

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

+ **RFA No. 890/2017**

% **23<sup>rd</sup> October, 2017**

KALI CHARAN

..... Appellant

Through: Mr. Dalip Kumar Santoshi,  
Advocate.

versus

MAHAVIR SINGH

..... Respondent

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not? **YES**

**VALMIKI J. MEHTA, J (ORAL)**

**C.M. Appl. No. 37699/2017 (for exemption)**

1. Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**C.M. Appl. No. 37701/2017 (for delay)**

2. This is an application seeking condonation of delay of 12 days in re-filing the appeal.

For the reasons stated in the application the same is allowed and the delay of 12 days in re-filing the appeal is condoned.

C.M. stands disposed of.

**RFA No. 890/2017 and C.M. Appl. No. 37700/2017 (for stay)**

3. This Regular First Appeal is filed under Section 96 Code of Civil Procedure, 1908 (CPC) impugning the judgment of the trial court dated 5.7.2017 by which the trial court has decreed the suit for possession, *mesne* profits, etc filed by the respondent/plaintiff. The suit property is property no. C-233, New Seemapuri, Delhi-110095. It is situated on a plot of 25 sq. yards.

4. The case of the respondent/plaintiff was that the suit property was allotted by the Delhi Development Authority (DDA) by an allotment order dated 8.10.1976 to one Sh. Mahavir Singh, son of Sh. Khushi Ram. Sh. Mahavir Singh as per the plaint sold the property to the respondent/plaintiff who became the owner. Appellant/defendant is the real uncle (*chacha*) of the respondent/plaintiff and therefore the suit property was given on rent to the appellant/defendant at rent of Rs.800/- per month. Appellant/defendant is pleaded to have stopped paying rent since March, 1997 and also refused to vacate and therefore the subject suit was filed.

5. Appellant/defendant appeared and contested the suit. It was pleaded by the appellant/defendant that the respondent/plaintiff was not the owner of the suit property and in fact the appellant/defendant was the owner of the suit property having purchased the same from one Sh. Prabhati Lal.

6. After pleadings were complete the trial court framed the following issues:-

- “1. Whether the plaintiff is allottee/owner of the property no. C-233, New Seemapuri, Delhi-95 as alleged. OPP
2. Whether the plaintiff is entitled to decree of possession of the suit property against the defendant as alleged. OPP
3. Whether the plaintiff is entitled to a decree of permanent injunction against the defendant in respect of the suit property as claimed. OPP
4. Whether the plaintiff is entitled to a decree of recovery of arrears of rent of Rs.28,800/- against the defendant with interest as claimed. OPP
5. Whether the plaintiff is entitled to future damages @ of Rs.15,000/- per month as claimed. OPP
6. Whether the suit has not been properly valued and proper court fee has not been paid. OPD”

7. Parties thereafter led evidence and which aspect is recorded in para 4 of the impugned judgment, and which reads as under:-

- “4. In order to prove their respective cases, the plaintiff has examined himself as PW-6 as well as five other witnesses and defendant examined himself as DW-1 as well as seven other witnesses on this behalf. Plaintiff has relied upon documents EX PW6/1 to EX PW6/37. Defendant has relied upon documents Mark D-1 to D-17 and EX DW1/1 to EX DW1/20 as well as Mark 18, 19 and 20.”

8. Respondent/plaintiff examined as many as six witnesses and the factum of depositions of these witnesses are found in the following portion of the impugned judgment of the trial court:-

**“PLAINTIFF’S WITNESSES**

To prove his claim, plaintiff has examined following witnesses:-

(a) PW-1 Sh. Pradeep Kumar Sharma, LDC Delhi Urban Shelter improvement Board, Welcome, Seelampur, Delhi. This witness has deposed that as per record, the property number C-233 New Seemapuri JJ Colony Delhi measuring 25 sq. yards was allotted to Sh. Mahavir s/o Sh. Khushi Ram on 08.10.1976 and this plot was never allotted to any Prabhati Lal.

(b) PW-2 Prabhati Lal deposed that he was never in possession of the above said property and he never sold the above said property to any one and never executed any sale purchase documents in respect of the above said property in favor of Sh. Kali Charan i.e. defendant herein.

