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

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Date of Decision: 30th May, 2017

+ RFA 880/2016

REKHA YADAV

..... Appellant

Through: Mr. Sugriva Dubey, Advocate
versus

SHYAMA

..... Respondent

Through: Mr. D. D. Pandey, Adv.
SI Ravinder Chander, P.S.
Jafrabad

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The appellant has challenged the judgment and decree for possession and mesne profits passed by the learned Trial Court.
2. The respondent instituted a suit for recovery of possession and mesne profits against the appellant on the averments that she is the owner of property bearing No.V-1688, V-Block, Gali No.4, Vijay Park, Maujpur, Delhi-110053, the appellant is respondent's niece (sister's daughter); the respondent allowed the appellant to live in one room, kitchen and common use of latrine and bathroom of the aforesaid premises on licence basis about 15 years ago; with the passage of time, the intention of the appellant became bad; the appellant started harassing and humiliating the respondent to grab her property; in June 2013, the respondent requested the appellant to

vacate the suit property, whereupon the appellant instituted a frivolous suit for injunction claiming herself to be a tenant in the suit property at a monthly rent of Rs.800/-; the respondent terminated the appellant's licence vide notices dated 26th July, 2013 and 13th September, 2013 and thereafter, instituted the suit for recovery of possession and mense profits.

3. The appellant contested the suit by claiming herself to be a tenant on monthly rent of Rs.800/- per month w.e.f. June 2013. Para 2 of the written statement of the appellant is reproduced hereunder:-

“2. That the contents of para No.2 of the plaint are admitted to the extent that the defendant is the daughter of the sister of the plaintiff, but it is denied that she being the niece, the plaintiff had allowed and permitted the defendant about 15 years back to live in one room, kitchen and common use of latrine and bath out of the said property bearing No.V-1688, V-Block, Gali No.4, Vijay Park, Maujpur, Delhi-110053 purely on license basis and after taking the suit property from the plaintiff, the defendant started residing therein along with her family members purely on licensee basis, having no relationship of landlord and tenant between the parties or it may be stated here that at no point of time any rent or any other charges were ever paid by the defendant to the plaintiff nor the same were taken by the plaintiff from the defendant or the plaintiff is a widow and has no child and she has been treating the defendant as her own daughter and has been helping her and her family members from time to time even during the period when she was financially not well or that the suit property was given to the defendant to reside over there as she had not accommodation with her to live therein and the defendant as such, has got no right, title or interest in the suit property except that she is the licensee of the plaintiff. In reply, it is submitted that the tenancy was oral and there is no Rent Agreement had ever been executed between the plaintiff and the defendant at any point of time. It is pertinent to mention

here that the plaintiff is real Mausi in relation of the defendant. It is further pertinent to mention here that the defendant has paid the rent upto the month of June-2013 in cash to the plaintiff. The plaintiff despite repeated requests and demands has not issued the rent receipts to the defendant with the malafide intention and ulterior motives, since the inception of the tenancy. That the defendant is paying the rent regularly and has paid the rent upto June-2013 to the plaintiff in cash on 03.06.2013 and at the time of receiving the rent on 03.06.2013, the plaintiff directed the defendant to vacate the tenanted premises within 15 days for giving the said room to other person on higher rent.”

(Emphasis supplied)

4. The learned Trial Court held the appellant to be a licensee whose licence has been validly terminated vide notices Ex.PW1/3 and PW1/4. The learned Trial Court passed a decree for possession and mesne profits @ Rs.3,000/- per month w.e.f. 11th August, 2013.

5. The appellant has challenged the impugned judgment and decree on various grounds *inter alia* that appellant is the adopted daughter of the respondent; the respondent and her husband adopted the appellant when she was two months old; the appellant is in possession as owner being the adopted daughter of the respondent; the respondent sold the subject property to Pramod Kumar Yadav and Umesh Kumar Yadav on 21st October, 2014 and the respondent has no right, title or interest in the subject property.

6. Learned counsel for the respondent submits that the respondent is a widow aged about 75 years and she is staying alone in one room in the suit property. The respondent has no child of her own. The appellant as well as her husband have abused the respondent, threatened her and made her life miserable. It is further submitted that

the appellant had filed a false criminal case against the witness who appeared on her behalf before the Trial Court. The respondent further submitted that she intends to bequeath the suit property in favour of the charitable organization.

7. In the written statement as well as the evidence led by the appellant before the Trial Court the only defence taken by the appellant was that she is the niece (sister's daughter) of the respondent and is a tenant at a monthly rent of Rs.800/- per month which has been paid upto 13th June, 2013. Surprisingly, the appellant has not raised the defence set up by her before the Trial Court and has raised the grounds in the appeal which were never urged by the appellant before the Trial Court. Some of the grounds of appeal taken by the appellant are reproduced as under :-

"I. Because the appellant is the adopted daughter of respondent as the respondent and her husband adopted the appellant when the age of the appellant was only two months old and it was a legal adoption and the property was built up in the name of the respondent with the earnings of her husband and also with the contribution of the father of the appellant and hence the respondent is not the absolute owner of the property in question and cannot deprive the legal right of co-owner in the property.

II. Because the respondent has gifted the property in question to Sh. Pramod Kumar Yadav and Umesh Kumar Yadav on 21.10.2014 and thereafter the respondent has not right, title or interest in the property.

III. Because the respondent has gifted her property of her share only and the appellant continues to be in possession in her share as the property was acquired by the husband of the respondent and adopted father of appellant.

IV. Because even the General Power of attorney has been executed in favour of Sh. Umesh Kumar Yadav and Pramod

Kumar Yadav and in the said Attorney it has been categorically stated that the respondent will have no right, title or interest in the property and all the benefits will be going in favour of Pramod Kumar Yadav and Umesh Kumar Yadav.

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VIII. Because the husband of the appellant throughout his married life has been paying in his earning in the hand of respondent who never clarified that the appellant is not the daughter of the respondent but a suit for possession was filed by the respondent without having any right, title or interest in favour of the respondent and hence the present appeal.”

8. There is no merit in this appeal which is hereby dismissed with cost of Rs.25,000/- to be paid by the appellant to the respondent before the learned Trial Court on 15th July, 2017.

9. This Court is of the view that the appellant has raised a false claim before this Court which is an offence under Section 209 of the Indian Penal Code. Show cause notice is hereby issued to the appellant to show cause as to why a complaint be not made against her under Section 340 Cr.P.C for raising a false claim before this Court under Section 209 IPC.

10. The appellant present in Court accepts notice. Let the reply to the show cause notice be filed within four weeks.

11. The appellant has handed over the possession of the suit property to the respondent on 27th May, 2017 in terms of the order dated 27th April, 2017. With respect to the decree for mesne profits, learned counsel for the appellant submits that the appellant has no means to satisfy the decree for mesne profits.

12. Learned counsel for the respondent submits that the respondent

has filed the execution which is listed before the Trial Court on 15th July, 2017. The appellant is directed to file the affidavit of her assets, income and expenditure as on the date of the filing of the suit as well as on the date of filing of the affidavit in the format attached as *Annexure-A* in order dated 27th March, 2017 W.P.(C) 8092/2016, ***Santosh Kumar Jha v. The Deputy Labour Commissioner (South)*** along with the documents mentioned therein before the Trial Court on 15th July, 2017.

13. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

MAY 30, 2017
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J.R. MIDHA, J.