

R-262

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

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Date of Judgment: 03.5.2011

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R.S.A.No.176/2007

SH.AMIT CHANDRA

.....Appellant

Through: Ms.Suman Chauhan,
Advocate.

Versus

SH.K.CHANDRA

.....Respondent

Through: Ms.Anju Jain, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. This appeal has impugned the judgment and decree dated 24.5.2007 which had endorsed the finding of the trial judge dated 24.3.2005 whereby the suit filed by the plaintiff K.Chandra seeking possession of the suit property i.e. the property bearing No.498-B/6, Govindpuri, Kalkaji, New Delhi

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had been decreed in his favour.

2. The facts as is evident from the pleadings is that Sheela Dixit, the deceased second wife of the plaintiff was the owner of the aforementioned suit property. She had purchased a plot and raised construction upon it. Defendant no.1 who is the son of the plaintiff was borne out of his first marriage; he was in need of a place for shelter. Plaintiff allowed defendant no.1 and his wife to occupy one room and a kitchen on the first floor of the aforementioned property on a licence basis without any charges. After the marriage of their second son there was a paucity of accommodation and thus the plaintiff requested the defendants to vacate the portion which was in their occupation but the defendants with ulterior motive started threatening the plaintiff. Plaintiff was compelled to issue legal notice dated 19.01.1995 but to no avail. Present suit was accordingly filed.

3. Defendant contested the suit. It was denied that Sheela Saxena was the owner of the aforementioned suit property. It was stated that in 1959, the plaintiff had married Kanti Saxena (natural mother of defendant no.1); three children were borne out of the said wedlock including defendant no.1. Income of the plaintiff was not sufficient to run the family; their mother took

up employment as a teacher. After her death plaintiff married Sheela Saxena in 1972 which was against the wishes of the defendant no.1 and his other two brothers. In early 1974 this plot was purchased by the plaintiff out of his own funds and funds of their mother upon which the construction was raised. Defendant no.1 had also contributed towards the construction of the house in question ; defendant no.1 was turned out of the house in the year 1979 and he was forced to seek shelter at Kanpur in his paternal uncle's house. Thereafter defendant no.1 fell ill; he returned back to Delhi. In 1980 defendant no.1 took up employment and helped the plaintiff in running the family and for construction of the house in question; the construction on the ground floor was completed in 1985 and the family shifted in the suit property after leaving rented accommodation in Lajpat Nagar. After the marriage of defendant no.1 with defendant no.2 (which was in 1988) since the two room accommodation was falling short two rooms were constructed on the first floor along with one kitchen and one bathroom and latrine. Construction on the first floor was completed in 1993 wherein defendants no.1 and 2 shifted along with their two brothers. The house in question is thus a joint Hindu Family

and the defendant cannot be asked to vacate the suit property.

4. On the pleadings of the parties the following four issues had been framed:

1. Whether the suit property is subject matter of joint Hindu family property and plaintiff cannot in law ask the defendants to vacate the house, as stated in para 3.4 at page no.8 of written statement of defendant no.1 & 2? OPP
2. Whether the suit has been properly valued for the purpose of Court fees and jurisdiction? OPP
3. Whether the plaintiff is entitled to decree of possession as prayed? OPP
4. Relief.

5. Oral and documentary evidence was led. The court was of the view that the suit property is owned by the plaintiff; defendant was only a licensee; he was liable to be evicted from the suit property.

6. This finding was endorsed in first appeal.

7. This is a second appeal. It has been admitted and on 27.8.2007, the following substantial question of law was formulated:

“Whether the trial court was justified in basing its decision on the Will left by the second wife of respondent in the absence of the said Will being filed, pleaded, relied upon or proved in accordance with law?”

8. On behalf of the appellant, it has been urged that the impugned judgment is a perversity as testimony of PW-1 has not been considered. It is pointed out that PW-1 in his cross-examination had admitted that at the time of his retirement his pension was Rs.500/- per month; his first wife Kanti Saxena was a teacher; she had died in December 1971. PW-1 had admitted that he had taken her retirement benefits. It was from this retirement benefits of the mother of the defendant that the aforementioned suit property had been constructed. Attention has been drawn to the various amendments which had been effected of the plaint; it is pointed out that the plaint was initially filed in 1995; thereafter an amendment of the plaint had been effected in May 1995; a second amendment had again been permitted in 2001; it is pointed out that the plaintiff was sure about the origin of the suit property. He was not clear whether this property had been owned by him individually or jointly with Sheela Saxena. These facts have not been appreciated in the correct perspective.

9. Arguments have been rebutted. It is pointed out that the impugned judgment calls for no interference.

10. This is a second appeal. Interference, in findings of fact

unless perverse, is not permitted. Both the two facts finding courts had appreciated the oral and documentary evidence and had held that the defendant had failed to show that he had in any manner contributed to the funds for the construction of the suit property. He had led no evidence on this score. Admittedly the suit property is in the name of Sheela Saxena who had died in the year 1997; she had left will dated 18.1.1996 by way of which she had bequeathed this property in the name of plaintiff no.1 i.e. her husband.

11. It is relevant to stated that an application under Order 22 Rule 2 of the Code had also been filed by the plaintiff no.1 along with a copy of the will seeking permission to be arrayed as the legal representative of his deceased wife Sheela Saxena. In the reply filed to the aforementioned application the defendant did not dispute the will. The application was allowed vide order dated 08.4.1999. Today before this court it has been urged that the will has not been proved in accordance with law. A document which is not disputed and, in fact, admitted need not to be proved. The attesting witness to the will PW-2 Ghanshyam and PW-3 Dr.P.L.Khanna had also been examined. PW-3 had deposed that the deceased had executed the will in his

presence. He had identified his signatures at point C and that of Sheela Saxena at point C.

12. The impugned judgment on no count calls for any interference. Substantial question of law is answered in favour of the respondent and against the appellant. There is no merit in the appeal. Dismissed.

INDERMEET KAUR, J.

MAY 03, 2011
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