

(2010) 09 DEL CK 0083

In the Delhi High Court

Case No : Regular Second Appeal No. 237 of 1982 and Rc. S.A. No. 45 of 1982

Padam Chand and Another

APPELLANT

Vs

Lakshmi Devi (since deceased) through L.Rs. and Others

 Phool Chand Jain Vs Padam Chand Jain and and
Another

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 41 Rule 27, 41
Delhi Rent Control Act, 1958 — Section 14, 14(1)
Penal Code, 1860 (IPC) — Section 380, 448
Specific Relief Act, 1963 — Section 34
Stamp Act, 1899 — Article 45, 2(15)
Transfer of Property Act, 1882 — Section 122, 41

Citation : (2010) 173 DLT 604 : (2011) 1 RCR(Rent) 39

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Pravir Kr. Jain, in R.S.A. Nos. 237 and 239/1982 and Girish K. Kaul, in Rc. S.A. Nos. 45, 63, 64 and 65/1982, for the Appellant; Girish K. Kaul, in R.S.A. Nos. 237 and 239/1982 and Pravir Kr. Jain in Rc. S.A. Nos. 45, 63, 64 and 65/1982, for the Respondent

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—This judgment shall dispose of two RSAs i.e.

(i) RSA No. 237/1982 titled as Padam Chand Anr. v. Smt. Lakshmi Devi and Ors. and

(ii) RSA No. 239/1982 titled Padam Chand v. Lakhshmi Devi.

These second appeals have impugned the judgment and decree dated 17.7.1982 which had set aside the finding of the Trial Judge dated 6.2.1978. Vide judgment and decree dated 6.2.1978, the suit of the plaintiff Lakshmi Devi had been dismissed. The impugned judgment had allowed the appeals whereby Lakshmi Devi was held entitled to a decree.

This judgment shall also dispose of four second appeals against the orders of the Rent Control Tribunal (RCT) dated 5.1.1982 i.e.

- (i) R.C.S.A. No. 45/1982 titled as Phool Chand v. Padam Chand,
- (ii) R.C.S.A. No. 63/1982 titled as Phool Chand v. Padam Chand,
- (iii) R.C.S.A. No. 64/1982 titled as Phool Chand v. Padam Chand and
- (iv) R.C.S.A. No. 65/1982 titled as Phool Chand v. Padam Chand.

The RCT modified the finding of the Rent Controller dated 30.1.1980 thereby holding that the appellants i.e. Padam Chand Jain and Mahender Kumar are the owners/landlords of the disputed premises. Cross objections of Phool Chand (husband of Lakshmi Devi) were dismissed; his tenancy was endorsed.

2. Briefly stated the factual matrix of the case is as follows:

(i) Ram Rakha Mal (deceased) was married to Ram Piari. He had three sons and two daughters; his three sons were Padam Chand Jain, Madan Lal and Mohan Lal. His two daughters were Lakshmi Devi (plaintiff) and Shakuntla Devi (defendant). The disputed property comprised of a part of house No. 7059, Gali Tej Singh, Pahari Dheeraj, Delhi.

(ii) Lakshmi Devi was married to Phool Chand Jain in 1952; she was living in this house with her husband.

(iii) As per the averments in the plaint on 18.3.1959 an oral partition had taken place between the wife and the children of Ram Rakha Mal. By virtue of this partition the disputed premises had fallen to the share of Ram Piari mother of Padam Chand Jain.

(iv) In December, 1973 Shakuntala Devi, sister of Lakshmi Devi who was also occupying a portion of the house No. 7059 left the premises; since then Lakshmi Devi was in occupation of the entire disputed portion.

(v) On 3.3.1974 Padam Chand Jain and Mahender Kumar (purchasers of the disputed portion from Shakuntla Devi) attempted to dispossess the plaintiff from the premises. Their contention was that they had purchased this property from Shakuntla Devi vide sale deed dated 24.1.1974.

(vi) In March 1974, Lakshmi Devi came to know that the disputed premises is being claimed by Shakuntla Devi as its owner; her contention being that she had been gifted this property by virtue of a registered gift deed dated 3.6.1969 executed by her deceased father Ram Rakha Mal.

(vii) The contention of the plaintiff was that as per the oral partition dated 18.3.1959 the dispute premises had fallen to the share of Ram Piari; Ram Rakha Mal not being the legal owner had no authority to make a gift in favour of Shakuntla Devi who in turn not being the legal owner had no authority to sell this property to Padam Chand Jain and Mahender Kumar.

(viii) In 1971 two eviction petitions were filed by Shakuntla Devi against Phool Chand Jain (husband of Lakshmi Devi) u/s 14(i)(a) of the Delhi Rent Control Act. On an application under Order 22 Rule 10 of the Code of Civil Procedure, the new owners Padam Chand Jain and Mahender Kumar had been substituted in place of Shakuntala Devi. These eviction petitions were dismissed on 30.1.1980. The Rent Controller held that Phool Chand Jain is a tenant; however, the ownership of Padam Chand Jain and Mahender Kumar had not been established.

(ix) Padam Chand Jain and Mahender Kumar filed appeals before the RCT against the orders of the Rent Controller. Cross appeal/objections had also been filed by Phool Chand Jain; the objections of Phool Chand Jain had been dismissed.

(x) Phool Chand Jain filed four second appeals i.e. SAO Nos. 45/1982, 63/1982, 64/1982 and 65/1982 which are the subject matter of the present proceedings.

(xi) In 1977 Lakshmi Devi (wife of Phool Chand) filed a suit No. 435/1977 against Padam Chand Jain and Mahender Kumar with a prayer that they be restrained from creating any third party interest in the disputed premises; her contention being that she was had received this property in an oral partition effected between the family on 18.3.1959.

