

\$~ 2

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

% *Date of Decision: December 2, 2016*

+ **RSA 352/2016 & CM No.43607/2016**

JOTSNA @ JYOTI & ANR

..... Appellants

Through: Mr.Dhan Mohan & Mr.Sarthak
Maggon, Advocate.

versus

LAKHPAT RAI

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

1. This Regular Second Appeal under Section 100 read with Order XLII Rule 2 and Section 151 Code of Civil Procedure, 1908 is preferred against the concurrent judgment of the Courts below i.e. of the First Appellate Court dated August 22, 2016 in RCA No.6/2016 and of the Trial Court dated March 01, 2016 in Civil Suit No.4784/2015 (Old No.254/2013), by which the suit of the respondent/plaintiff has been decreed and the appellants were directed to deliver the peaceful vacant possession of the suit property within one month to the respondent/plaintiff.

2. The brief facts are that the respondent/plaintiff Lakhpatri Rai filed a civil suit seeking the decree of declaration, mandatory and permanent injunction against his daughter-in-law Jotsna, appellant No.1/defendant

No.1 and grandson Rohit, appellant No.2/defendant No.2, pleading that he is a retired Government servant with date of birth as **March 08, 1932** and living along with the aged wife in his self-acquired property i.e. DDA Flat No. No.C-12/26, Yamuna Vihar, Delhi. His son Vishwa Bandhu Sharma was born on February 06, 1960 and got married to the appellant No.1 on April 20, 1987. At that time they were residing in a Government accommodation at Flat No.1922, Lodhi Complex, New Delhi. On his superannuation the Government accommodation was vacated and he shifted to the suit property after raising construction thereon. It is further pleaded that the appellants were staying at House No.1142, Madipur w.e.f. 1992 to 2001. In the year 2001 the appellants/defendants requested him to provide shelter to them with the assurance that they would live peacefully. Out of love and affection he provided one room to the appellants for a short period. Both the appellants/defendants are employed and appellant/defendant No.2 has been allotted 3BHK accommodation. Both the appellants/defendants have been harassing the old couple for a long time by abusing and torturing them. Even proceedings under Section 107/150 Cr.PC vide DD No.35-B, dated August 19, 2003, PS Bhajanpura were initiated against him at the behest of the appellants/defendants. Even a case under Section 12 of Domestic Violence Act, vide D.V. No.700/2012 has been filed against him to humiliate and harass him and his wife. Due to old age he is suffering from various ailments. Appellant No.1 has threatened him to falsely implicate him by pouring kerosene oil on her. This was reported by him to the DCP, North-East Distt., Welcome, Seelampur, Delhi by making complaint dated December 12, 2012. Being not able to bear this humiliation, harassment and torture, he disowned them and also served them with legal notice dated

October 03, 2012 sent by speed post. The notice was replied on November 16, 2012 but since they failed to vacate the room provided to them temporarily, he was constrained to take recourse to law.

3. In the written statement, the appellants/defendants claimed their right to live in the suit property as co-owners pleading that it was purchased out of sale proceeds of the ancestral property at Abhore, Punjab and also from the sale proceeds of a Janta flat in Vikas Puri, New Delhi which was in the name of Vishwa Bandhu Sharma, son of the plaintiff.

4. On the pleadings of the parties, following issues were framed:

1. *“Whether the plaintiff is entitled to the decree of permanent injunction as prayed for? OPP*
2. *Whether the plaintiff is entitled to the decree of declaration as prayed for? OPP*
3. *Whether the plaintiff is entitled to the decree of mandatory injunction as prayed for? OPP*
4. *Whether the suit property was purchased by the plaintiff out of the sale proceeds of his ancestral property at Abhore, Punjab? OPD*
5. *Whether the husband of the defendant no.1 has also contributed towards the consideration for the purchase of the suit property? OPD”*

5. All the issues were decided in favour of the plaintiff. In respect of the finding on issue Nos.4 & 5, learned Trial Court held that no evidence was led to substantiate this plea by the defendants. The plaintiff was held entitled to the relief claimed in the suit.

6. Being aggrieved by the judgment and decree passed by learned Trial Court, the appellants herein preferred First Appeal bearing RCA No. 6/2016. In the impugned judgment the contentions raised before the Appellate Court regarding co-ownership of in the suit property have been

dealt with in para Nos. 7.5 to 7.8 which reads as under:-

“7.5 In the present case, the contention of the defendants that the suit property is a joint family property, as it has been purchased after selling out ancestral property at Abhore, Punjab and that the husband of defendant no.1 had also contributed towards the consideration for the purchase of the suit property, has been decided on merits by Ld. Trial Court while deciding issue no.4 and 5. The defendants dispute being given opportunity failed to produce any documentary evidence to show that the suit property was purchased by the plaintiff out of the sale proceeds of the ancestral property at Abhore, Punjab and the defendants also failed to prove any document that the husband of defendant no.1 had contributed in the payment of consideration for the purchase of the suit property.

7.6 In the present case, the suit was not decreed by the ld. Trial Court on the basis of admission under Order XII Rule 6 Code of Civil Procedure, 1980, rather, the issues arising between the parties were decided after ample opportunities were given to the parties to lead evidence and prove their case.

