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

Date of hearing and Order: 5th July 2017.

+ RFA 335/2017

RENU SURI & ORS

..... Appellant

Through: Mr. Malaya Kumar Chand, Advocate
with appellant in person.

versus

SWARNA KUMARI

..... Respondent

Through: Mr.S.C. Singhal, Mr. B.S. Chauhan,
Advocates

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J (Oral)

ORDER

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1. The present appeal has been filed under Section 96 CPC read with Order XLI against the judgment and decree dated 31.08.2016 passed by the Court below vide which the respondent/plaintiff was held entitled for the decree of possession of the suit property and the appellants/defendants were directed to handover the physical and vacant possession of the said property to the respondent/plaintiff. The respondent/plaintiff was also held to be entitled for decree of mesne profits/damages @ Rs.6,000/- per month.

2. As per record, the respondent/plaintiff had filed a suit for possession, damages and mesne profits against the appellants/defendants. The appellant no.1 was the widow of late Sh.Narender Kumar Suri, brother of the respondent/plaintiff and appellants no.2 and 3 were their son and daughter. Late Sh.Narender Kumar Suri sold

the property no.B-93, Jhilmil Colony, Shahdara, Delhi i.e. half portion of ground floor up to the ceiling level to his sister i.e. respondent/ plaintiff for a sale consideration of Rs.3,20,000/- and had executed an agreement dated 23.02.2011 along with affidavit, will, receipt, possession letter, GPA etc. On 16.11.2011, Sh.Narender Kumar Suri had expired and prior to that he was allowed to stay in the suit property for one year. It was alleged that despite expiry of one year, the appellants/defendants did not vacate the suit property. A legal notice dated 07.11.2012 was served upon the appellants. It was claimed that the appellants/defendants were in unauthorized occupation of the suit property w.e.f. 15.11.2012.

3. In the written statement, preliminary objections regarding lack of pecuniary jurisdiction, suppression of material facts and non-maintainability of the suit under Order 7 Rule 11 CPC were taken. It was alleged that the suit property was sold for Rs.26 lacs to the plaintiff, out of which only Rs.3,20,000/- was paid by the plaintiff and remaining amount was never paid. The sale deed was executed in good faith to save the fund of the stamp duty. It was further submitted that all the acts were done in the presence of appellant no.1.

4. After the completion of pleadings by the parties, following issues were framed by the Court below:

- a) Whether the suit has not been properly valued for the purpose of court fees and jurisdiction? OPD*
- b) Whether plaintiff is entitled for decree of possession of the suit property, as prayed? OPP*

c) Whether plaintiff is entitled for decree of damages, if so, at what rate and for what period? OPP

d) Relief.

5. So far as the question regarding valuation of the suit is concerned, it is apparent from the record that the suit was valued as per the claim of the respondent/plaintiff, whereas the objection raised by the appellants/defendants was that the market value of the suit property was Rs.35 lacs and the Court below had no jurisdiction to try and entertain the same. In support of its case, the respondent/plaintiff had examined her son Sh.Sanjay Kumar Bhasin as PW1. She had also examined Sh.Prayas, LDC from the office of Sub-Registrar-VIII who had proved on record the Agreement to Sell and GPA as Ex.PW1/2 and Ex.PW1/3 respectively. The documents executed by late Sh.Narender Kumar Suri i.e. affidavit, will, receipt, possession letter and site plan were proved as Ex.PW1/4 to Ex.PW1/8 respectively. On the other hand, the appellants/defendants had not brought on record any evidence to controvert the case of the plaintiff or to support their plea that the suit was not properly valued for the purpose of pecuniary jurisdiction. No government valuer or architect had been produced before the trial court by the appellants to substantiate their claim that the suit was not properly valued.

6. So far as the next question i.e. whether the plaintiff was entitled for decree of possession of the suit property is concerned, it was proved on record by the respondent/plaintiff that the suit property was purchased by the plaintiff from late Sh.Narender Kumar Suri vide

documents Ex.PW1/2 to Ex.PW1/7 and the said documents were duly registered in the Office of Sub Registrar. It was the claim of the plaintiff that Sh.Narender Kumar Suri was permitted to stay in the suit property after selling the same to the plaintiff for a period of one year and he expired on 16.11.2011. It was also so claimed that after the death of late Sh.Narender Kumar Suri, she permitted his family members to reside in the suit property for some time and when she requested the appellants/defendants to vacate the same, they refused, therefore, a legal notice Ex.Pw1/9 was issued to them but despite its receipt, they did not vacate the suit property.

7. As per the documents Ex.PW1/2 to Ex.PW1/7, late Sh.Narender Kumar Suri sold the suit premises to the respondent/plaintiff and he was permitted to stay in the same for a period of one year as they were brother and sister. It was not disputed by the appellants/defendants that the sale documents with regard to selling of the suit property to the respondent/plaintiff were duly executed and registered in the Office of Sub Registrar. The dispute raised by the appellants/defendants was that the suit property was sold for a sum of Rs.26 lacs and the plaintiff had paid only Rs.3,20,000/- and the remaining amount was never paid, but they had failed to establish such a plea. On the basis of documentary and oral evidence produced on record by the respondent/plaintiff, she had proved her entitlement for the possession of suit property.

8. The next and the last question remained was whether the respondent/plaintiff was entitled for decree of damages. Since it had

been established on record that the legal notice dated 07.11.2012 was served upon the appellants/defendants and the fact that the plaintiff was entitled for possession of suit property, the appellants/defendants were held to be in unauthorized possession of the suit premises after 15.11.2012. Therefore, there was nothing wrong in awarding the damages @ Rs.6,000/- per month w.e.f. 16.11.2012 in favour of the plaintiff and against the defendants.

9. During the course of hearing of the present appeal, counsel appearing on behalf of the respondent, on instructions offered that if the appellant/defendant is ready to handover the vacant possession of the suit property within a period of six months, the respondent/plaintiff is ready to forego the amount of mesne profits till the date of vacation.

10. Counsel for the appellant, on instructions of the appellants/defendants, agreed to the offer of the respondent/plaintiff.

11. It is agreed between the parties that the appellants/defendants shall vacate the suit premises by 31st December 2017 and shall handover the possession thereof to the respondent/plaintiff. The appellants/defendants further undertook to continue to pay the water and electricity charges, as are being paid as on today. It is further agreed that the appellants shall not create any third party interest in the suit property.

12. On the other hand, the attorney of the plaintiff/respondent undertook that he will forego the mesne profits till 31st December

2017, if the vacant possession of the suit property is handed over by the appellants/defendants by 31.12.2017.

13. In view of the aforesaid settlement arrived at between the parties, the judgment and decree passed by the court below is upheld and the same would be stood satisfied with the agreed terms as per the statement made by them.

14. Learned counsel for the respondent, on instructions, submits that he would not press the execution petition pending before the trial court till 31st December 2017.

15. Since the matter has been amicably settled between the parties, the plaintiff/respondent would be entitled to claim the benefit of Section 89 of the CPC with regard to the court fee paid for claiming mesne profits.

16. In the light of the above settlement, the present appeal filed by the appellant is disposed of as settled.

17. Decree sheet be prepared accordingly.

18. A copy of the order be given dasti to counsel for both the sides.

P.S.TEJI, J

JULY 05, 2017

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