(c) PW-3; Kamal Punjabi @ Kamal Kishore has deposed that he is neighbor of plaintiff and defendant and plaintiff has been residing in the property bearing no. C-233, New Seema Puri, Delhi-95 since the date of allotment and no person namely Prabhati Lal s/o Sh. Ramji Lal ever resided in the suit property.

(d) PW-4; Ram Chander has deposed that plaintiff has been residing in the property bearing no. C-233, New Seemapuri, Delhi-95 since the date of allotment and no person namely Mr. Prabhati Lal s/o Sh. Ramji Lal resided in the said property. Defendant is paternal uncle of the plaintiff and was inducted as tenant at the first floor of the property bearing no. C-233, New Seemapuri, Delhi-95 and has not paying the rent of the same for many years. He further deposed that defendant is not the owner of the property bearing no. C233, New Seemapuri.

(e) PW-5, Sh. Nanak Chand is another neighbor of parties. In his cross examination, he has deposed that he knows the plaintiff for the last many years as he is on visiting terms with his brother Khushi Ram who is residing in the same gali. He has denied the suggestion that property no. C-233 was purchased by Prabhati Lal.

(f) PW-6 is plaintiff who tendered his evidence by way of affidavit EX PW6/A. He has reiterated the facts as stated in his plaint. During his cross examination he has deposed that C-233 has been allotted to him in 1976. He also deposed that he does not have any document related to C-233. He further deposed that his father was in possession of the allotment papers and he never gave him any paper related to this allotment despite his several requests. He further deposed that no written rent agreement was executed with the defendant and oral agreement was not executed in the presence of any witness. PW-6 has relied upon documents EX PW6/1 to EX PW6/37.”

9. The appellant/defendant also examined eight witnesses and depositions given by these witnesses are recorded in para 7 of the impugned judgment, and this relevant portion reads as under:-

**“DEFENDANT’S WITNESSES:-**

7. On the other hand, defendant has examined himself as DW-1 well as seven other witnesses as DW-2 to DW-8.

DW-1/ defendant tendered his evidence by way of affidavit EX DW1/A and has relied upon documents Mark D-1 to D-17 and EX DW1/1 to EX DW 1/20 as well as Mark 18, 19 and 20.

DW-1 had deposed that plaintiff is still residing in the suit property since 1988 and he is also in possession in the suit property since 1988. He further deposed that he was tenant of prior owner Sh. Prabhati Lal s/o Sh. Ramji Lal and he purchased the suit property on 01.12.1988 for sale consideration of Rs.90,000/-. In the presence of Sh. Banwari Lal and Mahesh Chand and none other person was present in the sale transaction and in execution of property documents as well as in the payment of sale consideration at Seelampur.

DW-1 further deposed that he can not show any document of allotment regarding the suit property in his name and can not bring the original document ie. Mark 18.

DW-1 denied that Mark 18 is false and fabricated document and this possession slip was in respect of shop not in respect of plot no. C-233, New Seemapuri, Delhi-95. He deposed that he can not show any document of allotment regarding the suit property in his name. He further deposed that plot no. C-233, New Seemapuri Delhi was allotted in the name of Sh. Prabhati Lal s/o Ramji Lal under the scheme of Jhuggi Jhopdi Removal in 1976.

Defendant has filed possession slip (EX DW1/1, OSR) GPA, agreement to sell dated 12.01.1998 which were executed by Prabhati Lal in favour of defendant (Mark D-1 colly).

DW-2 HC Manoj Kumar is a summoned witness who brought the record of NCR No. 229 dated 01.08.96 and proved the same as EX DW2/1.

DW-3 is also a summoned witness and brought receipt no. 33660 dated 13.04.2011 in the name of Kali Charan and the same is already EX DW1/2.

DW-4 Sh. Pramod Gupta is another summoned witness from BSES office, Dilshad Garden, Delhi who brought the record pertaining to electricity connection EX DW4/1A in the name of Kali Charan. He admitted that no document regarding ownership has been filed by the defendant with the electricity connection form at the time of electricity connection.

