

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

% **Judgment delivered on: 29th March, 2019**

+ **RFA. 372/2017**

SHRI SOHAN PAL GOEL

...Appellant

Through: Mr. Anunaya Mehta, Advocate
with Mr. Akshay Deep Singhal
and Mr. Siddhant Kumar Singh,
Advocates.

versus

SHRI SHALEEN GOEL

...Respondent

Through: Mr. Dharm Vir Singh,
Advocate.

**CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA**

JUDGMENT

I. S. MEHTA, J.

1. The Appellant (*Father of Respondent/Defendant*) preferred present appeal for setting aside the impugned judgment and decree dated 15.12.2016 passed by ADJ-02 (North-East District), Karkardooma Courts, Delhi in suit No. 476548/15 titled "Sohan Pal Goel v. Shaleen Goel".
2. Brief facts stated are that Appellant/Plaintiff herein is father of Respondent/Defendant herein. Appellant/Plaintiff filed a suit for possession against Respondent/Defendant in respect of property i.e. Shop No.1 admeasuring 8ft x 10ft on ground floor and one room

admeasuring 8ft x 12ft on first floor in property bearing No. F-13, Village Gokulpur, Delhi-110094 (*hereinafter called Suit Property*). The said property was purchased by the Appellant/Plaintiff from his real brother Atma Ram by way of general power of attorney, agreement to sell, receipt, deed of Will, etc. on 10.12.2002 by paying sale consideration amount of Rs. 50,000/-. Subsequently, Appellant/Plaintiff became lawful owner of the said property. The Appellant/Plaintiff was in possession of the said property since 1998 as he shared cordial relation with his brother Atma Ram, and out of love and affection Atma Ram handed over the possession to Appellant/Plaintiff. Sohan Pal Goel (*Appellant herein*) has two sons, younger one Shaleen Goel (*Respondent herein*) and elder son Vipul Kumar Goel, Appellant/Plaintiff allowed Shaleen Goel to use Suit Property. Respondent/Defendant got married to Smt. Geetesh Goel on 09.12.2010 and thereafter both started living with Appellant/Plaintiff in rented accommodation bearing No. C-7/203, Ground Floor, Yamuna Vihar, Delhi 110053 till November, 2013. December, 2013 onwards Respondent/Defendant and his wife started living in the suit property as a permissive user/licensee of Appellant/Plaintiff. Thereafter, some serious disputes arose among the parties due to which Appellant/Plaintiff debarred Respondent/Defendant from his properties vide public notice published in Rashtriya Sahara dated 06.02.2014. Appellant/Plaintiff, later, to resolve the disputes divided the whole property in between his two sons to which all parties agreed by way of family settlement dated 03.07.2014, same was duly registered. However, after the division Respondent/Defendant refused

the division scheme and demanded that whole property be transferred in his name. Since refusal by Respondent/Defendant, Appellant/Plaintiff transferred the remaining property too in name of his elder son on 25.07.2014 by general power of attorney in favour of his elder son, same was duly registered. Since dispute did not got resolved, Appellant/Plaintiff asked his elder son to execute two sale deed in favour of Appellant/Plaintiff, same were executed on 16.07.2014 and 05.08.2014. Subsequently, the license of the younger son was terminated by the Appellant/Plaintiff by giving a legal notice dated 30.08.2014, premises were not vacated by the Respondent/Defendant. Pursuant to aforementioned circumstances, Appellant/Plaintiff filed suit for possession, damages/mesne profits and permanent injunction against Respondent/Defendant herein.

3. Respondent/Defendant herein by his written statement has taken preliminary objection that the Appellant/Plaintiff has no *locus standi* to file the present suit and filing the same is abuse of process of law, plaint has not been filed with clean hands and the value of suit property is above Rs. 22 lakhs and the Court below has no pecuniary jurisdiction. Further, suit of Appellant/Plaintiff for injunction is barred by Section 41 (i) of Specific Relief Act, 1963. Hence, suit is liable to be rejected under Order 7 Rule 11 (a), (b), (c) and (d) of CPC.
4. The Respondent/Defendant on merit has denied that the Appellant/Plaintiff is actual and absolute owner of the area built up measuring 45 Sq. Yds out of Khasra No. 291, built on property No. F-

13, Village Gokalpur, Delhi-110094. The Respondent/Defendant has further denied property belongs to Appellant/Plaintiff, however, the alleged construction of rooms and shops over the suit property is not disputed and construction in other 45 Sq. Yds area only is denied.

