



\$~31.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA 358/2023**

SUDARSHAN KANTA ARORA & ANR. Appellants

Through: Mr. Sanjay Poddar, Senior Advocate
alongwith Mr. Shivam Goel,
Ms. Ramya S. Goel and Mr. Siddhant
Poddar, Advocates alongwith
appellants in person.

versus

HARENDER PAL ARORA & ORS. Respondents

Through: Mr. Sumit Rajput, Advocate for
respondent No. 1.
Mr. Pratish Goel, Advocate for
respondent No. 2.

**CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH**

ORDER
% **03.05.2023**

The hearing has been conducted through hybrid mode (physical and virtual hearing).

C.M. No. 22616/2023 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

RFA 358/2023 and C.M. No. 22615/2023 (interim relief)

3. The appellants (original plaintiffs) are aggrieved by the impugned judgment and decree dated 13.02.2023 passed by the learned ADJ-04,



North-West, Rohini Courts, Delhi in CS DJ 190/2022 titled as *Smt.Sudarshan Kanta Arora and Anr. Versus Sh. Harender Pal Arora and Ors.*

4. Vide the impugned judgment, the learned Trial Court was pleased to allow application under Order VII Rule 11 of Civil Procedure Code, 1908 filed by respondent No. 1 for rejection of plaint and rejection of suit for cancellation, declaration and for partition filed by the appellants against the respondents (original defendants) as barred by limitation. Late Sh. Harbans Lal Arora was the owner of the suit property. He died on 17.07.2016 leaving behind his wife (appellant No. 1), two sons (appellant No. 2 and respondent No. 1) and one daughter (respondent No. 2).

5. It is the case of the appellants that the suit property was constructed by late Sh. Harbans Lal Arora during the period 1988-1993 with the funds of appellant No. 2, who was working as an officer with the Indian Army. The loan taken for construction of the suit property was repaid by appellant No.2. Appellant No. 2 was occupying first floor of the suit property. During 2009, the health condition of late Sh. Harbans Lal Arora had deteriorated during the said period, respondent No. 1 had put pressure on late Sh. Harbans Lal Arora and was able to shift to first floor of the suit property as appellant No. 2 was posted at Madhya Pradesh. There was an understanding among the family that respondent No. 1 will shift from first floor to the ground floor after finishing of renovation of the ground floor or as and when appellant No. 2 requires the first floor.

6. On 27.02.2022, appellant No. 2 received a letter from respondent No.1 at his Bangalore address wherein it was averred that late Sh. Harbans



Lal Arora had executed a gift deed dated 08.12.2011 in favour of respondent No. 1 and thereby had gifted the suit property to respondent No. 1. The family members of the parties were not aware of any such gift deed dated 08.12.2011. Hence, appellant No. 2 obtained certified copy of the gift deed dated 08.12.2011. On perusal of said gift deed, it reveals that appellant No.1 stood as witness to the said gift deed. It was disclosed by appellant No. 1 that in the year 2011, her late husband had executed a registered Will bequeathing the suit property equally between his two sons, i.e. appellant No. 2 and respondent No. 1 and she stood as a witness to the said Will. Further, the factum of the gift deed was not disclosed by late Sh. Harbans Lal Arora to any other family member during his lifetime. Realizing that respondent No. 1 has played fraud upon late Sh. Harbans Lal Arora and appellant No. 1, the appellants filed suit for cancellation of the gift deed dated 08.12.2011 and also for declaration and partition of the suit property. Respondent No. 1 filed an application under Order VII Rule 11 for rejection of the plaint. Learned Trial Court, vide the impugned judgment, was pleased to allow the application and rejected the said suit on the ground that the same was barred by limitation.

7. Mr. Sanjay Poddar, learned senior counsel for the appellants submits that limitation is a mixed question of fact and law, hence, veracity of the factual averments can be determined only after examining evidence adduced by the parties during the trial. He further submits that it is the case of appellant No. 1 that respondent No. 1 had represented to her and her late husband that they were executing a registered Will and that she was not aware that her husband has executed a gift deed. Hence, the learned Trial



Court erred in rejecting the suit on the ground of limitation, based on the assumption that appellant No. 1 being signatory to the gift deed, was aware of its execution in the year 2011.

8. This matter requires consideration.

9. Issue notice to the respondent. Mr. Sumit Rajput, learned counsel accepts notice on behalf respondent No. 1 and Mr. Pratish Goel, learned counsel accepts notice on behalf of respondent No. 2.

10. Issue notice to respondent No. 3 through all permissible modes including electronic mode as well as *dasti*, returnable on 31.10.2023.

11. In the meantime, both the parties are directed to maintain status quo qua the said property.

12. Digitalized copy of the Trial Court record shall be requisitioned before the next date of hearing.

GAURANG KANTH, J

MAY 03, 2023

kd