

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

% *Date of Decision: January 17, 2017*

+ **RSA 109/2016**

RAM PRATAP Appellant

Through: Mr.Ram Kishan Saini, Advocate

versus

PURSHOTTAM@LALA RAM Respondent

Through: Mr.K.R.Rana, Advocate

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

RSA 109/2016

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure has been filed by the appellant/plaintiff impugning the judgment dated 19th December, 2015 passed in RCA No.31/2015 whereby the First Appellate Court allowed the appeal preferred by the respondent/defendant under Section 96 of Code of Civil Procedure and reversed the judgment and decree dated 10th March, 2015 passed by the learned Trial Court in Civil Suit No.177/2014.

2. The Learned Trial Court vide its judgment dated 10th March, 2015 has decreed the suit filed by the appellant/plaintiff for recovery of rent/damages. As a result of the judgment impugned of the First Appellate Court, the suit of the appellant/plaintiff stands dismissed.

3. Briefly stating, Civil Suit No.177/2014 was filed by the appellant/plaintiff against the respondent/defendant for recovery of rent/damages for use and occupation in respect of the shop in Property

No.16/1541-E, Arya Samaj Road, Bapa Nagar, Karol Bagh, New Delhi-110005 (shown in red in the site plan). The case of the plaintiff is that he purchased property No.16/1541-E, Arya Samaj Road, Bapa Nagar, Karol Bagh, New Delhi-110005 from Smt.Barji Devi wife of late Sh.Ganga Ram vide sale document dated 24th August, 1990 for sale consideration of ₹1,50,000/-. The physical possession of the suit property was handed over to him except the shop in possession of the respondent/defendant of which constructive possession was given to him by Smt.Barji Devi. The respondent/defendant, tenant of Smt.Barji Devi was occupying the said shop on monthly rent of ₹1,000/-. After the property was purchased by the appellant/plaintiff, Smt.Barji Devi directed the respondent/defendant to pay the future rent to him, however, the respondent/defendant failed to pay the rent despite service of demand notice dated 27th June, 1998. Thereafter the appellant/plaintiff served another demand notice dated 28th April, 2011 which was also neither replied nor rent was tendered in compliance thereof. While pleading that the respondent/defendant never paid any rent to him the plaintiff restricted his claim to ₹36,000/- i.e. to a period of three years preceding the date of filing of the suit in May, 2011.

4. The suit was contested by the respondent/defendant claiming himself to be the owner in respect of the suit shop and denying the title of the appellant/plaintiff as owner/landlord. The defence of the respondent/defendant is that Smt.Barji Devi herself had no title in the said property which she could transfer to the appellant/plaintiff. The alleged sale documents are unregistered documents. The father of the appellant/plaintiff and the father of the respondent/defendant occupied the land underneath the structure of premises No.16/1541-E, Arya Samaj Road, Bapa Nagar, Karol Bagh, New Delhi-110005 in the year 1948. Some temporary structure was

raised over the land and pukka structure was constructed later on. Since Ganga Ram, father of the appellant/plaintiff and Sohan Lal, father of the respondent/defendant were fast friends and hailed from Rajasthan, it was their understanding that whenever a pukka structure is raised, Ganga Ram would be allowed to raise construction on the first floor and father of the respondent/defendant will have no objection to the said construction. The shop in question being on the ground floor, is exclusive property of respondent/defendant and the appellant/plaintiff had no right or title or interest over the same.

5. It was also pleaded that in the year 1998 eviction petition bearing No.E-130/1998 was filed by the appellant/plaintiff on 21st October, 1998 for seeking his eviction on the ground of non-payment of rent. The said eviction petition was dismissed on 27th February, 2003 and the appeal bearing RCA No.336/2003 preferred by the appellant/plaintiff was also dismissed on 30th May, 2003. After lapse of about eight years from that date, the appellant/plaintiff filed this false suit claiming himself to be owner/landlord to seek arrears of rent/damages and pleading the tenancy to be oral without any rent receipt being ever issued either by his predecessor in interest of Smt.Barji Devi or by him. The respondent/defendant claimed possessory rights over the suit property through his father and prayed for dismissal of the suit.

