

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

+ **RSA No. 259/2017**

+ **RSA No. 260/2017**

%

13th November, 2017

+ **RSA No. 259/2017**

NAVEEN KUMAR

..... Appellant

Through: Mr. M.K. Vashishta and Mr.
S.K. Atri, Advocates.

versus

K GANPATI SUBRMANYAM

..... Respondent

+ **RSA No. 260/2017**

NAVEEN KUMAR

..... Appellant

Through: Mr. M.K. Vashishta and Mr.
S.K. Atri, Advocates.

versus

K GANPATI SUBRMANYAM

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 40775/2017 (for exemption) in RSA No. 259/2017

C.M. Appl. No. 40873/2017 (for exemption) in RSA No. 260/2017

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

C.M. Appl. No. 40776/2017 (for condonation of 5 days delay in re-filing) in RSA No. 259/2017

C.M. Appl. No. 40874/2017 (for condonation of 5 days delay in re-filing) in RSA No. 260/2017

For the reasons stated therein the delays are condoned subject to just exceptions.

The applications stand disposed of.

RSA No. 259/2017 and C.M. Appl. No. 40774/2017 (for stay)

RSA No. 260/2017 and C.M. Appl. No. 40872/2017 (for stay)

1. These Regular Second Appeals under Section 100 of Code of Civil Procedure, 1908 (CPC) are filed by the plaintiff in the suit against the self-same concurrent judgments of the courts below; of the trial court dated 27.1.2017 and the first appellate court dated 19.7.2017; dismissing the suit for injunction filed by the appellant/plaintiff and decreeing the suit for possession and *mesne* profits filed by the respondent/defendant/counter-claimant/owner/landlord. The appellant/plaintiff/tenant has been directed to handover vacant physical possession of the suit property to the respondent/defendant/owner/landlord/counter-claimant and appellant/plaintiff has been directed to pay arrears of rent and *mesne* profits from 1.12.2014 till the premises are vacated. Two appeals are

filed as the impugned judgment disposes two matters, one the suit of the appellant/plaintiff and second the counter-claim of the respondent/defendant/landlord.

2. The facts of the case are that the appellant/plaintiff pleaded that he came into possession of the suit premises being flat no. 5, first floor, Sadbhawna Apartment, Neb Sarai, New Delhi, in terms of a rent agreement dated 17.7.2012 executed by the respondent/defendant/owner/landlord and that immediately within a week thereafter the respondent/defendant/owner/landlord transferred the rights in the suit property to the appellant/plaintiff in terms of the documents being the agreement to sell, power of attorney, etc dated 25.7.2012. Appellant/plaintiff pleaded to have paid a consideration of Rs.6,50,000/- to the respondent/defendant for the execution of the documents dated 25.7.2012.

3. The respondent/defendant/counter-claimant contested the suit and denied that the alleged documents dated 25.7.2012 were ever executed in favour of the appellant/plaintiff by the respondent/defendant. Respondent/defendant also denied that he ever received a sum of Rs.6,50,000/- from the appellant/plaintiff. The

documents relied upon by the appellant/plaintiff dated 25.7.2012 were pleaded to be forged and fabricated.

4. After pleadings in the suit and counter-claim were completed, the following issues were framed:-

“On the basis of the pleadings of the parties, following issues were framed vide order dated 19.10.2015 in main suit:-

1. Whether the plaintiff is entitled to decree of permanent injunction as prayed in clause (a)? OPP
2. Relief.

On the basis of pleadings of the parties, following issues were framed vide order dated 19.10.2015 in counter claim:-

1. Whether the suit is not maintainable in its present form? OPD
2. Whether the plaintiff is entitled to decree of possession in respect to suit premises as prayed in clause (a)? OPP
3. Whether the plaintiff is entitled to decree of arrears of rent of Rs.1,20,000/- as prayed in clause (b)? OPP.
4. Whether plaintiff is entitled to decree of damage/mesne profits @ Rs.15,000/- per month whichever from 01.12.2014.
5. Relief.”

5. Both the courts below have held that the documents which are relied upon by the appellant/plaintiff being the documents dated 25.7.2012, Ex.PW1/1 to Ex.PW1/7 are not documents which have been proved to have been executed by the respondent/defendant/owner/landlord in favour of the appellant/plaintiff/tenant. Courts below have held that the appellant/plaintiff had sought to get the signatures proved through handwriting expert but that request was belated being after the

evidence being led by the respondent/defendant/landlord, and thus was dismissed by the trial court vide order dated 26.10.2016 and the challenge to that order also stood dismissed by the appellate court's order dated 24.12.2016. Trial court has also held that appellant/plaintiff has completely failed to prove that consideration of Rs.6,50,000/- was ever been paid by the appellant/plaintiff to the respondent/defendant. The courts below, accordingly, held that once appellant/plaintiff was inducted as a tenant and appellant/plaintiff has failed to prove that he had any rights in the suit property as there were no documents dated 25.7.2012 executed in favour of the appellant/plaintiff by the respondent/defendant, accordingly, the counter-claim for possession had to be decreed as also the counter-claim towards arrears of rent and *mesne* profits. It may be noted that the appellant/plaintiff admitted that he had not paid rent of the suit premises since 1.12.2014. *Mesne* profit was only granted at the rate of Rs.6,000/- per month in view of the admitted rate of rent of Rs.5,000/- per month.

