

Amena Bal vs Aminder Singh Bal on 30 December, 2024

Author: Manmeet Pritam Singh Arora

Bench: Manmeet Pritam Singh Arora

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 488/2022, I.A. 13004/2022, I.A. 9353/2023 & I.A.
41477/2024

Reserved on: 07th October

Date of Decision: 30th December

AMENA BAL

Through: Mr. Sanjay S. Chhabra, Mr.
Choudhary and Mr. Sugandh
Virmani, Advocates

versus

AMINDER SINGH BAL

Through: Mr. Vikrant Pachnanda and
Mukul Katyal, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA
JUDGMENT

MANMEET PRITAM SINGH ARORA, J:

I.A. 13004/2022 (under Order XXXIX Rules 1 and 2 read with Section 151 of CPC, 1908) I.A. 9353/2023 (under Section 151 of CPC, 1908 for appropriate urgent orders and directions)

1. I.A. No. 13004/2022 is an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC') filed by the plaintiff for seeking an order to restrain the defendant from creating third party rights and carrying out any construction on the third floor of the property bearing No. C-140, Defence Colony, New Delhi-

110024 ["Terrace"].

2. I.A. No. 9353/2023 is an application filed by the plaintiff under Section 151 of CPC for seeking permission of this Court to construct a temporary/pre-fabricated Porta cabin on the said Terrace for the residence of the plaintiff on the undertaking that the plaintiff will not claim any equities in the present proceedings on this ground.

3. The present suit has been filed by the plaintiff for a decree of declaration in her favour and against the defendant declaring that the relinquishment deed dated 10.08.2018, registered with the office of Sub-

Registrar, bearing registration No. 4412 in Book No.1, Vol. No.697 on Pages 54-60 dated 13.08.2018, executed by the plaintiff in favour of the defendant with respect to property bearing no. C-140, 2nd Floor (with terrace), Defence Colony, New Delhi-110024 be declared null and void. In addition, the plaintiff seeks a decree of partition by metes and bounds with respect to the said property.

4. It is noted at the outset that the counsel for the plaintiff conceded during the arguments that the plaintiff is not disputing the execution of the said relinquishment deed qua the 2nd Floor; he clarified that the plaintiff is only disputing the relinquishment qua the terrace i.e., the roof above the second floor. The said statement is taken on record and the plaintiff is bound down to the same.

5. In view of the aforesaid concession by the plaintiff, the suit property comprises of Terrace above 2nd Floor of C-140, Defence Colony, New Delhi-110024 ('suit property' or 'Terrace').

Arguments on behalf of the plaintiff

6. Learned counsel for the plaintiff stated that the plaintiff is the younger sister of the defendant and the plot no. C-140, Defence Colony, New Delhi, admeasuring 401 Sq. Yards ['plot no. C-140'] was initially owned by their father, late Sh. Amarjit Singh Bal by virtue of a registered conveyance deed dated 22.11.1996.

6.1. He stated that late Sh. Amarjit Singh Bal during his life time, reconstructed plot No. C-140 and the new super-structure consists of Basement, Ground floor, 1st floor and 2nd floor along with servant quarters, bath and WC on the terrace. He stated that out of the said floors, late Sh. Amarjit Singh Bal sold the Basement, Ground floor and 1st floor along with three (3) servant quarters, bath and WC on terrace to third-parties. 6.2. He stated that in this manner, late Sh. Amarjit Singh Bal retained ownership rights in the entire 2nd floor along with roof rights along with one servant quarter, bath and WC and proportionate rights in the land underneath ('estate of late Sh. Amarjit Singh Bal').

6.3. He stated that unfortunately, Sh. Amarjit Singh Bal died intestate on 06.11.2010 and accordingly, the said estate of late Sh. Amarjit Singh Bal devolved upon the plaintiff, defendant and their mother, Mrs. Indira Bal [all having 1/3rd share each]. He stated that thereafter, both, the plaintiff and the defendant executed a registered relinquishment deed dated 17.07.2011 in favour of their mother, Mrs. Indira Bal, making her the absolute and exclusive owner of the 2nd floor along with roof rights forming part of the estate of late Sh. Amarjit Singh Bal.

