

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

+ **RFA No. 19/2019**

% ***11th January, 2019***

SMT. SURINDER KAUR & ANR. Appellants

Through: Mr. K.K. Jha, Advocate with
Mr. Siddhartha Jha, Advocate
(M. No.9811403833).

versus

SMT. AJEET KAUR Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Nos. 878-79/2019 (exemption)

1. Exemption allowed subject to just exceptions.

C.M.s stand disposed of.

C.M. No. 880/2019 (for condonation of delay)

2. For the reasons stated in the application, delay of 48 days
in re-filing the appeal is condoned.

C.M. stands disposed of.

RFA No. 19/2019 and C.M. No. 877/2019 (stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the Judgment of the trial court dated 29.08.2018 by which the trial court has decreed the suit for possession and *mesne* profits filed by the respondent/plaintiff with respect to the property of 25 sq. yds. bearing no. A-92, Plot no. 63 in khasra no. 420 situated at Majra Saleempur Abadi Rishi Nagar, Shakurbasti, Delhi.

4. The facts of the case are that the respondent/plaintiff filed the subject suit by pleading that her mother, Smt. Jaswant Kaur, was the owner of the suit property, who had died intestate on 16.06.1989. The father of the respondent/plaintiff had also died intestate on 14.04.1997. The other legal heirs had executed a Registered Relinquishment Deed dated 16.06.1999 in favour of the respondent/plaintiff. The appellant no.1/defendant no.1 is the real sister of the mother of the respondent/plaintiff and the appellant no.2/defendant no.2 is the son of the appellant no.1/defendant no.1. In the year 1997 on appellant no. 1's/defendant no. 1's request, appellants/defendants were allowed to live in the suit property by respondent/plaintiff as the husband of the appellant no.1/defendant no.

1 had left the appellant no.1/defendant no. 1 long back. The brother of the respondent/plaintiff, Sh. Narinder Singh, remained in possession of the first floor of the suit property, whereas the appellant no.1/defendant no. 1 with sisters of the respondent/plaintiff namely, Smt. Harvinder Kaur and Smt. Kanwaljeet Kaur remained in the ground floor of the suit property till the time these two sisters of the respondent/plaintiff were married. It is further pleaded that in May, 2014 the respondent/plaintiff was forcibly restrained from entering the suit property and disputes therefore arose. The appellants/defendants illegally demanded an amount of Rs. 8,00,000/- from the respondent/plaintiff to vacate the suit property. Accordingly, the subject suit for possession and *mesne* profits was filed.

5. The appellants/defendants filed the written statement and it was not disputed that the mother of the respondent/plaintiff was the real sister of the appellant no.1/defendant no.1. It was pleaded that children of Smt. Jaswant Kaur were not being looked after by her and therefore the appellants/defendants were called by Smt. Jaswant Kaur to look after her and therefore the appellants/defendants started living in the suit property since June, 1988. It was pleaded that Smt. Jaswant

Kaur had promised to give the suit property as a gift to the appellant no.1/defendant no.1 and in this regard a Power of Attorney was executed in favour of the appellant no.1/defendant no.1 on 15.12.1988 and whereafter Smt. Jaswant Kaur died on 16.06.1989. It was also pleaded that appellants/defendants had re-built the suit property after demolishing the old structure at their costs, and this was done after selling the house belonging to the appellants/defendants at Jahangirpuri. It was also pleaded that the General Power of Attorney executed in favour of appellant no. 1/defendant no. 1 was misplaced during reconstruction of the property. It was also the case of the appellants/defendants that the electricity connection was in the name of the father of the respondent/plaintiff and this electricity connection was not transferred to the name of the appellant no. 1/defendant no. 1. The suit was therefore prayed to be dismissed.

6. The following issues were framed in the suit:-

- “1. Whether the plaintiff is entitled to a decree of possession with respect to the suit property as prayed for? OPP
2. Whether plaintiff is entitled to a decree of permanent injunction as prayed for? OPP
3. Whether plaintiff is entitled to mesne profits @ Rs.10000/- per month, if so for what period? OPP
4. Whether any GPA dated 15.12.88 was executed in favour of defendant no.1 by mother of the plaintiff? OPD-1& 2.

5. Whether suit of the plaintiff is barred by limitation? OPD

6. Relief.”

7. The real issues were issue nos. 1 and 4 as to whether the appellants/defendants were owners of the suit property by virtue of a Power of Attorney executed in favour of the appellant no. 1/defendant no. 1 on 15.12.1988 and as to whether the respondent/plaintiff was not the owner of the suit property. There was also an issue raised on behalf of the appellants/defendants that the suit was barred by limitation i.e. appellants/defendants had set up a plea of adverse possession.

8. On the aspect, that the respondent/plaintiff is the owner of the suit property, the same cannot be doubted because the respondent/plaintiff is admittedly the daughter of the original owner, Smt. Jaswant Kaur. The registered Relinquishment Deed in favour of the respondent/plaintiff executed by the other legal heirs of Smt. Jaswant Kaur has been proved as Ex.PW- 1/5. Appellants/defendants failed to prove that any power of attorney was executed in favour of appellant no. 1/defendant no. 1, much less on 15.12.1988, inasmuch as, neither the original Power of Attorney was filed nor copy thereof was filed. Though the appellants/defendants claim that they had

reconstructed the suit property, however, not a single document has been filed on record to show that the appellants/defendants had incurred costs of construction of the suit property whereas the reconstruction was carried out in the year 2008 whereas the respondent/plaintiff proved collectively 27 pages as Ex.PW-1/D-1 showing the property being reconstructed by respondent/plaintiff in 2008.

9. The issue of limitation has been rightly decided against the appellants/defendants because self serving *ipsi dixit* statements cannot create rights in favour of the appellants/defendants because adverse possession has to be proved *nec vi nec clam nec precario* i.e open, hostile and continuous and these aspects have to be proved to the satisfaction of the court. The satisfaction of the court cannot be on the basis of the oral statements, much less in a case like this when in fact the appellants/defendants claimed ownership on the basis of a power of attorney allegedly said to have been executed in favor of the appellant no.1/defendant no. 1, which was not proved and also no documents whatsoever were filed and proved by the appellants/defendants to show that they had incurred costs of re-

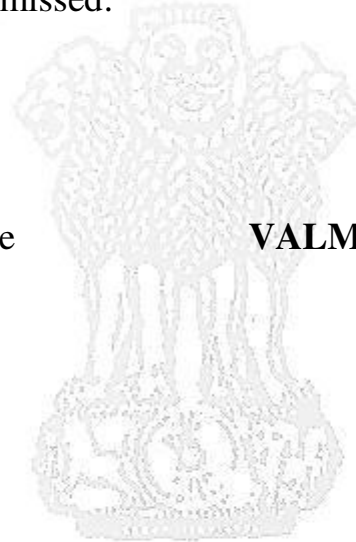
construction of the suit property in 2008. There is no documentary evidence proved by appellants/defendants whereby they asserted ownership rights in the suit property.

10. No other issue was argued before this Court except as discussed above.

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

JANUARY 11, 2019/Ne

VALMIKI J. MEHTA, J



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