

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

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Judgment Reserved on: December 08, 2016

Judgment Delivered on: December 16, 2016

+ RSA 445/2015

DHAN DEVI

..... Appellant

Represented by: Mr.J.C.Mahindro, Advocate.

versus

LAXMI DEVI & ORS.

..... Respondents

Represented by: Mr.Ravinder Tyagi, Ms.Kartika Tyagi, Ms.Kanishka Tyagi and Ms.Divya Singhal, Advocates.

**CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI**

JUDGMENT

RSA 445/2015

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure has been filed against the concurrent judgment of the Courts below; of the Trial Court dated 24.07.2014 and of First Appellate Court dated 09.09.2015, by which the suit of the respondents/plaintiffs has been decreed for possession against the appellant/defendant in respect of suit property bearing No.B-278, J.J. Colony, Budh Nagar, Inderpuri, New Delhi as shown red in the site plan Ex.PW-2/D and the appeal preferred by the appellant defendant has been dismissed.

2. The following substantial question of law has been formulated in this appeal:

‘Whether the findings of the Courts below in respect of title of Smt.Vidya Wati in Property No.B-278 & B-279, J.J.Colony, Budh Nagar, Inderpuri, New Delhi, in the absence of any documentary evidence establishing her title in the suit property, suffer from perversity?’

3. The subject suit bearing No.689/2002 was filed by Smt.Laxmi Devi (widow of Sh.Nand Kishore) and her two sons and three daughters against Smt.Dhan Devi, W/o Late Sh.Mahesh Chand seeking a decree for possession in respect of property No.B-278, J.J.Colony, Budh Nagar, Inderpuri, New Delhi as well for damages @ ₹2000/- per month in respect of said property.

4. The facts as pleaded by the plaintiffs (respondents herein) are as under:-

(i) Smt.Vidya Wati W/o Sh.Baldev Singh was the owner of property No.B-278 and B-279, J.J.Colony, Budh Nagar, Inderpuri, New Delhi. Sh.Baldev Singh expired on 18.08.1980. His wife Smt.Vidya Wati died intestate on 01.06.1988 leaving behind her only son Sh.Nand Kishore as her successor.

(ii) Sh.Nand Kishore permitted the defendant Smt.Dhan Devi to perform *Puja* in the *Mandir* of House No.B-278 where Late Smt.Vidya Wati used to conduct holy *chowki*.

(iii) The status of Smt.Dhan Devi in the said premises was that of a licensee but subsequently she unauthorisedly occupied one room and bathroom at the first floor and one room at the ground floor.

(iv) In the last week of June, 2001, Smt.Dhan Devi was requested by the plaintiffs to vacate the portion of her possession and on her refusal to do so, she was served with a legal notice dated 10.07.2002 which was replied by her.

(v) The suit property can fetch damages/licence fee @ ₹2000/- per month to which they are entitled till possession is handed over by the defendant.

5. The suit was contested by the defendant – Smt.Dhan Devi pleading the following facts in the written statement:-

(i) Sh.Baldev Singh married twice. From his first marriage, Sh.Mahesh Chand – husband of the defendant was born. Sh.Baldev Singh married Smt.Vidya Wati (on the death of first wife) and Sh.Nand Kishore was born out of this wedlock.

(ii) Smt.Vidya Wati brought up Mahesh (her step son) also as her own son and discharged her duties as mother. She even performed his marriage with the defendant Smt.Dhan Devi. One daughter Smt.Shanti Devi was also born to Sh.Baldev Singh and Smt.Vidya Wati.

(iii) Property No.278 was given by Smt.Vidya Wati to the defendant on the death of Sh.Mahesh Chand. The defendant had been attending Smt.Vidya Wati during the period of her illness and also when Smt.Vidya Wati was admitted in R.B.Jessa Ram Hospital. Even her dead body was collected by Manju i.e. the daughter of defendant Smt.Dhan Devi after clearing all the dues of the hospital.

(iv) On the day of death of Smt.Vidya Wati, the wall between the two houses was broken by Sh.Nand Kishore. Matter was reported to the police.

(v) The matter was settled ultimately in a Panchayat on 07.06.1998 which was duly signed by Sh.Nand Kishore whereby it was agreed that Property No.B-278 will remain with the wife of Sh.Mahesh Chand and Sh.Nand Kishore and his family will continue living in Property No.B-279. This arrangement continued during the life time of Sh.Nand Kishore who expired on 29.07.2001.

(vi) After the death of Sh.Nand Kishore, his wife and children started creating problem for the defendant Smt.Dhan Devi. The defendant served a legal notice on the plaintiffs.

(vii) Thereafter the defendant received a legal notice from the plaintiffs which was duly replied by her. The defendant denied her status in the suit property to be that of licensee and claimed her possession in her own independent right as widow of Sh.Mahesh Chand.

