

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

+ **RSA No. 226/2015 and RSA No. 227/2015**

% **Reserved on: 18th August, 2017**
Pronounced on: 24th August, 2017

+ **RSA No. 226/2015**

KULJEET SINGH & ANR. Appellants

Through: Mr. Rajat Aneja, Advocate and
Ms. Nisha Sharma, Advs.
Appellants in person.

versus

JASPAL KAUR & ANR. Respondents

Through: Mr. Sharad Chandra and Mr. Sanjay
Aggarwal, Advocates for R-1.
Ms. Vandana, Advocate for R-2.
Respondents in person.

+ **RSA No. 227/2015**

KULJEET SINGH Appellant

Through: Mr. Rajat Aneja, Advocate and
Ms. Nisha Sharma, Advs.

versus

JASPAL KAUR & ANR. Respondents

Through: Mr. Sharad Chandra and Mr. Sanjay
Aggarwal, Advocates for R-1.
Ms. Vandana, Advocate for R-2.
Respondents in person.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. These two Regular Second Appeals have been filed by the father-in-law Sh. Kuljeet Singh impugning the concurrent judgments of the courts below; of the trial court dated 13.12.2013 and the first appellate court dated 18.11.2014; by which the courts below have dismissed the suit for possession filed by the appellant and decreed the suit filed by the respondent no.1 for injunction against being dispossessed from the suit property. The suit property is a three bedroom DDA flat bearing no. 107, SFS Phase-IV, Ashok Vihar, Delhi-52. The two suits which were filed, one by the appellant and second by the respondent no.1, were consolidated before the trial court. The suit of the appellant filed was a suit for possession of the suit property as against the respondent no.1/daughter-in-law/Smt. Jaspal Kaur whereby the appellant pleaded that the daughter-in-law was harassing the aged parents-in-law and that the son of the appellant was no longer living with the parents-in-law, and therefore, the respondent no.1 who is occupying one bedroom along with the other related portion of the suit property be asked to handover possession of the same to the appellant. *Mesne* profits were also prayed for being granted. Respondent no.2 is the husband of the respondent no.1 and

the son of the appellant. The second suit was the suit filed by the daughter-in-law/respondent no.1/Smt. Jaspal Kaur seeking the relief that she should not be dispossessed from the suit property as it is her matrimonial home and where she is living with her two children. Respondent no.1 denied ownership of the appellant and pleaded that actually her husband/respondent no.2 being the son of the appellant was the owner of the suit property. Respondent no.1 thus prayed for injunction against being dispossessed from the suit property. It may be noted that the two children of the respondent no.1, wife of the respondent no.2 and the daughter-in-law of the appellant, are one son and one daughter. One son has already attained majority and is pursuing his MBBS course. The second child being the daughter is soon to achieve the age of majority and has now to take up studies in college. The children of the respondents are however not parties to the suit.

2. Two main issues arose in the two suits which were filed by the appellant and the respondent no.1. The first main issue was as to whether the appellant was or was not the owner of the suit property and the second issue was as to whether the suit property was the

matrimonial home of the respondent no.1/Smt. Jaspal Kaur/daughter-in-law although the respondent no.2 is not living with the parents-in-law in the suit property and with the fact that it was not the respondent no.2/husband but it was the appellant who was the owner of the suit property.

3. Both the courts below have given a finding that the appellant is not the owner because appellant has not filed any documents of title of the suit property inasmuch as he has only filed and proved one possession slip (Ex. PW1/2) issued by DDA in favour of the appellant with respect to the suit property. The courts below have also held that the respondent no.1 has made various structural changes in the property as well as paying the electricity bills, water bills, house tax bills etc, and therefore, respondent no.1 has an irrevocable licence to stay in the suit property. The courts below have also held that the suit has been filed by the appellant in collusion with his son being the respondent no.2 herein.

4. For disposal of these regular second appeals, the following substantial questions of law are framed:-

(i) Whether the courts below have not committed a complete illegality and perversity in requiring that the appellant should prove himself as an owner in terms of a title deed whereas all that was required to show was a better claim of ownership and possession of the appellant as compared to the respondent no.1 (and even respondent no.2) with respect to the suit property?

