

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

+ **RFA No.260/2018**

% **Reserved on: 14th March, 2018**
Pronounced on: 16th March, 2018

SURENDER SINGH RATHORE Appellant

Through: Mr. Paritosh, Advocate.

versus

VIRENDER SINGH RATHORE Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

Caveat No.208/2018

1. No one appears for the caveator. Caveat accordingly stands discharged.

C.M. No.9955/2018 (exemption)

2. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No. 260/2018 and C.M. No.9956/2018 (under Order XX Rule 6 CPC)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 is filed by the defendant in the suit impugning the judgment of the trial court dated 21.11.2017 by which

trial court has decreed the suit for possession, arrears of rent and *mesne* profits with respect to the suit property being shop no.4, ground floor in DDA Market, A2A Block, Janak Puri, New Delhi. The suit has also been decreed by awarding rent/*mesne* profits at Rs.6,44,685/- from 1.6.2014 till filing of the suit, during the pendency of the suit and till handing over of possession of the suit property with interest at 6% per annum.

4. The facts of the case are that the respondent/plaintiff filed the subject suit pleading that he was the owner of the suit property which was given on rent to the appellant/defendant in terms of the rent agreement dated 21.6.2013. Parties to the suit are real brothers. The mother of the parties Smt. Rattan Kanwar was the owner and in possession of two shops being shop nos.3 and 4 in the ground floor of DDA Market A2A Block, Janak Puri, New Delhi and that by virtue of family settlement after the death of the mother the respondent/plaintiff was given ownership of the suit property and the ownership of adjoining shop no.3 was given to the appellant/defendant. Parties entered into a rent agreement on 21.6.2013 whereby the respondent/plaintiff gave to the appellant/defendant tenancy of the suit

shop for 11 months commencing from 1.7.2013 and ending on 31.5.2014 at rent of Rs.15,000/- per month. Rent was to increase by 10% after expiry of the lease period ending on 31.5.2014. Rent was paid by the appellant/defendant to the respondent/plaintiff till 31.5.2014. Since the appellant/defendant thereafter neither paid the rent nor vacated the suit property, hence the subject suit for possession, arrears of rent and *mesne* profits was filed. Respondent/plaintiff in the plaint stated that there was an earlier suit filed by the respondent/plaintiff for partition, possession etc and in which proceedings the appellant/defendant herein admitted his tenancy of the suit premises and payment of rent by the appellant/defendant to the respondent/plaintiff for the lease period. In the earlier suit the appellant/defendant was pleaded to have taken a false defence of the two shops after the death of the mother being mutated in the name of the father of the parties and that the father of the parties had executed a gift deed dated 29.10.2014 gifting the two shops to the appellant/defendant.

5. The appellant/defendant contested the suit by filing his written statement. It was contended by the appellant/defendant that

mother of the parties Smt. Rattan Kanwar was owner of shop nos.3 and 4, and who died intestate on 20.6.2008, leaving behind two sons (parties to the suit), one daughter and her husband Sh. Dayal Singh. The case of the appellant/defendant further was that both the shops were handed over by the father of the parties to the appellant/defendant and appellant/defendant was to pay some compensation or occupation charges for the suit shop at Rs.15,000/- per month to the respondent/plaintiff till the matter is resolved permanently. The appellant/defendant paid the amount of Rs.15,000/- per month for sometime but he was thereafter unable to pay the said amount. It was contended by the appellant/defendant in his written statement that father of the parties by virtue of a gift deed and a Will dated 28/29.10.2014 had given ownership of the both shop nos.3 and 4 to the appellant/defendant. Suit was therefore prayed to be dismissed.

6. After pleadings were complete, the trial court framed the following issues:-

- “(i) Whether the suit has been under-valued for the purpose of jurisdiction and proper court fees has not been paid by plaintiff? OPD
- (ii) Whether the plaintiff is entitled to a decree for possession thereby directing the defendant to hand over the vacant, peaceful and physical possession of the property i.e. shop bearing no.4 on ground floor in DDA market, A2A Block, Janak Puri, New Delhi (hereinafter referred to as suit property)? OPP

- (iii) Whether the plaintiff is entitled to a decree for a sum of Rs.6,44,685/- along with pendente lite interest @ 18% p.a. as arrears of rent as per clause 1 and 2 of the rent agreement dated 21.06.2013, as prayed for? OPP
- (iv) Whether the plaintiff is entitled to a decree for a sum of Rs.3,50,000/- per month as damages for use and occupation of premises till date, as prayed? OPP
- (v) Whether the plaintiff is entitled to a decree directing the defendant to pay the damages @ 50,000/- per month pendente lite till the peaceful handing over of the possession of suit property, as prayed? OPP
- (vi) Relief.”

