delhi-110035, as shown in the Site Plan and since the partition of the property was not divisible, therefore, the plaintiffs deemed it fit to sell out the undivided share to the defendants.
- (e) The defendants purchased the half undivided share in the above-said property for a sum of Rs.26,00,000/- by registered Sale Deed dated 30.11.2011 with Sub-Registrar-VIA, New Delhi vide Registration No. 17127, Book No.1, Vol. No. 3845, pages 148 to 153.
- (f) After sale of the afore-said property, the plaintiffs and defendants visited the said property in December 2011 for handing-over the possession of the said property in view of the Sale Deed in favour of the defendants. When the plaintiffs and defendants visited the spot, the legal heirs of Smt. Laxmi Devi i.e. Gulzari Lal Saini and his wife did not allow the plaintiffs and defendants to enter the house and started abusing and assaulting by stating that plaintiffs have got no right in the property of Late Sh. Anant Ram as Sh. Gulzari Lal Saini has been adopted by Sh. Anant Ram by virtue of adoption

as well as a Registered Will in his favour, he has become the absolute owner of the entire property owned by Sh. Anant Ram.

- (g) After this episode, the plaintiffs apprised the defendants the correct facts regarding the ownership and requested them to wait for sometime for seeking the partition and challenging the alleged documents of adoption and Will as well since they were not aware of anything revealed by Sh. Gulzari Lal Saini, but the defendants were not ready and willing to consider the request of the plaintiffs and were adamant for getting the sale consideration refunded immediately.
- (h) Since the plaintiffs have divided the sale proceeds as per their entitlement and have further spent the same, therefore, it took them time to refund and the entire sale consideration of Rs.26,00,000/- was refunded to the defendants by the month of May, 2012. Since the sale consideration has already been refunded and the rights of the defendants have already been rescinded and no right, title or interest in the above said property remain with the defendants after entire refund of the amount and the plaintiffs have already received the original Sale Deed from the defendants, therefore, in view of the circumstances, the only efficacious remedy to get the Sale Deed cancelled is the present suit.
- (i) Since the Sale Deed has already become document of Book 1 in the records of Sub-Registrar VIA, therefore, the appropriate remedy is only the cancellation of the Sale Deed through the competent Court of law.

EX-PARTE PROCEEDINGS

Despite service, the defendants did not appear and as per Order dated 15.05.2013 passed by Hon'ble High Court of Delhi, the defendants were proceeded ex-parte.

EX-PARTE EVIDENCE OF THE PLAINTIFFS AND DOCUMENTS RELIED UPON BY PW-1

The plaintiffs in order to prove its case led plaintiff's evidence and got examined Smt. Krishna as PW-1. The PW-1 has filed her evidence by way of affidavit Ex.PW-1/A, wherein she reiterated and reaffirmed the contents of the plaint. PW-1 in her testimony has relied upon the Sale Deed dated 30.11.2011 which is Ex.PW-1/1.

The plaintiffs also examined Smt. Madhu as PW-2, who filed her evidence by way of affidavit Ex.PW-2/A.

The plaintiffs also examined Sh. Surender Saini as PW-3, who filed his evidence by way of affidavit Ex.PW-3/A And relied upon the Sale Deed dated 30.11.2011 which was already exhibited as Ex.PW-1/1.

Vide order dated 11.12.2013 passed by Hon'ble High Court of Delhi, the plaintiffs were granted an opportunity to lead further evidence by filing additional documents. Accordingly, the plaintiffs filed additional evidence by way of affidavit Ex.PW-1/B of Smt. Krishna examined as PW-4. She relied upon the payment details of the plaintiffs to the defendants vide Certificates, Passbook and Cheques, which were marked as Mark-X (Colly.).

