

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RFA No. 705/2017**

% **9th August, 2017**

JAMILA BEGUM Appellant

Through: Mr. Alamgir, Advocate.

versus

HEENA ANSARI Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 28094/2017 (for exemption)

1. Exemption allowed, subject to just exceptions.

C.M. stands disposed of.

RFA No. 705/2017 and C.M. Appl. Nos. 28091/2017 (under Order 20 Rule 6A(2) r/w Section 151 CPC, 28092/2017 (for placing additional documents on record) & 28093/2017 (for stay)

2. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the trial court dated 6.5.2017 by which the trial court has decreed the suit for recovery of possession and *mesne* profits with respect to the suit property bearing no. 28, consisting of

ground floor, tin shed with pillars situated at Batla House, Jamia Nagar, Okhla, New Delhi-110025.

3. The facts of the case are that the respondent/plaintiff filed the subject suit for possession, *mesne* profits, etc. with respect to the suit property pleading that the suit property was purchased by her from the previous owner, Sh. Jameel Ahmed by means of the usual documentation being the Agreement to Sell, Power of Attorney, Will, Receipt, etc. dated 13.6.2011 for a consideration of Rs.17,00,000/-. It was further pleaded that the respondent/plaintiff has with her the complete chain of ownership documents with respect to the suit property. It was further pleaded in the plaint that the husband of the appellant/defendant, who is the brother-in-law of the previous owner Sh. Jameel Ahmed, had come to Delhi from Mumbai in the year 2004 for getting medical treatment and since he had no suitable residence Sh. Jameel Ahmed had allowed the husband of the appellant/defendant Mohd. Saleem to take temporary shelter in the suit property. It was further pleaded in the suit that Mohd. Saleem had fraudulently got electricity connection in the suit property but the said connection was thereafter got disconnected by the electricity authority BSES RPL on

the complaint made by the respondent/plaintiff. It is further pleaded in the plaint that appellant/defendant had earlier filed a suit for permanent injunction bearing No. 45/2013 (old no. 77/2012) and in this earlier suit the erstwhile owner Sh. Jameel Ahmad had admitted that he had sold the suit property to the respondent/plaintiff. This suit was accordingly disposed of by the Civil Judge on 2.7.2013. Since the appellant/defendant failed to vacate the suit property the subject suit came to be filed.

4. The case of the appellant/defendant in the written statement was that the suit property was purchased by her husband. It is pleaded in the written statement that a sum of Rs.1,00,000/- was given for the suit property in the year 2001 to the son Sh. Faheem Ahmad of the original owner, Sh. Jameel Ahmad and balance payment totaling to sale consideration of Rs.5,00,000/- was made in installments till the year 2005 and whereupon the documents of ownership of the property were executed by the original owner Sh. Jameel Ahmad in favour of the husband of the appellant/defendant. It was pleaded in the written statement that the appellant/defendant was earlier a tenant in the suit property on a monthly rent of Rs.500/- but

thereafter the suit property was purchased after payment of consideration of Rs.5,00,000/-. The suit was therefore prayed to be dismissed.

5. After pleadings were complete the trial court framed issues and both the parties led evidence of various witnesses as also proved their documents, and since these are exhaustively dealt with in paras 11 to 22 of the judgment of the trial court which give details of the documents proved by the respective parties as also the witnesses who deposed of the respective parties, the said paras are reproduced as under:-

- “11. After completion of pleadings, following issues were framed.
1. Whether the defendant is in the suit property as being owner as alleged by her? OPD
 2. Whether the suit of the plaintiff is not maintainable in view of preliminary objection no. 7 i.e. the documents are not properly registered and properly stamped? OPD
 3. Whether the plaintiff is entitled for the decree of permanent injunction as prayed in prayer clause (c) of plaint? OPP
 4. Whether the plaintiff is entitled for the decree of recovery of possession of property i.e. entire premises No. P-28, consisting of ground floor, tin shed with pillar situated at Batla House, Jamia Nagar, New Delhi-110025 as shown red in the site plan?
 5. Whether the plaintiff is entitled for damages/mesne profits as demanded by her in prayer clause (b) of the plaint? OPP
 6. Relief.

