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

Reserved on :6th February, 2018

Date of decision :23rd May, 2018

+ **RFA 444/2015 & CM APPLs.11985-86/2015 & 11405/2017**

RAM RATI DEVI

..... Appellant

Through: Mr. Mitthan Lai, Advocate with
Appellant in person.
(M:9899863206)

versus

RADHEY SHYAM

..... Respondents

Through: Ms. Prema, Advocate for R-1.
(M:9999867039)

Mr. Naman Saraswat, Advocate for
R-3. (M:9990160938)

Mr. Veera Mehra, Advocate for R-4
(M-7766816037)0.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present appeal arises out of the impugned judgment and decree dated 7th November, 2014, passed by the Trial Court, by which the Plaintiff's suit for possession and injunction has been decreed in the following terms:

“20. In view of the aforesaid discussions and findings, this court is of the considered opinion that plaintiff has proved his case and therefore, he is entitled for the following relief:

(i) Decree of permanent/mandatory injunction is passed in favour of the plaintiff and against the defendant No. 1 and 2 and the defendant's attorneys,

representative, agents etc. are restrained from selling, transferring, alienating or creating third party interest in the suit property bearing E-21/255 (E-255/21) measuring 74 Sq. Yards, Amar Colony, Harijan Basti, Shakti Garden, Delhi as shown in red color with the site plan attached with the plaint Ex. PW5/2 except without due process of law.

(ii) The decree of declaration is passed in favour of the plaintiff and against the defendants regarding ownership as prayed in the suit.

(iii) The decree of possession is also passed in favour of the plaintiff and against the defendants.”

2. The Trial Court granted a mandatory injunction and possession in respect of the suit property being E-21/255, measuring 74 sq. yds., Amar Colony, Harijan Basti, Shakti Garden, Delhi.

3. The suit was filed by Plaintiff - Sh. Radhey Shyam against his wife Smt. Ram Rati Devi - Defendant No.1, her brother Sh. Bal Kishan - Defendant No.2, BSES - Defendant No.3 and the Sub-Registrar, Seelam Pur - Defendant No.4. The case of the Plaintiff is that he and his wife have been divorced as per decree dated 3rd May, 2008. The couple have a daughter, Smt. Sonia. On the strength of the General Power of Attorney, Agreement to Sell, Receipts and Will dated 17th November, 2000 executed by Smt. Naseem Bano in his favour, he claims ownership on the suit property. The GPA is a registered document No.59947, Volume No.6945, Book No.4, on pages 10 to 12 dated 17th November, 2000 registered with the defendant No.4/Sub Registrar, Seelampur, Delhi. The title to the property is traced back to another set of documents dated 1st June, 1995 from one Sh. Rakesh Kumar to Smt. Naseem Bano.

4. Plaintiff claims to have been in possession of the suit property until he

was dispossessed in 2004. Disputes arose between him and his wife. There was an enormous disquiet in the family. Various complaints and counter complaints were filed with the Police. Plaintiff claims that in these circumstances, in 2004, his wife along with her brother forcibly removed him from the suit property. It is stated that he had filed a complaint with the Police when he was dispossessed. The Plaintiff further submits that he has executed a registered Will bequeathing the suit property in favour of the daughter, Smt. Sonia who is now being educated by him and is also under his care and custody.

5. The Defendant in her written statement claimed that the Plaintiff has not established title and ownership to the suit property. It is further stated that she is entitled to live in the suit property as she has a share in the same, being the wife of the Plaintiff. She does not dispute that the daughter is under the care and custody of the Plaintiff. She further pleads that she is the owner of the property by virtue of a set of documents allegedly executed by Smt. Naseem Bano in her favour dated 2nd February, 2009. None of the documents i.e., GPA, the possession letter, agreement to sell, etc. are registered in favour of the Defendant. However, it is also claimed by her that she has obtained electricity connection in her name issued by the BSES and that shows that she is in possession of the property.

