

**(1998) 10 DEL CK 0033**  
**In the Delhi High Court**  
**Case No : Suit No. 3416 of 1992**

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|-------------------------------------|----|------------|
| Rakesh Juneja And Others            | Vs | APPELLANT  |
| Baba Chakravorty Darvesh And Others |    | RESPONDENT |

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**Date of Decision :** 06-10-1998

**Acts Referred:**

**Citation :** (1999) 1 AD 18 : (1999) 1 CLT 560 : (1998) 76 DLT 681 : (1999) 48 DRJ 138

**Hon'ble Judges :** Dr. M.K. Sharma, J

**Bench :** Single Bench

**Advocate :** Shri Rakesh Juneja and Others, for the Appellant;

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## Judgement

DR. M.K. Sharma, J.—This suit was instituted by the plaintiffs against the defendants seeking for cancellation of the documents specifically mentioned in the plaint under the provisions of Section 31 of the Specific Relief Act.

2. The present suit relates to a plot of land situated at E-255, Greater Kailash, Part-II, New Delhi, which was developed by DLF Housing and Construction Limited. The said Company sold various residential plots of land of different sizes and the plot in question was sold by the said Company to Smt. Gurdial Kaur wife of Shri Umrao Singh vide registered Sale Deed dated 27th July, 1964. Said Smt. Gurdial Kaur further sold the said plot to Shri Thakur Singh and Shri Lashkar Singh vide a Sale Deed duly registered with the Sub-Registrar on 21st March, 1966. The said co-owners namely, Shri Thakur Singh and Shri Lashkar Singh sold the said plot of land to Shri Satinder Singh vide a Sale Deed duly registered with the Sub-Registrar, New Delhi, on 14th December, 1970. Said Shri Satinder Singh sold the said plot of land to the plaintiffs and their late father by executing a Sale Deed in favor of them for a total consideration of Rs.7,85,000/-. The aforesaid Sale Deed was also duly registered in the name of the plaintiffs and their late father with the Sub-Registrar, New Delhi, on 2nd May, 1986.

3. After registration of the said Sale Deed and the payment of the entire sale

consideration, Shri Satinder Singh handed over the physical, peaceful and vacant possession of the said plot of land to the plaintiffs and their late father on 2nd May, 1986 itself and thereby the plaintiffs continue to have peaceful possession of the aforesaid plot of land.

4. Subsequently, however, the plaintiffs came to learn that the defendant No.1 has been claiming some interest in the said plot of land in question on the basis of some forged and bogus donation letter allegedly made on 23rd June, 1966 by late Smt. Gurdial Kaur. Having knowledge of the said fact, the plaintiffs and their late father issued public notices dated 19th December, 1988, 14th August, 1989 and 1st August, 1990 published in the daily edition of New Delhi, The Hindustan Times on 25th October, 1988, 20th August, 1989 and 5th August, 1990 respectively. By the aforesaid public notices, it was sought to be brought to the notices of general public about the possible mischief that might be committed in respect of the aforesaid plot of land, which is connected with the present suit.

5. On 11th December, 1990, the plaintiffs No.1 and 2 and their late father got the aforesaid plot of land mutated in their favor with the Municipal Corporation of Delhi, and they have also been paying house tax in respect of the said plot of land after the mutation of the same.

6. On 15th January, 1992, some persons at the behest of defendant No.1 tried to dispossess the plaintiffs forcibly and broke open the part of boundary wall and tried to remove the gate. On 4th February, 1992, the plaintiff No.1 also came to learn from some property agent that defendants No.3 to 6 are claiming to be owners of the suit property and trying to dispose off the same on the basis of some Sale Deeds purported to have been executed by defendant No.2 in their favor on 11.9.1989.

On enquiry in the office of the Sub-Registrar, New Delhi, the plaintiffs found that four Sale Deeds were sought to be executed by defendant No.2 in favor of defendants No.3 to 6 on 11th September, 1989 purporting to sell the suit property of the plaintiffs in four equal shares for a sum of Rs.1,50,000/- each for the 1/4th undivided share. The said Sale Deeds have been registered with the Sub-Registrar, New Delhi, vide Registration No. 7413 to 7416 in Book No.1, Volume No.6515 on pages 85 to 112. On further enquiry the plaintiffs further came to learn that one agreement to sell was purported to have been executed on 22nd July, 1976 by Smt. Gurdial Kaur in favor of defendant No.2 and by a receipt dated 22nd July, 1976 purported to be for a sum of Rs.48,000/- paid by defendant No.2 to Smt. Gurdial Kaur. According to the plaintiffs all the aforesaid documents are bogus, forged and void and accordingly the present suit has been instituted for cancellation of all the aforesaid documents.