(xii) Suit No. 434/1977 was also filed by Lakshmi Devi seeking a declaration that the gift deed dated 3.6.1969 in favour of Shakuntla Devi by Ram Rakha Mal and the subsequent sale deed dated 24.1.1974 executed by Shakuntla Devi in favour of Padam Chand Jain and Mahender Kumar be declared null and void.

(xiii) Suit No. 433/1977 was filed by Padam Chand Jain and Mahender Kumar against Phool Chand (husband of Lakshmi Devi) seeking an injunction restraining him from raising any unauthorized construction in the suit property.

(xiv) All the aforementioned suits i.e. suit nos.435/1977, 434/1977 and 433/1977 were clubbed together and disposed of vide common judgment dated 6.2.1978. Vide this judgment, the suits were dismissed; it was held that Ram Rakha Mal being the owner of the suit property was competent to gift the disputed property to Shakuntla Devi. The registered gift deed dated 3.6.1969 was upheld. Both the suits of Lakshmi Devi were dismissed. The suit filed by Padam Chand Jain and Mahender Kumar was also dismissed, vide the same judgment. It was held that no cause of action has accrued in their favour.

(xv) Lakshmi Devi filed two appeals against the impugned judgment dated 6.2.1978. They were disposed of by the first Appellate Court vide impugned judgment dated 17.7.1982. The appeals of Lakshmi Devi were allowed; the suits were decreed in her favour; it was held that Lakshmi Devi was validly claiming title through her mother Ram Piari; she was in legal possession of the suit property; gift deed executed by Ram Rakha Mal in favour of Shakuntla Devi was void; Ram Piari had received this property in the oral family partition; Ram Rakha Mal had no legal right to gift it to Shakuntla Devi.

(xvi) Padam Chand Jain and Mahender Kumar aggrieved by the impugned

judgment dated 17.7.1982 have filed two regular second appeals i.e. RSA No. 237/1982 and RSA No. 239/1982.

(xvii) The question involved in the two RSAs and the four SAOs being similar, vide order dated 31.1.2000 all these matters were directed to be heard together. They are accordingly being disposed of by this common judgment.

3. In the regular second appeals substantial questions of law as is the mandate had been formulated on 16.2.1983. The said order reads as follows:

The substantial question of law in this appeal is whether the appellants, the purchasers of the property, have acquired a valid title to the property in suit. Flowing from this, other questions also arise which are set out in the grounds of appeal at pages 9 to 11 (ground Nos. I to XIII) and similarly in other appeal (R.S.A. No. 239/82) the substantial questions of law are set out in the grounds of appeal at pages 6 to 10 (grounds Nos. I to VIII). It is unnecessary to set out those substantial questions of law here again.

4. The grounds of appeal at page 9 to 11 [Ground No. (i) to (xiii)] in RSA 237/1982 read as follows:

I. The Lower Appellate Court has erred in relying upon the documents PW-4/A, PW-4/B & PW-4/C and on their basis it was held that a partition took place and the property in suit fell to the share of Smt. Ram Piari, Respondent No. 3. While coming to this finding he has totally ignored the fact that the property in suit and other properties were neither joint Hindu family properties nor were joint properties but Shri Ram Rakha Mal was the absolute owner of the same, hence the question of partition never arose. This aspect of the case has been dealt with by the Lower Court in para 31 at page 19 of its Judgment. The alleged partition if there be any must be for collateral purposes as held by the Lower Court as well as by the Rent Control Tribunal in its decision made on 5.1.1982.

II. The Lower Appellate Court has seriously erred in observing that PW-4/A, PW-4/B & PW-4/C were filed in a suit for possession which fact is against the record. In the decree PW-4/B the nature of suit is mentioned as partition and not a suit for possession. The suit filed by Smt. Ram Piari respondent No. 3 for partition of the property in which she claimed 1/6th share in all the properties including the property in suit. During the pendency of this suit a compromise is alleged to have been made which is PW-4/A. Final decree in the partition suit is PW-4/B. The said decree falls within the ambit of Section 2(15) of the Indian Stamp Act and is to be stamped in accordance with Article 45 of the above Act. Since the decree is not engrossed on a stamp paper, it has no existence as a decree. Until it is engrossed on proper judicial stamp & it is nullity it can be challenged in any proceedings whatsoever.

III. The Lower Appellate Court has erred in overlooking the fact that Smt. Lakshmi Devi Respondent No. 1 in the plaint of the suit has specifically stated that the properties of the father were partitioned in suit No. 133/59 from the

court of Shri R.L. Sehgal Sub Judge 1st Class Delhi vide order dated 23.3.1959. Respondents 4 to 7 sons of Shri Ram Rakha Mal in para 2 of their written statement pleaded the above fact of partition as alleged by Respondent No. 1. On the above pleadings of the parties the Trial Court framed in the present suit No. 436/77 issue No. 4 which clearly pertains to the above partition pleading and held that the partition of the later date proved by PW-4/A to PW-4/C cannot be looked upon as it was not pleaded but the Lower Court based its judgment on the above documents PW-4/A to PW-4/C. In doing so the Lower Appellate Court has transgressed the well known principle of law that no amount of evidence can be looked into upon the plea which was never put forward in the pleadings.

IV. The Lower Appellate Court has erred without any evidence of any kind on the record that the alleged partitions have been acted upon. There is no evidence of any kind on the record in the above behalf. This finding of the Lower Appellate Court is perverse and not at all borne out from the record. The first suit decided from the court of Shri R.L. Sehgal was filed on 20.3.1959 and compromised on 23.3.1959. Similarly the other suit for partition was filed on 16.4.1959 and decided on 11.5.1959. The Trial Court as well as the Rent Control Tribunal both have held that the alleged partition were not real but were made with oblique motives for income tax or other purposes.