7. Parties thereafter led evidence and which aspect is recorded in paras 8 and 9 of the impugned judgment, which read as under:-

“8. To prove their respective case, both the parties adduced their respective evidence. Plaintiffs examined himself as PW-1 and proved on record-site plan as Ex.PW1/1; sale deed dated 20.11.2007 as Ex.PW1/2; rent agreement as Ex.Pw1/3; plaint bearing no.608523/16 as Ex.PW1/4; written statement of defendant no.1 Ex.PW1/5; copy of order and statement of defendant no.1 dated 19.01.2017 and order dated 25.01.2017 as Ex.PW1/6 and relinquishment dated 23.03.2017 as Ex.PW1/7 and he was duly cross examined and close his evidence.

9. In defendant evidence, he examined two witnesses i.e. himself as DW-1 and proved on record his affidavit in evidence as DW1/A and filed the copy of gift deed dated 28.10.2014 which is marked as Mark D-1 and he was duly cross examined. Sh. Mahinder Singh Rathore tendered his affidavit as DW-2 and was duly cross examined. Thereafter defendant closed his evidence.”

8. Trial court has while discussing the issue no. (ii) held that the respondent/plaintiff was the owner of the suit shop and the appellant/defendant was a tenant in the same at rent of Rs.15,000/- per month in view of the rent agreement which has been proved and

exhibited as Ex.PW1/3. Trial court also notes that though the appellant/defendant contended to be owner of the both shop nos.3 and 4 on the basis of the alleged gift deed and Will of the father, however, none of these documents were filed and proved and that even if the gift deed was proved yet since admittedly the gift deed was not registered therefore under the gift deed no title of the shop nos.3 and 4 would flow to the appellant/defendant. Trial court also notes that father and sister of the parties had relinquished their shares in the suit shop in favour of the respondent/plaintiff in terms of the registered relinquishment deed which was proved and exhibited as Ex.PW1/7 and which document has not been questioned by the appellant/defendant. Accordingly, trial court has held that respondent/plaintiff is the owner of the suit shop and that the appellant/defendant was a tenant in the same at Rs.15,000/- per month and since the tenancy stood terminated, therefore respondent/plaintiff was entitled to possession of the suit property as also payment of arrears of rent. Trial court did not grant *mesne* profits as prayed but only granted admitted rate of rent as per month as *mesne* profits

amount. I do not find any error or illegality in these aforesaid findings of the trial court.

9.(i) Learned counsel for the appellant/defendant only argued by placing reliance upon para 8 of the earlier suit filed by the respondent/plaintiff to argue that in this para the respondent/plaintiff only pleaded the appellant/defendant to be “like a tenant” i.e not a tenant, and therefore it is argued that appellant/defendant was never a tenant of the respondent/plaintiff. It is also argued that both the parties are owners of the shop nos.3 and 4 and therefore without a partition taking place between the parties for giving the suit shop to the respondent/plaintiff, the said suit for possession and *mesne* profits cannot be decreed.

(ii) I am unable to agree with the argument urged on behalf of the appellant/defendant because para 8 of the plaint in the earlier suit does not state that the appellant/defendant was not a tenant. No doubt the word “like” is used but this word has to be taken in context along with entire para 8 and the reading of the entire contents of para 8 of the plaint in the earlier suit show that the appellant/defendant was pleaded

to be a tenant of the respondent/plaintiff. This para 8 of the plaint of the earlier suit reads as under:-

“8. That when the plaintiff again requested the defendant No.1 to partition the said shops then the defendant put a proposal before the plaintiff to pay him Rs.15,000/- per month and further requested that until and unless the shops are not partitioned, he will kept on paying Rs.15,000/- per month to the defendants like a tenant and the plaintiff has also agreed for the same and to this effect a rent agreement was also executed between the defendant No.1 and the plaintiff on 21.6.2013 and the tenancy commenced w.e.f. 1.7.2013 for a period of 11 months i.e. upto 31.5.2014.” (underlining added)

10. I may note that respondent/plaintiff has duly proved the rent agreement as Ex.PW1/3 and that the appellant/defendant has also admitted making monthly payment at Rs.15,000/- per month to the respondent/plaintiff. Therefore I do not find any error in the impugned judgment by which trial court has held that appellant/defendant was the tenant of the respondent/plaintiff of the suit shop and that ownership of the suit shop was of the respondent/plaintiff. Also as already stated above the claim of the appellant/defendant to ownership of the suit shop was on the basis of a gift deed and a Will executed allegedly executed by the father of the parties in favour of the appellant/defendant but this alleged gift deed and the Will have not been proved with the fact that gift deed being an unregistered gift deed

cannot transfer title of the suit shop in favour of the appellant/defendant.

11. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

MARCH 16, 2018
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VALMIKI J. MEHTA, J