6. The learned Trial Court framed the following issues:-

- (i) *Whether the suit is not maintainable on account of under valuation? OPD.*
- (ii) *Whether the suit is not maintainable on account of non-joinder of necessary parties? OPD.*
- (iii) *Whether the suit is not maintainable in the present form? OPD.*
- (iv) *Whether the plaintiff is entitled for the decree of possession as prayed in para (a) of prayer clause? OPP.*
- (v) *Whether the plaintiff is entitled for the damages/licence fee? If so, at what rate and for what period? OPP.*
- (vi) *Relief'*

7. The learned Trial Court held that in view of the admission by the defendant Smt.Dhan Devi about the ownership of Smt.Vidya Wati, only her natural son Sh.Nand Kishore was her legal heir thereby excluding the defendant from any share in the property owned by Smt.Vidya Wati. The right in the suit property was claimed by the defendant Smt.Dhan Devi through Ex.DW1/4 which is a settlement before Panchayat. However, reliance on this document was not placed by the learned Trial Court firstly

for the reason that it was not a family settlement. Secondly, it was on an unstamped paper and unregistered document thus, inadmissible in evidence except for collateral purposes. Thirdly DW-4 Manju, daughter of the defendant admitted that they entered the premises with permission of Sh.Nand Kishore, initially saying that for purpose of worship and then immediately saying that to reside in the property. Learned Trial Court held that the plaintiffs on a preponderance of probabilities have established their better right/titled to the suit property qua the defendant hence decree for possession in respect of property No.B-278, J.J.Colony, Budh Nagar, Inderpuri, New Delhi was passed as shown red in the site plan Ex.PW2/D. The claim of the plaintiff to seek damages was declined on the ground that plaintiffs have not adduced any objective or positive evidence in this regard.

8. The First Appellate Court affirmed the findings of learned Trial Court observing that in view of Section 15(1) of Hindu Succession Act, 1956, the property of a female Hindu dying intestate first devolves on her sons and daughters and then to husband. In the presence of a surviving son Sh.Nand Kishore the property of Smt.Vidya Wati devolved on him and not on the step-son. On the issue of ownership the First Appellate Court also held that the ownership of Smt.Vidya Wati was not disputed in the written statement and defendant cannot raise any dispute to this effect at this stage. In respect of the Panchayati Faisla dated 07.06.1998 Ex.DW1/4 the view of the Appellate Court was that it was in respect of opening of a *trunk* (box) with a writing by Sh.Nand Kishore that he was signing in respect of the articles, which casts a cloud of doubt on this document Ex.DW1/4.

9. Both the courts below have proceeded to decide in favour of the respondents/plaintiffs on the assumption that House No.B-278 and B-279,

J.J. Colony, Budh Nagar, Inderpuri, New Delhi were owned by Smt.Vidya Wati and were her self-acquired property and inherited by her son Nand Kishore.

10. The suit for possession has been filed by the legal heirs of Late Sh.Nand Kishore, son of Late Smt.Vidya Wati claiming their right through Late Sh.Nand Kishore. Both the courts below have not examined the aspect that the respondent/plaintiff did not plead in the suit as to how Smt.Vidya Wati acquired title in respect of suit property and whether the same was her self-acquired property and if so, the source of funding the sale consideration. Unfortunately the legal heirs of Late Sh.Nand Kishore, son of Sh.Baldev Singh and Smt.Vidya Wati even did not acknowledge the fact that Late Sh.Mahesh Chand, husband of appellant/defendant Smt.Dhan Devi was real son of Late Sh.Baldev Singh. In the entire plaint, there is no averment as to when and from whom Late Smt.Vidya Wati purchased the suit property or in what manner she acquired title in respect of the suit property.

11. The cross-examination of respondent/plaintiff Laxmi Devi (PW-3) assumes lot of significance on the question of title of suit property and relationship between the parties. Her cross-examination commenced with the valuation of the suit property which is not relevant for the purpose of this appeal. Her remaining cross-examination being relevant for the purpose of this appeal is extracted hereunder:

“I do not know any Mahesh Chand. I do not know Sh.Baldev Singh and Smt.Vidyawati. Mark ‘D’ does not bear the signature of my husband.

It is correct that the wall between premises bearing no. B-278 and 279 had been brought down by us.

Smt.Dhan Devi or her family members are not in possession of premises bearing no. B-278, J.J. Colony,

Inderpuri, New Delhi. I do not know the said wall was broken in order to dispossess the defendant from B-278. I have public documents to show that the property bearing no. B-278 and 279 are owned by me. I have filed the documents of my ownership on the Court record (the counsel for the plaintiff after going through the file has confirmed that there is no document in respect of the title of the suit property.

