

Judgment Pronounced on: 20.08.2009

+ CS (OS) 1655/2003

MEERA SAWHNEY

..... Plaintiff

Through : Mr. J.P. Sengh, Sr. Advocate with Ms. Sonia Arora,
Advocate.

versus

SAMRITI BHASIN & ANR.

..... Defendants

Through : Nemo.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

1. Whether the Reporters of local papers
may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be
reported in the Digest?

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The plaintiff seeks a decree for possession for possession of 2nd floor and barsati of property bearing no. 58, Rajinder Nagar, New Delhi (hereafter, the "suit property"). A sum of Rs. 96,000/- by way of mense profits/damages for being in occupation of the property w.e.f. 28.10.2002 in respect of the second floor (at the rate of Rs. 8000/- p.m.) and w.e.f. 1.2.2003 in respect of the barsati floor (at the rate of Rs. 4000/- p.m.) is also claimed.

2. It is stated in the plaint that the defendant is the plaintiff's sister-in-law and occupies the second floor of the suit property, which consists of two bed rooms, one drawing cum dining, kitchen, toilet etc., in the capacity of a guest. It is alleged that in the month of January 2003, in addition to the second floor, the defendant illegally trespassed into the barsati floor, which consists of two rooms, kitchen and a bathroom, after the tenant occupying it vacated. It is claimed that the defendant has no legal right to remain in occupation of the said premises, she was merely permitted to live there during the life time of the plaintiff's husband, Sh. Arvind Kumar Swahney.

3. Initially the suit impleaded the Old Rajinder Nagar branch of Syndicate Bank, as defendant no. 2, a proforma party as the title deeds of the suit property are mortgaged with the same. Later by order dated 03.09.2003 the second defendant was deleted from the array of parties.

4. Brief facts necessary to decide the present suit are that the suit property was allotted to Sh. Mulakh Raj Swahney, plaintiff's father-in-law, for a period of 99 years through a lease deed executed by the President of India in his favour after he migrated from West Pakistan at the time of Partition. On 04.06.1981, he died and was survived by his widow- Smt. Ved Wati, his son- Sh. Arvind Kumar (plaintiff's husband) and his daughter- Samriti Swahney (the defendant), who got married three years prior to the death of her father. It is stated that the defendant has her family consisting of her husband and two grown up sons. On 14.08.1981, Smt. Ved Wati and the defendant jointly executed a Relinquishment deed in favour of Sh. Arvind, which was registered with the Sub Registrar, District No. 3, New Delhi at Serial No. 4254 in Additional Book No. 1 Volume 4254 at pages 126 to 128. Sh. Arvind later got the property mutated in his favour in the year 1982, on the basis of the said relinquishment. Thereafter, Sh. Arvind constructed the first, second and barsati floor on the suit property after obtaining loan from various sources. Smt. Ved Wati, passed away in May, 1985. It is alleged that sometime in the year 1986, the defendant approached Sh. Arvind citing her husband's poor financial condition and his inability to pay the rent for their house and requested permission to stay in the ground floor of the suit premises, to which Sh. Arvind agreed. In June 1991, the defendant moved to the second floor of the suit property, after a tenant who was in occupation vacated it. On 28.10.2002 the plaintiff's husband, Sh. Arvind passed away, survived by the plaintiff and two grown up daughters. It is alleged that in January 2003 the defendant seized possession of the barsati floor also and as on date she is in occupation of the second and the barsati floors.

5. As per the suit averments, the plaintiff, after her husband's death, applied to the office of the L&DO for mutation of the suit property in her name, after obtaining NOC from her daughters, to which the defendant filed her objections. It is stated that, as the plaintiff has no source of income and in order to generate finances she intends to let-out the second and barsati floor and the defendant's illegal possession of the same is coming in way of the same. The defendant has turned down all requests made by the plaintiff in this connection. It is alleged that the defendant has demanded a sum of Rs. 40 Lakhs to vacate the suit property or in the alternative 50% of the suit property. By letter dated 03.08.2003 the defendant was formally requested to vacate the said premises, but the request has not been complied with.

6. The plaintiff is seeking possession of the second and the barsati floors of the suit property and mense profits on account of illegal user of the said floors after the defendant was asked to vacate the said premises.

7. The defendant in her written statement, apart from generally denying the allegations made against her, in substance claims to be the owner of one half of the suit premises, which she claims is an undivided property and further denies the execution of the relinquishment deed in favour of her brother, Sh. Arvind. She alleges that the relinquishment deed dated 14.08.1981 is a forged document, fraudulently registered by the husband of the plaintiff in connivance with the two witnesses and certain unnamed officers from the office of the Sub Registrar. Further, a mutation in the name of Sh. Arvind on the basis of the said forged relinquishment deed cannot be upheld as a valid one.

8. The defendant in the matter was set down *ex-parte* by order dated 18.04.2009, thereafter no application has been moved by the defendant for vacation of the said order. Hence, for the purposes of deciding this suit only the facts alleged and which stand proved by the plaintiff shall be considered. The *ex-parte* evidence of the plaintiff (PW-1) was filed on 30.07.2009 and she was examined in *ex-parte* plaintiff evidence on 17.08.2009.