5. Respondent/Defendant submitted that after marriage of Respondent/Defendant, Appellant/Plaintiff and other family members started harassing his wife for bringing less dowry, thus, she left the matrimonial home and started living in her paternal home, she filed a police complaint against Appellant/Plaintiff and other. To save Appellant/Plaintiff and others from the said proceedings, Atma Ram (*tau ji*) allowed Respondent/Defendant and his wife to live separately in the suit property and they started living peacefully over entire first floor and started running the shop as well on the ground floor from 2012. Respondent/Defendant further submitted that at the time of shifting, said property was not habitable and he got the premises renovated and got constructed the first floor on the property. Atma Ram, real owner of the property assured Respondent/Defendant that he would reimburse the expenses incurred for construction and renovation, but, unfortunately, later, he expired intestate. He is since living with consent of Late Atma Ram, Appellant/Plaintiff has no right/title/interest in the suit property to debar Respondent/Defendant from living there or to get the premises vacated, he is also not liable to pay any damages/mesne profits. He further submitted that Appellant/Plaintiff has no *locus standi* to file the suit and pressed that suit of the Appellant/Plaintiff be dismissed as the same does not give

any cause of action qua Respondent/Defendant.

6. On 04.12.2014, as per order sheet, Appellant/Plaintiff was not represented through a counsel and did not file replication or any other document for admission or denial to the opposite party and the case was fixed for Plaintiff Evidence. On the same day issues were also framed as follows:

- (1) Whether the plaintiff is entitled for decree of possession as prayed in the suit? (OPP)
- (2) Whether the plaintiff is entitled for decree of permanent injunction as prayed in the suit? (OPP)
- (3) Whether the plaintiff is entitled for decree of damages/mesne profits as prayed in the suit? (OPP)
- (4) Relief.

7. Respondent/Defendant submitted that the suit property is valued at not less than Rs 22 Lakh and the court lacks pecuniary jurisdiction. Thereafter, one additional issue was framed on 10.09.2015 which is as follows:

- (5) Whether this court has no pecuniary jurisdiction to entertain and try this suit? (OPD)

8. The Appellant/Plaintiff has examined himself as PW1 and closed his evidence on 18.07.2016. The Respondent/Defendant has examined himself as DW1 and closed his evidence on 03.12.2016.
9. Arguments were heard, thereafter, impugned judgment and decree

dated 15.12.2016 was passed in favour of the Respondent/Defendant.

10. Appellant/Plaintiff being aggrieved, filed the present Appeal alongwith application under Order 41 Rule 27 read with Section 151 Code of Civil Procedure for permission to file general power of attorney, agreement to sell, receipt, deed of will, all dated 10.12.2002 executed by Sh. Atma Ram, the documents were issued by Sh. G.K. Marwah, Inspector General of Registration and Chief Controlling Revenue Authority, Govt. of NCT of Delhi and to lead evidence to prove the same.
11. The Appellant/Plaintiff in his application has alleged that the aforementioned documents could not be produced due to mistake of previous counsel as the documents were handed over to previous counsel, but, the previous counsel has not filed them in the court for the reasons best known to him. It is well settled law that the parties should not suffer due to the mistake of their previous counsel. He prays that he be permitted to file and prove the same by leading evidence before trial court for equity, fair play and in the interest of justice.
12. The counsel for Defendant opposed the contention of Appellant/Plaintiff and submitted that aforesaid documents were not filed on record and Defendant was never supplied with copy of the said documents and on the mistake of the Appellant/Plaintiff, Defendants should not be made to suffer and submitted that appeal and application for filing additional documents by the

Appellant/Plaintiff is devoid of merit and is liable to be dismissed.

13. Perusal of the records shows that Appellant/Plaintiff has filed a suit for recovery of possession, permanent injunction and damages/mesne profits pertaining to the suit property i.e. Khasra No. 291, built on property No. F-13, Village Gokalpur, Delhi-110094 on 13.10.2014 and prays:

- (1) Pass a decree of possession in favour of the plaintiff and against the defendant, his servants, agents, employees, associates, representative etc. whereby directing them to get removed themselves alongwith their entire belongings from the suit premises i.e. shop no. 1, measuring 8ft x 10ft approx. on ground floor, and one room measuring around 8ft x 12ft on the first floor of the said property situated at F-13, Village Gokal Pur, Delhi-110094 as shown in colour red in the site plan thereof filed herewith, with complete fittings and fixtures installed therein.
- (2) Pass a decree of possession in favour of the plaintiff and against the defendant for recovery of damages/mesne profits of Rs. 21,000/- towards illegal and unauthorized use and occupation charges of the suit premises, calculated at Rs. 1,500/- per day.
- (3) Pass a final decree of possession in favour of the plaintiff and against the defendant for *pendente lite* and future damages/mesne profits at Rs. 1,500/- per day or such higher rates as may be adjudged finally by holding an inquiry as per

law, from the date of filing of the suit till the possession is delivered to the plaintiff; and

- (4) Pass a decree of permanent injunction in favour of the plaintiff and against the defendant thereby restraining the defendant permanently from transferring parting with possession of the suit premises or part thereof in favour of any person and/or making any addition/alteration/changes in the suit premises, in any manner; and
- (5) Award cost of the suit in favour of the plaintiff and against the defendant.
- (6) Pass any other further orders/reliefs as may be deem fit in the facts and circumstances of the present case, in favour of the plaintiff and against the defendant.

