

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

+ **RFA No. 1039/2017**

% **Reserved on: 13th December, 2017**
Pronounced on: 15th December, 2017

SUBRATI Appellant

Through: Mr. M.M. Rehman, Advocate.

versus

MOHD. NAIM Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. Appl. No. 45267/2017 (for delay)

This is an application seeking condonation of delay of 18 days in re-filing the appeal.

For the reasons stated in the application, the delay of 18 days in re-filing the appeal is condoned, subject to just exceptions.

C.M. stands disposed of.

RFA No. 1039/2017 and C.M. Appl. No. 45266/2017 (for stay)

1. This Regular First Appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) by the defendant in the suit

impugning the judgment of the trial court dated 16.9.2017 by which the trial court has decreed the suit filed by the respondent/plaintiff for possession and permanent injunction with respect to the suit property bearing no. E-17, E-Block, Gali No. 4, Near Lakri Market, West Vinod Nagar, Delhi -110092, more specifically shown in the site plan Ex.PW1/L. Appellant/defendant has also been restrained from sub-letting, assigning or parting with possession of the suit property.

2. The facts of the case are that respondent/plaintiff claims to be the owner of the suit property on account of purchase of the suit property from the previous owner Mohd. Salim Qureshi by means of usual documentation dated 17.1.2011. Respondent/plaintiff pleaded that he had paid a sum of Rs.10,00,000/- to the previous owner Mohd. Salim Qureshi for purchasing of rights in the suit property. Mohd. Salim Qureshi had purchased this property from its previous owner Smt. Shamim Begum in terms of the usual documentation.

3. Appellant/defendant was in possession of the suit property as he was the real maternal uncle of the seller Mohd. Salim Qureshi and on account of close relation was given license to occupy the suit property. As per the plaint, the seller Mohd. Salim Qureshi

informed the respondent/plaintiff that the appellant/defendant would vacate the property whenever the respondent/plaintiff asked the appellant/defendant to do so. Respondent/plaintiff sent a legal notice for termination of tenancy on 20.3.2012 and thereafter filed the subject suit for possession, *mesne* profits and permanent injunction.

4. Appellant/defendant appeared in the suit and filed his written statement. The defence of the appellant/defendant was that he had purchased the suit property on 11.6.2005 by paying consideration of Rs. 1.8 lacs in the presence of Mohd. Salim Qureshi. Appellant/defendant claimed to have purchased the suit property from Mohd. Salim Qureshi and from whom the respondent/plaintiff had purchased the suit property.

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

- “(i) Whether defendant is the owner of the property No.E-17, E-Block, Gali No.4, Near Lakri Market, West Vinod Nagar, Delhi-92? OPD
- (ii) Whether the plaintiff is entitled to decree of possession of the suit property bearing No.E-17, E-Block, Gali No.4, Near Lakri Market, West Vinod Nagar, Delhi-92? OPP
- (iii) Whether the plaintiff is entitled to decree of damages and mesne profits as prayed for? OPP
- (iv) Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPP

(v) Relief.”

6. The relevant issue to decide the claim of entitlement of possession of the respondent/plaintiff was issue no. 1 and this issue has been rightly held by the trial court in favour of the respondent/plaintiff noticing that not a single document has been filed by the appellant/defendant to show that he purchased rights in the suit property from Mohd. Salim Qureshi. Trial court has rightly held that oral testimonies cannot help the appellant/defendant to prove his case of purchase of the suit property from Mohd. Salim Qureshi. The relevant observations of the trial court are contained in paras 7 and 8 of the impugned judgment, whose reasoning I accept, and these paras read as under:-

7. The defendant in order to prove his ownership has examined himself as DW1 alongwith other witnesses namely Mohd. Rashid as DW2 and Sh. Naseem as DW3 and has placed on record the documents Ex.DW1/A Aadhar Card and Ex.DW1/C, D & E Electricity Bills. The defendant has deposed in examination in chief that he paid a sum of Rs.1.80 lacs to Mohd. Salim Qureshi for purchase of the property in question on 11.06.2005 but in cross examination he deposed that he did not have any title document of the property nor there is any receipt of the payment mentioned above. The defendant is real maternal uncle of Mohd. Salim Qureshi from whom he alleged to have purchased the property. From 2005 till the filing of the suit, he did not give any notice to Mohd. Salim Qureshi for execution of the title deeds. The defendant has placed on record Ex.DW1/B, the power of attorney executed by Smt. Shamim Begum in favour of Salim Qureshi. This document is in favour of Salim Qureshi, executed by Smt. Shamim

Begum, the previous owner wife of Sh. Qureshi Ali. It is no proof that the property was transferred in favour of the defendant.

8. It is admitted fact that the defendant is in possession of the suit property. The other witness produced by the defendant is Mohd. Rashid who deposed that he was present in house No.E- 431, Block-E, Gali No.7, West Vinod Nagar on 11.06.2005 and he was called by the defendant and that a sum of Rs.1.80 lacs was paid by him to Salim Qureshi. The oral testimony of the witness in the absence of the documents is of no use. The last witness is DW3 Naseem, who is the son of the defendant. He has also repeated the same story of making the payment, however, he admitted that no document was executed in favour of the defendant. It was in the knowledge of the witness that the suit property was sold by Mohd. Salim Qureshi to the plaintiff. It is not out of place to discuss document Ex.PW1/5 i.e. the suit filed by the present defendant against Rahish Ahmad and Mohd. Salim Qureshi for permanent injunction wherein the present plaintiff moved application U/o 1 rule 10 CPC which was allowed and the present plaintiff was ordered to be impleaded as a defendant. Thereafter, the plaintiff i.e. defendant herein withdrew the suit. Thus, it clearly shows that plaintiff has no document to prove his ownership and he has miserably failed to prove this issue. Hence, this issue is decided against the defendant.

(underlining added)

7. Learned counsel for the appellant/defendant could not dispute before this Court that appellant/defendant has not led any evidence of having any document of purchase of the suit property from Mohd. Salim Qureshi. Once that is so, it cannot be held that the appellant/defendant is the owner of the suit property having purchased the same from Mohd. Salim Qureshi. Respondent/plaintiff on the other hand proved the documentation of purchase of rights in the suit property as Ex.PW1/A to Ex.PW1/E and which are usual documents of Agreement to Sell, Power of Attorney, Will, etc. I may note that

these documents would not give formal ownership rights to the respondent/plaintiff, however, respondent/plaintiff by virtue of these documents Ex.PW1/A to Ex.PW1/E can be treated as having authority from Mohd. Salim Qureshi so as to receive possession of the suit property as Mohd. Salim Qureshi at least gave rights of taking possession of the suit property by respondent/plaintiff in terms of the documentation Ex.PW1/A to Ex.PW1/E.

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

DECEMBER 15, 2017

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VALMIKI J. MEHTA, J

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