There was altercation between us and the defendant in June, 1998 and the police was also summoned. There was writing also executed. This altercation has happened between Sh.Sanjay and Manju. There was no reason for the fight but it just happened. I can not say that this altercation took place in respect of the performance last rites of Vidyawati and breaking of wall.

We had received a reply to the legal notice through Sh.J.C. Mahendru, Advocate. I am not aware that prior to issuance of legal notice by us, Sh.J.C. Mahendru Advocate on instructions of the defendant and Ms.Manju had got issued Ex.PW2/D2. Vol. I am not very literate, therefore, I can not comment on the same. It is wrong to suggest that there was a Panchayati Faishla dated 07.06.1998 was executed between my deceased husband. It is wrong to suggest that I am not aware about the contents of my affidavit. The affidavit dated 11 march, 2008 does not bear my signature. Again said the affidavit bears my signatures. It is wrong to suggest that Sh.Mahesh Chand, husband of the defendant was the son of Baldev Singh and Vidyawati and his marriage was also performed by them as his parents. It is further wrong to suggest that Smt.Shanti Devi was also the daughter of Baldev Singh and Vidyawati and the sister of Sh.Mahesh Chand. It is wrong to suggest that there had been a partition in respect of the properties, whereby B-278 was given to the defendants and 279 to the family of Nand Kishroe. It is wrong to suggest aht the dead body of Vidywati was received by Manju after clearing hospital bills. It is wrong to suggest that we have deliberately not produced the signature of Sh.Nand Kishore as the same would have gone against us. It is wrong to suggest that we are not the owner of the disputed property. I do not have any documentary evidence to show that Smt.Vidyawati was

conducting “holly Chowki”. It is wrong to suggest aht the defendant is living in the disputed property in her own rights and is not liable to pay any license fee. It is wrong to suggest that she is not a licensee. It is wrong to suggest that the suit property is not capable of fetching ₹2,000/- per month. It is wrong to suggest that the suit is false or that I am deposing falsely.”

12. Late Smt.Vidya Wati, who is claimed to be owner of the suit property, has expired at R.B. Jessa Ram Hospital on 01.06.1998. On the same day vide DD No.43, report was made by Manju, daughter of Late Sh.Mahesh Chand about the wall between No.B-278 and B-279, J.J. Colony, Budh Nagar, Inderpuri, New Delhi being demolished by her uncle (*chachaji*), Nand Kishore. The call was attended by Head Constable Ishwar Singh and status was recorded vide DD No.43B dated 01.06.1998, PS Inderpuri to the effect that when he reached the spot B-278/279, J.J. Colony, Inderpuri, New Delhi, he found a dead body of Smt.Vidya Wati lying there. Sh.Nand Kishore informed that first he would perform last rites of his mother and thereafter talk on the issue. Hence the DD entry was kept pending and SHO was apprised about the same.

13. Thereafter on 07.06.1998 vide Ex.DW1/4 trunk and almirah of Smt.Vidya Wati were opened in the presence of Panchayat and the details of the articles found therein were recorded. Signatures of Sh.Nand Kishore appears on DW1/4 at two places. At one place he has written that he was signing in respect of the articles and at the second place his signature appear above the writing that the house wherein the Mandir is there, wife of Late Sh.Mahesh Chand would live and Sh.Nand Kishore would continue to live where he is already residing. This arrangement has been reduced into writing by the Panchayat just after one week of death of Smt.Vidya Wati and

duly signed by Sh.Nand Kishore in acknowledgement of the above arrangement.

14. After this arrangement dated 07.06.1998 was implemented, Sh.Nand Kishore during his life time for almost three years did not raise any issue on the capacity in which the defendant i.e. the wife of his step brother Late Sh.Mahesh Chand was living in House no.278, J.J.Colony, Inderpuri, New Delhi. It is only after the death of Sh.Nand Kishore that his family has tried to assert their claim over B-278, J.J. Colony, Inderpuri, New Delhi as legal heirs of Sh.Nand Kishore alleging the appellant/defendant only to be a licensee in the suit property without pleading that the defendant ever paid any licence fee to Sh.Nand Kishore or Sh.Nand Kishore ever questioned the arrangement Ex.DW1/4 entered into before the Panchayat on 07.06.1998 that she would continue residing in B-278, J.J. Colony, Inderpuri, New Delhi and Sh.Nand Kishore and his family would continue residing in B-279, J.J. Colony, Inderpuri, New Delhi.

