

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

+ **RSA No.166/2012**

% **14th March, 2014**

SUNIL SHARMA AND ANR. Appellants
Through: Mr. Vinod Sharma, Advocate.

VERSUS

SMT. UMA SHARMA Respondent
Through: Mr. Prag Chawla, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is filed against the concurrent judgments of the Courts below; of the trial Court dated 6.8.2011 and the first appellate Court dated 21.7.2012; by which the suit of the respondent/plaintiff has been decreed for possession and mesne profits against the appellant with respect to suit property bearing No.1-B, Block-E, measuring 110 sq yds part of khasra No.466, 467 and 468 situated in the abadi of Jawahar Park, Shakarpur

Ext, Village Mandawali Fazalpur, Shahdara, Delhi now known as E-1/B, Jawahar Park, Laxmi Nagar, Delhi-92 shown in red in site plan Ex.PW1/1.

2. The respondent/plaintiff is the step-mother i.e the appellant No.1/defendant No.1 is the step-son. On account of deterioration of their relations, respondent/plaintiff terminated the gratuitous licence of the appellants/defendants in the suit premises by means of the legal notice dated 18.8.2008, Ex.PW1/7, but since the appellant/defendant failed to vacate the suit property, the subject suit for possession came to be filed.

3. Before me, counsel for the appellant has argued the following aspects:-

(i) The trial Court had no pecuniary jurisdiction and the suit was not properly valued, consequentially, the judgment passed by the Court which does not have jurisdiction is liable to be set aside. Alongwith this aspect, it is also urged that the first appellate Court wrongly converted the suit for possession into a suit for mandatory injunction.

(ii) Respondent/plaintiff failed to prove her ownership of the suit property and therefore was not entitled to the reliefs as claimed.

(iii) Both the Courts below have wrongly allowed the claim of damages / mesne profits inasmuch as no evidence was led with respect to mesne profits.

4. In my opinion, all the arguments urged on behalf of the appellant are misplaced and misconceived and liable to be rejected on account of the reasons as given below.

5. So far as the issue of pecuniary jurisdiction and the form of suit is concerned, I do not think in cases such as the present the same would result in a substantial question of law being raised and which is *sine qua non* for a second appeal under Section 100 CPC. In any case, even if the arguments are considered on merits the same are meritless and cannot be accepted. A reading of the judgment of the trial court with respect to the issue of pecuniary jurisdiction, and which has been dealt with in issue no.4, shows that onus of this issue was on the appellants/defendants and since there was nothing except the oral statements of the appellants/defendants on the value of the property it was held that this issue no.4 has to be decided in favour of the respondent/plaintiff. Relevant observations of the trial court, in this regard, are contained in para 11 of the judgment and which reads as under:-

“11. The onus of proving this issue was on the defendants. In their WS, defendants have raised the preliminary objections that the plaintiff has not properly valued the suit property for the purpose of court fees and jurisdiction and the market value of the suit is Rs.30 lac and the court fees is insufficient and the suit is liable to be dismissed on this ground alone. The defendants have not examined any witness to establish that the market value of the property on the date of filing of the suit was more than Rs.30 lacs as alleged by them. Mere bald assertion by the defendants regarding the market value of the suit property cannot be taken into consideration. Hence, in my opinion, the defendants have failed to discharged the onus cast on them. The issue is accordingly decided in favour of the plaintiff and against the defendants.”

6. The first appellate Court has dealt with this issue in paras 32 to 34 of the judgment and which read as under:-

“32. In the case of Sant Lal Jain Vs. Avtar Singh reported in (1985) 2 SCC 332 the Hon’ble Supreme Court was pleased to hold the Hon’ble Supreme Court has been pleased to hold that the status of a licensee remains as a licensee and the plaintiff in such situation is only required to bring the suit for mandatory injunction to call upon the defendant to vacate the suit premises. The same was followed and reiterated by the Hon’ble High Court of Delhi in the case of Puneet Chaddha Vs. B.P. Chaddha reported in CRP 152/2009 decided on 01.12.2009. In the present matter plaintiff in her plaint has prayed for the following relief:-

“Pass a decree of possession in favour of the plaintiff and against the defendants, thereby directing the defendants to remove their unauthorized occupation and to vacate the handover the vacant, physical possession of the suit premises built over plot no.1-B, Block-E, area measuring 110 sq yds, part of khasra no.466, 467 situated in the abadi of jawahar park in the area of Shakarpur Extn, Village Mandawali Fazalpur Ilaqa Shadhara, Delhi now known as property bearing no.E-1/B, Jawahar Park, Laxmi Nagar, Delhi-92, as more specifically shown in red colour in the site plan annexed, to the plaintiff.”