Plaintiff's Evidence

12. In order to prove her case, plaintiff has examined six witnesses. PW-1 is the plaintiff herself. She tendered her evidence by way of affidavit Ex.PW1/A relying on documents i.e police complaint dated 31.05.2011 is Ex.PW1/1, copy of GPA, Agreement to Sell, Indemnity

Bond, Special Power of Attorney, Affidavit, Will Receipt dated 13.06.2011 are Ex.PW1/2 to Ex.PW1/8 respectively, copy of site plan is Ex.PW1/9, copy of letter from BSES RPL dated 08.11.2011 is Ex.PW1/10, copy of complaint dated 27.03.2012 to DCP South East, Delhi is Ex.PW1/11, copy of complaint to SHO PS Jamia Nagar dated 31.03.2012 is Ex.PW1/2, copy of complaint dated 02.04.12 with DCP Saraita Vihar is Ex.PW1/3, copy of legal notice dated 25.11.2013 is Ex.PW1/14, copy of postal and courier receipt are Ex.PW1/15 (colly), copy of the reply dated 10.12.2013 is Ex.PW1/16, certified copies of the plaint in civil suit No. 145/13 is ex. PW1/17, order dated 02.07.2013 and statement of parties dated 02.07.2013 is Ex.PW1/18 (colly), copy of letter dated 08.11.2013 sent by BSES RPL is Ex.PW1/19, copy of the letter dated 07.12.2013 sent to BSES RPL by plaintiff is Ex.PW1/20, copy of letter dated 13.12.2013 sent to DGM Sarita Vihar, BSES RPL by the plaintiff is Ex.PW1/21, copy of letter dated 13.12.2013 sent by BSES RPL to plaintiff as well as the defendant is Ex.PW1/22, copy of old photographs and photographs of the suit property are Ex.PW1/23 (colly), copy of the complaint dated 07.01.2014 sent by the plaintiff to the SHO PS Jamia Nagar, New Delhi is Ex.PW1/23, complaint dated 07.01.2014 is Ex.PW1/24 copy of complaint dated 12.01.14 with DCP South East Sarita Vihar, New Delhi is Ex.PW1/25, complaint to DGM, BSES RPL is Ex.PW1/26, original letter dated 13.10.2013 sent by BSES RPL is Ex.PW1/27. She has reaffirmed and reiterated the contents of the plaint in her evidence affidavit Ex.PW1/A.

13. PW-2 is Sh. Jamil Ahmad who deposed that he sold the suit property to the plaintiff for Rs.17 lacs vide documents Ex.PW1/1 to Ex.PW1/8 and these documents bear his signature and thumb impressions at points A and B. He deposed that he had handed over the complete chain of documents regarding previous ownership to the plaintiff. He further stated that he had not sold the suit property to the defendant and that defendant has no right, title or interest in the suit property.

14. PW-3 is the official from Record Room, Civil South East who has proved the statement of parties dated 02.07.2013 recorded in suit No. 145/13 in the court of Sh. Jitender Mishra, SCJ-cum-RC (South East). Copy of the plaint alongwith affidavit is Ex.PW3/1, copy of the proceedings dated 01.05.2013 and 02.07.2013 are Ex. PW3/2.

15. PW-4 is Sh. Sagir Ahmad and PW-5 Sh. Shahzad Ali are the attesting witnesses who deposed that transfer documents with respect to the suit property were executed by Jamil Ahmad in favour of plaintiff in their presence. They further deposed that documents Ex.PW1/2 to Ex.PW1/5, Ex.PW1/7 and Ex.PW1/8 bear their signatures at point C and D respectively. They further deposed that plaintiff paid scale consideration of Rs.17 lacs to Jamil Ahmad in their presence and Jamil Ahmad executed the receipt thereof which is Ex.PW1/8.

16. PW-6 Mohd Sharif is the official from BSES Rajdhani Power Ltd who proved the bill and connection record as Ex.PW6/A (colly).