15. While filing the civil suit the fact of Late Sh.Mahesh Chand being step son of Late Smt.Vidya Wati was concealed. The relationship between the parties i.e. Sh.Nand Kishore – husband of respondent No.1/plaintiff No.1 and Sh.Mahesh Chand – husband of appellant/defendant Smt.Dhan Devi were biological sons of Late Sh.Baldev Singh, was suppressed. Even the fact that Sh.Nand Kishore and Sh.Mahesh Chand were step brothers was not pleaded. Rather Smt.Dhan Devi was claimed to be only a disciple of Late Smt.Vidya Wati assisting her in performing holy *chowki*. Late Smt.Vidya Wati though pleaded to be owner of Property No.B-278 and B-279, J.J.Colony, Budh Nagar, Inderpuri, New Delhi, how she acquired title of the suit property was not even pleaded and proved. The learned Trial Court did

not place any reliance on the Panchayati faisla Ex.DW1/4 on the ground that it was unregistered and unstamped and could be used only for collateral purpose.

16. Defendant was not claiming any ownership right on the basis of the Panchayati faisla Ex.DW1/4 rather it was relied upon to show her possessory rights in the suit property. Both the courts below have erred in holding that in the written statement title of Late Smt.Vidya Wati was admitted by the appellant/defendant. So far as the title of Smt.Vidya Wati is concerned, learned counsel for the respondents/plaintiffs has conceded that the plaintiffs have not proved her title in respect of the suit property. It may be noted that respondents/plaintiffs have not led any documentary evidence whatsoever to show ownership of Late Smt.Vidya Wati in the suit property as her self-acquired property which could have been inherited only by her natural son. Obviously oral testimony cannot confer ownership title on the respondent/plaintiffs. Title has to be necessarily proved by the respondents/plaintiffs by unimpeachable documentary evidence that suit property was self acquired property of Late Smt.Vidya Wati hence could be inherited by Sh.Nand Kishore to the exclusion of her step son.

17. The claim for seeking decree for physical possession of suit property on the basis of title has to be proved by the respondent/plaintiff to the satisfaction of the judicial conscience of the Court. Mere oral testimonies and sketchy evidence cannot be taken by the Court as proof of title especially when how Late Smt.Vidya Wati acquired these properties so as to be termed as self acquired properties is not even pleaded by the respondents/plaintiffs. Sh.Nand Kishore during his life time after entering into the Panchayati faisla Ex.DW1/4, did not question the possessory rights

of appellant/defendant who is wife of his step brother, Late Sh.Mahesh Chand. Between the two claimants neither of them has title. Any admission in the written statement by the defendant/plaintiff that Late Smt.Vidya Wati was the owner, cannot confer any title on her so as to prove the suit property as her self-acquired property. Possession by itself is a substantive right recognized by law and has legal consequence attached to it.

18. In my considered opinion without there being any proof of the suit property i.e. B-278, J.J. Colony, Inderpuri, New Delhi being vested in Late Smt.Vidya Wati as her self-acquired property, learned Trial Court could not have decreed the suit for possession in favour of legal heirs of Late Sh.Nand Kishore. It may also be noted here that the Panchayati faisla Ex.DW1/4 was not something which had the effect of creation of the rights in the suit property for the first time. It was some kind of arrangement between the two sons of Late Sh.Baldev Singh from two different wives in respect of the two adjacent flats, the title in respect of which was not based on any documentary evidence but was mere possessory. The fact that Ex.DW1/4 has been signed by Sh.Nand Kishore at two places: (i) below the list of articles prepared in respect of the articles found in trunk and almirah of Late Smt.Vidya Wati, and (ii) below the arrangement recorded in respect of H.No.B-278 and B-279, J.J.Colony, Budh Nagar, Inderpuri, New Delhi i.e. *'Jis mein mandir hai us makaan mein Mahesh ki bahu rahegi aur jis makaan mein nand kishore reh raha hai usme weh rahega'*, shows that it was recording of an arrangement about possessory rights in respect of H.No.B-278 and B-279, J.J.Colony, Budh Nagar, Inderpuri, New Delhi. This arrangement Ex.DW1/4 does not have the effect of creation of any right or title in favour of defendant Smt.Dhan Devi so as to require compulsory

registration. This document otherwise also could not have created any title for want of title in favour of Sh.Nand Kishore or Late Smt. Vidya Wati.

19. The claim of the respondents/plaintiffs in the suit could not get substantiated. Rather it is the case of the appellant/defendant which stands on a better footing and appears to be more plausible and probable when weighed in the scale of principles of possibilities.

20. In view of the above discussion, the substantial question of law is answered in favour of the appellant/defendant. The impugned judgment of the courts below are set aside. This Regular Second Appeal is allowed and the suit of the respondents/plaintiffs stands dismissed leaving the parties to bear their own cost.

CM No.31229/2015

Dismissed as infructuous.

PRATIBHA RANI, J.

DECEMBER 16, 2016

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