V. The Lower Appellate Court gave no finding on the most important issue in the case which was No. 7. The Appellants purchased the property in suit after perusing the relevant documents such as Gift Deed dated 3.6.1969 DW-3/1 executed by Shri Ram Rakha Mal in favour of Respondent No. 2. The rent notes D1 & D2 executed by Shri Phool Chand husband of Lakshmi Devi Respondent No. 1 in favour of Shri Ram Rakha Mal, the statement dated 1.6.1971 made by Smt. Ram Piari Respondent No. 3 in the eviction case, the record of house tax of Municipal Corporation of Delhi PW-5/1 to PW-5/4 were of the House Tax & Water Department. Smt. Shakuntala Devi Respondent No. 2 was shown as owner of the property and they thus acted in good faith after taking reasonable care for ascertaining the fact that Respondent No. 2 had power to sell the house in suit and Section 41 of the Transfer of Property Act applies to the facts of the present case as held by the Lower Court. This aspect of the case which was very important has been totally ignored.

VI. The Lower Appellate Court has also not taken into full consideration the Disclaimer Deed (Relinquishment Deed) DW-2/1 executed by Smt. Ram Piari on the plea that the same was not proved. This is against the record. It stands fully proved from the statement of Smt. Shakuntala Devi Respondent No. 2 who is a party to the Deed DW-3 and the Petition Writer. All these persons were cross-examined but nothing came out. In this Deed Smt. Ram Piari Respondent No. 3 has clearly stated that she never acquired any right, title or interest in the property in suit and it belonged to Shri Ram Rakha Mal. The gift is valid. Respondent No. 2 had authority to sell the same and she had rightly sold the same to the Appellants. She has also mentioned in the said deed that if it is

considered that she had any right, title or interest she relinquished the same. All these facts are mentioned on the record but the Lower Appellate Court did not give any legal finding in respect thereof.

VII. The Lower Appellate Court has erred in overlooking the fact that Smt. Ram Piari Respondent No. 3 was the most important witness which ought to have been produced by Smt. Lakshmi Devi Respondent No. 1 to prove that she was the owner of the property in suit. On the other hand the Lower Appellate Court held that the Appellants should have produced Smt. Ram Piari. This finding on the face of it is perverse and not at all tenable in law.

VIII. The Lower Appellate Court has erred in law in fastening ownership on Smt. Ram Piari Respondent No. 3 when she has not come in the witness box to claim the same.

IX. The Lower Appellate Court has erred in holding that mere suit for injunction is maintainable when Respondent No. 1 has admittedly no right, title or interest in the suit property. It overlooked the fact that it is Smt. Ram Piari only could have filed injunction suit.

X. The Lower Appellate Court has erred in overlooking the fact that relief for injunction has also been claimed by Respondent No. 1 against her mother Smt. Ram Piari who she alleges to be the owner of the property in suit. This shows collusion.

XI. The Lower Appellate Court has erred in overlooking the fact that the possession of Respondent No. 1 on portion in suit was of a trespasser as such no injunction could have been issued admittedly when criminal case against Respondent No. 1 and her husband in respect to the portion in suit is pending in Criminal Court for offences u/s 448 and 380 Indian Penal Code as both of them committed criminal trespass and removed the goods of the Appellants.

XII. The Lower Appellate Court has erred in misreading the evidence of Tarsem Kumar. His evidence is very clear that Smt. Shakuntala Devi Respondent No. 2 and he himself remained in occupation of the portion in suit till the same was sold and that the possession of the premises in suit was never delivered to Respondent No. 1 otherwise Respondent No. 2 would not have given possession to Respondent No. 1 as litigation was going on between Respondent No. 2 and husband of Respondent No. 1 in the court of Additional Rent Controller, Delhi.

XIII. The Lower Appellate Court has violated the well known principle of law that injunction can be issued only in favour of a person who has some right of ownership or other right in the property but not in favour of a trespasser. Besides that mere suit for injunction is not legally tenable when there is an obstacle of Gift Deed and the Sale Deed in favour of the Appellants.

5. The grounds of appeal at page 6 to 10 [Ground No. (i) to (viii)] in RSA 239/1982 read as follows:

I. That the suit No. 434/77 filed by Respondent No. 1 for declaration is not at all maintainable. Section 34 of the Specific Relief Act is not at all attracted to the facts of the present suit in as much as admittedly Respondent No. 1 has no right whatsoever in the property.

II. The Lower Appellate Court has erred in relying upon the documents PW-4/A, PW-4/B, PW-4/C and on their basis it was held that a partition took place and the property in suit fell to the share of Smt. Ram Piari Respondent No. 3. While coming to this finding he has totally ignored the fact that the property in suit and other properties were neither joint Hindu family properties nor were joint properties but Shri Ram Rakha Mal was the absolute owner of the same, hence the question of partition never arose. This aspect of the case has been dealt with by the Lower Appellate Court in para 31 at page 19 of its judgment. The alleged partition if there be any must be for collateral purposes as held by the Lower Court as well as by the Rent Control Tribunal in its decision made on 5.1.1982.

III. The Lower Appellate Court has seriously erred in observing that PW-4/A, PW-4/B & PW-4/C were filed in a suit for possession which fact is against the record. In the decree PW-4/B the nature of suit is mentioned as partition and not a suit for possession. The suit filed by Smt. Ram Piari Respondent No. 3 for partition of the property in which she claimed 1/6th share in all the properties including the property in suit. During the pendency of this suit a compromise is alleged to have been made which is PW-4/A. Final decree in the partition suit is PW-4/B. The said decree falls within the ambit of Section 2(15) of the Indian Stamp Act and is to be stamped in accordance with Article 45 of the above Act. Since the decree is not engrossed on a stamp paper, it has no existence as a decree. Until it is engrossed on proper non judicial stamp & it is nullity it can be challenged in any proceedings whatsoever.