(ii) Whether the courts below have committed a complete illegality and perversity in not referring to and deciding the suits on the basis of the ratio of the judgment of the Supreme Court in the case of ***S.R. Batra and Another Vs. Taruna Batra (2007) 3 SCC 169*** and which holds that a daughter-in-law has no right in an immovable property which belongs to her parents-in-law?

(iii) Whether the courts below have most illegally denied the relief to the appellant and has most illegally granted relief to the respondent no.1 on the ground that there is collusion between the respondent no.2 and the appellant whereas even if there exists collusion, the respondent no.1 in view of the ratio of the judgment of the Supreme Court in the case of ***S.R. Batra (supra)*** has no right to stay in the suit property.

5. The ratio laid down by the Supreme Court in *S.R. Batra's* case (*supra*) is now the law of the land. As per *S.R. Batra's* case (*supra*) a daughter-in-law has no right to the immovable property belonging to the parents-in-law and the right of a wife for maintenance and residence is only against her husband. I may also note that there can be taking up a case of non-application of the ratio in *S.R. Batra's* case (*supra*) if the husband is found to be living with the parents-in-law and in which case a wife cannot be separated from the husband and hence she cannot be thrown out of the house of the parents-in-law where the husband is residing, however, in the present case, the undisputed fact which emerges on record is that the respondent no.2/husband has been living separately from his parents and at the time when the suits were filed he was living at Bharat Nagar at Delhi. There are also some facts emerging on record and so argued of the residence of the respondent no.2 being at Sushant Lok in Gurgaon at Haryana. The aspect of non-residence of the husband in the suit property is reflected in the memo of parties of both the suits and the appeals before the first appellate court showing the addresses of the respective parties.

6. I may also at this stage mention that during the course of hearing this Court did endeavor to bring about a settlement between the concerned parties for residence being available to the respondent no.1 from her husband/respondent no.2. So far as the matrimonial relations between the respondents are concerned the same were not the subject matter of the present proceedings and the respondents have to independently sort out their personal issues. The issue for settlement which was examined was that the respondent no.1 with the two children must get reasonably suitable accommodation from the respondent no.2 for at least for 5 years in around the same vicinity of the suit property, which should be a two bedroom flat, so that by this period of five years the children would complete their education. It was also kept in mind that the children once they are adult would not ordinarily have a right against their parents for maintenance and up keep except of course as regards an unmarried daughter. It was also kept in mind by the Court when the negotiations were going on between the parties that the respondent no.1 has presently with her benefit only one bedroom in the suit property which is three bedroom DDA Flat whereas the alternative accommodation offered to the

respondent no.1 was to be a two bedroom flat in around the same vicinity of the suit property in the range of rent of about Rs. 25,000/- to Rs. 30,000/- per month and for paying of which rent the respondent no.2 was to give necessary financial security and any other security for ensuring the availability of the two bedroom residential accommodation for a period of five years. The respondent no.1, however, at the end of the settlement and compromise proceedings refused to accept the offer of the alternative accommodation of a flat of two bedrooms. I would like to observe that strictly speaking if the issues are to be looked at legally then such settlement was outside the purview of these appeals as the issue in this appeal was entitlement of the respondent no.1/daughter-in-law to right of residence in the house/flat belonging to the father-in-law and not the right of the respondent no.1/wife against the respondent no.2/husband.

7. As regards the issue of ownership of the suit property of the appellant, it is noted that the appellant had indubitably filed and proved on record as Ex.PW1/2, the possession slip issued by the DDA in favour of the appellant. Surely, a possession slip for a property is only issued by DDA in favour of an owner who only is entitled to

possession, and therefore, once possession slip Ex.PW1/2 was proved by the appellant, the courts below have erred in denying ownership of the suit property of the appellant. Further, even if appellant failed to strictly prove ownership in that the conveyance deed was not filed, however, appellant/plaintiff indubitably proved his better entitlement to ownership and possession of the suit property because he had filed the possession slip Ex.PW1/2 as also an allotment letter from DDA to the appellant which was marked A, and the respondent no.1 admittedly did not file any document whatsoever to show that the ownership of the suit property was of the respondent no.2/husband. I may also note that along with the present appeal the appellant has filed the Conveyance Deed dated 6.5.2015 executed in his favour by the DDA, and therefore, this public document is taken on record and there therefore remains no doubt as to ownership of the appellant of the suit property. Accordingly, I hold that the courts below have wrongly held that the appellant had no ownership right to the suit property and in any case since the appellant was found entitled to a better right to possession of the suit property as against the respondent no.1,

therefore, the suit for possession filed by the appellant was bound to be decreed.