7. On service of summons, the defendants No. 3 and 6 appeared in the suit and filed a written statement contending, inter alia, that the said defendants never claimed to be owners of the aforesaid plot of land and that they had never got any share of the plot registered in the names. It was further stated that the four

Sale Deeds as mentioned in the plaint are bogus as the said defendants have never purchased any share in respect of the plot in question. The remaining defendants, however, although served with the summons and notices from this Court did not appear in the suit and accordingly, the suit was ordered to be proceeded ex parte as against the said remaining defendants.

So far, defendants No. 3 and 6 are concerned, although they filed a written statement, they, however, did not choose to appear in the suit thereafter and accordingly, it was ordered that the suit would also proceed ex parte as against them. At the request of the counsel for the plaintiffs, he was allowed to lead evidence by filing an affidavit which stands filed and is on record.

8. I have heard Mr. R.M. Bagai, counsel appearing for the plaintiffs.

9. In pursuance of the order passed by this Court, Shri Rakesh Kumar Juneja, the plaintiff No.1 has filed an affidavit in this Court by way of evidence. In his affidavit he has proved the statement made in the plaint. The Sale Deed under which Shri Satinder Singh sold the suit property to the plaintiffs and their late father for a total consideration of Rs.7,85,000/- has been exhibited as "Exb. PW1/1". The said Sale Deed is a duly registered Deed in the name of the plaintiffs and their late father. It is also stated in evidence that after registration of the aforesaid Sale Deed and payment of the entire consideration, Shri Satinder Singh handed over the physical, peaceful and vacant possession of the suit property to the plaintiffs and their late father on 2nd May, 1986 itself at site and that the plaintiffs continue to have peaceful possession of the aforesaid suit property.

10. The mutation granted in favor of the plaintiffs No.1 and 2 and their father on 11th December, 1990 issued by the Municipal Corporation of Delhi has been exhibited as "Exb. PW1/2". The said mutation vide mutation letter dated 14th February, 1992 was mutated in favor of the plaintiffs and their mother, the defendant No.3, after the death of Shri Nand Lal Juneja, the father of the plaintiffs. The aforesaid mutation letter dated 14th February, 1992 has also been exhibited as "Exb. PW1/2A". The name of the plaintiff No.3 was mutated as she became co-owner of the said plot of land by operation of law being wife of late Shri Nand Lal Juneja and mother of plaintiffs No.1 and 2. The donation letter which is stated to be forged and bogus allegedly made on 23rd June, 1966 by late Smt. Gurdial Kaur has been placed on record. The said letter is exhibited and marked as "Mark-A".

11. It is also stated on evidence that on 4th February, 1992, the plaintiff No.1 came to know from some property agent that defendants No.3 to 6 are claiming to be owners of plot in question and trying to dispose off the same on the basis of some Sale Deeds purported to have been executed by defendant No.2 in their favor on 11th September, 1989. Certified copies of the aforesaid four Sale Deeds as obtained by the plaintiffs from the Office of the Sub-Registrar have also been exhibited and marked "Marks-B,C,D & E" respectively. The Agreement to Sell

purported to have been executed on 22nd July, 1976 by Smt. Gurdial Kaur in favor of defendant No.2 and a receipt dated 22nd July, 1976 purported to be for a sum of Rs.48,000/- paid by defendant No.2 to Smt. Gurdial Kaur have also been placed on record exhibited and marked as "Marks-F & G" respectively. A copy of the affidavit dated 22nd July, 1996 allegedly executed by late Smt. Gurdial Kaur is exhibited and marked as "Mark H". It is stated that the aforesaid Sale Deeds are on the face of it bogus and void.

12. I have carefully perused the documents placed on record and exhibited in the present case, in order to appreciate the contention of the learned counsel appearing for the plaintiffs with regard to the reliefs sought for in the present suit.