IV. The Lower Appellate Court has erred in overlooking the fact that Smt. Lakshmi Devi Respondent No. 1 in the plaint of the suit has specifically stated that the properties of the father were partitioned in suit No. 133/59 from the court of Shri R.L. Sehgal Sub Judge Ist Class Delhi vide order dated 30.3.1959. Respondents 4 to 7 sons of Shri Ram Rakha Mal in para 2 of their written statement pleaded the above fact of partition as alleged by Respondent No. 1. On the above pleadings of the parties the Trial Court framed in the present suit No. 435/77 issue No. 4 which clearly pertains to the above partition pleading and held that the partition of the later date proved by PW-4/A to PW-4/C cannot be looked upon as it was not pleaded but the Lower Court based its judgment on the above documents PW-4/A to PW-4/C. In doing so the Lower Court has transgressed the well known principle of law that no amount of evidence can be looked upon the plea which was never put forward in the pleadings.

V. The Lower Appellate Court has erred without any evidence of any kind on the record that the alleged partitions have been acted upon. There is no evidence of any kind on the record in the above behalf. This finding of the Lower Appellate Court is perverse and not at all borne out from the record. The first suit was

decided from the court of Shri R.L. Sehgal was filed on 20.3.1959 and compromised on 23.3.1959. Similarly the other suit for partition was filed on 16.4.1959 and decided on 11.5.1959. The Trial Court as well as the Rent Control Tribunal both have held that the alleged partition were not real but were made with oblique motives for income tax or other purposes.

VI. The Lower Appellate Court gave no finding on the most important issue in the case which was No. 7. The Appellants purchased the property in suit after perusing the relevant documents such as Gift Deed dated 3.6.1969 DW-3/1 executed by Shri Ram Rakha Mal in favour of Respondent No. 2, the rent notes D1 & D2 executed by Shri Phool Chand husband of Lakshmi Devi Respondent No. 1 in favour of Shri Ram Rakha Mal, the statement dated 1.6.1971 made by Smt. Ram Piari Respondent No. 3 in the eviction case, the record of house tax of Municipal Corporation of Delhi PW-5/1 to PW-5/4 were of the House Tax & Water Department. Smt. Shakuntala Devi Respondent No. 2 was shown as owner of the property and they thus acted in good faith after taking reasonable care for ascertaining the fact that Respondent No. 2 had power to sell the house in suit and Section 41 of the Transfer of Property Act applies to the facts of the present case as held by the Lower Court. This aspect of the case which was very important has been totally ignored.

VII. The Lower Appellant Court has also not taken into full consideration the Disclaimer Deed (Relinquishment Deed) DW-2/1 executed by Smt. Ram Piari on the plea that the same was not proved. This is against the record. It stands fully proved from the statement of Smt. Shakuntala Devi Respondent No. 2 who is a party to the Deed DW-3 and the Petition Writer. All these persons were cross-examined but nothing came out. In this Deed Smt. Ram Piari Respondent No. 3 has clearly stated that she never acquired any right, title or interest in the property in suit and it belonged to Shri Ram Rakha Mal. The gift is valid. Respondent No. 2 had authority to sell the same and she had rightly sold the same to the Appellants. All these facts are mentioned on the record but the Lower Appellant Court did not give any legal finding in respect thereof.

VIII. That the Lower Appellate Court has erred in overlooking the fact that necessary parties namely mother and brothers of Respondent No. 1 have not been impleaded in the present suit against whom the relief of cancellation of the gift and sale deed can be claimed. Without impleading them the suit is not legally competent.

6. As already aforenoted the four second appeals pending before this Court have impugned the order of RCT dated 5.1.1982; two appeals have challenged the finding of the RCT wherein it had been held that Phool Chand was a tenant and the latter two appeals have challenged the finding of the RCT recognizing the legal title of the appellants namely Mahender Kumar and Padam Chand.

7. Arguments have been addressed at length by learned Counsel for the appellant who is appearing in the RSAs. He has challenged the impugned

judgment and decree dated 17.7.1982. It is submitted that the findings in the impugned judgment are illegal and arbitrary. A partition decree pursuant to a compromise and a family arrangement arrived at between Ram Rakha Mal, his wife Ram Piari, his four sons was allegedly made on 18.3.1959; the relevant documents are Ex.PW-5/1, Ex.PW-5/2 and Ex.PW-5/3. Thereafter for the first time PW-4 Mohan Lal one son of Ram Rakha Mal when recalled for his evidence on 20.1.1977 produced a partition decree of May, 1959; this was a compromise effected between the same family members of Ram Rakha Mal i.e. between himself, his wife Ram Piari and his four sons; the said documents are Ex.PW-4/A, Ex.PW-4/B and Ex.PW-4/C. It is submitted that this partition of May, 1959 was never pleaded in the pleadings. It had seen the light of the day for the first time in January 1977; this was a contrary plea set up by the plaintiff; the plaintiff himself not being sure as to whether the partition had been effected in March, 1959 or in May 1959. The Trial Court had rightly rejected this partition decree. Even otherwise, presuming that such a partition had taken place u/s 2(15) read with Article 45 of the Indian Stamp Act, 1899 this partition decree was never engrossed upon a stamp paper and for this reason cannot be looked into. It was merely a paper decree; it was never acted upon and this had rightly been held by the Trial Court after examining the evidence led by the parties both oral and documentary. As per these partition decrees both Ram Rakha Mal and Ram Piari were parties to these court decrees; yet the registered gift deed Ex.DW3/1 dated 3.6.1969 was executed at a later date by Ram Rakha Mal in favour of his daughter Shakuntala Devi and was witnessed by Ram Piari herself. Ram Piari was an attesting witness to this document; this evidences the fact that the partition decree was in fact never acted upon.

8. Attention has been drawn to the testimony of Ram Piari recorded as AW3 in the proceedings before the Rent Controller wherein she had stated that she has no right, claim or title over the disputed property; it was always owned by her husband Ram Rakha Mal who had made a valid gift deed in favour of his daughter Shakuntala Devi vide the aforementioned document Ex.DW-3/1.