6. After the pleadings were completed, following issues were framed:-

- (i) *Whether the plaintiff is entitled to a money decree for a sum of ₹36,000/- as prayed for? OPP.*
- (ii) *Whether the plaintiff is entitled to interest as prayed for? OPP.*

(iii) *Whether the defendant is occupying the suit property in capacity of owner and not tenant and there is no relationship of landlord and tenant between plaintiff and defendant? OPC.*

(iv) *Relief.*

7. The main issue before the learned Trial Court was issue No.3 and vide its judgment dated 10th March, 2015 the learned Trial Court decreed the suit for the following reasons:-

'Issue No.3.

Whether the defendant is occupying the suit property in capacity of owner and not tenant and there is no relationship of landlord and tenant between plaintiff and defendant? OPD

9.1. *It is apparent that the onus to prove this issue is cast upon the defendant and it is admitted position that the defendant has not placed on record any titled documents of the suit property in his favour. Furthermore, the site plan has admitted by the defendant and it is also not disputed that the plaintiff has raised the construction on the roof of the shop in question after the purchase of the property.*

9.2 *It shows that the plaintiff has an absolute right, title and interest over the property and defendant has none. It is unreasonable and beyond contemplation that a person would permit another to raise construction on the roof of his property who has no right title and interest in the same. The claim of the defendant with respect to his ownership of the entire suit property is hallow and sham.*

9.3 *The witnesses produced by the defendant in support of his case was tutored and major chunk of their testimony was based on hearsay evidence which is not admissible in law. In absence of any title document or mutation record with respect to the suit property or even with respect to the shop in question, leads to one inescapable conclusion that the defendant has no*

*right, title and interest with respect to the suit property or even the shop in question. Merely by depositing property tax by the defendant would not give rise to the ownership right to the suit property in favour of the defendant. Though he may be occupying the same since long but mere occupation (**which acknowledges the ownership right of the plaintiff by conduct and implications**) of the property for long time does not give rise to the ownership of the property to the occupant.*

9.4 The suit of plaintiff is decreed against the defendant. The plaintiff is awarded the damages @ ₹36,000/- along with interest @ 6% p.a. on the entire sum of damages.'

8. The First Appellate Court, vide its judgment dated 19th December, 2015 reversed the judgment of the learned Trial Court observing as under:-

10. The claim of the defendant/appellant that he is occupying the premises as its owner. The learned Trial Court after appreciating the evidence as produced has not found the appellant occupying the premises as owner. The findings of the learned Trial Court are based on the evidence adduced by the parties and does not need interference. The plaintiff is claiming his ownership of the premises on the averments that he has purchased the property from Smt.Barji Devi by way of sale documents dated 24.08.1990. The plaintiff during the course of trial has filed a GPA, agreement to sell, affidavit, Will and a receipt. Out of the said documents only receipt is registered and remaining are notarized documents. In the documents it has not been disclosed how executor Smt.Barji Devi acquired rights in the suit property. The receipt is only qua receiving of a sum of ₹1,50,000/- and purpose has not been mentioned in the same. The plaintiff has not proved the complete chain of ownership documents in his favour. Although the property has been mutated in the records of MCD in the name of the plaintiff but the same is not sufficient to prove the ownership of the plaintiff as the entry in mutation record is not a document of ownership. The factum of filing photocopy of these documents by the

appellant for installation of electricity connection in his name is not sufficient proof of admission of ownership of the plaintiff as the entry in mutation record is not a document of ownership. The factum of filing photocopy of these documents by the appellant for installation of electricity connection in his name is not sufficient proof of admission of ownership of the plaintiff by the appellant making him liable to pay the damages on account of occupation of the premises particularly in the absence of the case of the plaintiff that occupation is unauthorized.'

9. Mr.R.K.Saini, learned counsel for the appellant has submitted that the learned Trial Court has given a finding against the respondent/defendant that he is not having any title documents to prove his plea of ownership in respect of the suit property. Learned counsel for the appellant has drawn the attention of this Court to the title documents placed on record by the appellant/plaintiff which are GPA, Agreement to Sell, Affidavit, Will and Receipt executed in his favour by Smt.Barji Devi. The sale consideration was paid vide receipt Ex.PW1/6 which is a registered document and submitted that these documents may not confer ownership rights on the appellant/plaintiff in the strict sense but for seeking rent/damages from the respondent herein, definitely the appellant has a better title. When the possession in respect of the suit property is not disputed by the respondent/defendant, he does not have any title documents in his favour and the construction on the first floor of the shop in possession of the respondent/defendant has been admittedly done by the appellant/plaintiff, in that circumstance, the only inference that can be drawn is that the appellant/plaintiff is owner of the said property. Otherwise, the respondent/defendant would not have allowed him to raise any construction on the roof of the shop in his possession. Attention of this Court has also

been drawn by learned counsel for the appellant/plaintiff on the house tax receipt showing the property No.16/1541-E, Arya Samaj Road, Bapa Nagar, Karol Bagh, New Delhi-110005 being assessed to house tax in the name of the appellant/plaintiff.