*7.7 The ownership of the plaintiff is not disputed in this case, like it was disputed in the case titled **Preeti Satija Vs. Raj Kumari 2014(2) RCR Civil 8**, therefore, the ratio of the said case cannot be applied to the present case, rather, the present case is governed by the principles laid down by the Hon'ble Apex Court with respect to 'shared household' in judgment titled **S.R. Batra Vs. Taruna Batra (Supra)**.*

7.8. Accordingly, this ground of appeal is also decided in favour of the plaintiff and against the defendants/appellants.

7. Learned counsel for the appellants Mr.Dhan Mohan, Advocate has submitted that substantial question of law arising in this case is that being daughter-in-law (appellant No.1) she has a right to live in the property of her

father-in-law (respondent) as held by Division Bench of this Court in the decision dated November 15, 2016 passed in RFA(OS) 113/2015 titled as Shilpa Tandon vs. Harish Chand Tandon & Ors..

8. In the decision Shilpa Tandon vs. Harish Chand Tandon & Ors. relied upon by learned counsel for the appellants, the Division Bench has drawn the distinction on the basis of facts pleaded in the written statement as is clear from para 13 & 14 of the report, which reads as under:-

'13. In the instant case the pleading by the first respondent in the plaint, in paragraph 3, is an admission that after the appellant and respondent No.2 were married they shared a common kitchen with him on the ground floor; though they slept on the barsati/first floor. That is to say, the shared residence would be the barsati/first floor of his property. As per his pleadings they shifted their kitchen on the barsati/first floor. Therefore, the barsati/first floor of the property owned by the first respondent would be the shared residence and the appellant would have a right of residence therein notwithstanding said fact.

14. The impugned judgment is overruled.'

9. Section 100 of the Code of Civil Procedure was amended by Amending Act No.104 of 1976. After the amendment, Section 100 of the Code of Civil Procedure reads as under:-

*S.-100. **Second appeal.**-(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.*

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the Respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this Sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.'

10. In the case Municipal Committee, Hoshiarpur v. Punjab State Electricity Board and Ors. (2010) 13 SCC 216, the legal position as to when the Second Appeal can lie has been summarized in paragraph 16 as under:

'... The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 Code of Civil Procedure....'

11. It is settled law that in second appeal the High Court cannot set aside concurrent finding of fact given by the Courts below unless a substantial question of law is raised. Where there is a clear enunciation on a question of law the appellant cannot claim that the case involves substantial question of law.

12. The concurrent finding of the Courts below regarding the suit property being self-acquired, the father-in-law is under no legal obligation to maintain

the appellant No.1 and her adult son i.e. appellant No.2 in his self acquired property in view of the legal position enunciated in the decision S.R.Batra vs. Taruna Batra 2007 (3) SCC 169.

13. The respondent/plaintiff filed a Civil Suit claiming himself to be the absolute owner of the suit property by virtue of documents executed by DDA in his favour, Ex.PW-1/3, claiming it to be the self-acquired property. The appellants/defendants on the other hand failed to place on record any document to controvert the said plea of the plaintiff by showing that the suit property was purchased out of the sale proceeds of any ancestral property in which the husband of the appellant No.1 has right, title or interest. The appellant No.1 being the daughter-in-law, her right would be dependent on the rights of her husband. Her husband could have resided in the said house as a matter of right only if it could be established to be an ancestral house in which he can claim his share by seeking partition. Her husband has neither contributed towards purchase of the suit property nor he had been residing in that house. The appellant No.1 who got married in the year 1987 and her son who was born in 1988 are independent and the respondent in his capacity as father-in-law or grandfather is under no legal obligation to maintain them. Out of love and affection he provided shelter to them temporarily when the appellants/defendants approached him in the year 2001 requesting for shelter as their financial position was not permitting them to stay in a rented accommodation. The litigations going on, the police complaints against the father-in-law who is 84 years old by the appellants/defendants when he is suffering from various ailments with no support system even from his son who is not residing with him, the respondent cannot be compelled to remain under constant threat of false implication and face humiliation at the hands

of his daughter-in-law and grandson. The parents in such a case when their life has been made miserable by their daughter-in-law can always ask such son, daughter-in-law or grandson to leave the house and lead their life so that the parents can live in peace. The concurrent finding given by the Courts below are in accordance with the law settled by the judgment of the Supreme Court in S.R.Batra vs. Taruna Batra (*supra*) case which has been followed by the Division Bench of this Court in Shumita Didi Sandhu vs. Sanjay Singh Sandhu & Ors. 174 (2010) DLT 79.

14. The appellant No.1 being the daughter-in-law and appellant No.2 being an adult grandson of the respondent/plaintiff have no right to reside in self-acquired property of the respondent/plaintiff. Since the finding of the courts below are in consonance with the decision of the Supreme Court in S.R.Batra vs. Taruna Batra 2007 (3) SCC 169. The appellants cannot claim any legal right to live in the self-acquired property of respondent/plaintiff. It is relevant to mention here that both the appellants are financially independent and the respondent/plaintiff has no liability to make arrangements for their residence.

15. Since no substantial question of law arises, this Regular Second Appeal is dismissed.

16. No costs.

PRATIBHA RANI, J.

DECEMBER 02, 2016

'hkaur'