9. Attention has also been drawn to the disclaimer deed Ex.DW-2/1 dated 6.4.1974 which had been proved through the version of DW-3 who was the deed writer of this document. He had categorically stated that Ram Piari had disclaimed title if any in the suit property in favour of Shakuntala Devi. This document was registered with the Sub-Registrar on 8.4.1974. It is submitted that Shakuntala Devi had become owner of the suit property by virtue of this gift deed on 3.6.1969. Thereafter in 1971 she had filed two eviction petitions against her brother-in-law Phool Chand who was only a tenant in the suit property. These eviction proceedings were contested by Phool Chand. It was in these proceedings that Ram Piari who had been examined as AW-3 had made a statement that Ram Rakha Mal was the owner of this property and he had made a valid gift deed of it in favour of Shakuntala Devi. All these facts were well within the knowledge of Lakshmi Devi whose husband Phool Chand was contesting these petitions. Further this gift deed was not challenged right upto 1975 when Lakshmi Devi

filed a suit for declaration seeking a cancellation of this document; Lakshmi Devi has slept over the matter for this entire period. It is pointed out that in the proceedings before the Rent Controller the status of Phool Chand husband of Lakshmi Devi, had been established as a tenant; Ex.D1- and D-2 were the rent receipts executed by Phool Chand in favour of Ram Rakha Mal his father-in-law dated 14.6.1965 and 30.6.1965 evidencing the tenancy of Phool Chand in the suit property. These rent receipts Ex.D-1 and D-2 had been proved both in the suit as also before the Rent Controller; in the suit proceedings they had been proved through the version of DW-1 who was the deed writer of these rent notes. Attention has been drawn to the version of DW-5 Shakuntala Devi; she had proved Ex.DW-5/1 to Ex.DW-5/4 which were the house tax receipts issued by the Corporation in her name evidencing her legal status to the suit property. Learned Counsel for the appellant has also placed reliance upon Section 41 of the Transfer of Property Act. It is submitted that under this statutory provision it is clear that there was an implied consent of Ram Piari; in June 1969 when the gift deed had been executed by the ostensible owner Ram Rakha Mal in favour of his daughter Shakuntala Devi; the consideration was love and affection in favour of his daughter.

10. Attention has been drawn to that part of the statement of DW-5 Shakuntala Devi and her husband DW-3 Tarsem Sen Gupta wherein both have stated that they were residing in the suit property upto February 1974 when they had executed a sale deed in favour of Mahender Kumar and Padam Chand on 24.1.1974 handing over the suit property to them. This document was registered on 28.2.1974. Entire gamut of events show that the Mahender Kumar and Padam Chand had stepped into the shoes of Shakuntala Devi through this registered document of sale executed in their favour; Shakuntala Devi had legal title to the suit property; the gift deed dated 3.6.1969 had been executed by her father in her favour wherein her mother was an attesting witness; the partition decree relied upon by the first appellate court dated 18.3.1959 Ex.PW-5/1 to Ex.PW-5/3 was never acted upon; it was only a paper decree; this is clear from the fact that Ram Piari who was a party to this partition decree was herself an attesting witness to the subsequent gift deed thereby evidencing the fact that Ram Piari had recognized the legal title of her husband Ram Rakha Mal to gift this property to their daughter Shakuntala Devi.

11. Arguments have been countered by learned Counsel for the respondent. It is submitted that the rent notes Ex.D-1 and Ex.D-2 at best only establish a relationship of landlord-tenant; the contents of the document are however not proved. Reliance has been placed upon AIR 1968 Bombay 112 Sir Mohammed Yusuf and Anr. v. D and Anr.; it is pointed that in this judgment it was held that even if a document is formally proved, it does not amount to a proof of the truth of the contents of the document. It is submitted that Ex.PW-4/A to Ex.PW-4/C are in consonance and in conformity with the earlier partition decree dated 18.3.1959 Ex.PW-5/1 to Ex.PW-5/3; as such the finding of the trial judge that this fact had not been pleaded is incorrect as Ex.PW-4/A to Ex.PW-4/C had only

endorsed a finding which had earlier been recorded in Ex.PW-5/1 to Ex.PW-5/3. This evidence could not be held to be beyond the pleadings of the parties. It is submitted that such a family arrangement is exempt from payment of stamp duty. For this proposition reliance has been placed upon a judgment of Punjab and Haryana High Court reported in LPA No. 291/1976 decided on 16.7.1981 titled as Ram Niwas and Anr. v. Rakesh Kumar. It is submitted that the decree dated 18.3.1959 could not have been ignored. It was a valid and subsisting partition decree evidencing a partition between the family members. It was not an oral partition and as such the plea of the appellants that it was not acted upon has no relevance. Reliance has been placed upon Sh. Chaman Lal Jain Vs. Sh. Arun Kumar Jain and others, wherein it was held that a compromise decree is a valid and subsisting document and unless it is set aside the same does not stand frustrated.

12. Learned Counsel for the respondent has drawn attention of this Court to certain subsequent facts; it is pointed out that on 16.7.2010 and 16.8.2010 certified copies of certain documents have been placed on record which evidence the fact that this oral partition dated 18.3.1959 had in fact been acted upon. Further on 1.6.1968 Ram Piari had executed a will in favour of Lakshmi Devi bequeathing 50 % of her share in the suit property to Lakshmi Devi; letters of administration have since been granted in terms of the judgment dated 13.5.1994. Ram Piari having acquired title to this property in terms of the partition decree dated 18.3.1959 had validly executed this will in favour of Lakshmi Devi. Lakshmi Devi has now acquired a legal title to the suit property. These documents establish this factum.

