

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

% *Judgment Reserved on: February 10, 2017*
Judgment Delivered on: February 16, 2017

+ **RSA 27/2017**

KANHAIYA LAL & ANR. Appellants
Through: Mr.Narender Malawaliya, Advocate

versus

NATHI LAL Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

RSA 27/2017, CM Nos.2752/2017 & 2753/2017

1. The appellant No.1 Sh.Kanhaiya Lal is the son and appellant No.2 Smt.Raj Kumar is the daughter-in-law of the respondent Sh.Nathi Lal. The appellants are aggrieved by the concurrent judgments of the Courts below i.e. judgment dated 9th January, 2014 passed by the learned Trial Court and judgment dated 29th November, 2014 passed by the learned First Appellate Court whereby, by way of mandatory injunction, the appellants/defendants have been directed to vacate the first floor of the property bearing No.15/291, Dakshin Puri, New Delhi-110062 admeasuring 22½ sq.yds.
2. This Regular Second Appeal has been preferred after a delay of 617 days in filing the appeal and delay of 25 days in re-filing the appeal. The reason given for condonation of delay is that the appellant No.1 was having

high blood sugar and was bed ridden. The application is not accompanied by any medical record to show that the appellant No.1 remained bed ridden for such a long time. However, in view of the decision of the Supreme Court in N.Balakrishnan vs. M.Krishnamurthy (1998) 7 SCC 123 to ensure that doors of the justice are not foreclosed to the appellants, the delay of 617 days in filing the appeal and delay of 26 days in re-filing the appeal is condoned.

3. Learned counsel for the appellant has filed written submissions on the substantial question of law involved in this appeal. Learned counsel for the appellant has also contended that the Civil Suit No.411/2011 was filed by the father of the appellant No.1 under the influence of his another son Sh.Dal Chand without impleading Urban Shelter Board which was a necessary party. The land was allotted by the Urban Shelter Board. Further, the respondent/plaintiff himself was a licensee and was not capable to create or revoke licence in favour of any other person including the appellants who are his son and daughter-in-law. Learned counsel for the appellant has also raised issue of maintainability of the suit for mandatory injunction contending that possession could not have been granted by issuing mandatory injunction and the respondent/plaintiff should have filed a suit for possession. It has been contended that both the Courts below failed to take note of the fact that plot was allotted to respondent/plaintiff for rehabilitation of the jhuggi-jhopri dwellers. The appellants have also contributed in the construction of the suit property and are share holders in the said property.

4. Undisputed facts are that Sh.Nathi Lal is father of Kanhaiya Lal - appellant No.1/defendant No.1 and father-in-law of appellant No.2/defendant No.2. It is also not in dispute that a plot bearing No.15/291, Dakshin Puri, New Delhi-110062 admeasuring 22½ sq.yds. was allotted to Sh.Nathi Lal in

the year 1976. After raising construction thereon he has been residing there alongwith his family. It is also admitted case of the parties that in the year 1989 appellant No.1 got married to appellant No.2 and they had been residing on the first floor of the said property. The appellant No.2 had lodged a police complaint against her father-in-law in connection with alleged dowry demand. Sh.Nathi Lal on not being able to bear harassment at the hands of his son and daughter-in-law filed Civil Suit No.411/11 with a prayer to issue a decree of mandatory injunction directing the appellants/defendants to vacate the first floor of the suit property.

5. The suit was contested pleading that the defendants are shareholders in the said property and they had contributed in depositing the amount with the slum department as well towards construction of the said house.

6. On the basis of pleadings of the parties, learned Trial Court framed the following issues:-

(i) Whether the plaintiff is entitled to the mandatory injunction as prayed for? OPP

(ii) Whether the defendant has contributed to the deposit made to the slum department and construction raised in the suit property thereafter? If yes, its effect. OPD

(iii) Whether plaintiff is entitled to any relief? If so, what?

7. On considering oral and documentary evidence adduced by the parties, learned Trial Court was of the view that in the year 1976 the appellant No.1/defendant No.1 was about 8 years old hence could not have contributed towards acquisition or construction of the said property. Similarly, appellant No.2/defendant No.2 got married only in the year 1989, by that time the construction was already complete. Hence she also could not have made any

monetary contribution. It was also held that suit property being allotted to the respondent/plaintiff, the appellants/defendants could not have claimed themselves to be shareholders in the said property as it was not a joint family property.

8. The First Appellate Court concurred with the findings of the learned Trial Court and held that there was no evidence to suggest that appellant No.1/defendant No.1 derived any kind of interest under the scheme of allotment of plots.

