

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

+ RSA No. 155/2012 & CM No. 16103/2012 (stay)

% 19th March, 2014

NAND LAL GUPTA Appellant

Through: Mr. Satish Kumar Tripathi, Adv.

VERSUS

AKHILESH KUMAR Respondent

Through: Mr. Sudeep Srivastava, Mr. Arun
Kumar Sharma and Mr. Anup Kr.
Mishra, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This second appeal under Section 100 CPC is filed impugning the judgment of the first appellate court dated 31.3.2012 by which the first appellate court has accepted the appeal which was filed by the defendant in the suit, respondent herein. The first appellate court set aside the judgment of the trial court dated 3.1.2011 by which the suit for possession with respect to H.No.RC-315 (Old No. RC-53/2), Rajasthan Colony (Faridpuri), Near

West Patel Nagar, New Delhi shown in red in the site plan Ex.PW1/6 was decreed in favour of the appellant/plaintiff. Trial court had also granted damages to the appellant-plaintiff at Rs.700/- per month till possession is delivered.

2. Appellant-plaintiff claimed ownership of the suit property by means of the documents being Ex. PW1/1 to Ex.PW1/4 being the agreement to sell, power of attorney etc, all dated 14.6.1996, and which were executed by one Sh. Prahlad son of Bhoora Ram in favour of the appellant-plaintiff. In these documents, by which appellant-plaintiff purchased rights in the suit property, the defendant/respondent had signed as a witness. Respondent/defendant also executed a document Ex.PW1/5 dated 25.10.1997 by which the respondent-defendant in his own handwriting stated that till he pays the complete amount to the appellant-plaintiff, with respect to the suit property, he would have no rights in the suit property. Appellant-plaintiff claimed that since the respondent/defendant, was kept as a caretaker in the suit property, but he failed to vacate when asked to, therefore, the subject suit for possession and mesne profits was filed.

3. The case of the respondent/defendant before the trial court was that the appellant-plaintiff is not the owner of the suit property and

respondent/defendant had signed the document Ex.PW1/5 dated 25.10.1997 under the influence of liquor, and that consequently, the document Ex.PW1/5 dated 25.10.1997 is of no effect. It was also pleaded by the respondent-defendant that signatures were obtained by the appellant-plaintiff from the respondent/defendant on blank papers when he was under the influence of liquor and consequently the document Ex.PW1/5 cannot be looked into. Ownership of the appellant-plaintiff with respect to the suit property was questioned and it was stated that actually one M/s Ramjas Foundation is the owner of the suit property and which had given the suit property on lease/licence to the respondent/defendant. Documents executed in favour of the respondent/defendant by Ramjas Foundation are proved as Ex.DW2/A and DW1/A to DW1/C, and which are of the year 1999 ie after 1997 when documents Ex.PW1/1 to Ex.PW1/5, when on 25.10.1997 Ex.PW1/5 was executed.

4. The following issues were framed by the trial court:-

- “(i) Whether the suit is bad for non-joinder of necessary parties? OPD
- (ii) Whether the suit has not been properly valued for the purpose of court fees and jurisdiction? OPD
- (iii) Whether the plaintiff is entitled for decree of possession as prayed for? OPP

- (iv) Whether the plaintiff is entitled for decree of mesne profits/damages as prayed for? OPP
- (v) Relief.”

5. The main issues were issue nos. 3 and 4 and which have been held in favour of the appellant-plaintiff in terms of paras 5 to 7 of the judgment of the trial court and which read as under:-

“5. **ISSUE No. 3&4**

Both these issues are interlinked, therefore, are decided collectively. The onus on proving both these issues was on plaintiff who has examined himself as PW1 and one witness from Food & Supply Department as PW2 and a witness from Election Department as PW3. PW2 & PW3 has simplicitor proved defendant earlier was residing at some other address in area known as Bada Faridpuri (West), Delhi and thereafter shifted to the suit property. There is no material cross-examination to both these witnesses who proved the fact the defendant earlier was residing at some other address and subsequently shifted to the suit property. Plaintiff himself has appeared as PW1 and has examined himself on affidavit and has proved on record GPA executed in his favour as PW1/1, affidavit of the seller Prahlad PW1/2, the copy of the agreement as PW1/3, the receipt as PW1/4 and a statement made by defendant as PW1/5. These documents have not been disputed by the defendant to the extent that they bears his signatures. He, however, has taken the plea that his signatures were obtained under the influence of liquor. I have perused these documents, the document Ex. PW1/5 has been admitted to be written by the defendant himself in his cross-examination. He admits as under:

“ It is correct that this document is in my hand-writing”