6. Initially, on 24th September, 2010, Defendants were directed to maintain status quo. On 21st October, 2010, the following issues were struck in the suit:

- “1. Whether the defendant no.1 is the joint owner of the suit property? OPD1*
- 2. Whether the defendant no.1 is entitled to reside in the suit property in capacity of wife/ex wife? OPD1*

3. *Whether the plaintiff is entitled for the possession of the suit property?* *OPP*
4. *Whether the defendant no.1 has no right to get electricity connection in the suit property?* *OPP*
5. *Whether the plaintiff is entitled for a decree of mandatory injunction as prayed in the plaint?* *OPP*
6. *Whether the plaintiff is entitled to a decree of declaration as prayed in the plaint?* *OPP*
7. *Whether the plaintiff is entitled to a decree of possession as prayed in the plaint?* *OPP*
8. *Damages/mesne profits, if any.*
9. *Relief.”*

The Plaintiff led the evidence of an official from the Sub-Registrar's office, Smt. Janki as PW-1, Sh. Varun Kumar, LDC from the Karkardooma Courts as PW-2, Constable, Sh. Pravesh Kumar from the office of the DCP, Seelam Pur as PW-3, Sh. Chander Prakash from the BSES office, Nand Nagri as PW-4 and the Plaintiff himself deposed as PW-5.

7. The Defendant appeared as DW-1 in the suit. After considering the evidence on record, the Trial Court decreed the suit.

Analysis and Findings

8. A perusal of the documents and the evidence on record shows that the witness from the Sub-Registrar's office has confirmed the registered GPA executed by Smt. Naseem Bano in favour of the Plaintiff. The witness from the Karkardooma Court produced the domestic incidence report along with other reports. It is interesting to note that in her statement, marked as Ex.PW-2/1 which was produced by the witness from the Karkardooma Court, Defendant no.1 admitted that the property at Meet Nagar i.e., suit property was already purchased by the Plaintiff by the time they had shifted to the property. Her statement in *Hindi* is relevant and reads as under:

“ Main Ram Rati patni Sh. Radhey Shayam niwasi makaan no. 252/21, khasra no.365/2, harijan basti, Shakti garden mein rehti hoon. Meir shadi 18 saal pehle Radhey Shayam ke saath hui thi. Meri ek beti hai jis ki umar 14 saal hai jo ki mere pati ke sath rehti hai.

Pehle main apne pati ke saath Raj Nagar, UP mein rehti thi. Us doran mera pati ne ek kirayedaarni raki thi jiske 5 bacche the. Uske aadmi ka koi pata nahi tha. Weh takriban do mahine us makaan mein rahi. Iske doran mere pati ne yeh makaan bech dia aur main apni pati ke sath Shakti Garden, Meet Nagar wale makaan jo ki mere pati ne pehle se khareeda hua tha mein akar rehne lage. Mera pati chahta tha ki weh aurat Rajendri bhi hamare sath us makaan mein rahe. Mere mana karne par mera pati (28/7/04) ko use lekar chala gaya. Mere kaafi jagah pata karne par jab uski soochna nahi mili to mene 9/8/04 ko Nand Nagri thane mein ve 12/8/04 ko e.A.W.eELL mein shikayat kari jahan hamar samjhota kara dia gaya. Uske baad mera pati mere sath kriban ek mahine raha. Is doran mere pati ne ghar ka koi kharcha nahi uthaya aur mujh par dabav daalta raha ki yeh makaan khaali kar de jis se veh makaan bech sake. Mere mana karne par weh mere se ladai jhagda karta raha. Ek din mere dono dewar Ramesh ve Anil, Chacha sasur Joginder ve Rajinder ve Mama sasur Mahender ghar par aae mujhpar makaan bechne ka dabaav dalne lage mere mana karne par in sabhi ne mere saath maar peet ki. Kuch dino baad mera pati bina batay meri ladki ko apne sath lekar chala gaya ve usne mere ghar ki bijli ka connection katwa diya. Us din se aaj tak mein us ghar mein akeli reh rahi hoon ve mera saara kharch mere bhai chala rahe hain. Mera pati kabhi bhi akar mere saath ladai jhagda ve maar peet karta hai. Ve apne saath dosto ko bhi lakar ladai jhagda karta hai. Ve mujhe dhamki deta hai ki veh makaan khaali karo nahi to apne aap kisi ko bech doonga.

Antah: Adarniya Court se prathana hai ki mujhe

suraksha ke sath ghar mein rehne dia jae. Mera pati us ghar se mujhe na nikale, makaan na beche, mujhe mera kharcha ve meri beti dilwai jae.”

The officer from BSES produced a set of documents, which formed the basis of grant of an electricity connection in favour of Smt. Ram Rati Devi. The said documents were dated 2nd February 2009. The application by Smt. Ram Rati Devi, for the electricity connection is of 3rd February 2009. Thus the documents relied upon by her to show ownership of the suit property are one day prior to her application to the BSES. All these documents were produced by the BSES officer, PW-4.

