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

+ RFA 174/2013 and CM Appl. No. 5518/2013 (stay)

Decided on 22nd May, 2013

INDERPAL SINGH

..... Appellant

Through: Mr. J.S. Bhasin, Adv. for Ms. Rashmi
Priya, Adv.

Versus

JASWANT SINGH

..... Respondent

Through: Mr. Sandeep Prakash Agarwal, Sr.
Adv. with Mr. Anurag Chopra, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Aggrieved by the impugned judgment and decree passed by trial court whereby suit for declaration, possession and permanent injunction has been dismissed, appellant – plaintiff has preferred this appeal.

2. Appellant is son of respondent – defendant. In the plaint, appellant has alleged that property bearing no. D-90, Jhilmil Colony, Delhi – 110095 (for short hereinafter referred to as “suit property”) was purchased by his grandfather in the year 1970 for ₹3500/- (Rupees Three Thousand Five

Hundred Only). Suit property was purchased in the name of respondent. Respondent had no funds to purchase the suit property as he remained unwell from 1968 to 1970. Grandfather of the appellant was living in Patna. However, he came to Delhi to financially support the respondent, who was living on rent in Delhi. In the year 1971, respondent opened a tailoring shop in the suit property. Appellant completed higher secondary education in the year 1976 and started helping his father in the shop. In the year 1979, appellant joined as a Clerk with DDA. Subsequently, he joined DTC in the year 1984. Respondent was having four daughters. Appellant spent money in their marriages. In the year 1985, appellant spent about ₹10,000/- (Rupees Ten Thousand Only) towards repair of the suit property. In the year 1987, suit property was reconstructed. Appellant spent approximately ₹45,000/- (Rupees Forty Five Thousand Only) on construction. In the year 1990, appellant got married. Disputes arose between the wife of appellant and his mother, accordingly, appellant constructed a kitchen at the first floor where he had been residing with his wife. Ultimately, appellant and his wife were thrown out of the house. In the year 1991, appellant purchased a property bearing No. D-15A, Jhilmil Colony, Delhi – 110095 and started living therein with his family. However, appellant continued to financially

help the respondent. In the year 1992, appellant spent ₹35,000/- (Rupees Thirty Five Thousand Only) on the marriage of his sister. Again in the year 1998 he spent ₹60,000/- (Rupees Sixty Thousand Only) on the marriage of his other sister. Since appellant had constructed the whole first floor a family settlement was arrived at in terms whereof first floor portion had fallen to the share of appellant and respondent executed Will Dated 29th October, 2004 after cancelling the earlier Will dated 4th February, 2003 whereby bequeathed entire first floor of the suit property to appellant. Subsequently, respondent as well as his wife and daughters lodged false and frivolous complaints against the appellant and his wife, inasmuch as, threatened to forcibly throw the appellant from the property bearing no. D-15A, Jhilmil Colony, Delhi – 110095. Thus, appellant filed a suit for declaration. As a counterblast respondent and his wife also filed a suit for possession and damages against the appellant in respect of the property bearing no. D-15A, Jhilmil Colony, Delhi – 110095. Appellant alleged that he was having absolute right in respect of first floor of the suit property, same being ancestral property having been purchased by his grandfather, inasmuch as, appellant had spent huge amounts on construction from time to time. Appellant came to know that respondent was trying to sell the suit

property, hence the present suit.

3. In the written statement, besides taking preliminary objections respondent, on merits, alleged that appellant was a trespasser in respect of property bearing no. D-15A, Jhilmil Colony, Delhi owned by his wife, thus, legal proceedings were initiated against the appellant in respect of the said property. It was denied that suit property was purchased by the grandfather of appellant in the year 1970 for ₹3,500/- (Rupees Three Thousand Five Hundred Only). Respondent alleged that he did not take any financial help from his father. Respondent shifted to Delhi in the year 1960 and had been running a tailoring shop in Khan Market, New Delhi. He had purchased the suit property from his own funds. Respondent had been handsomely earning and was financially well off. He educated his children without taking any financial help from anyone. Respondent denied that appellant started helping him in the shop in the year 1976 after completing Higher Secondary. Respondent alleged that after completing graduation appellant started taking care of accounts of the shop. Appellant started working in DDA in the year 1982 at the consolidated salary of ₹500/- (Rupees Five Hundred Only) per month and at that time eldest daughter of respondent was working as Stenographer and earning much more than the appellant. Respondent denied

that appellant had spent any money on construction or repair of the house. It was also denied that appellant had rendered any financial help to respondent at the time of marriage of his daughters. It was alleged that differences arose between the appellant and his wife and she lodged a complaint in the police station against the appellant. Respondent got the matter resolved. Thereafter, appellant and his wife started living at the first floor. It was denied that respondent and his wife had thrown out the appellant and his wife. It was alleged that appellant and his wife criminally trespassed the property bearing no. D-15A, Jhilmil Colony owned by the respondent's wife. Accordingly, a complaint under Sections 448/379/34 IPC was lodged against the appellant and his wife on 18th December, 2004. It was denied that any family settlement was arrived at between the parties. Respondent alleged that appellant misappropriated funds while he was looking after the accounts of the shop. Respondent executed the Will dated 29th October, 2004 on the insistence of his wife that appellant being only son may be given first floor. However, respondent cancelled the said Will in view of the conduct of appellant. Instead of looking after respondent and his wife, appellant had been causing trouble in the life of respondent and his wife. Respondent has categorically stated in the written statement that appellant

has no right, title or interest in the suit property and it is the respondent, who was sole and exclusive owner thereof.