6. A perusal of this document reveals that, he has admitted that he is residing in this premises which is owned by plaintiff and he will not become the owner of the premises unless he gives the entire consideration to the plaintiff. By admitting that this document was written by him the burden shifts upon the defendant to prove that under what circumstances, the same was written by him. If he alleges that he has done so under the influence of liquor. It was he who was required to

prove the same as well as the consequences thereof. Though, it is correct that the documents Ex.PW1/1 to PW1/4 does not create a valid title in favour of the plaintiff more so when he has not filed the complete chain of title documents starting from the original owner up to plaintiff but considering the fact that by virtue of document Ex.PW1/5, defendant has admitted that he is in permissive possession of the suit premises, he is stopped by virtue of section 116 of the Indian Evidence Act which debars a tenant/licencee from challenging the title of the lesser. In view of this fact that there is no denial to this execution of documents Ex.PW1/5 and plaintiff otherwise has proved that defendant is in possession of the premises since 1997 and not 1999 as alleged by the defendant and as stated by DW2 it is proved on record that it is the plaintiff who permitted the defendant to occupy the premises and his possession is permissive possession and therefore, defendant cannot challenge the title of the plaintiff U/s 116 of the Indian Evidence Act and, therefore, both the issues are proved by the plaintiff in his favour. Learned Counsel for the defendant has relied upon the judgment of Hon'ble High Court of Delhi reported in **1994 (2001) DLT 111** but I find that the same is not applicable to the facts before me since in that suit before Hon'ble High Court of Delhi, the question was that a person who does not have a title to the property cannot pass any to the third person but the facts before me are entirely different as defendant is in permissive possession and cannot, therefore, challenge the title of the plaintiff.

7. As far as the quantum of damages are concerned, defendant has admitted in his cross-examination that the suit property can fetch a market rent of Rs. 700/- p.m. to which there is no dispute or denial by the plaintiff and therefore, the damages are ascertained to the tune of Rs. 700/- p.m. Both the issues are accordingly decided in favour of the plaintiff.”
(underlining added)

6. For the purpose of disposal of this regular second appeal, following substantial questions of law are framed in accordance with Section 100 CPC:-

(i) Whether the first appellate court has committed a gross illegality and perversity in denying the ownership rights of the suit property to the

appellant-plaintiff although the respondent-defendant is a witness to the respondent/plaintiff's ownership documents Ex.PW1/1 to Ex.PW1/4, and he never ever objected to his signatures as a witness at any point of time?

(ii) Whether the first appellate court has committed complete illegality and perversity in holding that the document Ex.PW1/5 dated 25.10.1997 cannot be looked into because it was executed under the influence of liquor which was the case of the respondent/defendant?

(iii) Whether the first appellate court has committed an illegality and perversity in holding that Section 116 of the Evidence Act, 1872 does not apply in favour of the appellant-plaintiff and which was so held by the trial court?

(iv) Whether the first appellate court has committed a perversity in holding that the respondent-defendant is not a licensee of the appellant-plaintiff because Ex.PW1/5 cannot help the appellant-plaintiff ?

(v) Whether the judgment of the first appellate court suffers from clear cut illegality and perversity by holding that the documents from the Ramjas Foundation Ex.DW2/A and Ex.DW1/A to Ex.DW1/C proved that appellant-plaintiff was not the owner of the suit property?

7. Whereas on behalf of the appellant it was argued by placing reliance on the findings and conclusions of the trial court that the substantial questions of law have to be answered in favour of the appellant/plaintiff, in response the following arguments were urged on behalf of the respondent to support the judgment of the first appellate court:

(i) Document Ex.PW1/1 to Ex.PW1/5 cannot give ownership interest to the appellant-plaintiff and more so because the documents Ex.DW2/A and Ex.DW1/A to Ex.DW1/C shows that it is the Ramjas Foundation which is the owner of the suit property.

(ii) Appellant-plaintiff has failed to prove that the respondent/defendant is a licensee of the suit property, and also that the production of documents Section 116 of the Evidence Act, 1872 cannot in any manner help the appellant-plaintiff, who has otherwise failed to prove that he is the owner of the suit property.

(iii) It is argued that the document Ex.PW1/5 does not create a relationship of licensor and licensee and consequently, therefore, the first appellate court was justified in holding that there was no relationship of licensor and licensee between the appellant-plaintiff and respondent-defendant.

8(i) In my opinion, the aforesaid substantial questions of law which have been framed need to be answered in favour of the appellant-plaintiff against the respondent-defendant. The reasons for the same are contained hereinafter.

9. The trial court had rightly applied the provision of Section 116 of the Evidence Act because the said provision applies not only between the lessor and lessee but also licensor and licensee. Licencee need not be a licensee for consideration but the license which is referred to in Section 116 can be even a gratuitous license and any other relationship of creation of relationship in the nature of licensor and licensee because there is no specific language as regards creation of licensee under Section 116 and thus the document Ex.PW1/5 dated 25.10.1997 executed by the respondent/defendant clearly shows that he was in permissive possession of the suit property ie as a licensee, and that he would not stake ownership claim of the suit property unless he pays the entire consideration to the appellant-plaintiff. In my opinion, therefore, this language is enough not only to confirm the ownership of the appellant-plaintiff of the suit property but also that the respondent-defendant was in permissive possession and

which permissive possession is a licence under the relevant provisions of the Easement Act, 1882 and Section 116 of the Evidence Act, 1872.