6.4. He stated that Mrs. Indira Bal died intestate on 18.07.2016, leaving behind the plaintiff and the defendant as her only Class-I legal heirs. 6.5. He stated that the estate of late Sh. Amarjit Singh Bal and late Mrs. Indira, which devolved upon the parties herein includes the suit property situated at

Defence Colony and other immovable properties inter-alia situated at Uttarakhand and Gurgaon.

6.6. He stated that with respect to the property at Defence Colony, there was an oral agreement between the parties that 2nd floor of the said property i.e., the suit property will fall exclusively to the share of the defendant, whereas, the plaintiff herein will have the exclusive rights on the terrace above the said 2nd floor property. He stated that as per the said oral agreement, the plaintiff was entitled to construct a 3rd floor upon the suit property at her own cost and expense.

6.7. He stated that it was on this understanding that defendant persuaded the plaintiff to execute the registered relinquishment deed dated 10.08.2018 in defendant's favour with respect to the Defence Colony property. 6.8. He stated that, however, the defendant had assured the plaintiff that with respect to the terrace, the defendant will release his 50% rights therein, in favour of the plaintiff after the completion of the construction of the third floor.

6.9. He stated that, on the basis of this understanding, the plaintiff executed the relinquishment deed dated 10.08.2018 with respect to the Defence Colony property in favour of the defendant herein. He stated that the plaintiff admits that she executed the said relinquishment deed dated 10.08.2018 and also appeared before the concerned Sub-Registrar for the purposes of the registration of the said relinquishment deed. 6.10. He stated, however, the plaintiff was not provided with a copy of the relinquishment deed dated 10.08.2018 and as a result, the plaintiff did not have sufficient time to read the contents of the said relinquishment deed before execution. And, therefore, it escaped her attention that as per the said relinquishment deed, the plaintiff was not only relinquishing her share in the 2nd Floor of C-140, Defence Colony, Delhi-110024 but also her share in the terrace rights of the said property in favour of the defendant. He stated that plaintiff did not intend to relinquish her 50% share in the terrace rights. 6.11. He stated that the plaintiff received the certified copy of the relinquishment deed dated 10.08.2018 in February, 2021 and it was only then that she realised that the said relinquishment deed wrongly records that she has relinquished her share qua the terrace rights in the Defence Colony property.

6.12. He stated that the plaintiff has separately initiated proceedings against the plaintiff with respect to other immovable properties situated at Uttarakhand and Gurugram as well; however, the said properties are not the subject matter of these proceedings.

6.13. During the course of the arguments, learned counsel for the plaintiff fairly conceded that though the prayer clause 'b' pertains to both the 2nd Floor as well as the terrace in property bearing No. C-140, Defence Colony, New Delhi-110024 i.e., the suit property; however, in fact, the plaintiff is only claiming her ownership rights in the Terrace. He states that the plaintiff does not dispute the validity of the relinquishment deed dated 10.08.2018 to the extent of relinquishment of plaintiff's rights in the 2nd floor of C-140, Defence Colony, New Delhi-110024 in favour of the defendant. Arguments on behalf of the defendant

7. In reply, learned counsel for the defendant stated that the entire case set by the plaintiff is false and frivolous. He stated that in the year 2018, the defendant herein simultaneously executed a relinquishment deed with respect to the Commercial Unit at Gurugram in favour of the plaintiff

herein. 7.1. He stated that the defendant and his mother, late Ms. Indira Bal, by virtue of the registered conveyance deed dated 18.03.2011, were the joint owners of a commercial unit bearing No. 401, 4 th Floor admeasuring Super Area 2047 sq. ft. (190.17 sq. mtr.) in Unitech Commercial Tower-II situated at Greenwoods City, Block-B, Sector-45, Gurugram, Haryana along with right to use o2 Car Parking Slots [hereinafter referred to as 'Commercial Unit at Gurugram'].

7.2. He stated that the defendant herein executed a registered relinquishment deed on 18.10.2018 in favour of the plaintiff herein with respect to his 1/2 share of the 50% share of Mrs. Indira Bal in the said Commercial Unit and in this manner, the plaintiff became owner of Mrs. Indira Bal's entire 50% share in the Commercial Unit at Gurugram. 7.3. He stated that the plaintiff is an accomplished and a qualified professional, highly educated and has worked as a leader at KI firms, TDG in Manila, Philippines and still representing the said Organisation in India. He stated that therefore, the plea that she signed the relinquishment deed dated 10.08.2018 qua the Defence Colony property without reading the contents thereof is neither credible nor truthful. 7.4. He stated that after the execution of the registered relinquishment deed 10.08.2018, the plaintiff is left with no right, title or interest in any portion of the Defence Colony property including the Terrace.