The plaintiffs also got examined Sh.Ajay Goel, Senior Manager, Central Bank of India, Old Sabzi Mandi, Kedar Building, Ghanta Ghar, Kamla Nagar, Delhi as PW-4, who brought on record the following summoned record:-

1. Certified copies of cheque bearing no. 58768 Ex.PW4/1, dated 28.04.2012.
2. Cheque bearing no. 587269 Ex.PW4/2 dated 28.04.2012 and
3. Statement of Account bearing no. 3149493085 for the period of 10.04.2012 to 28.06.2012 Ex.PW4/3 with Central Bank, Subzi Mandi Branch in the name of Sh. Lekh Ram Saini, having address of 4420, Sanjan Gali, Subzi

Mandi, Arya Pura, Delhi-110007, showing the clearing in the above mentioned account, which is correct and true as per bank records.

This Court heard ex-parte final arguments, as advanced by Ld. Counsel for the plaintiffs through Video Conferencing. I have perused the material available on record.

FINDINGS AND CONCLUSIONS OF THE COURT

The suit of the plaintiffs is well within the period of limitation. In the present case, the PW-1 to PW-4 has proved on record the documents, as mentioned in their testimony, showing that the entire consideration amount which was received by the Plaintiffs had already been returned to the defendants. The defendants have not filed the Written Statement to contest the suit of the plaintiffs. The defendants have also not cross-examined PW-1 to PW-4 to contradict or disprove the case of the plaintiffs. When the defendants have chosen not to appear and when the case of the plaintiff has gone un-challenged, un-controverted, un-rebutted and duly corroborated by the documents, this Court has no reason to disbelieve the version of the plaintiff. Moreover, the original Sale Deed has already been produced by the Plaintiffs, which also show that the Defendants and Plaintiffs have already arrive the contract of rescindment of the original Sale Deed in question in terms of Section 62 of the Indian Contract Act, 1872 after taking the entire consideration which was paid by them to the Plaintiffs under the Sale Deed in question.

RELIEF

From the discussions, as adumbrated hereinabove, I hereby pass the following

FINAL ORDER

- (i) A decree of Declaration is hereby passed in favour of the Plaintiffs and against the defendants declaring the Sale Deed dated 30.11.2011 of property bearing No.1508/107, Ganesh Pura, Tri Nagar, Delhi-110035 registered with Sub-Registrar VI A, New Delhi vide Registration No.17127, Book No.1, Vol. No.3845, pages 148 to 153 is hereby cancelled on account of contract of rescindment between the parties.
- (ii) The parties shall bear their respective costs of litigation.
- (iii) The copy of the Judgment and decree be sent to the Sub-Registrar VIA, Sub-Division Model Town, District North-West, Delhi in terms of Section 31(2) of the Specific Relief Act, 1963 for necessary information and action in accordance with Section 31(2) of The Specific Relief Act, 1963.

Decree-sheet be prepared accordingly in terms of this decision.

File be consigned to Record Room after due compliance.

**Announced through Video Conferencing on
this 28.07.2020.**

**ARUN
SUKHIJA**

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by ARUN
SUKHIJA
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**(ARUN SUKHIJA)
ADJ-07 (Central)
Tis Hazari Courts, Delhi**

CS No. 41/19 (ID No. 16366/16)

Lekh Ram Saini etc.

Vs.

Vikas etc.

28.07.2020

The Judgment has been pronounced through cisco webex video conferencing.

Present: Sh. Devender Kaushik, Ld. Counsel for the plaintiffs

Defendants are already ex-parte.

Vide Separate Judgment announced through video conference the suit of the Plaintiffs is decreed in terms of the Judgment. The parties shall bear their respective costs of litigation. The copy of the Judgment and decree be sent to the Sub-Registrar VIA, Sub-Division Model Town, District North-West, Delhi in terms of Section 31(2) of the Specific Relief Act, 1963 for necessary information and action in accordance with Section 31(2) of The Specific Relief Act, 1963. Decree Sheet be prepared accordingly. File be consigned to record room after due-compliance.

ARUN

SUKHIJA

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by ARUN

SUKHIJA

Date: 2020.07.28

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(Arun Sukhija)

ADJ-07/Central/Tis Hazari Courts,
Delhi/28.07.2020