

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

+ **RSA No. 142/2017**

% **19th May, 2017**

SUMAN SHARMA Appellant
Through: Mr. G.S. Sharma and Mr. V.K.
Sharma, Advocates.

versus

HARI RAM SHARMA & ANR. Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 19052/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RSA No. 142/2017 and C.M. Appl. No. 19051/2017 (for stay)

1. This Regular Second Appeal is filed by the defendant no.2/daughter-in-law under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugning the concurrent judgments of the courts below; of the Trial Court dated 30.9.2016 and the First Appellate Court dated 13.4.2017; by which the courts below have decreed the suit for mandatory injunction filed by the respondent no.

1/plaintiff/father-in-law and directed the appellant/defendant no.2 to vacate the suit premises of which she was in possession, and which was owned by the respondent no.1/plaintiff. The disputed property comprises of two rooms on the ground floor of the property being house no. 64, Kanwal Singh Wali Gali, Village Budh Pur, Police Station Alipur, Delhi.

2. Respondent no.1/plaintiff/father-in-law filed the subject suit for permanent and mandatory injunction seeking directions to the appellant/defendant no. 2/daughter-in-law to vacate the suit property in which she was residing as a licensee on the ground that the respondent no.1/plaintiff is the owner of the property in terms of the documentation of the year 2000, Ex.PW1/2 to Ex.PW1/7, and which are Agreement to Sell, General Power of Attorney, receipt, affidavit and possession letter executed by the erstwhile owner Sh. Dharamvir in favour of respondent no. 1/plaintiff. It was pleaded by the respondent no.1/plaintiff that the appellant/defendant no. 2 being the daughter-in-law was permitted to reside in the suit property along with the respondent no. 1/son but the relations between the parties have got strained. The appellant/defendant no. 2 had filed complaints against the respondent no. 1/plaintiff and the other family members in the CAW cell. She had also filed a suit for injunction against the

respondent no. 1/plaintiff for not being dispossessed without due process of law. Respondent no. 1/plaintiff pleaded that he has disinherited and disowned the respondent no. 2/defendant no. 1/son from all the movable and immovable properties owned by the respondent no. 1/plaintiff. When the appellant/defendant no. 2 refused to vacate the suit property the respondent no. 1/plaintiff orally directed the defendants to vacate the suit premises on 1.7.2013, which too failed to yield the desired result, and hence the subject suit was filed.

3. The suit was contested only by the appellant/defendant no.2. As per her defence the suit was a counter blast to the matrimonial cases filed by the appellant/defendant no. 2 against the respondent no.2/defendant no. 1/son. It was further pleaded that the suit has been filed in collusion with the respondent no. 2/defendant no. 1/son so as to defeat the rights of the appellant/defendant no. 2 and the minor daughter.

4. The only and the main issue before the Court below was regards whether the respondent no. 1/plaintiff was the owner of the suit property and which was rightly held in favour of the respondent no. 1/plaintiff by the trial court on the basis of the documentation Ex.PW1/2 to Ex.PW1/7 and which have been referred to above. The order passed in the suit filed by the appellant/defendant no. 2

Ex.DW2W1/1 only recorded the statement of the respondent no. 1/plaintiff that the appellant/defendant no.2 will not be dispossessed without due process of law, and which has no relevance, because the subject suit is the due process of law by which the appellant/defendant no. 2 is asked to vacate the suit property.

5. It is now a well settled law in view of the judgment of the Supreme Court in the case of ***S.R. Batra and Another Vs. Smt. Taruna Batra (2007) 3 SCC 169*** that there is no 'shared household' of a daughter-in-law in the house which is owned by her parents-in-law and the entitlement of right of a wife is only against her husband and not against her parents-in-law.

6. A second appeal under Section 100 CPC lies only if there arises a substantial question of law. No substantial question of law arises as respondent no. 1/plaintiff has been proved to be the owner of the suit property and it is settled law that a daughter-in-law has no right to reside in the suit property which is owned by her father-in-law in view of the judgment of the Supreme Court in the case of ***S.R. Batra (supra)***.

7. It is argued by the appellant/defendant no. 2 that the respondent no.2/defendant no. 1/son had given his earnings always to

the respondent no. 1/plaintiff and therefore the suit property is also owned by the respondent no.2/defendant no. 1/son, however, it is seen that there is neither any pleading nor any evidence of the suit property being an HUF property and once there was no pleading or an issue framed or evidence led as regards the suit property being an HUF property, no such issue has been decided by the court below. An issue which is not raised as per the pleadings will not raise a substantial question of law under Section 100 CPC.

8. After arguments, I had put it to counsel for the appellant/defendant no. 2 as to whether the appellant/defendant no.2 wants sufficient time to vacate the property instead of inviting a judgment but the counsel for the appellant/defendant no.2 says that the appeal be disposed of on merits by judgment.

9. Dismissed.

MAY 19, 2017/

VALMIKI J. MEHTA, J