

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

Judgment Reserved on: February 06, 2017

% *Judgment Delivered on: February 14, 2017*

+ **RSA 14/2017**

MEENU Appellant

Through: Mr.Vijay Kinger and Mr.Sanjay
Verma, Advocates.

versus

BIRMA DEVI Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

1. The appellant has filed this Regular Second Appeal under Section 100 of Code of Civil Procedure impugning the concurrent findings of the Courts below i.e. order dated 01st October, 2016 passed by the First Appellate Court and order dated 23rd May, 2016 passed by learned Trial Court. The appellant has questioned the legality and validity of the order of the learned Trial Court dated 23rd May, 2016 whereby a decree under Order XII Rule 6 CPC for possession in respect of property House No.235, Khasra No.60, Near MCD School, Sabha Pur, Karawal Nagar, Delhi-110094 has been passed against her by the learned Trial Court and she has been directed to vacate the suit property and also restrained from creating any third party interest in the suit property.

2. Learned counsel for the appellant has filed the brief written synopsis and has also made oral submissions raising the following contentions:

(i) The Civil Court has no jurisdiction to adjudicate the family matters between the parties as per Section 7 and other provisions of the Family Court Act, 1984.

(ii) The Civil Court cannot overwrite the provisions of Protection of Women from Domestic Violence Act, 2005.

(iii) The Civil Court did not have the jurisdiction to entertain a suit in respect of a property falling in revenue estate of Sabha Pur, Shahdara which is an urbanized village.

3. With a view to appreciate the various contentions raised by learned counsel for the appellant, it is necessary to refer to the pleadings of the parties.

4. Civil Suit No.271/2013 was filed by Smt.Birma Devi, respondent herein against the appellant Smt.Meenu, her daughter-in-law and Sh.Anil, her son (husband of defendant No.1). In this appeal (in this RSA No.14/2017) the appellant Meenu has not impleaded her husband as a party.

5. The case of the respondent/plaintiff is that on 28th December, 2005 she purchased House No.A-235 (measuring 50 sq. yds.), situated in Khasra No.60, near MCD School, Sabha Pur, Karawal, Delhi. At the time of purchase, the vendor Sh.Govardhan executed irrevocable General Power of Attorney in her favour which was duly registered with the Sub-Registrar on 17th March, 2006. The marriage of the appellant (defendant No.2 in civil suit) with the son of the respondent/plaintiff was solemnized on 18th February, 2013. She started residing at House No.G-396, West Karawal Nagar, New Delhi with her husband and in-laws. However, since the son and daughter-in-law started harassing the respondent/plaintiff and her husband, she permitted them to shift temporarily to the House No.A-235,

situated at Khasra No.60, near MCD School, Sabha Pur, Karawal, Delhi i.e. the suit property, for a period of one year.

6. After shifting to the said house her son and daughter-in-law started pressurizing her to transfer the said house in the name of the daughter-in-law. On her refusal they even threatened to implicate her in dowry demand case and stopped paying the electricity bills. Even a criminal complaint was filed against her (mother-in-law) and the daughter-in-law also threatened to commit suicide with the sole motive to pressurize her to transfer the said property, which is her (mother-in-law) self-acquired property, in her (daughter-in-law) name. When the complaints were filed by the daughter-in-law with CAW Cell, North-East, she (mother-in-law) was compelled to issue public notice severing all her relations with her son and daughter-in-law. Even legal notice was served by her asking her son and daughter-in-law to vacate the suit property and also to pay use and occupation charges.

7. After the written statement was filed by the appellant/defendant, the respondent/plaintiff filed an application under Order XII Rule 6 CPC. Learned Trial Court decreed the suit and granted the relief of possession under Order XII Rule 6 CPC on the admissions made in the written statement.

8. The First Appellate Court on analyzing the legal position about the rights of daughter-in-law in the self acquired property of father-in-law/mother-in-law affirmed the order of the learned trial Court observing as under:-

“7. I have heard the Ld. Counsel for the appellant and respondent and gone through the trial Court records.

