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

% *Judgment Reserved on : 18.12.2017*
Date of Judgment: 13.02.2018

+ **R.F.A. 285/2017**

KOMAL & ORS Appellants/Defendants.
Through: Mr. D.B. Yadav & Ms. Pragya
Verma, Advs.

versus

PANCHI DEVI ... Respondent/Plaintiff.
Through: Mr. Ajay Kumar Jha, Advocate.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. By this appeal, the appellants have challenged the impugned judgment and decree dated 10.08.2016 passed by the court of learned Additional District Judge-05, South-West District, Dwarka Courts, New Delhi (in short 'learned ADJ') against them by which Civil Suit No.86/2016 of the respondent/plaintiff for possession of the suit property was decreed.
2. The brief facts of the case are that the respondent/plaintiff filed an indigent suit under Order XXXIII of the Code of Civil Procedure, 1908 (in short 'CPC') for possession of House No.395, Block No.F, Raj Nagar Extension, Ambedkar Marg,

Raj Nagar-II, Palam Colony, New Delhi against the appellants/defendants on the grounds that the respondent/plaintiff had purchased the said property on 04.11.1980 from the previous owner Sh. Zile Singh. The suit property is recorded as plot No.34 measuring 100 square yards (at present 60 square yards) and consisting of Khasra No.51/19/3 and 20/3, Raj Nagar, Palam Colony, New Delhi. She claimed that the present area is 60 square yards as later on she sold part of its portion. It is pleaded that after purchasing the plot, she constructed the house by her self earned money. The appellant/defendant No.1 is her daughter-in-law being the wife of her late son Puran Chand. It is alleged that she was thrown out from the said house by appellant No.1 on 20.12.2001. She further alleged that the appellant No.1/defendant No.1 had also thrown out her husband from the said house on 25.02.2003. She alleged that she has been paying the house tax of the said house to the municipal committee regularly. She requested the appellants/defendants several times to vacate the house and handover the vacant possession thereof but of no avail.

3. In their written statement, it is *inter alia* pleaded by the appellants/defendants that the suit property was purchased from the earnings of her deceased husband. She further pleaded that after purchasing the plot, half of its portion was constructed by her husband and since then she has been living in the property. It is further pleaded that the plot was partitioned in two parts of 50 square yards each. It is further claimed that an area of 50

square yards came to the share of her husband and remaining 50 square yards fell to the share of the respondent/plaintiff, who had sold her share for consideration of Rs.1,20,000/- to some other person. She also pleaded that since the day of purchase of the property the respondent/plaintiff never resided therein. It is further pleaded that the suit is barred by time.

4. The respondent/plaintiff filed replication to the written statement of the appellants/defendants denying their allegations and reaffirming the averments made in the plaint. The learned ADJ framed the following issues on 03.11.2011:-

1. Whether the plaintiff is owner of the suit House No.395, F-Block, Raj Nagar Ext. Ambedkar Nagar, Raj Nagar-II, Palam Colony, New Delhi? OPP
2. Whether the plot consisting suit house was purchased by the deceased husband of defendant No.1, Plot No.34, Measuring 60 Sq. yards (at present) and Part of Khasra No.51/19/3 and 20/3, Raj Nagar, Palam Colony, New Delhi? OPP.
3. Whether the plaintiff is entitled to a decree for possession of the suit house? OPP.
4. Whether the suit is barred by limitation? OPD.
5. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.
6. Relief.

5. In support of her case, the respondent/plaintiff examined herself as PW1. She also examined PW2, a Record Clerk. On the other hand, appellants/defendants have examined defendant No.1 as DW1.
6. After hearing the parties, the learned ADJ found under issue No.4 that the suit had been filed by the respondent/plaintiff

within 12 years from the date of her dispossession on 20.12.2001 which was within time under Section 65 of the Limitation Act. Ld. ADJ decided all the issues in favour of the respondent/plaintiff and against the appellants/defendants and thus, decreed the suit.

7. The impugned judgment and decree have been challenged by the appellants/defendants mainly on the emotional grounds that the appellant No.1/defendant No.1 is a widow of the son of the respondent/plaintiff; defendants No.2 to 4/appellants no.2 to 4 are granddaughters of the respondent and are of marriageable age and liability to take care of them is not only on appellant no.1 but also on respondent/plaintiff; the respondent had already sold her share and residing at house No.1411, Wazir Nagar, Gurdwara Road, K.M. Pur, New Delhi; the appellant No.1 has been residing in the suit property since the date of her marriage; the respondent/plaintiff did not file the suit during the life time of her son; the suit property is the matrimonial home of appellant No.1 wherein she was brought by the son of the respondent/plaintiff; and the respondent/plaintiff started harassing and torturing the appellant No.1 after the death of her husband and asking her to vacate the suit property.
8. I have heard learned counsel for the parties and perused the record. At the time of arguments, learned counsel for the appellants/defendants did not dispute the findings of the learned ADJ on issues No.4 and 5.