Findings and Analysis

8. This Court has considered the submissions of the learned counsels for the parties and perused the record.

9. The plaintiff categorically and unequivocally admits that she has executed the registered relinquishment deed dated 10.08.2018 in favour of the defendant herein with respect to 2nd Floor and the roof rights above 2nd Floor qua the Defence Colony property.

10. The plaintiff also concedes that she is not seeking any claim over the 2nd Floor of the suit property and by way of this suit is only claiming 50% rights in the Terrace above the 2nd Floor in the said property. Though, the plaintiff admits that the said relinquishment deed dated 10.08.2018 records her relinquishment qua the 2nd floor as well as the Terrace; however, she has sought to dispute the validity and the binding nature of the relinquishment deed qua the Terrace rights on the plea that she signed the said document without reading the same.

11. The only relevant pleading in the plaint in this regard reads as under: -

"16. That sometime in the first week of August,2018, the Defendant telephonically required the Plaintiff to come to the Office of the Sub- Registrar to sign a Relinquishment Deed which was prepared by the Defendant in respect of the division of the Defence Colony property. Accordingly, the Plaintiff reached the office of the Sub-Registrar on 10.08.2018. The document was ready. The Defendant pointed out the points at which the Plaintiff was to sign. The Plaintiff out of implicit trust, put her signature little realizing that the entire exercise as revealed later was intended to rob the Plaintiff of her share in the Defence Colony property. It is this document that is sought to be nullified in the present proceedings the same being tainted with fraud,

misrepresentation, deceit and misuse of fiduciary status. After the Plaintiff signed the relinquishment deed it was taken by the Defendant and handed over immediately to a person who was stated to be an agent, for presentation of the document to the Sub-Registrar.

The Plaintiff was informed that the copy of the deed shall be available after it was registered and that the Defendant shall supply to the Plaintiff. The document was registered on the same day i.e. 10.08.2018. The Defendant never supplied the copy of the release deed to the Plaintiff.

17. That the defendant to demonstrate his genuineness and bonafide towards acting upon the oral family settlement released/renounced his $\frac{1}{4}$ share in the Gurgaon property in favour of the Plaintiff by a registered Release/Relinquishment Deed dated 18.10.2018 bearing registration No. 10747. Thus, the plaintiff became $\frac{1}{2}$ owner of the Gurgaon property. This document was also got prepared by the Defendant. It is relevant that this document acknowledges the existence of mutual understanding."

(Emphasis Supplied)

12. The plaintiff and the defendant are both accomplished individuals; educated and well-heeled. In the considered opinion of this Court, the averments set out at paragraph '16' of the plaint, do not show any *prima facie* case in favour of the plaintiff herein.

13. The law is well settled that there is a presumption in law that a registered document has been validly executed and such a document cannot be discarded or disregarded lightly by the Court on such cursory pleas. In this regard, it would be apposite to refer to the judgment of the Supreme Court in Prem Singh & Others v. Birbal¹, which reads as under: -

"27. There is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption."

14. In the facts of this case, the plaintiff categorically admits the (2006) 5 SCC 353 execution of the relinquishment deed dated 10.08.2018 and also admits that she was conscious of the fact that she was executing a relinquishment deed of her share qua the Defence Colony property in favour of the defendant herein. It is thus apparent from the record that the relinquishment deed dated 10.08.2018 has been executed by the plaintiff, voluntarily and out of her own free will.

15. The plaintiff has admitted the due execution of the relinquishment deed even before the concerned Sub-Registrar while presenting the said relinquishment deed for registration.

16. The assertion that the plaintiff did not peruse the contents of the relinquishment deed dated 10.08.2018 before signing and/or failed to notice that it also pertains to relinquishment of the

terrace rights in addition to the 2nd Floor, fails to persuade this Court. Every executant of a document is obliged to read such document before signing it and is bound by the terms and conditions of the said document. This obligation is to be discharged by the executant more diligently when such document is being registered and has the effect of transferring right, title and interest of the executant in favour of the other party. The Courts are cautious while entertaining challenges to registered documents at the behest of the executant as the impact of the registered documents effects third parties, who transact relying upon the same. The Court would be unwilling to permit an executant to resile from the binding nature of a registered document on such a tenuous plea (as raised in paragraph 16 of the plaint). This plea in paragraph 16 on a demurrer fails to raise any rebuttable presumption against the registered document. To accept such a plea and release the executant from the binding nature of the registered document would have a devastating effect on the integrity attached with registered documents and the reliance placed by general public on the registered documents.