4. In the replication, averments made in the written statement were denied and the contents of the plaint were reiterated.

5. On the pleadings of the parties trial court framed following issues:-

- “1) Whether the plaintiff is entitled to a decree of declaration, as prayed for? OPP
- 2) Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for? OPP
- 3) Whether the plaintiff is entitled to a decree of possession, as prayed for? OPP
- 4) Whether the suit is bad for non-joinder of necessary parties? OPD
- 5) Whether the plaintiff has no locus standi to file a suit? OPD
- 6) Whether the suit is barred under the provisions of Benami Transaction (Prohibition) Act? OPD
- 7) Whether the suit is barred by limitation? OPD
- 8) Whether the suit is without cause of action? OPD
- 9) Whether the defendant is the sole and exclusive owner of the suit property which is self acquired property? OPD
- 10) Whether the suit has not been properly valued for the purposes of court fees and jurisdiction? OPD
- 11) Relief.”

6. Appellant examined himself as PW1. As against this, respondent examined Shri Gurbax Singh as DW1. He himself stepped in the witness box as DW2. After scrutinizing the entire material placed on record including the evidence adduced by the parties trial court has returned a categorical finding that respondent had succeeded in proving that he was the absolute owner of suit property. Suit property was self acquired property of respondent and appellant had no right, title or interest therein. Appellant has no locus standi to file the present suit. Appellant had failed to prove the family settlement. He also failed to prove that construction was raised by him from his own funds. Appellant failed to prove that he had spent money on construction of suit property between 1985 and 1987, inasmuch as, passbook produced by the appellant pertaining to the period was subsequent to renovation period. Payments of house-tax, electricity bills etc. were not sufficient to confer any proprietary right in favour of the appellant.

7. I have heard learned counsel for the parties at length and have carefully perused entire record. During the course of hearing, it has been submitted that photocopies of entire relevant trial court record on which parties seek reliance, are already on appeal record and trial court record need not to be summoned. From the evidence adduced by the parties it emerges

that respondent is owner of the suit property vide conveyance deed- Ex.DW2/1 duly executed by the President of India in favour of respondent. Appellant has failed to prove that the property was purchased by his grandfather, that is, father of respondent. From the record it is clear that father of respondent was living in Patna and not in Delhi. This fact has even been stated in the plaint and the affidavit of the appellant. In his cross-examination appellant has stated that his grandfather was living in a joint family in Patna. He had four brothers. He was not having any family business. No cogent evidence could be produced by the appellant to show that his grandfather was financially well off than respondent. As against this, respondent has succeeded in proving that he was financially independent and could have purchased the suit property of his own. He had been running a tailoring shop right from the beginning which fact has been admitted by the appellant in his cross-examination. He has further admitted that his father incurred expenses on his education. Appellant is a graduate. This shows that he was being provided full financial assistance to complete his studies. That apart, respondent also provided education to his daughters, who are working in Government/private institutions. This clearly indicates that respondent was having sufficient finances at his disposal and could

afford to purchase a house. No cogent evidence could be led by appellant before trial court to show that any financial assistance was provided by the father of respondent to him in the year 1970. Conveyance Deed Ex. DW2/1 has been executed by the President of India in favour of respondent in the year 1984, wherein he has been referred as an allottee. Conveyance Deed is sufficient to prove that respondent is owner of the suit property.

7. Plea of the appellant that he had constructed the first floor thereafter demolishing the old structure has remained unproved. Appellant has alleged that entire first floor was constructed by him by spending ₹45,000/- (Rupees Forty Five Thousand Only). However, no cogent evidence has been led to prove this plea. His bald statement to this effect is not sufficient to prove this plea. Appellant has not produced any documentary evidence on this point. No document has been placed on record to show that any building material was purchased by him, inasmuch as, no receipt has been placed and proved on record to show that any payment was made to labourers etc. Admission of respondent in his cross-examination, that certain repair works to the extent of finishing, flooring and whitewash were done by the appellant, in my view, is inconsequential. If the appellant had carried out minor repairs, that is, finishing, flooring and whitewash in the portions

where he had been living with his family would not vest any ownership right in him qua the suit property. He was living in the suit property upto 1991 as a permissive gratuitous user without any payment, thus, the works done to make the portion in his possession habitable to his liking would be inconsequential for conferring ownership rights in favour of respondent.

8. It has been vehemently contended that house-tax and electricity bills used to be paid by the appellant. This plea is also of no help to the appellant and is not sufficient to vest any right in the property in favour of the appellant. As regards plea of the appellant regarding family settlement whereby appellant was allegedly given first floor has remained unproved. No cogent evidence has been led by the appellant about the so called family settlement. Admittedly no such family settlement was reduced in writing. Plea of oral settlement cannot be given any weightage merely on the unreliable solitary statement of appellant, more so when it has come on record that relations between the appellant and respondent were not cordial. Appellant has also failed to prove that he spent alleged amounts on the marriage of his sisters. Even otherwise, this plea will not vest any ownership rights in his favour.

9. For the foregoing reasons, I am of the view that no fault can be found

in the findings returned by the trial court that respondent was absolute owner of the suit property and appellant was not entitled to the reliefs as prayed for. Accordingly, appeal is dismissed. Miscellaneous application is also disposed of as infructuous.

A.K. PATHAK, J.

MAY 22, 2013
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