

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

+ **RSA No.331/2016**

% **7th November, 2016**

SH. ZINDA SINGH Appellant

Through: Mr. Alok Sharma, Advocate with Ms.
Swati Kumar, Advocate.

versus

SH. SUNIL KUMAR AND ANR. Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.41309/2016 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+RSA No.331/2016 and C.M. No.41308/2016 (stay)

2. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no.1 in the suit against the concurrent Judgments of the courts below; of the Trial Court dated 23.4.2016 and the First Appellate Court dated 22.9.2016; by which the

courts below have decreed the suit for possession and injunction filed by the respondent no.1/plaintiff with respect to the suit property admeasuring 55 sq. yds forming part of khasra no.73/20 situated in Revenue Estate of Village Nangloi, commonly known as Nihar Vihar, Delhi and whose municipal number is F 17A, Laxmi Park, Nihal Vihar, Nangloi, Delhi.

3. The facts of the case are that the respondent no.1/plaintiff filed the subject suit for possession, declaration and permanent injunction with respect to the suit property stating that the respondent no.1/plaintiff had purchased rights in the suit property on 31.10.2003 from the respondent no.2/defendant no.2. At the time of purchase, there was already existing a built up temporary double storey construction. The appellant/defendant no.1 was the son of maternal uncle of the respondent no.1/plaintiff, and was therefore inducted as a tenant in the suit property at rent of Rs.3,000 per month for residential purposes, but, the appellant/defendant no.1 stopped making payment of rent and claimed that he had purchased the suit property from the respondent no.2/defendant no.2. Hence the subject suit came to be filed by the respondent no.1/plaintiff.

4. The appellant/defendant no.1 contested the suit by denying the ownership of the suit property of the respondent no.1/plaintiff on account of having purchased rights in the same from the respondent no.2/defendant

no.2. A reading of the written statement of the appellant/defendant no.1 shows that except for denying the ownership of the respondent no.1/plaintiff, the appellant/defendant no.1 did not plead any ownership rights in his favour of the suit property. The appellant/defendant no.1 claimed that he never paid any rent to the respondent no.1/plaintiff. In sum and substance, the pleadings/written statement of the appellant/defendant no.1 was only to deny ownership of the respondent no.1/plaintiff and denial of any tenancy created in his favour by the respondent no.1/plaintiff.

5. The courts below have decreed the suit by making the following salient observations and conclusions:-

(i) Respondent no.1/plaintiff established rights in the suit property on account of purchasing rights in the same from respondent no.2/defendant no.2 by virtue of the documents which were proved as Ex.PW1/B to Ex.PW1/F.

(ii) The appellant/defendant no.1 though generally denied the ownership of the respondent no.2/defendant no.2 and thus disentitlement of ownership rights in the suit property of the respondent no.1/plaintiff for being acquired from respondent no.2/defendant no.2, however, it was found that the appellant/defendant no.1 had himself executed the documents being an

affidavit and indemnity bond Ex.PW2/D and Ex.PW2/G and submitted the same to the local electricity authority M/s BSES for the grant of an electricity connection and which documents admitted the ownership of the respondent no.2/defendant no.2 over the suit property. Accordingly, it was held by the courts below that the appellant/defendant no.1 cannot question the ownership of the respondent no.2/defendant no.2.

6. Originally the suit was filed for injunction, but an amendment of the plaint was allowed and an additional issue was framed for possession, which was done at the stage of final arguments. However the additional issue was to be decided only from the same pleadings and evidence which was led by both the parties on record. It is also noted that even the original claim of injunction in favour of the respondent no.1/plaintiff or denying thereof by dismissing the suit in favour of the appellant/defendant no.1 was on the basis of contesting claims of better rights in the suit property by the respective parties.

7. It is therefore seen that the appellant/defendant no.1 had no vestige of any title or rights in the suit property and his general pleadings/written statement of denying any title of the respondent no.1/plaintiff was rightly rejected as respondent no.1/plaintiff proved title documents being Ex.PW1/B to Ex.PW1/F vide which respondent

no.1/plaintiff purchased rights from the original owner being respondent no.2/defendant no.2, and which respondent no.2/defendant no.2 was admitted to be the owner by the appellant/defendant no.1's as per the documents being the affidavit and indemnity bond submitted to the local electricity authority.

8. The courts below have rightly held that surely the respondent no.1/plaintiff had a better title than the appellant/defendant no.1 who not only filed complete vague pleadings, but also failed to even substantiate the same remotely, much less of an alleged claim of ownership of the suit property in his favour.

9. No substantial question of law arises for this Regular Second Appeal to be entertained under Section 100 CPC. Dismissed.

NOVEMBER 07, 2016
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VALMIKI J. MEHTA, J