13. Arguments have been rebutted by the learned Counsel for the appellant. It is pointed out that documents which have not seen the light of the day either in the trial court or before the first appellate court cannot now be pressed into service. Even otherwise, the procedure for placing documents on record before the second appellate court i.e. by resorting to the provisions or Order 41 Rule 27 of the CPC has not been adhered to. These documents cannot be looked into. It is pointed out by the learned Counsel for the appellant that the entire family has in fact colluded with one another to oust the appellants who are the outside purchasers and alien to the family. It is pointed out that Shakuntala Devi having received the sale money from the present appellants is in fact no longer interested in the litigation. This purported will dated 1.6.1968 has in fact been set up by the other members of the family to protect the right of Lakshmi Devi against the appellants who are being maligned and harassed only in order that the property continues to be retained within the family. Even otherwise, these documents have to be ignored for the reasons as afore submitted. Reliance has been placed upon AIR 1930 57 (Privy Council) as also upon another judgment of the Supreme Court reported in AIR 1966 SC 1861 Bhagat Singh and Ors. v. Jaswant Singh to support a submission that the partition decree produced by the appellant of May, 1959 Ex.PW-4/A to Ex.PW-4/C was rightly rejected by the trial court as it was an evidence beyond the pleadings. It is pointed out that in the

aforenoted judgments it was held that where a claim had never been put forward in defence no amount of evidence can be looked into on such a plea.

14. The judgment impugned in the two second appeals is the judgment and decree dated 17.7.1982. This judgment and decree had emanated from the three suits which were filed before the civil court; two of which had been filed by Lakshmi Devi. Suit No. 434/1977 had been filed by Lakshmi Devi; it was a suit for declaration; the prayer was that the gift deed dated 3.6.1969 executed by Ram Rakha Mal in favour of Lakshmi Devi be declared null and void; further the sale deed dated 24.1.1974 executed by Shakuntala Devi in favour of the present appellants namely Mahender Kumar and Padam Chand Jain also be declared null and void. Suit No. 435/1976 was filed by Lakshmi Devi against Padam Chand Jain and Mahender Kumar. This was a suit for injunction. The prayer was that the defendant be restrained from creating any third party interest in the suit property; submission of Lakshmi Devi was that her mother Ram Piari had received this property in an oral partition which had formed the subject matter of a decree dated 18.3.1959 Ex.PW-5/2. The third suit i.e. suit No. 433/1977 was filed by the present appellants Padam Chand Jain and Mahender Kumar against Phool Chand, husband of Lakshmi Devi. This was a suit for injunction; prayer was that the defendant be restrained from raising any unauthorized construction in the suit property.

15. All the aforenoted suits had been disposed of by a common judgment; suits had been dismissed. Against this dismissal two appeals had been filed by Lakshmi Devi. No appeal had been filed by Padam Chand Jain and Mahender Kumar. The impugned judgment dated 17.7.1982 had allowed the appeals of Lakshmi Devi and suits were decreed in her favour. Gift deed executed by Ram Rakha Mal in favour of Shakuntala Devi was held to be illegal; Ram Piari in terms of the compromise decree Ex.PW-5/2 dated 18.3.1959 was the legal owner of the suit property; Ram Rakha Mal had no authority to gift this property to Shakuntala Devi.

16. Trial judge had framed 13 issues in suit No. 435/1977; four issues in suit No. 434/1977 and five issues in 433/1977. Common evidence was led on all the issues. The plaintiff in terms of her pleadings had proved documents Ex.PW-5/1 to Ex.PW-5/3 dated 18.3.1959 evidencing a partition decree between Ram Rakha Mal, Ram Piari and their four sons. This was in a suit for partition. Being a decree passed in a partition suit, it necessarily required to be engrossed on a stamp paper which was not done. Provisions of Section 2(15) read with Article 45 of the Indian Stamp Act clearly state that an instrument of partition whereby the co-owners of any property divide or agree to divide their property in severalty must bear a stamp duty for the amount of the value of the separated share or shares of this property. It is not in dispute that this partition decree was never stamped or engrossed on stamp paper. A subsequent partition document Ex.PW-4/A to Ex.PW-4/C was also placed on record; this document had seen the light of the day for the first time when PW-4 Mohal Lal had been recalled for his

examination. This was on 20.1.1977. The said documents had been proved in his version as Ex.PW-4/A to Ex.PW-4/C. Assuming the statement of learned Counsel for the respondent to be correct that there is no contrary plea taken in the document Ex.PW-4/A to Ex.PW-4/C qua the earlier documents Ex.PW-5/1 to Ex.PW-5/3 yet admittedly these subsequent documents i.e. Ex.PW-4/A to Ex.PW-4/C which relate to a partition decree of May, 1959 had never been pleaded in the suit proceedings; as such the trial court had rightly rejected these documents being beyond the pleadings of the parties. In the judgment of Atta Mohammad (supra) and Bhagat Singh (supra) it has been reiterated that no amount of evidence can be looked into a plea which had not been put forward in the pleadings.

17. Finding of the trial court that Ex.PW-5/1 to Ex.PW-5/3 was only a paper decree and was never acted upon is correct; this finding of fact which was reversed by the first appellate court was a mis-appreciation of the evidence. PW-2 Padam Chand, one son of Ram Rakha Mal was unaware of which portion of the property had fallen to his share; PW-3 had also given evasive answers; he could not state as to what was the respective portion of the shares of the members of the family. PW-4 a third son of Ram Rakha Mal and the brother of PW-2 was also not sure as to whether the sisters had also got any share in the partition or not. Admittedly, these properties were the self-acquired properties of Ram Rakha Mal; they were not joint family properties. No paper work was done pursuant to this decree dated 18.3.1959. It was not as if the parties were already living in the respective portions which had been allocated to them; in fact, Lakshmi Devi and her husband Phool Chand continued to live in the disputed property which clearly goes to show that this partition was in fact never acted upon and this decree dated 18.3.1959 Ex.PW-5/3 was only a decree on paper, never meant or intended by the parties to have been acted upon. This is also evidenced by the fact that another tenant in this suit property namely Pawan Kumar Jain even after 18.3.1959 continued to occupy this property as a tenant and to pay rent to Ram Rakha Mal. This fact has been elicited in the cross-examination of PW-3. The mutation of the property also continued in the name of Ram Rakha Mal during his lifetime. As per this partition decree, the disputed property had fallen to the share of Ram Piari. The rent notes Ex.D-1 and Ex.D-2 executed by Phool Chand, husband of Lakshmi Devi in favour of Ram Rakha Mal dated 14.6.1965 and 30.6.1965 show that this rent was received by Ram Rakha Mal; had Ram Piari become the owner of this property in terms of this oral partition, she should have received this rent as a landlady and not her husband Ram Rakha Mal.