DW-5 Sh. Tara Chand has deposed that defendant is the resident of Seemapuri locality and known to the defendant since last 40 years. He

further deposed that defendant is residing in the suit property since the date of its purchase i.e. in the year 1988 and the defendant is the owner of the suit property and he is not tenant of the plaintiff. He further deposed that he has seen Prabhati Lal when the negotiation for sale and purchase of the suit property was purchased by the defendant for consideration of Rs.90,000/- and the sale consideration was paid in cash at the house of defendant i.e. the suit property. He denied the suggestion that defendant is not the owner of the suit property or that he was never present in the sale transaction of the suit property.

DW-6 Smt. Ramwati has deposed that she is the resident of Seemapuri locality and known to the defendant since last 30 years. She deposed that defendant is residing in the suit property since the date of its purchase i.e. in the year 1988 and the defendant is the owner of the suit property and he is not tenant of the plaintiff. She further deposed that defendant has purchased the suit property from its erstwhile owner namely Prabhati Lal and since then the defendant is residing in the suit property being owner. She further deposed that defendant has allowed the plaintiff to live at the ground floor of the property no. C-233, New Seemapuri, Delhi and the plaintiff is living there under the permissive possession of the defendant since the year 1988.

In her cross examination, she deposed that no document of sale purchase was prepared in her presence. She denied the suggestion that no property has been purchased from Prabhati Lal s/o Sh. Ramji Lal. She stated that she knows about the ownership of Kalicharan as he is residing.

DW-7 Sh. Satish Kumar has deposed that plaintiff is residing at the ground floor of the said property under permissive possession of the defendant since the year 1989 and the father of defendant is the owner of the suit property. He further deposed that plaintiff is not the owner of the suit property and he procured forged and fabricated documents in order to grab the property of the defendant.

In his cross examination, he has deposed that he was just nine year old at the time of purchasing of the property and he has not seen Prabhati Lal but he has met with Prabhati Lal as Prabhati Lal was having the visiting terms with his family. He had personal knowledge about the sale purchase of the suit property with Prabhati Lal. He further deposed that my father used to go alongwith Prabhati Lal, his tau Banwari Lal and Mahesh Chand to the Court for executing the transfer document in his presence.

DW-8 Sh. Rajinder Kumar LDC from Delhi Shelter improvement Board Delhi, East Zone B, Welcome, Seelampur, Delhi has deposed that he has not brought the record pertaining to the allotment of the jhuggis in the area of New Seemapuri as the suit property was allotted under motivation of family planning scheme and not under the removal of jhuggis jhopri schemes. He further deposed that the suit property was allotted in lieu of the sterilization of Jakir Hussain, however, sterilization certificate of Jakir Hussain is not available on record.”

10. The only issue which arose was whether respondent/plaintiff is the owner of the suit property or the appellant/defendant is the owner of the suit property. The issue would have to be decided on the basis as to whether the original allottee of the suit property was Sh. Mahavir Singh as claimed by the respondent/plaintiff or Sh. Prabhati Lal as claimed by the appellant/defendant. In this regard, the trial court has referred to the fact that after evidence of the parties was complete a report was called from Director, DDA, and who gave his report that Sh. Prabhati Lal from whom the appellant/defendant purchased the suit property was never the allottee of the suit property and the allottee of the suit property was Sh. Mahavir Singh and from whom the respondent/plaintiff purchased the suit property. This relevant para 8 of the trial court reads as under:-

“8. Perusal of the record reveals that a RTI application (EX.6/34) has been filed by the wife of plaintiff i.e. Vimla Devi before the Assistant Director (EZB) Delhi Urban Shelter improvement Board, Welcome and in reply of the RTI application it is stated that as per available record plot no. C-233 (25 sq. yds) at New Seemapuri, J.J. Colony stands allotted in the name of Shri Mahabir s/o Sh. Khushi Ram on 08.10.1976.