8. Under order 12 Rule 6 CPC, where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit,

either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

In the case herein, the appellant is the daughter in law of respondent. In the suit, the son of the respondent was also a defendant who has not preferred any appeal against the decree. I have gone through the pleadings of the parties alongwith impugned order and decree and Order 12 ule 6 CPC. The appellant/defendant No.1 has denied the ownership of plaintiff by way of WS alongwith other contentions/allegations against her in the plaint. As observed though, the appellant/defendant No.1 has denied the ownership of plaintiff in this case, she had admitted the ownership of plaintiff in other suit filed by her against her husband/defendant No.2 and therefore the denial of ownership by defendant No.1/appellant in the case only appears a ploy to delay the matter and prolong the litigation. The appellant/defendant No.1 is the daughter-in-law of the plaintiff who admitted that plaintiff is the registered owner of the suit property and she was requested by the plaintiff to vacate the suit property as well as received the notice issued by plaintiff to vacate the same. It is also noteworthy that only appellant has contested the suit. The defendant No.1 has further failed to show that if the plaintiff is not the owner, who else is the owner and therefore the reply of the defendant No.1 is not specific or categorical. No documents has been produced by defendant No.1 as well to support her contentions. Merely oral averments is not sufficient to deny the claim. From the material on records, it is also established that defendant was permitted to reside therein merely as a licensee and possession was merely permissive in nature. As the defendant failed to vacate the premises despite termination of license, mandatory and permanent injunction by the Ld. Trial Court. This Court finds itself in consonance with the findings of the Ld. Trial Court and the impugned order does not warrant for any interference. The Ld. Trial Court rightly reached to the conclusion and decided the issues on the basis of materials on record and this Court does not find any ground to interfere with the findings of Ld. Trial Judge. The findings of the Ld. Trial

Judge is well explained in the impugned order and the same does not require any interference. The findings of Ld. Trial Judge does not appear to suffer from any illegality or infirmity. The judgment relied by Ld. Counsel for appellant is not applicable in the facts and circumstances of this case as in the matter in hand, there is no dispute regarding title of plaintiff at all.

9. *I have gone through the judgment of Hon'ble Delhi High Court reported 211(2014) DLT 537 titled Sudha Mishra V/s Surya Chandra Mishra and ratio of the judgment which is mentioned below is squarely applicable in the facts of the case:-*

“The legal position which can be culled out from the above reports is that daughter-in-law has no right to continue to occupy the self acquired property of her parents-in-law against their wishes more so when her husband has no independent right therein nor is living there, as it is not a shared household within the meaning of Section 17(1) of Protection of Women from Domestic Violence Act, 2005. Wife is entitled to claim a right in a shared household which means a house belongs to joint family of which husband is a member. Daughter-in-law cannot assert her rights, if any, in the property of her parents-in-law wherein her husband has no right, title or interest. She cannot continue to live in such a house of her parents-in-law against their consent and wishes in my view, even an adult son or daughter has no legal right to occupy the self-acquired property of the parents; against their consent and wishes. A son or daughter if permitted to live in the house occupies the same as a gratuitous licensee and if such license is revoked, he has to vacate the said property.”

10. *This court is further forfeited in this respect in view of judgment of Hon'ble Supreme Court in Civil Appeal No.5837/06 titled S.R.Batra & Ors. Vs. Smt. Taruna Batra decided on 15.12.06. Hon'ble Delhi High Court in judgment reported as 2009(1) CCC 301 (Delhi) titled Neetu Mittal Vs. Kanta Mittal & Ors. also held that:-*

“As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Prem pal nor was it taken on rent by him nor is it a joint family property of which the husband Prem Pal is amember, it is the exclusive property of plaintiff, mother of Prem Pal. Hence, it cannot be called a shared household.”

The judgments reported as 188(2012) DLT 765 titled Kavita Chaudhri V/s Eveneet Singh, 2008(1) Feml-Juris C.C.929(SC) titled Vimlaben Alhitabhai Patel V/s Vatsalaben Ashokbhai Patel, 186(2012) DLT 138 titled Pamela Sharda V/s Rama Sharda, 202(2013) DLT 548 titled Kavita Chaudhri V/s Eveneet Singh & Anr. & 111(2013) DMC 689 (Delhi) titled Savitri Devi V/s Manoj Kumar & Ors. may be relied in this case.