18. Relevant would it be to state that the proceedings before the Rent Controller also show that this partition had in fact never been acted upon. Two eviction petitions had been filed by Shakuntala Devi u/s 14(1)(a) of the Delhi Rent Control Act against Phool Chand, her brother-in-law and the husband of Lakshmi Devi. These were hotly contested petitions. Before the Rent Controller Ex.D-1 and Ex.D-2 the aforementioned rent notes had been proved as Ex.AW1/1 and

Ex.AW5/1. Rent was paid by Phool Chand to Ram Rakha Mal and not to Ram Piari. Ram Piari had come into the witness box as AW-3. Her statement is categorical to the effect that she was never the owner of the disputed property. This property is owned by her husband Ram Rakha Mal; he had made a valid gift deed dated 3.6.1969 of this property in favour of his daughter Shakuntala. This was a registered document. Ram Piari was an attesting witness to this document. As AW-3 she had deposed that the Sub-Registrar had come to their house; Ram Rakha Mal, her deceased husband was in a sound disposition of mind; he had thumb-marked the gift deed in her presence; she has also signed as an attesting witness; Ganga Saran was another attesting witness. Ex.DW-3/1 stood proved. Contention of learned Counsel for the respondent that Ex.D-1 and Ex.D-2 have not been properly proved has no force. Shakuntala Devi AW-9 had corroborated the version of Tarsem Kumar, her husband examined as AW-7 in these proceedings before the Rent Controller. She had identified the signatures of Phool Chand on Ex.AW-1/1 and Ex.AW5/1. Stand of Lakshmi Devi, the wife of Phool Chand that her husband was living as a tenant but her mother had later on given this suit property to her for her residence; her husband had never executed any rent note was repelled. Scribe of the rent notes Hem Chand had been examined as AW-5; he had deposed that these rent notes Ex.AW-1/1 and Ex.AW-5/1 had been prepared by him at the instance of Phool Chand; attesting witness of these rent notes had also been examined as AW-1, AW-2; AW-6 had produced the record from the office of Collector of Stamps. These documents had been adequately proved. It was thus established that even in June, 1965 Phool Chand continued to be a tenant in the suit property. The partition decree was never acted upon.

19. In a judgment reported in Potti Lakshmi Perumallu Vs. Potti Krishnavenamma, the Supreme Court in the context of a family arrangement has held as below:

9. No doubt, a family arrangement which is for the benefit of the family generally can be enforced in a court of law. But before the court would do so, it must be shown that there was an occasion for effecting a family arrangement and that it was acted upon. It is quite clear that there is complete absence of evidence to show that there was such an occasion or the arrangement indicated in the will was acted upon. The letter Ex.B-12 upon which reliance was placed before the High Court on behalf of the defendant has not been found by it to be genuine. The defendant had also pleaded that the provision under the will were given effect to but no satisfactory evidence has been adduced to prove that the plaintiff was in enjoyment of the properties, allotted to her under the will. We cannot, therefore, accept the second contention of Mr. Desai.

20. The relinquishment deed/disclaimer document dated 6.4.1974 was a registered document. This document is in Hindi. It is described as a "Dastbardari"; the literal English translation of which reads as a "deed of disclaimer". This document was proved through the version of the scribe of this

document. In the suit proceedings, he had been examined as DW-2. This document was an affirmation and confirmation by Ram Piari that she was not the owner of the disputed property; the owner of the property was her husband Ram Rakha Mal who had made a valid gift deed in favour of Shakuntala Devi vide a registered gift deed dated 3.6.1969; if at all she had any right in the property, the same stood divested in favour of Shakuntala Devi. The finding of the first appellate court on this score as recorded in para 16 of the impugned judgment is a faulty finding and clearly calls for an interference. This document cannot be read to recite that Ram Piari had admitted herself to be the owner of the disputed property. The document has to be read in the plain and simple language in which it has been worded; nothing can be added or subtracted therefrom as the intention of the executant was clearly worded. It clearly recited that Ram Piari had no interest or title in the suit property; in case, she had any, the same stood disclaimed by her in lieu of the fact that her husband had made a valid registered gift deed in favour of their daughter on 18.3.1969. On this score, submission of learned Counsel for the appellant that this document had only reasserted the aforementioned facts is forceful as this document had even otherwise been executed on 6.4.1974 i.e. almost two months after the disputed property had already been sold by Shakuntala Devi to the appellants vide a registered sale deed dated 18.2.1974 Ex.DW-5/5.