8. The courts below have also wrongly held that there is collusion between the respondent no.2 and the appellant and therefore the suit has to be dismissed, inasmuch as for the sake of arguments even if collusion existed, yet in view of the ratio of the judgment of the Supreme Court in ***S.R.Batra's*** case (*supra*) the respondent no.1 had no right, title and interest to stay in the suit property which belongs to/owned by the appellant, and which aspect is to be taken with the fact that it is not the case of the respondent no.1, and nor was proved by her that respondent no.2 is residing with the appellant. Accordingly, it is held that the courts below have committed a complete illegality and perversity in dismissing the suit filed by the appellant and decreeing the suit filed by the respondent no.1 on the ground of alleged collusion between the respondent no.2 and the appellant.

9. Learned counsel for respondent no.1 placed very strong reliance upon the admissions made by the appellant in his cross-examination on 19.9.2013 wherein the appellant admitted that the

respondent no.2 had been paying the installments to the DDA with respect to the suit property, and accordingly it is argued that it is the respondent no.2 who is the owner of the suit property. This argument of the respondent no.1 is totally misconceived because this plea is barred by the Benami Transactions (Prohibition) Act, 1988 once it is seen by the title document that the suit property is in the name of the appellant. Even if it is proved that the son of the appellant being the respondent no.2 did make payments of money for the flat in question, those payments can be considered as gifts of these amounts to the appellant by his son/respondent no.2 but such gifts of monies creates no right, title and interest in favour of the respondent no.2 and as against the appellant with respect to the suit property. Payment of monies by a son for a property owned by the father does not lead to the conclusion necessarily that the son has become the owner and not the father in whose name the property stands because such a plea of the son/respondent no.2 would be barred by the Benami Transactions (Prohibition) Act.

10. Learned counsel for respondent no.1 then tried to argue that the respondent no.1 is the owner of the suit property by adverse

possession or that respondent no.1 has an irrevocable licence under Section 60(b) of the Easement Act, 1882 however it is noted that though these pleas were taken in the written statement but these pleas were abandoned because no such issues were got framed by the respondent no.1. Not only no such issues were got framed, no evidence was led with respect to these pleas of adverse possession and irrevocable licence, and therefore, the argument of the respondent no.1 in this regard has to be rejected. The courts below have wrongly given benefit of Section 60(b) of the Easement Act to the respondent no.1 merely on the ground of the respondent no.1 having paid electricity bills, water bills and house tax bills for the suit property. Surely, if the respondent no.1 is staying in the suit property then if she incurs charges for the user and upkeep of the property and which is of electricity, water and house tax bills then such payments would only show that the respondent no.1 has been taking care of the maintenance and up keep of the property but that would not give any right under Section 60(b) of the Easement Act of an irrevocable licence being granted. It is extremely important to note that there is not even a whisper in the affidavit by way of evidence filed by the respondent

no.1 of her getting a right in the suit property on account of an irrevocable licence under Section 60(b) of the Easement Act, and as already stated above, no such issue was pressed for being framed by the respondent no.1.

11. In view of the aforesaid discussion, all the substantial questions of law are answered in favour of the appellant and against the respondent no.1. The suit filed by the appellant only for possession will be decreed but the appellant will not get *mesne* profits because no evidence has been led to prove *mesne* profits. The suit of the respondent no.1 for injunction will stand dismissed.

12. Accordingly these appeals are allowed. The suit of the appellant is decreed with respect to the possession of the suit property being DDA flat bearing no. 107, SFS Phase-IV, Ashok Vihar, Delhi-52 against the respondent no.1. The suit of the respondent no.1 against the appellant for injunction against being dispossessed from the suit property will stand dismissed. Parties are left to bear their own costs.

AUGUST 24, 2017

VALMIKI J. MEHTA, J