6. I do not find any reason to interfere with the impugned judgments of the courts below, inasmuch as, onus was upon the

appellant/plaintiff to prove that the respondent/defendant had executed in favour of the appellant/plaintiff the documentation dated 25.7.2012 being the agreement to sell, power of attorney, etc. Ex.PW1/1 to Ex.PW1/7. As already stated above, the appellant/plaintiff had sought to get the signatures proved through handwriting expert but that request was rejected and which rejection became final on an appeal against the order also being dismissed. Most importantly, the documents Ex.PW1/1 to Ex.PW1/7 cannot be relied upon because the appellant/plaintiff has failed to prove that any consideration of Rs.6,50,000/- was passed from the appellant/plaintiff to the respondent/defendant. Admittedly and conveniently this consideration of Rs.6,50,000/- is alleged to be paid in cash by the appellant/plaintiff to the respondent/defendant. Also, it is seen that the courts below have held that the appellant/plaintiff admittedly issued cheques of Rs.20,000/- and Rs.60,000/- in the year 2013 to the respondent/defendant/landlord/counter-claimant and which would not have been if there was no liability of the appellant/plaintiff towards rent and the appellant/plaintiff as claimed by him had already purchased rights in the suit property on 25.7.2012.

7. It may also be noted that the respondent/defendant/landlord had become desperate because he was to sell the suit property to a third person, namely one Sh. Purshottam Chaudhary with whom documents dated 30.3.2013 were executed, but the respondent/defendant/owner could not go ahead with selling of the suit property to Sh. Purshottam Chaudhary under the documentation dated 30.3.2013 as the appellant/plaintiff failed to vacate the suit property inspite of the respondent/defendant giving a cheque of Rs. 4 lacs to the appellant/plaintiff to vacate the suit property and which cheque was not encashed.

8. In my opinion, *de hors* any of the reasons given by the courts below, the suit for injunction filed by the appellant/plaintiff was liable to be dismissed and the counter-claim of the respondent/defendant was bound to be decreed because the set of documentation dated 25.7.2012 being agreement to sell, power of attorney, etc relied upon by the appellant/plaintiff are unregistered and unstamped and thus hit by Section 53A of the Transfer of Property Act, 1882. Section 53A of the Transfer of Property Act was amended by Act 48 of 2001 with effect from 24.9.2001 by which an agreement

to sell in the nature of part performance under Section 53A of the Transfer of Property Act was directed by the Legislature not to create rights of part performance under Section 53A of the Transfer of Property Act unless such an agreement to sell is duly stamped and registered i.e stamp duty paid at 90% of the value/price of the property and also the agreement to sell being compulsorily registered under the Registration Act, 1908, and the documents dated 25.7.2012 relied upon are neither stamped nor registered. Admittedly, appellant/plaintiff has not filed a suit for specific performance on the basis of the agreement to sell, etc dated 25.7.2012 but he only claims rights in the suit property on the basis of these documents and which rights clearly cannot be asserted or granted to the appellant/plaintiff because these documents fall foul of the amended Section 53A of the Transfer of Property Act which came into effect with effect from 24.9.2001. Therefore, the best case of the appellant/plaintiff of placing reliance on the documents dated 25.7.2012 fails, and consequently the appellant/plaintiff was bound to hand over the possession of the suit property as also pay rent/*mesne* profits to the respondent/landlord/counter-claimant in terms of the impugned judgments.

9. It is clear that the person like the appellant/plaintiff has no connection whatsoever to any scruples and principles. The appellant/plaintiff has gone to the extent of manufacturing documents so as to continue his illegal possession of the suit premises in which he was admittedly inducted as a tenant with rent of Rs.5,000/- per month i.e the tenancy was outside the protection of the Delhi Rent Control Act. As already stated above, the alleged consideration paid by the appellant/plaintiff to the respondent/defendant was conveniently said to be in cash and which even could not be proved and in such a case the documents dated 25.7.2012 are illegal and to be discarded because the documents dated 25.7.2012 are hit by the amended of Section 53A of the Transfer of Property Act.

10. Therefore, while observing that not only no substantial question of law arises for entertaining of these Regular Second Appeals, it is seen that these second appeals are completely frivolous and a complete abuse of process of law, and the same are therefore dismissed with costs of Rs.15,000/- for each of the appeal and which will be deposited by the appellant/plaintiff with the website www.bharatkeveer.gov.in within a period of six weeks from today. In

case the said costs are not deposited, the Registry will list these matters in Court for directions against the appellant/plaintiff so as to ensure compliance of the order of deposit of costs.

NOVEMBER 13, 2017

VALMIKI J. MEHTA, J

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