10. Mr.K.R.Rana, Advocate for the respondent has argued that the learned Trial Court returned the finding which was illegal and has rightly been set aside by the First Appellate Court. It has been urged by learned counsel for the respondent/defendant that the land underneath the super structure of Property No.16/1541-E, Arya Samaj Road, Bapa Nagar, Karol Bagh, New Delhi-110005 is not owned by either of the parties. Mr.Ganga Ram – father of the appellant/plaintiff and Sh.Sohan Lal – father of the respondent/defendant were close friends hailing from Rajasthan and this vacant land was occupied by them in the year 1948 by raising a temporary structure with the understanding that the temporary structure raised by father of the respondent/defendant whenever made pucca, father of the respondent/defendant would let him raise construction on the roof of the shop and he stood by his promise to his friend. Learned counsel for the respondent/defendant has further contended that the Eviction Petition No.130/1998 filed by the appellant/plaintiff under Section 14(1)(a) of Delhi Rent Control Act had been dismissed by the learned ARC on failure of the appellant/plaintiff to lead any evidence to even establish the relationship of landlord and tenant between the parties. It has been further argued that the respondent or his father had never paid any rent to anyone at any point of time in respect of the suit property, hence there was no question of paying any rent/damages to the plaintiff on the basis of unregistered documents got executed by him from Smt.Barji Devi who is none else but his own mother

and she herself was also not having any title documents in her favour or in favour of her husband Sh.Ganga Ram.

11. I have considered the rival submissions. It is borne out from the record that Smt.Barji Devi is mother of the appellant/plaintiff Ram Pratap and wife of Late Sh.Ganga Ram. Surprisingly in none of the documents i.e. GPA, Agreement to Sell, Affidavit, Will and Receipt she had disclosed this fact that she is executing these documents in favour of her son. Even in the plaint in Civil Suit No.177/2014 this fact has not been disclosed by the appellant/plaintiff. Rather his plea is that he purchased this property from one Barji Devi, Wife of Sh.Ganga Ram but not disclosing that they are none else but his own parents. How Smt.Barji Devi became owner or what title documents were seen by the appellant/plaintiff before purchasing the property from her have neither been pleaded nor proved. As per the appellant/plaintiff, earlier the respondent/defendant was a tenant of Smt.Barji Devi but there is absolutely no documentary evidence to prove this fact. Even the alleged sale documents by Smt.Barji Devi do not make any reference of part of the property i.e. one shop to be in possession as tenant with the respondent/defendant or the rate of rent.

12. Though the property is stated to have been purchased by the appellant/plaintiff from Smt. Barji Devi on 24.08.1990, eviction petition on the ground of non-payment of rent was filed after eight years. No notice was ever sent either by Smt.Barji Devi or by the appellant/plaintiff informing about the sale transaction and asking the respondent to attorn in favour of the appellant/plaintiff. It is necessary to record here that all the sale documents including GPA are unregistered documents and could not have been considered by the learned Trial Court to pass a decree in favour of the appellant/plaintiff.

13. It has come on record in the testimony of PW-3 Sh.Ramji Lal Bakolia that late Sh.Ganga Ram and Smt.Barji Devi had two-three children. In that case, if the property belonged to the father of the appellant/plaintiff who died intestate, then it devolved on all the legal heirs including Smt.Barji Devi who could not have sold the same to one legal heir only.

14. It is necessary to mention here that that in the Eviction Petition No.130/1998 the respondent/defendant filed the written statement raising the following preliminary objections:-

'1. That the respondent is the owner of the property in the suit as the father of the respondent late Shri Sohan Lal had occupied the land underneath the structure in the year 1948 approximately, and he has raised a temporary structure over the same, which was converted into a pacca structure in 1982 by the present respondent himself. It is pertinent to mention that the respondent is an owner by adverse possession as since 1948 nobody had ever disturbed the possession of his father and thereafter the possession of the respondent is peaceful and undisturbed since 1982 when the present respondent turned the Kachha structure into pacca one.