17. The relinquishment deed was executed in the year 2018 and the present suit has been filed in the year 2022. The lapse of the four years is substantial. This lapse of four years additionally shows that the plea of fraud during alleged in execution of the relinquishment deed dated 10.08.2018 is *prima facie* an afterthought and unreliable.

18. A perusal of the averments in the plaint shows that there have been subsequent disagreements between the parties qua other properties at Uttarakhand, Pune and Gurugram, which has led the plaintiff to initiate multiple court proceedings against the defendant, including the present one. However, in the opinion of this Court, the plaintiff has failed to show any *prima facie* case in her favour for asserting her rights over the Terrace above the 2nd floor of the C-140, Defence Colony, New Delhi-110024, having voluntarily executed the relinquishment deed dated 10.08.2018. The filing of the present suit for challenging relinquishment deed dated 10.08.2018 is intended to be a part of the bouquet of litigation filed against the defendant; however, the plaintiff *prima facie* does not have any legal basis for maintaining the suit.

19. In this case, the Predecessor Bench vide order dated 22.08.2022 had granted an *ex parte ad-interim* order in favour of the plaintiff in I.A. 13004/2022.

20. The Supreme Court in *Ramrameshwari Devi v. Nirmala Devi*², has (2011) 8 SCC 249 held that the Civil Courts while granting status quo orders during the Civil Trials, ought to be cautious and extremely careful. The relevant paragraphs of the said judgment read as under: -

"44. Usually the court should be cautious and extremely careful while granting *ex parte ad interim* injunctions. The better course for the court is to give a short notice and in some cases even *dasti* notice, hear both the parties and then pass suitable bipartite orders. Experience reveals that *ex parte* interim injunction orders in some cases can create havoc and getting them vacated or modified in our existing judicial system is a nightmare. Therefore, as a rule, the court should grant interim injunction or stay order only after hearing the defendants or the respondents and in case the court has to grant *ex parte* injunction in exceptional cases then while granting

injunction it must record in the order that if the suit is eventually dismissed, the plaintiff or the petitioner will have to pay full restitution, actual or realistic costs and mesne profits.

45. If an ex parte injunction order is granted, then in that case an endeavour should be made to dispose of the application for injunction as expeditiously as may be possible, preferably as soon as the defendant appears in the court.

46. It is also a matter of common experience that once an ad interim injunction is granted, the plaintiff or the petitioner would make all efforts to ensure that injunction continues indefinitely. The other appropriate order can be to limit the life of the ex parte injunction or stay order for a week or so because in such cases the usual tendency of unnecessarily prolonging the matters by the plaintiffs or the petitioners after obtaining ex parte injunction orders or stay orders may not find encouragement."

(Emphasis Supplied)

21. A similar finding was given by the Supreme Court in *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*³. The relevant paragraphs of the said judgment read as under: -

"83. Grant or refusal of an injunction in a civil suit is the most (2012) 5 SCC 370 important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and Judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant.

84. In order to grant or refuse injunction, the judicial officer or the Judge must carefully examine the entire pleadings and documents with utmost care and seriousness. The safe and better course is to give a short notice on the injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to grant an ex parte ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an ex parte ad interim injunction.

85. The court, in order to avoid abuse of the process of law may also record in the injunction order that if the suit is eventually dismissed, the plaintiff undertakes to pay restitution, actual or realistic costs. While passing the order, the court must take into consideration the pragmatic realities and pass proper order for mesne profits. The court must make serious endeavour to ensure that even-handed justice is given to both the parties.

86. Ordinarily, three main principles govern the grant or refusal of injunction:

- (a) prima facie case;
- (b) balance of convenience; and
- (c) irreparable injury;

which guide the court in this regard.

In the broad category of prima facie case, it is imperative for the court to carefully analyse the pleadings and the documents on record and only on that basis the court must be governed by the prima facie case. In grant and refusal of injunction, pleadings and documents play a vital role."