11. The pleadings of the parties and evidence on record reveals that the appellant/defendant No.1 categorically failed to prove the case. The ratio of judgment reported as 1982(1) RCR 637 is squarely applicable in the facts of this case. Further, as held in Subhra Mukherjee Vs. Bharat Coking Coal Ltd. AIR 2000 SC 1203, the party which makes the allegation must prove it. The appellant has failed to produce any oral or documentary evidence to prove the contentions. Undisputedly, the burden lies on the appellant to establish such facts.”

9. Section 100 of the Code of Civil Procedure was amended by Amending Act No.104 of 1976. After the amendment, Section 100 of the Code of Civil Procedure reads as under:-

*S.-100. **Second appeal.**-(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the*

High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the Respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this Sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.'

10. In the case *Municipal Committee, Hoshiarpur v. Punjab State Electricity Board and Ors.* (2010) 13 SCC 216, the legal position as to when the Second Appeal can lie has been summarized in paragraph 16 as under:

'... The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 Code of Civil Procedure....'

11. The contention raised on behalf of the appellant/respondent that the subject matter of the Civil Suit No.271/2013 is covered by Family Court Act, 1984 and Civil Court has no jurisdiction to try the suit or pass a decree under Order XII Rule 6 CPC or under Protection of Women from Domestic Violence Act, 2005 is not tenable in the eyes of law. In the decision reported as *Shumitra Didi Sandhu Vs Sanjay Singh Sandhu & Ors.* 174 (2010) DLT

79, it was held that the property which neither belongs to the husband nor is taken on rent by him, nor is a joint family property in which the husband is a member, cannot be regarded as a 'shared household' and therefore, the daughter-in-law has no right to claim right to stay in such property belonging to her father-in-law or mother-in-law.

12. On the basis of pleadings, both the Courts below held that it is not disputed that the respondent/plaintiff is the owner of House No.A-235, situated at Khasra No.60, near MCD School, Sabha Pur, Karawal, Delhi which is her self-acquired property. The appellant/defendant was married to the son of the respondent/plaintiff and initially she stayed with her in-laws in House No.G-396, West Karawal Nagar, New Delhi. After the relations became strained, till making of an alternate arrangement, they (son & daughter-in-law) were allowed to stay in the property bearing House No.A-235, situated in Khasra No.60, near MCD School, Sabha Pur, Karawal, Delhi by the respondent/plaintiff.

13. The appellant who got married in the year 2013 was permitted by the respondent to live initially with her in-laws and thereafter in the self-acquired property of her mother-in-law only out of love and affection to provide shelter to them temporarily. The status of the appellant/daughter-in-law in the self-acquired property of her mother-in-law is that of a 'gratuitous licensee'. The respondent in her capacity as mother-in-law is under no legal obligation to maintain her daughter-in-law. The various criminal cases/complaints filed against the respondent/mother-in-law are reasons good enough to ask the son and the daughter-in-law to leave the house so that the old parents can live in peace.

14. The legal position is well settled that the daughter-in-law has no right to reside in the property belonging to her mother-in-law as the said property

is not covered by the definition of ‘shared household’, the same being neither a joint family property in which her husband is a member nor property belonging to her husband. The appellant being daughter-in-law has no right as against her mother-in-law to occupy any portion of the suit property which is the self-acquired property of her mother-in-law.

15. Since the findings of the courts below are in terms of legal position settled by the Supreme Court in S.R.Batra vs. Taruna Batra 2007(3) SCC 169, as the appellant cannot claim any legal right to live in the self-acquired property of the respondent/plaintiff, the order impugned cannot be interfered with in exercise of power under Section 100 of Code of Civil Procedure.

16. Since no substantial question of law arises, this Regular Second Appeal is dismissed.

17. No costs.

CM No.1620/2017 (stay)

The application is dismissed as infructuous.

PRATIBHA RANI
(JUDGE)

FEBRUARY 14, 2017

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