13. The plaintiffs purchased the aforesaid plot of land on 2nd May, 1986 for a total consideration of Rs.7,85,000/-. The Sale Deeds which were executed on 11th September, 1989 by the defendant No.2 in favor of defendants No.3,4,5 and 6 is for a total consideration of Rs.6 lacs for the entire suit property. That itself gives rise to doubt about authenticity and genuineness of the aforesaid Sale Deeds. The defendants No. 3 and 6 have denied purchase of any portion of the said property in their written statement. However, Sale Deed dated 11th September, 1989 which is marked as "Mark-E" indicates that 1/4th of the suit property was sold by defendant No.2 in favor of defendant No.3. Similarly, Sale Deed dated 11th September, 1989 marked as "Mark-B" is shown to have been executed by defendant No.2 in favor of defendant No.6. The said defendants have disclaimed execution of any such Sale Deeds in their favour. "Marks-C and D" are similarly Sale Deeds dated 11th September, 1989 executed by defendant No.2 in favor of defendants No.4 and 5 respectively.

14. Interestingly, "Mark-F" is a Gift Deed shown to have been executed by Smt. Gurdial Kaur in favor of defendant No.1. The aforesaid Deed is dated 23rd June, 1966 donating the suit property in favor of defendant No.1. However, even prior to the aforesaid Deed, Smt. Gurdial Kaur sold the suit property by registered Sale Deed to Shri Thakur Singh and Shri Lashkar Singh on 21st March, 1966. Thus, said Smt. Gurdial Kaur on the date when the aforesaid Deed of Gift was executed, had no right and title to donate the aforesaid land in favor of defendant No.1. Besides, the said Deed is not a registered document.

15. Contents of "Mark-G" which is in the nature of an affidavit, executed by Smt. Gurdial Kaur, would indicate that the suit property was sold to Shri Balwant Rai Kapoor, the defendant No.2. It further indicates that an amount of Rs.95,000/- was received in advance and the balance amount of Rs.10,000/- would be received on execution of the Sale Deed for the entire suit property. The aforesaid affidavit is dated 22nd July, 1976.

16. "Mark-H" is a copy of the Agreement to Sell dated 22nd July, 1976 between Smt. Gurdial Kaur and Shri Balwant Rai Kapoor, the defendant No.2. Under the aforesaid Agreement to Sell, the entire suit property was to be sold for a sale

consideration of Rs.1,05,000/-. These documents are contradictory in themselves and give conflicting versions. On the face of it, they appear to be made out for some unlawful consideration.

17. The allegations made in the plaint go unrebutted and unchallenged and the plaintiffs have been able to prove and establish that the aforesaid four Sale Deeds executed on 11.9.1989 by defendant No.2 in favor of defendants No.3,4,5 and 6 respectively are void, as on that date the said defendant No.2 had no title, right and interest in the suit property.

18. Relief u/s 31 of the Specific Relief Act could be granted on satisfaction and fulfillment of three conditions, as has been held in Muppudathi Pillai Vs. Krishnaswami Pillai and Others, , namely, (1) that the written instrument is void or voidable as against the plaintiff (2) the plaintiff may reasonably apprehend serious injury from the instrument being left outstanding and (3) in view of the circumstances of the case, Court considers it reasonable and proper to administer protective and preventive justice asked for.

19. On perusal of the documents placed on record, I find that the aforesaid four Sale Deeds dated 11th September, 1989 executed by defendant No.2 in favor of defendants No.3,4,5 and 6 purporting to sell the suit property to the said defendants are void. If the said Sale Deeds are left outstanding and not cancelled, there is a possibility of the said Deeds being used for unlawful purposes and for clouding the title and interest of the plaintiffs and to the detriment to their interests. Thus, I am satisfied that the apprehension of the plaintiffs in respect of the aforesaid Sale Deeds have sufficient justification. Considering the entire facts and circumstances of the case, I also consider it reasonable and proper to administer protective and preventive justice as sought for in the present suit.

20. A decree is thus granted in favor of the plaintiffs and against the defendants declaring the four Sale Deeds dated 11th September, 1989 executed by defendant No.2 in favor of defendants No.3 to 6 and registered with the Sub-Registrar, New Delhi on 11th September, 1989 vide Registration No. 7413 to 7416 registered under Book No.1, Volume No. 6515 void and cancelling the same. A further decree is passed directing cancellation of the Gift Deed dated 23rd June, 1966 allegedly executed by Smt. Gurdial Kaur in favor of defendant No.1, affidavit dated 22nd July, 1976, Agreement to Sell dated 22nd July, 1976 and receipt dated 22nd July, 1976 purportedly executed by late Smt. Gurdial Kaur.

The suit accordingly stands decreed with costs. Let a copy of the judgment and decree be sent to the Office of the Sub-Registrar, New Delhi, who would make a note on the copies of the instruments contained in his books.