

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

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Date of decision: 16th March, 2016

+ RFA 37/2013 & CMs No.6855/2015 (for waiver of costs imposed on 27th August, 2014), 869/2013 (for stay) & 871/2013 (for condonation of 69 days delay in re-filing)

RAJINDER KAUR @ RANI

..... Appellant

Through: Mr. Ranjeet Singh Cheema, Adv.

Versus

AJAY KUMAR SINHA

..... Respondent

Through: Mr. Dilip Singh, Adv.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The appeal impugns the judgment and decree dated 31st August, 2012 of the Court of Additional District Judge (ADJ), (Central)-17, Delhi in suit No.235/2008 bearing Unique Case ID No.02401C0952422008.

2. The appeal accompanied with an application for condonation of 69 days delay in re-filing came up first before this Court on 16th January, 2013 when the notice of the application was issued. Though the counsel for the respondent appeared on 26th February, 2013 but the appeal was dismissed in default of appearance of the appellant on 19th March, 2013. Applications for restoration and for condonation of delay in applying for restoration were filed and in which again adjournment was sought on behalf of the appellant

from time to time and ultimately the appeal was restored to its original position on 27th August, 2014. Thereafter, the counsel for the appellant again started taking adjournments and the appeal so remained pending till 12th January, 2016 when again adjournment was sought on behalf of the counsel for the appellant. The matter was adjourned to today by way of last opportunity.

3. Today, though the counsel for the appellant has appeared and argued the matter but without even having the complete trial court record and without reference to any evidence.

4. The delay of 69 days in re-filing the appeal is condoned and the appeal has been considered on its merits by perusing the trial court record.

5. The suit from which this appeal arises was filed by the respondent / plaintiff, besides against the appellant (who was defendant no.2) also against Smt. Sindhu Mishra (who was defendant no.1) for the reliefs of recovery of possession, permanent injunction and *mesne profits* / damages for use and occupation pleading i) that the respondent / plaintiff had purchased the property bearing No.B-127, area measuring 25 sq. yds. situated at Jahangirpuri, Delhi comprising of two floors from one Sh. Sumit Goel vide sale deed dated 8th June, 2006; ii) that the said property was originally

allotted to one Sh. Tilak Raj on 4th November, 1996 and had been transferred successively to Smt. Gyan Kaur, Sh. Ram Lubhaya Kundra, Smt. Kakoo Devi and Sh. Sumit Goel from whom the respondent / plaintiff acquired the property; iii) that Smt. Kakoo Devi had inducted the appellant and the aforesaid Smt. Sindhu Mishra as tenants on the ground floor and first floor of the property and the appellant and the said Smt. Sindhu Mishra were paying rent to Smt. Kakoo Devi but subsequently had stopped paying the rent; iv) that the appellant had started claiming to have acquired the property from Smt. Kakoo Devi.

6. On enquiry, the counsel for the appellant states that Smt. Sindhu Mishra was in possession of the ground floor and the appellant was in possession of the first floor of the property.

7. Smt. Sindhu Mishra contested the suit aforesaid claiming to be a tenant protected under the Delhi Rent Control Act, 1958 and contending the suit to be not maintainable.

8. The appellant contested the suit claiming that though she was initially inducted into the property as a tenant by Smt. Kakoo Devi but Smt. Kakoo Devi had subsequently sold the property to her.

9. The learned ADJ on the pleadings of the parties, on 16th July, 2009 framed the following issues in the suit:

- “1. Whether the suit is not maintainable in the present form? OPD2
2. Whether the suit is hit by the provisions of Section 41(i)(h) of the Specific Relief Act? OPD2
3. Whether the suit of the Plaintiff is bad for non-joinder of necessary parties? OPD2
4. Whether the suit is barred by Section 50 of Delhi Rent Control Act? OPD2
5. Whether the Plaintiff is entitled to a decree of possession of the suit property as prayed? OPP
6. Whether the Plaintiff is entitled to a decree of permanent injunction in respect of suit property? OPP
7. Whether the Plaintiff is entitled to damages for unauthorized use and occupation of the suit property? OPP
8. Relief.”

10. On the basis of the evidence led by the parties, the learned Additional District Judge has i) decided the Issue no.1 in favour of the respondent / plaintiff and against the appellant / defendant no.2 on the ground that the appellant / defendant no.2 had not substantiated the plea; ii) decided the Issue no.2 in favour of the respondent / plaintiff and against the appellant / defendant no.2 on the ground again that the appellant / defendant no.2 had failed to explain as to how the suit is barred by Section 41(i)(h) of the

