

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

+ **RFA No. 472/2008**

% **Date of Judgment: 5th January, 2012**

MADAN MOHAN AND ANR. Appellant

Through : Mr. B.P. Sharma, Advocate.

versus

CHANDER BHAN AND ANR. Respondent

Through : Mr. Manoranjan and Mr. Anil Rakhar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J. (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 7.7.2008 by which the suit of the respondent/plaintiff/father for possession, damages and permanent injunction was decreed against the appellants/defendant Nos. 1 and 2, who are the son and his wife (i.e. daughter-in-law of the respondent).

2. The brief facts of the case are that the respondent/plaintiff filed the subject suit for possession, damages and permanent injunction against the

appellants/defendant Nos. 1 and 2 on the ground that the respondent/plaintiff was an absolute owner of the property No. 105-A/1, Village Begumpur, Post Office Malviya Nagar, New Delhi. It was pleaded that the ownership of the respondent/plaintiff was proved by the judgment and decree dated 22.1.2002 passed by the Court of Sh. I.C. Tiwari, Additional District Judge, Delhi in Suit No. 69/1998 titled as *Shri Chander Bhan v. Shri Amar Chand & Ors.* It is pleaded that the property is mutated in Municipal Corporation of Delhi (MCD) records in the name of respondent/plaintiff and house tax was also being paid by the respondent/plaintiff. Defendant Nos. 1 and 2 were said to have misbehaved with the respondent/plaintiff/father by humiliating, torturing, maltreating and defaming him, whereafter the respondent/plaintiff was forced to disown the appellants/defendant Nos. 1 and 2. The respondent/plaintiff also terminated the license of the appellants/defendant Nos. 1 and 2 since they were allowed to stay only on account of closeness in their relations, and thereafter, the subject suit came to be filed as the appellants failed to vacate the suit property.

3. The appellants/defendant Nos. 1 and 2 contested the suit by claiming that the suit property was in fact an HUF property because the same was purchased out of the funds of the ancestral property being 91, Begampur, Delhi. It was also claimed that the suit was barred by limitation.

4. Before I proceed further, I may note that the respondent/plaintiff led

evidence and proved his case, however, in spite of repeated opportunities, the appellants/defendant Nos. 1 and 2 failed to lead any evidence and, therefore, their evidence was closed. The net effect, therefore, is whereas the respondent/plaintiff proved his case, no evidence whatsoever was led on behalf of the appellants/defendant Nos. 1 and 2.

5. After completion of the pleadings trial Court framed the following issues:-

“1. Whether suit is bad for misjoinder of unnecessary party? OPD

2. Whether suit is barred by law of limitation? OPD

3. Whether the suit property was purchased out of sale proceeds of ancestral property i.e. 91 Begampur Delhi and accordingly, defendant No.1 and 3 are co-sharers. If so to what effect? OPD

4. Whether the plaintiff is entitled to decree of possession with respect to suit property forming part of property bearing No. 105A/1 situated within Lal Dora Abadi of viallage Begumpur, P.P. Malviya Nagar? OPP

5. Whether plaintiff is entitled to damage on account of harassment from the defendant as claimed and interest? OPP

6. Whether plaintiff is entitled to decree of damage @ 5000/- per month against defendant No.1 and 2 and @ Rs.3000/- per month against defendant No. 3 for unauthorized use? OPP

7. Whether plaintiff is entitled to decree of injunction as claimed? OPP

8. Whether written statement has not been properly signed and verified in accordance with law. If so, its effect? OPP

9. Relief.”

6. The main stress on behalf of the appellants was that the property in question was an HUF property, as it was purchased out of the sale proceeds of an ancestral property being 91 Begampur, Delhi. In my opinion, the case of the appellants has no merits, inasmuch as, unless whatever is stated in the pleadings is proved, a person is not entitled to any relief on that basis. On one hand, respondent/plaintiff had filed and proved on record various documents showing his ownership of the property including the judgment and decree dated 22.1.2002 in his favour Ex.PW1/1, original bill of house tax in the name of respondent/plaintiff Ex.PW1/4 and original receipt of property tax Ex.PW1/5, on the other hand there was no evidence led on behalf of the appellants/defendant Nos. 1 and 2.

7. I, therefore, hold that the trial Court has rightly held that respondent/plaintiff was the owner of the suit property.

8. Though, no arguments were addressed on any other aspect on behalf of the appellants, however, I note that the trial Court has granted *mesne* profits of Rs.5,000/- per month *pendente lite* and future against the appellants, only on an oral statement on behalf of respondent/plaintiff as to the rate of rent/mesne profits. In my opinion, a mere oral statement cannot be taken as

discharge of proof of rate of damages and, therefore, I am not inclined to grant damages/*mesne* profits at the rate of ₹5,000/- per month, which is granted by the trial Court. However, considering that the appellants are in possession of a substantial portion of an immovable property, namely, rear portion comprising of three rooms, a store, a latrine and a kitchen on the first floor, consequently reasonable damages can be awarded as the Courts can take judicial notice that there has to be an approximate minimum rental in an area for the megapolis i.e. Delhi. The suit property is situated in the prime location of South Delhi. Village Begampur is actually extension of Malviya Nagar, which is a prime part of South Delhi. The period in question is from 13.7.2007 onwards. In my opinion, in a property at South Delhi, even in so called Begampur village, the rate of rent for three rooms, a store, a latrine and bathroom cannot be less than ₹2,500/- per month. Accordingly, I direct that *mesne* profits shall be payable, not at ₹5,000/- per month *pendente lite* and future, but at ₹2,500/- per month *pendente lite* and future till possession is handed over to the respondent/plaintiff. In the facts of the case, where the appellants have unnecessarily harassed their old father, I deem it fit that interest @9% per annum simple are also awarded on *mesne* profits in favour of the respondent and against the appellants from the end of each month for which the *mesne* profits became payable, and for which purpose I exercise my powers under Order 41 Rule 33 CPC.

8. No other issue was urged before me or could have been urged, in view of the fact that no evidence was led on behalf of the appellants/defendant Nos.1 and 2 in the Court below.

9. In view of the above, the present appeal is allowed by reducing the mesne profits, but dismissed so far as the reliefs of possession and damages which have been granted by the Court below. Parties are left to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

JANUARY 05, 2012

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