A report on 25.04.2017 from the Director (JJR/SUR/Housing/Allotment/L&L/BVK/CS/SCP/Property/land/IA/RP/CD F/OCM/PR). Punarwas Bhawan, I.P. Estate, New Delhi-110002 was called by the Court to know the status of property bearing plot no. C-233 (25 sq. yds) at New Seemapuri, J.J. Colony, Delhi-110095 and according to the report filed by Assistant Director (EZB) Delhi Urban Shelter Improvement Board, the plot bearing no. C-233 (25 sq. yds) at New Seemapuri, J.J. Colony, Delhi was allotted in the name of Sh. Mahabir Singh s/o Sh. Khushi

Ram on 08.10.1976 under Motivation Family Planning Scheme case no. 102936 C-4072 against sterilization of Sh. Altaf Hussain & Sh. Zakir Hussain and further submitted that an amount of Rs.3794/- was deposited by the allottee in the Slum Treasury, MCD (Now DUSIB) on 12.08.2011 vide G-8 No. A-58844 against his application and the demand notices issued by this office from time to time.

Perusal of the record further shows that defendant has failed to produce any document regarding allotment of the suit property in his favour. Even, defendant in his evidence has admitted that he was tenant of prior owner Sh. Prabhati Lal s/o Sh. Ramji Lal and the purchased the suit property on 01.12.1988 for sale consideration of Rs.90,000/- in the presence of Sh. Banwari Lal and Mahesh Chand.

Defendant has filed possession slip, GPA, agreement to sell dated 12.01.1998 executed by Prabhati Lal in favour of defendant (Mark D-1, colly), in support of his claim which was executed by Sh. Prabhati Lal in favour of defendant. However, PW-2 Prabhati Lal from whom defendant stated to have purchased the suit property deposed that he was never in possession of the suit property and he never sold the above said suit property to any one and never executed any sale purchase documents in respect of the above said property in favour of Sh. Kali Charan i.e. defendant herein. Defendant deposed during his cross examination that he has purchased the suit property on 01.12.1988 for sale consideration of Rs.90,000/-. In the presence of Sh. Banwari Lal and Mahesh Chand and none other person was present in the sale transaction and in execution of property documents as well as in the payment of sale consideration of Seelampur. However, defendant has neither cited nor examined both these persons as witnesses to prove his claim.

Keeping in view the aforesaid discussions as well as the government records, this Court is of the view that the plot bearing no. C-233 (25 sq. yds) at New Seemapuri, J.J. Colony, Delhil has been allotted in the name of Sh. Mahabir Singh s/o Sh. Khushi Ram under Motivation Family Planning Scheme. Hence, issue no. 1 is decided in favour of plaintiff and against the defendant.”

11. In view of the above paras of the impugned judgment I do not find any illegality whatsoever in the impugned judgment of the trial court holding that the respondent/plaintiff is the owner of the suit property as the respondent/plaintiff had proved the purchase of the suit property from Sh. Mahavir Singh vide documents Ex. PW6/1 to Ex.

PW6/37 and that appellant/defendant was not the owner as Sh. Prabhati Lal from whom the appellant/defendant purchased was never the allottee of the suit property from DDA.

12.(i) Counsel for the appellant/defendant next contended that once as per the suit plaint respondent/plaintiff himself admitted the appellant/defendant to be a tenant at a rent of Rs.800/- per month, and in such scenario, the civil court would not have jurisdiction for eviction in view of the bar contained in Section 50 of the Delhi Rent Control Act, 1958 and therefore the suit was liable to be dismissed.

(ii) Firstly, it is noted that this issue was not raised by the appellant/defendant in the trial court and therefore is not decided by the trial court. Even for the sake of argument, if I permit the appellant/defendant to raise this issue, being a legal issue governed by Section 50 of the Delhi Rent Control Act, even then the issue will have to be decided against the appellant/defendant in view of the Division Bench judgment of this Court in the case of *Naeem Ahmed Vs. Yash Pal Malhotra, (deceased) through LRs and Another, 2012 (188) DLT 579*, and which holds that once the tenant denies the title of his landlord then such a person is deemed to have renounced the tenancy whereby the tenancy comes to an end and therefore once

tenancy comes to an end there is no bar of jurisdiction of the civil court to decide the suit for possession because then the bar contained in Section 50 of the Delhi Rent Control Act would not apply. This argument of the appellant/defendant is therefore rejected.

13. No other issue or aspect is argued before this Court except as discussed above.

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

**OCTOBER 23, 2017/ AK**

**VALMIKI J. MEHTA, J**

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