Specific Relief Act; iii) decided the Issue no.3 in favour of the respondent / plaintiff and against the appellant / defendant no.2 on the ground that the appellant / defendant no.2 had failed to disclose as to how Smt. Kakoo Devi was a necessary party and had not been impleaded; iv) held that the Issue no.4 was in fact on the plea of the defendant no.1 Smt. Sindhu Mishra and the onus thereof has been wrongly placed on the appellant / defendant no.2 and decided the said issue in favour of the defendant no.1 Smt. Sindhu Mishra and against the respondent / plaintiff; v) decided the Issue No.5 in favour of the respondent / plaintiff and against the appellant / defendant no.2 holding a) that though the respondent / plaintiff claimed having acquired the property by way of Agreement to Sell, registered Power of Attorney, Will etc. from Smt. Kakoo Devi but the appellant / defendant no.2 had failed to produce any documents whatsoever by which she claimed to have purchased the property from Smt. Kakoo Devi; b) that there was inconsistency in the version of the appellant / defendant no.2 of the date of purchase of the property – while in her written statement, she claimed to have purchased the property from Smt. Kakoo Devi on 18th January, 1999, in the cross examination of the respondent / plaintiff the suggestion of the counsel for the appellant / defendant no.2 was that the appellant / defendant no.2 had

purchased the property on 23rd March, 1995; c) that though the respondent / plaintiff in support of his claim of having purchased the property had examined Smt. Kakoo Devi as PW3, the appellant / defendant no.2 failed to carry out any cross examination despite opportunity of Smt. Kakoo Devi; and d) that though the respondent / plaintiff also had proved only agreement to sell, possession letter, Power of Attorney, Will etc. in his favour which did not confer title, but the property throughout was being transacted on the basis of said documents only and since the appellant / defendant no.2 admitted to have been inducted into possession by Smt. Kakoo Devi, absence of title was no impediment to grant the relief in favour of the respondent / plaintiff; vi) decided the Issues nos.6&7 against the respondent / plaintiff.

Accordingly, though the suit against the defendant no.1 Smt. Sindhu Mishra was dismissed, the suit insofar as against the appellant / defendant no.2 was decreed for possession and for *mesne profits* at Rs.400/- from the date of filing of the suit till dispossession.

11. Since there was no stay till now of execution, it was noted on the last date that the respondent / plaintiff has already recovered possession of the property from the appellant in execution of the impugned judgment and decree.

12. The only argument of the counsel for the appellant is that the appellant was represented by an inefficient advocate before the Trial Court who did not take appropriate steps to prove the case of the appellant. It is stated that the documents of purchase of property in favour of the appellant were filed by the appellant in the suit for injunction filed by appellant against Smt. Kakoo Devi and thus could not be proved. Attention in this regard is invited to pages 69 to 76 of the paper book being copy of an application filed by the appellant in the Court before which the appellant claims to have filed the documents of purchase in her favour and the order thereon.

13. A perusal thereof shows that the appellant applied to that Court in or about March, 2009 for obtaining the goshwara number of that file but the same was not given to the appellant till 6th July, 2010. However the counsel for the appellant is unable to state the ultimate fate of that application.

14. I have in this regard perused the Trial Court record of the present appeal requisitioned in this Court and do not find the appellant / defendant no.2 to have taken any steps either for summoning the record of the suit in which the documents for purchase by the appellant / defendant no.2 are stated to have been filed. Rather, a perusal of the order sheet of the Trial Court record shows that the suit was first listed for the evidence of the

appellant / defendant no.2 on 13th April, 2011 when adjournment was sought on behalf of the appellant / defendant no.2; thereafter again on 9th June, 2011 adjournment was sought on behalf of the appellant / defendant no.2; on the next date i.e. 14th September, 2011 though the appellant / defendant no.2 filed her affidavit by way of examination-in-chief but the same was found to be defective and rejected and another opportunity granted; again on 16th December, 2011 and 24th January, 2012 adjournments were sought by the counsel for the appellant / defendant no.2 to file a fresh affidavit; ultimately, on 12th April, 2012 the appellant / defendant no.2 filed her affidavit by way of examination-in-chief and was cross examined and since she had not summoned any other witness, her evidence was closed and the matter posted for final arguments.

15. The counsel for the appellant is unable to tell whether the appellant had filed any list of witnesses or not.

16. The appellant however is not found to have thereafter filed any application for examining any further witnesses though the suit was adjourned on her request for arguments.

17. It is thus evident from the record that the appellant at least insofar as the suit from which this appeal arises is concerned, did not even whisper of

any documents relating to purchase of subject property having been filed by her in any other suit or being not made available to her. I may record that even if the appellant was having difficulty in retrieving the originals of the document from the suit in which they were filed, had the appellant summoned that record during her evidence in the suit from which this appeal arises, the Court of learned ADJ would have been put to enquiry and would have accordingly summoned the record.

18. I will be failing in my duty if do not mention that on the same contention of the appellant on an earlier date, file of suit No.126/1999 titled ***Rajinder Kaur Vs. Kako Bai*** of the Court of Sh. Rajesh Kumar Singh, Civil Judge, Delhi, decided on 24th November, 1998 was requisitioned in this Court and has been received and which suit is found to have been dismissed disbelieving the plea of the appellant to have become the owner of the property.

19. It is also worth recording that though the counsel for the appellant has called the counsel appearing for the appellant before the Trial Court to be inefficient, but the appeal is not accompanied with any application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 for leading any additional evidence.

20. In view of the aforesaid scenario, on merits also, the appellant is not found to have any case.

21. The appeal is accordingly dismissed.

No costs.

Decree sheet be drawn up.

MARCH 16, 2016
'gsr'

RAJIV SAHAI ENDLAW, J.