33. Although the relief claimed in the plaint appears to be a decree for possession, in content what the plaintiff has prayed is for a decree for mandatory injunction to direct the defendants to remove their belongings and to vacate the suit premises. Such a relief for mandatory injunction is to be valued under the provisions of Section 7(iv)(d) of the Court Fees Act 1870 as has been held by the Hon'ble High Court of Delhi in the case of Puneet Chaddha Vs. B.P. Chaddha reported in CRP 152/09 cited on 01.12.2009. Hence the plaintiff was only required to value her relief for mandatory injunction at Rs.130/- and to affix court fee of Rs.13/- on the same.

34. Perusal of para 15 of the plaint reveals that plaintiff has valued her relief for possession at Rs.1,20,000/- and affixed court fees ad-valorem on the same. The said valuation has been arrived at by the plaintiff on the basis of expected monthly rent of the suit premises at Rs.10,000/-. In the opinion of this Court the plaintiff has over valued his relief and paid excess court fee. Since the status of defendants is that of licensee, plaintiff was only required to bring a suit for mandatory injunction. It therefore cannot be said that the suit of the plaintiff was undervalued for the purposes of court fee and pecuniary jurisdiction.” (underlining added)

7. I do not find any illegality in the judgments of the Courts below, much less a substantial question of law arising because the Supreme Court in the case of *Sant Lal Jain Vs. Avtar Singh (1985) 2 SCC 332*; which is referred by the first appellate court in para 32 of its judgment; has held that the relief of mandatory injunction is in effect a relief of possession as available against a licensee. Thus the subject suit can be treated as a suit for mandatory injunction and by doing which no illegality has been committed by the first appellate court because, there is no illegality if a licensee by a mandatory injunction is asked to remove himself from the suit

premises in view of the categorical ratio of the Supreme Court in the case of ***Sant Lal Jain (supra)***. Both the courts below have not erred in giving findings of pecuniary jurisdiction or with respect to the form of the suit.

8. So far as the second argument is concerned, I may note that the respondent/plaintiff has proved her ownership by means of usual documentation being the agreement to sell, power of attorney etc which were exhibited as Ex.PW1/2 to Ex.PW1/4 by the trial court. These aspects have been mentioned in para 14 of the impugned judgment of the first appellate court. I may note that since the documents in this case are prior to 25.9.2001 when by Act 48 of 2001 the provision of Section 53A of the Transfer of Property Act, 1882 and other related provisions were amended, the documents will create rights as provided under Section 53A of the Transfer of Property Act, 1882 of part performance and also as per Section 202 of the Contract Act, 1872. Even the Supreme Court in the case of ***Suraj Lamps & Industries Pvt. Ltd. Vs. State of Haryana and Anr. 183 (2011) DLT 1 (SC)*** has held that these documents may not create strict ownership rights, however whatever rights of a decretal transferor are created as per Section 53A of Transfer of Property Act, 1882 and Section 202 of the Contract Act, 1872, the same are protected including the

devolution of rights if transferor had executed the Will in favour of the transferee. As against these documents which were filed on behalf of the respondent/plaintiff, the appellants/defendants have not filed any other documents to show a better title. It bears note that really the ownership of the respondent/plaintiff in the trial court was not disputed because of the title deeds but because appellants/defendants claimed to have become the owner of the property by having spent moneys for construction thereupon and which defence has necessarily to proceed on the ground that the respondent/plaintiff was owner of the plot in question. Therefore, looking at it from any manner of the respondent/plaintiff having proved her ownership or the appellants/defendants failed to prove before the Courts below of having spent moneys for construction, respondent/plaintiff is undoubtedly the owner of the suit property. I may note that the aspect of appellants/defendants becoming owner by spending moneys on construction has not been canvassed before me.

9(i) So far as the third argument of grant of damages are concerned, the courts below have taken note of the fact that the suit property is situated in Delhi, is on plot of 110 sq yds, the colony is a developed colony and the appellants/defendants failed to rebut the legal notice which stated that

damages were Rs.10,000/- per month. Accordingly, trial court rightly granted damages, not at Rs.10,000/- per month, but at Rs.7,000/- per month.

(ii) The first appellate court has relied upon the judgment of this Court in the case of *M.C. Agrawal HUF Vs. Sahara India and Ors. 183 (2011) DLT 105* to arrive at a conclusion with respect to accepting the finding of the Court below with respect to Courts taking judicial notice of rents and increase of rents in the city of Delhi.

10. In view of the above, no substantial question of law arises under Section 100 CPC, and the appeal is therefore dismissed, leaving the parties to bear their own costs.

MARCH 14, 2014
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VALMIKI J. MEHTA, J.