9. In my considered opinion, the Courts below have rightly held that the license of both the appellants/defendants have been terminated on 21st June, 2011 and suit has been filed on 10th August, 2011 i.e. within two months thereafter, in view of the decision of the Supreme Court in Sant Lal Jain Vs. Avtar Singh 1985 AIR 857, the suit for mandatory injunction was maintainable.

10. At the outset, I deal with the contention raised by learned counsel for the appellant that Urban Shelter Board was not a necessary party. In a suit for mandatory injunction filed by father against his son and daughter-in-law after the allotment of the plot, DDA/Urban Shelter Board has hardly any role so as to be impleaded as a party.

11. Since there is no dispute even by the appellants/defendants that the property No.15/291, Dakshin Puri, New Delhi-110062 admeasuring 22½ sq.yds was allotted to the respondent/plaintiff, the status of the son and daughter-in-law in the plot allotted to the father was only that of 'gratuitous licensee'. The license has already been terminated by the father of appellant No.1 who is allottee of the said property. At the time of acquisition of the said plot and raising of construction, the appellant No.1 being a child aged

about 8 years, was not having the earning capacity so as to contribute in the acquisition or construction of the said plot. By the time he got married in the year 1989 with appellant No.2, the construction was already complete hence no contribution could have been made by them.

12. Both the Courts below have held the status of the appellants as licensee in the suit property qua the allottee of the said plot, who is father of the appellant No.1 and father-in-law of appellant No.2. It is undisputed that dowry case has been registered at the behest of the appellant No.2 against her father-in-law (respondent/plaintiff).

13. In the decision reported as S. R. Batra and Anr. v. Taruna Batra, (2007) 3 SCC 169, the Supreme Court has extensively dealt with the legal position regarding the right of a daughter-in-law in a shared household under Section 17(1) of the DV Act and it was held as under:-

“16. There is no such law in India, like British Matrimonial Homes Act, 1967 and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.

29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member...

30. No doubt, the definition of “shared household” in section 2(s) of the Act is not happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in the society.”

14. In S.R. Batra’s case (supra), the property in question belonged to the mother-in-law and the defence taken by the daughter-in-law was that the said

property was a joint family property and therefore she enjoyed a protection under Section 17(1) of Domestic Violence Act, 2005. However, the court took a view that daughter-in-law cannot claim any right in an accommodation which belongs to mother-in-law or the father-in-law as such an accommodation does not satisfy the test of shared household accommodation as envisaged under Section 2(s) of the Domestic Violence Act, 2005.

15. The respondent/plaintiff is the original allottee of the suit property. Merely because out of love and affection, he has permitted his son and daughter-in-law to live on the first floor, does not mean that he is under some legal obligation to provide shelter and accommodation to disobedient son or daughter-in-law who are source of continuance nuisance for him. After the mutual relationship of love, respect and trust vanished and the stage reached to the extent that criminal case has been filed against the father-in-law, he is under no statutory obligation to provide residence to his son and daughter-in-law and also suffer at their hands.

16. None of the Statute dealing with the rights of a married woman in India, be it The Hindu Marriage Act, 1955; The Hindu Succession Act, 1956; The Hindu Adoption and Maintenance Act, 1956; The Protection of Women from Domestic Violence Act, 2005 confer any right of maintenance, including residence, for the married woman as against the parents of her husband. Law permits a married woman to claim maintenance against her in-laws only in a situation covered under Section 19 of The Hindu Adoption and Maintenance Act, 1956. Thus, the contention raised on behalf of the appellant that the Civil Court has no jurisdiction in view of the provisions of

The Family Court Act, 1984 and The Protection of Women from Domestic Violence Act, 2005 is liable to be rejected.

17. It is settled law that in second appeal the High Court cannot set aside concurrent finding of fact given by the Courts below unless a substantial question of law is raised. Where there is a clear enunciation on a question of law the appellant cannot claim that the case involves substantial question of law.

18. I completely agree with the conclusions arrived at by the Courts below as law is now well settled by the judgment of the Supreme Court in S.R.Batra's case (Supra). The status of the respondent/plaintiff being that of the allottee of the plot, he is residing there in his capacity as a allottee, the status of his son and daughter-in-law i.e. appellants herein could not be more than that of a licensee and that status also came to an end when they were served with a notice to vacate the suit property. The suit property being self-acquired, the respondent/plaintiff is under no legal obligation to maintain the his son – appellant No.1 and daughter-in-law appellant No.2 in view of the legal position enunciated in the decision S.R.Batra vs. Taruna Batra (Supra).

19. Since no substantial question of law arises, this Regular Second Appeal is dismissed.

20. No costs.

PRATIBHA RANI
(JUDGE)

FEBRUARY 16, 2017
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