21. The contentions of the plaintiff Lakshmi Devi were contrary. Her contention was that she was living in the suit property since 1952; her husband was living as a tenant; thereafter with the permission of her mother who had received this property in terms of a partition decree dated 18.3.1959; she continued to retain the suit property. In the course of proceedings as aforementioned a second partition of May, 1959 also saw the light of the day. This was for the first time on 20.1.1977 when PW-4 appeared in the witness box on being recalled. As noted supra testimony of the witnesses of the plaintiff were evasive, ambiguous; they were doubtful about the shares of the property which had fallen to each of them in the proceedings Ex.PW-5/1 to Ex.PW-5/3. None of the brothers of Lakshmi Devi knew which share had been allocated to him. They were also not sure as to whether the sisters had also been allocated a share or not. This was purportedly in March, 1959. Thereafter the same persons who were parties to this partition decree i.e. Ram Rakha Mal being the head of the family and his wife Ram Piari had executed a registered gift deed on 3.6.1969 in favour of Shakuntala Devi. Ram Piari was a witness to this document. Testimony of Ram Piari AW-3 recorded on 1.6.1971 in the proceedings in the eviction petitions is clear and categorical. This version of Ram Piari had been proved before the Trial Court in the present proceedings as Ex.DW-3/1. Ram Piari had clearly stated that her husband had gifted this property to Shakuntala Devi; she had no right or title in the suit property. This stand of Ram Piari continued right upto April, 1974 when she had executed the document of disclaimer dated 6.4.1974 where she again disclaimed her rights, if any, in this suit property stating that this property stood gifted by her late husband to her daughter Shakuntala Devi. This was also a registered

document.

22. Meanwhile Shakuntala Devi pursuant to the registered gift deed dated 3.6.1969 had filed two eviction petitions against her brother-in-law Phool Chand; this was in the year 1971. Status of Phool Chand as a tenant was proved both before the Rent Controller as also before the Rent Control Tribunal. Ex.D-1 and Ex.D-2 were the rent notes dated 14.6.1965 and 30.6.1965 executed by Phool Chand in favour of his father-in-law Ram Rakha Mal. As discussed supra these rent notes stood proved. This fact finding calls for no interference.

23. Section 41 of the TPA has no application. To attract this statutory provision there must a transfer by the ostensible owner for consideration. A gift deed does not contemplate payment of any consideration or compensation. A gift is a voluntary transfer of property without consideration; it is a parting by the owner of property without any pecuniary benefit. A "gift" has been defined u/s 122 of the TPA. It is a transfer of an existing movable or immovable property voluntarily without consideration by the donor to the donee. In *Ashokan v. Lakshmikutty and Ors.* the Supreme Court had reiterated that a gift does not contemplate any payment of compensation or consideration. This concept is unknown in the case of a gift.

24. The question of Ram Piari not having been brought into the witness box for which an adverse inference had been drawn by the first appellate court against the present appellant is a misinterpretation; it was an erroneous finding. As per the oral versions of PW-2, PW-3 and PW-4, their mother Ram Piari was living with them. The appellants were strangers to this family; they were the subsequent purchasers of this suit property who had entered into the family scene only in February 1974. Adverse inference for not producing Ram Piari could not have been drawn against the defendants/appellants.

25. The subsequent documents sought to be produced by the respondents which have been filed on the record of this Court on 16.7.2010 and 16.8.2010 cannot be read. The submission of learned Counsel for the respondent that these documents have been placed on record only to bring to the notice of this Court that certain subsequent events had taken place between the parties. One such event was a will which had been executed by Ram Piari on 1.6.1968 in favour of Lakshmi Devi bequeathing 50 % of this property in favour of Lakshmi Devi who was thus a legal owner. The other documents evidence the partition decree of 18.3.1959 had been acted upon by the other family members i.e. brothers of the plaintiff Lakshmi Devi. Counsel for the respondent has vehemently opposed the reading of these documents.

26. This is a second appeal. This is not a third fact finding court. The facts have already been delved into in detail by the two fact finding courts below. Even at the second appeal level there is a procedure for placing documents on record. Provisions of Section 41 Rule 27 of the CPC have not been adhered to. No application has been filed to place these documents on record. They necessarily

have to be ignored.

27. The aforementioned discussion leads to only one conclusion which is an inevitable conclusion.

28. Shakuntala Devi had acquired a legal title to the suit property in terms of the registered gift deed dated 3.6.1969 executed by her late father in her favour. This document was attested by her mother Ram Piari. The oral partition in terms of the decree dated 18.3.1959 Ex.PW-5/1 to Ex.PW-5/3 was only a paper decree. It not having been acted upon, it was non est, the subsequent registered gift deed dated 3.6.1969 is evidence of this factum. Phool Chand the husband of Lakshmi Devi was a tenant in the suit property. He had no other status. Rent notes Ex.D-1 and Ex.D-2 dated 14.6.1965 and 30.6.1965 executed by Phool Chand in favour of his father-in-law had been duly proved. Shakuntala Devi being the legal owner of this property had sold the same to the appellants Padam Chand and Mahender Kumar vide a valid registered sale deed of February, 1974. Rights of Ram Piari if any in the suit property were disclaimed by her by a subsequent registered document dated 6.4.1974. This documentary evidence coupled with the oral versions of the witness as discussed supra has substantiated these findings. Finding of the trial judge in the suit proceedings was the correct appreciation of the fact and law. Lakshmi Devi having been left with no other status in the suit property except that of a rank trespasser could not have filed a suit either for injunction or for declaration. None of the aforementioned suits were maintainable by her. They were rightly dismissed by the trial court. The findings in the judgment of the first appellate court dated 17.7.1982 clearly call for an interference. They are set aside.

29. Findings in the second appeals i.e. of the Rent Control Tribunal dated 5.1.1982 call for no interference. Phool Chand was rightly held to be a tenant in terms of the rent notes Ex.D-1 and Ex.D-2. The present appellants Mahender Kumar and Padam Chand had been substituted in place of Shakuntala Devi on an application under Order 22 Rule 10 of the CPC. They had validly and legally stepped into the shoes of Shakuntala Devi. This finding of the RCT also calls for no interference. Title of Shakuntala Devi having been established, she had rightfully passed it on to the present appellants vide sale deed dated February, 1974.

30. The end result is; appeal is allowed. Finding of the first appellate court dated 17.7.1982 are set aside. Findings of the RCT dated 5.1.1982 call for no interference; they are endorsed. Regular second appeals and second appeal against orders are disposed of accordingly.