9. What is also interesting is that the GPA, Agreement to Sell, etc. are also purportedly signed by Smt. Naseem Bano, i.e., the same person from whom the Plaintiff had purchased the suit property. However, neither the photographs of Smt. Naseem Bano are clear nor has any evidence been adduced to prove her thumb impressions. While the Plaintiff's documents of title includes a registered GPA, the documents relied upon by the Defendant are not registered. The Plaintiff in his evidence has exhibited the registered GPA to show title, as PW 1/1. No suggestion is put to him that the documents relied upon by him are fabricated or forged.

10. It appears that there were matrimonial disputes which arose and due to the intervention of the family, the Plaintiff and Defendant were living together. However, after September, 2004 as per the Plaintiff's statement, he was dispossessed after some incident which was also reported to the police. Insofar as the original title documents are concerned, the Plaintiff stated that the same were taken away from him at the time when he was thrown out of the property. Hence the copies of the Agreement to Sell (Mark B), Receipt

for Rs. 2,15,000/- (Mark C), Will Deed (Mark D), Agreement to Sell dated 1st June 1995 between Sh. Rakesh Kumar and Smt. Naseem Bano (Mark F) and Receipt for Rs. 15,000/- (Mark G) are all merely marked and not exhibited. The Plaintiff could not produce the originals of these documents.

11. The Defendant no.1- Smt. Ram Rati in her evidence clearly states that the property was purchased 10 to 12 years back which lends credence to the fact that the purchase was made by her husband in the year 2000. This evidence was given by her in 2014 in the divorce proceedings, whereas in the present suit she relies on documents of 2009 which are only 5 years prior to 2014. Thus, the documents filed by the Plaintiff have greater credibility even as per the Defendant. She claimed that being the wife, she is entitled to live in the property of her husband. She also claimed that she has been residing in the suit property since the time it was purchased. In her cross-examination she further states that she had no knowledge as to in whose name the property existed. She claimed that she lived alone in the suit property.

12. From a perusal of this evidence, it is clear that the Defendant no.1 is taking contradictory pleas. On the one hand before the BSES she has filed documents claiming that she is the owner of the property and that is the stand taken in the Written Statement. In the statement given before the Karkardooma Courts, she admitted that the suit property was purchased by her husband. This fact is also admitted by her in her affidavit in evidence. However, in the cross-examination, she again resiles from the same. From this, it is clear that the credibility of the Defendant is suspect. Her wavering statements also cast a doubt on her defence of ownership. The Plaintiff having established the registered GPA in his favour has a better title on the

balance. Moreover, the Defendant's own admission clearly show that she was living in the suit property since the time she got married. There were directions in respect to payment of maintenance to her by the Family Courts. This court is however not seized with the matrimonial dispute between the parties. The title of the Plaintiff having been established and also having been admitted by the Defendant no.1, the Trial Court's reasoning cannot be faulted with. Since the Defendant also claimed title through Smt. Naseem Bano in the documents filed with the BSES she cannot challenge Smt. Naseem Bano's title. In a suit for possession what requires to be seen is the better title and not complete ownership.

13. Prior to the judgement in *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana; AIR 2012 SC 206 (hereinafter 'Suraj Lamps')* in Delhi, property was being transferred by means of GPA, Sale, Receipts, Wills and Agreements to Sell. Post this decision, unless documents are registered, no title is deemed to have been transferred. However, genuine and bonafide sales prior to the judgement of *Suraj Lamps (supra)* are saved.

14. The Defendant's claim to ownership is not established but the Plaintiff has been able to discharge the onus placed on him, with the production of the Registered GPA from the Sub-Registrar's office as also owing to the various admissions by the Defendant in other proceedings. The Defendant has already separated from her husband. The plea taken by her is that she is the owner of the suit property. The husband is already paying maintenance to her as per the directions in proceedings which this Court is not seized of. Her right to seek relief as an ex-wife is in those proceedings and not in the present suit where the Plaintiff is seeking declaration of ownership. The Defendant's right to maintenance or other reliefs such as

residence etc., are not being adjudicated in this case. The Defendant's testimony being contradictory, the Plaintiff is entitled to the relief of injunction and possession. The judgment and decree passed by the Trial Court is upheld. Since, the Defendant was living with the Plaintiff as a wife, no mesne profits are liable to be granted. The declaration sought for and granted by the Trial Court is also upheld.

15. Appeal is dismissed. All pending applications are disposed of.

PRATHIBA M. SINGH, J.
Judge

MAY 23, 2018
Rahul