(Emphasis Supplied)

22. The plea of the plaintiff that she is in constructive possession of the Terrace being a co-owner of the property is wholly misleading. After the execution of the relinquishment deed dated 10.08.2018, the plaintiff is neither in actual possession nor in constructive possession of the Terrace or the 2nd Floor of the Defence Colony property.

23. The plaintiff has thus, failed to make out a prima facie case and therefore, she is not entitled to the relief of injunction sought in I.A. No. 13004/2022 and the same is dismissed and the ex-parte ad-interim order dated 22.08.2022 is hereby vacated.

24. For the reasons recorded hereinabove, the relief sought by the plaintiff in I.A. No. 9353/2024 is also without any merits and the same is hereby dismissed.

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25. The statement of the plaintiff that she is not challenging the relinquishment qua her 50% share in the 2nd Floor of C-140, Defence Colony, New Delhi is taken on record and it is clarified that the 2nd Floor is not a subject matter of the suit. Accordingly, the relinquishment deed qua the said 50% share is also not under challenge.

26. Consequently, the Terrace rights above the 2nd Floor of C-140, Defence Colony, New Delhi is the only subject matter of the suit.

27. The plaintiff in the suit has sought a declaration that the registered relinquishment deed dated 10.08.2018 is null and void and has consequentially sought a decree of partition qua the suit property. In the plaint, the plaintiff has asserted that she is in constructive possession of the suit property being a co-owner and, on this basis, the plaintiff has paid a fixed court fee of Rs. 20 for the relief of partition despite valuing the suit property at Rs. 7 crores.

28. In the considered opinion of this Court, the plaintiff has incorrectly asserted that she is in constructive possession of the suit property. Since, the plaintiff ceased to be a co-owner after the execution of the relinquishment deed dated 10.08.2018, her averment that she is a co-owner in the suit property is without any factual basis and untenable law.

29. The Supreme Court in Suhrid Singh v. Randhir Singh⁴ has held that an executant of a document is obliged to seek its cancellation and also seek a decree for possession and on such reliefs the executant has to pay ad- valorem Court fee. The relevant portion of the said judgment reads as under:

"7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non- executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in (2010) 12 SCC 112 possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act."

(Emphasis Supplied)

30. In this view of the above law, the plaintiff in order to maintain the consequential relief of partition, which includes the relief of possession, ought to pay an-ad valorem Court fee on the valuation qua Terrace of C-140, Defence Colony, New Delhi-110024 affixed by her in the suit.

31. The plaintiff is accordingly directed to deposit the ad-valorem Court fees within four (4) weeks. In case, the plaintiff fails to deposit the ad- valorem Court fee, the suit is liable to be rejected under Order VII Rule 11 CPC without reference to this Court.

32. Subject to Court fee being deposited, in addition, on the next date of hearing, the plaintiff will also address arguments on the maintainability of the suit.

33. The defendant has correctly referred to the fact that contemporaneously, the defendant herein relinquished his share in the Commercial Unit in Gurugram in favour of the plaintiff by a registered relinquishment deed dated 18.10.2018 making plaintiff the owner of the entire 50% share owned by Mrs. Indira Bal. Admittedly, the plaintiff has not denounced the said relinquishment deed and has accepted the relinquishment made by the defendant in her favour and is enjoying the said property. The plaintiff cannot be permitted to approbate and reprobate. The plaintiff while acting upon/accepting the documents executed in her favour by the defendant has elected to challenge the document executed by her in favour of the defendant.

34. In the opinion of this Court, the pleas on which, the registered relinquishment deed dated 10.08.2018 qua Terrace rights in the Defence Colony property is sought to be challenged in this plaint fails to show any cause of action. No party can be permitted to resile from a relinquishment deed on the plea that he/she failed to read its contents before signing. If such a plea is accepted and put to trial then the faith of the public in the integrity of the process of registration of documents and the binding effect of registration will be irreparably damaged. This plea in paragraph 16 of the plaint on a demurrer fails to raise any rebuttable presumption against the registered document i.e., the relinquishment deed.

35. The plaintiff is thus put to notice as to why the plaint be not rejected under Order VII Rule 11(a) CPC. Accordingly, an opportunity of hearing is hereby granted to the plaintiff to address arguments on maintainability of the plaint.

36. List on 13.02.2025.

MANMEET PRITAM SINGH ARORA, J DECEMBER 30, 2024/rhc/MG