9. The averments in the suit are premised on the factum of valid execution and registration of the deed of relinquishment dated 14.08.1981 (Ex. PW-1/2). The said deed was duly registered with Sub Registrar. The property was mutated in favour of the plaintiff's husband and accordingly letter no. L&DO/SP III/1775 dated 8.9.1992 was issued by the L&DO which is exhibited as Ex. PW-1/3. Ex. PW-1/4 is the lease deed duly registered on 15.12.1965 in the office of the Sub Registrar, Dist. 3, New Delhi at serial no. 7753 in additional book no. 1 Volume 1435 at pages 105 to 107 and Ex. PW-1/5 conveyance deed execute by the President of India in the favour of Lt. Mulakh Raj Swahney, which was registered on 15.12.1965 at the office of the Sub Registrar at serial no. 7754 in additional book no. 1 volume 1435 at pages 105 to 107.

10. After the plaintiff filed the present, the defendant preferred a suit under section 31 of the Specific Relief Act, 1961 before the Ld. Additional District Judge, praying for cancellation of the Relinquishment deed, a copy of the said suit is exhibited as Ex. PW-1/12. The said suit of the defendant was dismissed after due consideration. A copy of the judgment in that suit is Ex. PW-1/13. The Regular First Appeal preferred by the defendant was dismissed by a judgment of this court, dated 19.11.2008 after being considered on merits (Ex. PW-1/14). The observations and the final decision of the court in the RFA titled *Samriti Bhasin v. Union of India and Ors.*, 2009 (107) DRJ 99 are reproduced as under:

“24. Before concluding we note that the learned Trial judge has noted a fact which we have perused ourselves, that Samriti Bhasin, conscious of the fact that her signatures on the disputed documents were under a scanner was taking care to cloud her signatures, forgetting that the plaint and the vakalatnama signed by her in favour of the Counsel engaged by her contained her signatures, and when compared with signatures of Samriti Bhasin on the disputed documents, even to the naked eye show that the same are by one person.

25. Instant litigation is yet another case where the phenomenal rise in prices of urban property is fouling family relationships.

26. The plot of land ad-measuring 85.9 sq. yards, bearing No. 55/8, Old Rajinder Nagar, New Delhi, had hardly a value of about Rs. 20,000/- in the year 1981 when Mulkh Raj Sawhney died. Samriti Bhasin's petty share, valued at Rs. 7,000/- was not worthy of a fight with her brother. It being the only family house she readily relinquished her share in favour of her brother. Today, we were told that the house has a value of nearly Rs. 2 crores. Today, it is no longer profitable to live in peace and hence the claim for half share in the property.

27. We fully concur with the conclusion arrived at by the learned Trial Judge.

28. We find no merit in the appeal. The appeal is dismissed.

29. Keeping in view the relationship between the parties, we refrain from imposing any costs.”

11. The defendant in this suit has not preferred a second appeal against the judgment in the Regular First Appeal in her suit. Even in this proceeding the defendant had been set down *ex-parte* and has not moved for vacation of the said order. Therefore, in view of the above observations as well as decision of the Court in the Regular First Appeal the defendant's plea about the relinquishment being illegal or fixed stands concluded against her. She has no interest in the property. The defendant at best was permitted occupier, whose permission was withdrawn by the plaintiff.

12. The plaintiff has claimed mense profits/damages w.e.f. 28.10.2002 in respect of the second floor (at the rate of Rs. 8000/- p.m.) and w.e.f. 1.2.2003 in respect of the barsati floor (at the rate of Rs. 4000/- p.m.), which amount is said to be valued at the market rate prevalent in that area. The plaintiff has placed on record two rent agreements with regard to similarly situated properties as Ex. PW-1/10 and Ex. PW-1/11. Ex. PW-1/10 is the copy of rent agreement dated 03.04.2009 of a second floor premises in Karol Bagh area, which fetched rent at the rate of Rs. 9000/- p.m. excluding water and electricity charges. Ex. PW-1/11 is the copy of rent agreement dated 25.04.2009 of a third floor premises in Karol Bagh area, which

fetches rent at the rate of Rs. 6500/- p.m. excluding water and electricity charges. Although the amount of monthly profits as claimed by the plaintiff is supported by the rent agreements placed on record yet the same are not certified copies, and the court cannot take notice of those documents. The plaintiff has not examined any witness in support of such documents. To prove the documents the plaintiff should have filed certified copies thereof or examined any of the following, the executant of the said rent agreements, the beneficiary of the said rent agreements, the witnesses of the said agreements or the notary in whose presence the document was executed.

13. In light of the above the suit is decreed in terms of sub-para (a) of the prayer clause; with costs. Counsel's fee is quantified at Rs.25,000/-. Let decree be drawn in these terms.

**S. RAVINDRA BHAT
(JUDGE)**

**AUGUST 20, 2009
'ajk'**