10 The argument of the respondent/defendant that the document Ex.PW1/5 dated 25.10.1997 cannot be looked into because it was executed under the influence of liquor, is a misconceived argument and was rightly rejected by the trial court because firstly a document cannot be signed in blank as per the case of the respondent-defendant and at the same time it can still be argued that the document was signed under the influence of liquor inasmuch as the respondent-defendant admitted in cross-examination that the document Ex.PW1/5 is written by him in his own hand. It is inconceivable that the document Ex.PW1/5 would have been written under the influence of liquor because the document is in the hand writing of the respondent-defendant himself. Clearly, therefore, the trial court was justified in holding that the document Ex.PW1/5 was not written under the influence of liquor and this document created a licence whereby respondent/defendant was estopped under Section 116 of the Evidence Act to dispute the title of the appellant-plaintiff. This document Ex.PW1/5 was never legally challenged by the respondent/defendant except in the present

suit, on the ground that the same is illegal or invalid including on the ground that it was written under the influence of liquor.

11. In addition to the above stated facts, it is seen that the respondent/defendant is himself a witness to the documents Ex.PW1/1 to Ex.PW1/4 by which rights in the suit property were purchased by the appellant-plaintiff from one Sh. Prahlad. At no point of time, the respondent/defendant ever challenged his signatures on these documents Ex.PW1/1 to Ex.PW1/4, and therefore, in my opinion, respondent/defendant is additionally estopped from challenging the title of the appellant-plaintiff in the suit property on account of being a witness to documents Ex.PW1/1 to Ex.PW1/4.

12. Once respondent-defendant is estopped under Section 116 of the Evidence Act to challenge the title of the appellant-plaintiff, then, the respondent-defendant cannot set up a case that the Ramjas Foundation is the owner of the suit property. Also, even assuming Ramjas Foundation is the owner of the suit land at best, it would be Ramjas Foundation who will be entitled to take possession of the suit land from the appellant-plaintiff and it is not open to the respondent-defendant in view of execution of Ex.PW1/5 to dispute the right of the appellant-plaintiff to take possession of the suit

property. Needless to state that till date no suit for possession has been filed by Ramjas Foundation against the appellant-plaintiff with respect to the suit property and as so stated before this Court by the counsel for the appellant, although the appellant/plaintiff from 1996 and prior to him one Sh. Prahlad is found to be in possession of the suit property. Therefore, it cannot be held in these proceedings that Ramjas Foundation since is the owner of the suit land, thus the suit for possession must fail.

13. It also cannot be held that respondent/defendant is a licensee of Ramjas Foundation and it is the Ramjas Foundation who created a licence in favour of the respondent-plaintiff in the year 1999 by the documents Ex.DW2/A to Ex.DW1/2. This is for two reasons. Firstly, in the document Ex.DW2/A, the property which is mentioned is a Jhuggi no. 315 situated on 25 sq. yds and this has no co-relation to the suit property which bears no. no. 53/2 which measures 20 sq. yds. Secondly, the case of the respondent-defendant is that Ramjas Foundation created a license in his favour in 1999 but it is admitted that the respondent-defendant is in possession of the suit property since the year 1997, inasmuch as, the document Ex.PW1/5 is dated 25.10.1997, and which was executed by respondent-defendant in favour of the appellant-plaintiff with respect to the suit property. Also, respondent-

defendant admits in his cross-examination that he came into possession of the suit property on 20.10.1997, and therefore, the entire case set up by the respondent-defendant of his having become a licensee of Ramjas Foundation was only to frustrate the suit after obtaining documents in 1999 from Ramjas Foundation, and the first appellate court has grossly misread evidence amounting to perversity in holding that the appellant-plaintiff is not the owner of the suit property and the respondent/defendant is not the licensee of the appellant-defendant.

14. I would also like to state that the judgment of the first appellate court dated 31.3.2012 does not inspire confidence and in fact there is a very confused reasoning which is given by the first appellate court, that too in a disjointed manner, though the appellate court in the facts of this case should have taken each of the issues specifically as was done by the trial court.

15. In view of the above, the appeal is allowed. The impugned judgment of the first appellate court dated 31.3.2012 is set aside and the judgment of the trial court dated 3.1.2011 will stand revived whereby the appellant-plaintiff will be granted decree in possession and mesne profits in

terms of para-9 of the judgment of the trial court dated 3.1.2011. Parties are left to bear their own costs.

MARCH 19, 2014
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VALMIKI J. MEHTA, J.