Defendant's Evidence

17. Defendant examined five witnesses to prove her case.

18. Defenant has examined herself as DW-1. She tendered her examination in chief by way of affidavit Ex.DW1/A. She has relied on documents i.e. copy of her ration card Ex.DW1/1, voter I card of daughter in law of defendant namely Ashifa Quraishi, Naziya, Shaheen, voter I card of husband of daughter namely Shameen, copy of voter I card of husband of daughter namely Mohd Saleem, copy of voter I card of defendant, copy of voter I card of son of defendant namely Mohd Azeem are Ex.DW1/2 to Ex.DW1/8 respectively. She has also filed copy of voter I-card of her daughter Parveen Jahan ex.DW1/9, her sons namely Atik Ahmad Ex.DW1/10 and Laeeq Ahmad Ex.DW1/25. Defendant has also relied on copy of her bank passbook as Ex.DW1/13, and pass books of her daughter namely Neha Nadisha and her son Mohd. Azeem as Ex.DW1/11 and Ex.DW1/12 respectively. She has also relied and filed copy of electricity bills Ex.DW1/14 to Ex.DW1/21, copy of defendant's Adhar Card Ex.DW1/34, and that of her daughter in law namely Ashifa Quarishi ExDW1/22, copy of Adhar Card of defendant's son Atik Ahmad Ex.DW1/27, copy of Adhar Card of defendant's husband Ex.DW1/28, copy of Adhar card of defendant's son namely Mohd Azeem Ex.DW1/29, copy of Adhar card of defendant's daughters namely Shaheen, Neha Nadish, Shameen and Naziya Ex.DW1/30 to Ex.DW1/33 respectively. She has further filed copy of FIR No. 200/12 Ex.DW1/36, copy of complaint dated 15.01.2014 to DCP South-East Ex.DW1/37, copy of complaint dated 29.06.2011 to SHO PS Jamia Nagar, Delhi, copy of electricity bill dated 27.01.2012 Ex.DW1/39 and copies of certified copy of judgment dated 22.03.2013 titled Jamila Begum Vs. BSES Rajdhani Pvt Ltd mark Y.

19. DW-2 is Haseen who is the brother of defendant tendered his chief examination by way of affidavit Ex.DW2/A wherein he has deposed that defendant is residing in the suit property since 2001. He further deposed in his cross-examination that Rs.2 lacs were given by Mohd Saleem husband of defendant to Jamil Ahmed in the year 2005 and he put his thumb impressions on some document.

20. DW-3 is Mohd Wasimullah Khan who tendered his chief examination by way of affidavit Ex.DW3/A wherein he has deposed that defendant is residing in the suit property since 2001. He further deposed on the similar lines of DW-2.

21. DW-4 ASI proved the FIR No. 200/12 dated 17.03.12 U/s 323/451/506/427/34 IPC PS Jamia Nagar lodged by Jamila Begum as Ex.DW4/A.

22. DW-5 is Sh. Rajesh Sharma, Patwari from the office of SDM, Defence Colony, South-East District who has filed the jamabandi for the year 1967-68 of Village Jogabai which is EX. DW1/A. This witness has admitted in his cross-examination his signatures on the RTI reply given by him to the application of the plaintiff. Same has been exhibited as Ex.DW5/P-1.”

6. Trial court has decreed the suit by holding that appellant/defendant has failed to prove that her husband has purchased the suit property from the erstwhile owner Sh. Jameel Ahmad, inasmuch as, no documents whatsoever were filed by the appellant/defendant to show purchase of the suit property from the erstwhile owner Sh. Jameel Ahmad. Trial court has also held that the documentary evidence led by the appellant/defendant only shows that the address of the appellant/defendant and her family members as of the suit property but these documents cannot confer any right, title and interest in the suit property in favour of the appellant/defendant. Trial court has also held that the erstwhile owner Sh. Jameel Ahmad appeared as a witness for the respondent/plaintiff as PW-2 and admitted to execution of the title documents of the suit property in favour of the respondent/plaintiff on 13.6.2011 on receipt of consideration of Rs.17,00,000/-. Accordingly, the trial court held the respondent/plaintiff to have a better title to the suit property than the

appellant/defendant and decreed the suit in spite of holding that the documents of the year 2011 in favour of the respondent/plaintiff cannot confer ownership/title, inasmuch as, the said documents were unregistered and hence could not be looked into in view of the judgment of the Supreme Court in the case of *Suraj Lamp and Industries Private Limited. Vs. State of Haryana and Another (2012) 1 SCC 656*.

7. I may note that the trial court thought has held that the respondent/plaintiff has a better title to the suit property, actually what ought to have been held, and probably held by the trial court, is that the respondent/plaintiff has a better claim to possessory title than the appellant/defendant, inasmuch as, the erstwhile owner appeared as PW2 on behalf of the respondent/plaintiff and conceded to entitlement of the respondent/plaintiff to take possession of the suit property from the appellant/defendant. Therefore, once the respondent/plaintiff proved the documents dated 13.6.2011 as Ex.PW1/2 to Ex.PW1/8 and appellant/defendant failed to file any documents to buttress her claim that the suit property was purchased by her husband, trial court has committed no error in holding respondent/plaintiff to be the owner of

the suit property i.e to have a better entitlement to possession of the suit property.