14. The Appellant/Plaintiff in his affidavit Ex.PW1/A dated 19.03.2015 relied upon site plan Ex.PW1/1, sale deed for the portion in which the suit property is situated Ex.PW1/2, sale deed for the other portion Ex.PW1/3, legal notice dated 30.08.2014 Ex.PW1/4, postal receipt Ex.PW1/5, delivery report Ex.PW1/6, electricity bills Ex.PW1/7 to Ex.PW-1/9, public notice Ex.PW1/10, letter dated 07.02.2014 to D.C.P. Ex.PW1/11, letter dated 17.02.2014 to D.C.P. Ex.PW1/12, letter dated 10.05.2014 to D.C.P. Ex.PW1/13, letter dated 10.05.2015 to S.H.O. Gokal Puri Ex.PW1/14, letter dated 02.06.2014 to D.C.P. Ex.PW1/15, complaint dated 01.08.2014 Ex.PW1/16 and complaint dated 19.08.2014 Ex.PW1/17.

15. The Affidavit Ex.PW1/A does not show the presence of the documents that Appellant/Plaintiff is asking for producing in present appeal.
16. As per order sheets, on 04.12.2014, the case was fixed for admission/denial of documents and for framing of the issues. On the said date, Appellant/Plaintiff was not represented by his then counsel Adv. Ms. Himani Gupta, which led unnoticing of documents required to be filed for admission or denial. Thereafter, the Appellant/Plaintiff for reasons best known to him changed his counsel on 18.02.2015 to Adv. Mr. R.C. Sharma who drafted his evidence by way of affidavit Ex.PW1/A and filed the same on 21.03.2015 and left the aforementioned documents unnoticed for want of possession of aforesaid documents at the relevant time of drafting. The additional documents relied upon by the Appellant/Plaintiff are as follows:
- (1) General Power of Attorney in favour of Appellant/Plaintiff,
 - (2) Agreement to sell in favour of Appellant/Plaintiff,
 - (3) Receipt of payment of Rs. 50,000/- from Appellant/Plaintiff to Sh. Atma Ram for suit property.
 - (4) Deed of Will in favour of Appellant/Plaintiff pertaining to the suit property.

All documents are dated 10.12.2002 and are executed by Sh. Atma Ram in favour of the Appellant/Plaintiff.

17. The aforementioned documents are dated 10.12.2002 and thus, were in existence prior to filing of the present suit, therefore, the said

documents does not give any cause to Respondent/Defendant that the documents are prepared at a subsequent date to falsify the claim made in the plaint. At the same time, the aforesaid documents which are *sine qua non* for determination of the suit definitely goes to root of the case to maintain equity and to prevail justice. Consequently, Appellant/Plaintiff's plea that previous counsel did not file the aforementioned documents before the trial court seems to be bonafide, truthful and the aforementioned documents requires for determination of real controversy to be set at rest.

Reliance is placed on ***Delhi Metro Corporation v. M/s. Maruti Electricals and Anr.*** 2016 (230) DLT 354, relevant extract is reproduced as under:

” 17. The general rule is that ordinarily an Appellate Court would not traverse beyond the records of the lower Court and would not admit additional evidence for the asking. However, Section 107 of the Code of Civil Procedure is an exception to this general rule, enabling the Appellate Court to take additional evidence or to require such evidence to be taken subject to the conditions and limitations LA.APP.327/2014 & 329/2014 Page 9 of 11 prescribed under Rule 27 of Order 41 of the CPC. The circumstances under which additional evidence can be adduced have been enumerated and they are (i) when the Court refuses to admit evidence or (ii) when the party seeking to adduce such additional evidence did not have any knowledge about such evidence or could not have procured such evidence despite exercise of due diligence. Apart from these conditions, additional evidence could also be taken in, if the Appellate Court required the same for

pronouncing judgment satisfactorily and comprehensively or for any other substantial cause. Under such circumstances the Appellate Court could allow such evidence or documents to be produced or witnesses to be examined but only after recording the reasons for its admission."

18. At the same time no prejudice should be caused to the Defendant if aforesaid documents are placed on record and lead evidence on the material point, subject to cross examination and rebuttal of evidence. Consequently, the application under Order 41 Rule 27 read with Section 151 of Code of Civil Procedure is allowed and impugned judgment is set aside.
19. Parties are directed to appear before concerned court on 22.04.2019. Court below is directed to proceed the matter in accordance with law and give opportunity to Appellant/Plaintiff to lead additional evidence subject to cross examination and rebuttal of evidence by the defendant on material documents and complete the proceedings preferably within six months from the receipt of the file.
20. Appeal is accordingly allowed. Applications, if any, are accordingly disposed of. TCR be sent back alongwith one copy of the judgment.

I.S.MEHTA
(JUDGE)

MARCH 29, 2019