It is also pertinent to mention that Late Shri Sohan Lal, the father of the respondent was a very good friend of late Sh.Ganga Ram and it was agreed between them that as and when the structure will be converted into pacca then late Sh.Ganga Ram husband of Smt.Barji Devi will raise construction on the first floor with his own funds, hence the ground floor exclusively belonged to the respondent and the first floor after construction became the property of late Shri Ganga Ram who was the husband of Smt.Barji Devi. Smt. Barji Devi had no right or titled to sale of the property in dispute as the same belonged to the respondent. Late Shri Ganga Ram, above mentioneod and late Shri Sohan Lal the father of the respondent were just like migatory birds who came from

Rajasthan and settled on the vacant land where and when they found and since 1948 late Shri sohan Lal and thereafter the respondent are in possession of the property in dispute and the petitioner is neither the owner nor the landlord of the premises and the respondent is not a tenant under anybody.

2. That the petition is not maintainable as there is no relationship of landlord and tenant between the parties and the respondent is the owner of the land underneath and the ground floor structure thereon. The First Floor was allowed to be constructed by the father of the respondent to Late Shri Ganga Ram husband of Smt.Barji Devi, as both of them were fast friends and had migrated from Rajasthan to Delhi together.

3. That the alleged vendor Smt.Barji Devi had no ownership rights on the property in dispute, hence he had no right to sell the same, and the respondent is the absolute owner of the property in dispute. The petition is not maintainable under the Provision of Delhi Rent Control Act as only the dispute between the landlord and tenant are tried and decided, and there is no relationship of landlord and tenant between the parties.'

15. The eviction petition was dismissed on failure of the appellant (petitioner in eviction petition) to prove his case. The conduct of the appellant after purchasing the property allegedly in the year 1990, for long eight years by not taking any step to send the letter of attornment or to recover the rent also shows that there was no relationship of landlord and tenant between the parties or between Barji Devi and respondent. Though the eviction petition was dismissed in the year 2003 on his failure to lead any evidence in support of his plea, the civil suit was filed in the year 2011 after gap of eight years claiming to be owner on the basis of title documents which infact do not confer any such title on him. It is a matter of record that

in the house tax record neither the appellant/plaintiff nor his predecessor-in-interest had ever shown the respondent to be a tenant in the suit property.

16. The contention of the appellant regarding the observation made by the learned trial Court that the respondent had no title in the suit property, in no way help in promoting the case of the appellant. With the background that the eviction petition filed by the appellant was dismissed on his failure to lead any evidence to establish the relationship of landlord and tenant between the parties, this suit seeking recovery of land and damages is another tactics by him to establish himself as owner of the suit property.

17. The civil suit has been filed on the strength of the title deeds executed by Smt.Barji Devi in his favour who claims to have derived her title from her husband. Smt.Barji Devi and her husband late Sh.Ganga Ram, were not having any title which was capable of being transferred to the appellant/plaintiff. If Smt.Barji Devi was not having any title nor late Sh.Ganga Ram, her husband, no title could have been transferred to the appellant/plaintiff which they did not possess.

18. Right from the inception of litigation i.e. Eviction Petition No.130/1998 wherein the written statement was filed, stand of the respondent/defendant is consistent i.e. the land underneath the super structure was occupied by his father and father of the plaintiff. They being friends, the construction was permitted to raise over the shop by the father of the respondent as per their understanding. Merely because the father of the appellant was able to raise construction on the shop in possession of the respondent cannot confer any title on him.

19. Similarly, inability of the respondent to prove his title, weakness, if any, in his defence, does not entitle the appellant/plaintiff to get a decree in his favour. Both the parties are on the same pedestal as none of them has any

legal and valid title in their favour. Assessment for house tax purpose is no proof of better title in favour of the appellant/plaintiff.

20. In view of the above, the suit has rightly been dismissed by the First Appellant Court.

21. The substantial question of law is answered against the appellant.

22. RSA No.109/2016 is dismissed.

23. LCR be sent back alongwith copy of this order.

24. No costs.

CM No.14596/2016 (stay)

Dismissed as infructuous.

JANUARY 17, 2017
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PRATIBHA RANI
(JUDGE)