8. The appellant/defendant has moved an application under Order XLI Rule 27 CPC before this Court being C.M. Appl. No. 28092/2017 and by this application it is prayed that the appellant/defendant be allowed to lead additional evidence because now the appellant/defendant has got the documents of ownership dated 10.1.2005 executed by erstwhile owner Sh. Jameel Ahmad in favour of the husband of the appellant/defendant, and that these documents actually were wrongly taken away by the son of the appellant/defendant because he had taken money from one Sh. Taufeeq and with whom the documents were kept as collateral security. I have examined the contention urged on behalf of the appellant/defendant for leading additional evidence and the application has to be dismissed for the reasons given hereinafter. Firstly, it is noted that in case the husband of the appellant/defendant had purchased rights in the suit property in the year 2005 as claimed, then such documents would have seen the light of the day by being filed before any public authority, including the house tax department

or electricity department, etc etc. It is the admitted position that on the basis of the so called documents of ownership dated 10.1.2005 said to have been executed by Sh. Jameel Ahmad in favour of the husband of the appellant/defendant neither the appellant/defendant nor her husband applied for mutation of the suit property in the house tax records in the name of appellant/defendant or her husband Mohd. Saleem. Not only no application for mutation has been filed but also appellant/defendant does not claim to have paid any house tax for the suit property to the house tax department. Though counsel for the appellant/defendant sought to argue that no house tax is payable as it is an unauthorized colony, however, this is legally and factually not correct statement because with respect to every property in Delhi the local authority takes property tax and property tax is taken not only with respect to buildings but even with respect to lands which are within the boundaries of the local authority. Also, assuming for the sake of arguments that property tax was not payable on the suit property, then if the appellant/defendant's husband had purchased the property in the year 2001 and paid consideration and had thereafter applied for electricity connection then before the electricity authority

the documents showing taking of connection as an owner would have been filed with the electricity authority, but, admittedly, the record of the electricity authority does not contain the basis on which electricity connection was obtained in the name of the appellant/defendant. In fact, it is the respondent/plaintiff who summoned the witnesses from the electricity authority as PW-6 and when this witness proved as Ex.PW6/A (colly) the documents on the basis of which electricity connection was obtained in the name of the appellant/defendant and these documents do not show that the electricity connection was applied for on the basis of ownership documents and that no documents of ownership of the husband of the appellant/defendant existed in the record of the electricity authority. The relevant examination-in-chief and cross-examination of PW-6 reads as under:-

“PW 6 Mohd. Shafir, Field Executive at BSES Rajdhani Power Ltd, New Friends Colony, New Delhi – 25

On S.A.

I have brought the bills and connection record which is Ex.PW6/A (colly) but I have not brought the documents on the basis of which the connection was given to the consumer and I cannot say whether the said documents are there on our record or not.

XXXX by Sh. Fakhruddin, Counsel for the defendant.

We give the connection to the person who submit the required documents. It is correct that the said connection vide CA No. 1020 6195 3 is in the name of Md. Saleem (husband of the defendant). It is correct that the said connection is in working condition and bill is paid upto date by the defendant. It is wrong to suggest that I have not brought deliberately the documents submitted by the husband of the defendant. I know that the electricity was disconnected. I do not know that any case was also filed

against the BSES Rajdhani in the Court of Ms. Archana Beniwal, J. CJ. South East, New Delhi. I do not know whether the said case was decided in favour of present defendant, or not. It is wrong to suggest that I am deposing wrongly.
RO&AC”

9. Therefore in view of the serious lack of authenticity and doubt as to documents of ownership of Sh. Jameel Ahmad now sought to be relied upon, hence CM No. 28092/2017 is dismissed.

10. It is therefore seen that the trial court has rightly held that the respondent/plaintiff was the owner of the suit property and not the appellant/defendant, inasmuch as, appellant/defendant led no evidence and had no documents to show ownership of the property. Also, it is noted that the documents dated 10.1.2005 sought to be relied upon by the appellant/defendant in this Court cannot be allowed to be led in evidence under Order XLI Rule 27 CPC, inasmuch as, not only the story of the appellant/defendant of these documents being taken by the son of the appellant/defendant for being given for taking loan cannot be believed, it is seen that the documents lack credibility because not only these documents cannot be shown to be relatable to the year 2005 as no payment is made by cheque in the year 2005, but also as stated above, these documents have also not been filed before any public

authority including the electricity authority claiming any title to the suit property by the appellant/defendant.

11. No other issue is urged before this Court.

12. There is no merit in the appeal and the same is hereby dismissed.

AUGUST 09, 2017

AK

VALMIKI J. MEHTA, J