9. Hence I proceed to consider the findings of the learned ADJ on the remaining issues No.1, 2, 3 and 6.

ISSUE No.1

10. The appellants/defendants have pleaded in their written statement that the suit property was purchased by the earnings of her deceased husband and after purchasing the vacant plot, half portion of the plot was constructed by her husband and since then the appellant No.1 has been residing in the suit property. They also claimed that during the life time of the husband of appellant No.1, the plot was partitioned in two parts of 50 square yards each, which went to the share of the respondent/plaintiff and her husband respectively. It is also the case of the appellants/defendants that the respondent/plaintiff had sold her share of 50 square yards for sale consideration of Rs.1,20,000/- and that she never resided in the suit property at any point of time. The burden to prove this issue was wrongly placed upon the respondent/plaintiff by the learned ADJ. In fact, the burden of proof should have been placed on the appellants/defendants as this defence was set up by them in their written statement. The appellants/defendants have not placed on record any document of purchase of the said property allegedly by her husband. There is only bare and self-supporting statement of appellant No.1 in the form of affidavit. Also, in her cross-examination she has admitted that she is not in possession of any document of the title of the suit property. She admitted that no partition of the suit property had ever taken place. She

had shown her ignorance if her husband had contributed any amount for purchase of the suit property. She stated that the suit property was not purchased in her presence. In view of no evidence by appellants/defendants, the learned ADJ has rightly decided this issue against the appellants/defendants.

ISSUES No.1, 3 & 6

11. To prove these issues the respondent/plaintiff testified that she is the owner of the said property. She stated that she had purchased the suit property on 04.11.1980 from the original owner Sh. Zile Singh and its number in the revenue record was plot No.34 measuring 100 square yards which is now 60 square yards and falls in Khasra No. 51/19/3 and 20/3, Raj Nagar, Palam Colony, New Delhi. She had also filed copies of General Power of Attorney, Deed of Agreement, Affidavit, Receipt Ex.PW1/A collectively executed on 04.11.1980 by which Zile Singh who had sold the said property to the respondent/plaintiff for a sum of Rs.3100/-. Entire sale consideration was paid to the vendor and possession of the property was given to the respondent/plaintiff. Copies of complaints lodged by the respondent/plaintiff against the appellants/defendants dated 01.05.2010 & 07.07.2010 are placed on record as Ex.PW1/C & Ex.PW1/C1 respectively to the effect that the appellants/defendants are in illegal occupation of the suit property. The respondent/plaintiff had also issued a notice, copy of which is Ex.PW1/D. She had also testified that the appellant/defendant No.1 used to pick up quarrel even on trivial

matters and that she (respondent/plaintiff) was thrown out by the appellant/defendant no.1 from her house by giving severe beatings on 20.12.2001. She also stated that she had requested the appellants/defendants several times to vacate the house but in vain.

12. The testimony of the respondent/plaintiff went unrebutted and unchallenged as despite opportunity the appellants/defendants had not cross-examined the respondent/plaintiff.
13. Learned counsel for the appellants/defendants have relied upon the judgment of **Hon'ble Supreme Court in Suraj Lamp Industries Pvt. Ltd. Vs. State of Haryana and Anr., (2012) 1 SCC 656**, and submitted that documents like General Power of Attorney, Agreement to sell & Receipt, etc. placed on record by the respondent/plaintiff do not create any title in favour of the respondent/plaintiff. It is to be noted that these documents of sale i.e. GPA, Affidavit, Deed of Agreement, Property Tax Receipt, etc. were executed on 04.11.1980, however, this judgment has a prospective effect only.
14. A single Bench of this Court in **Hardip Kaur Vs. Kailash 193 (2012) DLT 168** after considering the judgment of **Suraj Lamp (supra)** of the **Hon'ble Supreme Court** has held that though a purchaser of immovable property by power of attorney may not be a classical owner as would be an owner under registered sale deed but still he would have better rights/entitlement of possession than the person who is in actual physical possession.

15. Here it would be relevant to refer the judgment of **Hon'ble S.R. Batra & Anr. Vs. Taruna Batra, (2007) SCC 169** wherein the **Hon'ble Supreme Court** has held that neither a son nor the wife of son would have any claim in self-acquired property either of the mother or father of the son i.e. a daughter-in-law cannot claim her right to reside in the self-acquired property of her father-in-law and mother in law.
16. In view of this discussion, this Court finds that the learned ADJ has rightly reached to the conclusion that the respondent/plaintiff has been able to prove a better title on the basis of the said sale documents in respect of the suit property and accordingly, decided the issues No.1,3 and 6 against the appellants/defendants and in favour of the respondent/plaintiff. I do not find any merit in the appeal.
17. The appeal is accordingly dismissed with no order as to costs.
18. Trial court record be sent back forthwith.

नित्यमेव जयते

(VINOD GOEL)
JUDGE

FEBRUARY 13th, 2018
"sandeep"