

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

+ **RFA No.221/2018**

% **Reserved on: 5th March, 2018**
Pronounced on: 8th March, 2018

VINOD KUMAR & ORS. Appellants
Through: Mr. Pawan Kumar Jakhu,
Advocate with appellant nos.2
and 5 in person.

versus

BOHAT RAM & ANR. Respondents
Through: Mr. J.K. Jain, Advocate for
respondent No.1.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. No.8163/2018 (exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

C.M. No.8164/2018 (for condonation of delay)

2. For the reasons stated in the application delay of thirteen
days in re-filing the appeal is condoned.
C.M. stands disposed of.

RFA No.221/2017 and C.M. Nos.8161/2018(stay) & 8162/2018
(under Order XX Rule 6B CPC)

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

impugning the judgment of the trial court dated 28.11.2017 by which trial court has decreed the suit for possession and *mesne* profits filed by the respondent no.1/plaintiff.

4. The facts of the case are that respondent no.1/plaintiff filed the subject suit for possession and *mesne* profits with respect to part of the property bearing no.WZ-5 admeasuring 700 sq. yards situated at Lal Dora of Village Titar Pur, Delhi pleading to be its owner and that appellants/defendants had no right, title and interest with respect to the suit property. In the plaint, it was pleaded that one Sh. Sumer Chand was a tenant with respect to two rooms and a shed in the suit property and as per the request of Sh. Sumer Chand, the tenancy of rooms and shed was changed in the name of Sh. Ram Kishan husband of Smt. Murti Devi/appellant no.2/defendant no.2 and one Sh. Tilak Raj. Sh. Ram Kishan was a tenant with respect to one room admeasuring 16x10 and Sh. Tilak Raj was a tenant with respect to a room admeasuring 10x8 and shed measuring 8x8. On the death of Sh. Ram Kishan his wife Smt. Murti Devi/appellant no.2/defendant no.2 became the tenant with respect to the portion with Sh. Ram Kishan. Sh. Tilak Raj also expired and his tenancy devolved upon his

son. Smt. Murti Devi/appellant no.2/defendant no.2 illegally constructed a temporary kitchen and a toilet and also a temporary chappar in the vacant land in front of the tenanted premises and which is the suit property. The illegally encroached portion comprising of temporary construction was razed in a fire and when the appellant no.2/defendant no.2 after again making the construction wanted to transfer the property to a third person, then the respondent no.1/plaintiff filed a suit in which it transpired that appellant no.2/defendant no.2 had transferred the property in favour of appellant no.1/defendant no.1/Sh. Vinod Kumar. Respondent no.1/plaintiff also pleaded to have filed the eviction petition against the appellant no.2/defendant no.2/Smt. Murti Devi and appellant no.1/defendant no.1/Sh. Vinod Kumar. Appellant no.1/defendant no.1/Sh. Vinod Kumar is pleaded to have illegally occupied the suit property shown in blue colour in the site plan and hence the subject suit was filed.

5. During the pendency of the suit, it transpired that the appellant no.1/defendant no.1/Sh. Vinod Kumar had transferred the suit property to the appellant nos.3 to 6/defendant nos.3 to 6, and therefore, they were impleaded in the suit. The suit property was sold

by the appellant nos. 3 to 6/defendant nos.3 to 6 to the appellant no.7/defendant no.7 one another Sh. Vinod Kumar on 13.1.2004 and he was impleaded/sued as defendant no.7. The claim of the titles of the suit property of the appellant nos. 1, 3 to 6/defendant nos.1, 3 to 6 and appellant no.7/defendant no.7 is through the appellant no.2/defendant no.2/Smt. Murti Devi i.e only in case Smt. Murti Devi would have title to the suit property would the other appellants/defendants be her valid successors-in-interest.

6. After pleadings were complete, issues were framed and parties led evidence and which aspects are recorded in paras 5 to 8 of the impugned judgment and which paras read as under:-

“5. After pleadings of the parties vide order dated 18.03.2009 following issues were framed:-

1. Whether the plaintiff is entitled for the relief of possession, as prayed? OPP
2. Whether the plaintiff is entitled for the relief for declaration, as prayed? OPP
3. Whether the plaintiff is entitled for the relief for mesne profits, as prayed? OPP
4. Whether the plaintiff is entitled for the relief for mesne profits, as prayed? OPP
5. Whether the defendants have got no right, title or interest to transfer the suit property in any manner? OPP
6. Whether the defendant no.2 is the owner of the suit property? OPD-2
7. Whether the suit is not maintainable as framed and the plaint is liable to be rejected under Order 7 Rule 11 CPC? OPD-1
8. Whether the suit is under valued? OPD-7
9. Relief.

6. In order to prove its case plaintiff has examined himself as PW1 and has relied upon various documents. Ex.PW1/1 being the site plan, Ex.PW1/2 being the Tax bills, Ex.PW1/3 receipt, Ex.PW1/4 is water bill, Certified copies of the plaint, written statement and Statement of Tilak Raj in the suit filed by the Tilak Raj as Ex.PW1/5 to Ex.PW1/8. Certified copy of statement of Murti Devi as Ex.PW1/9 to 13. Certified copy of order dated 23.05.2005 as Ex.PW1/14, Certified copy of eviction order as Ex.PW1/15, Certified copy of the order of the Appellate Court whereby the appeal filed by Smt. Murti Devi was dismissed as Ex.PW1/16, Ex.PW1/17 is original survey report carried out by the MCD, Certified copy of the award no.121 is Ex.PW1/18, Khasra Girdhawari for the year 1958-61 is Ex.PW1/19, Copy of Jamabandhi for the year 1978-79 is Mark A, Certified copy of Dhakhil Khariz for the year 1926-27 is Ex.PW1/20, Certified copy of Lal Dora Certificate along with Plan is Ex.PW1/21, Electricity bill of 1968 is Mark B, Electricity bill for the year 2004 as Ex.PW1/22, Electrol Roll as Ex.PW1/23.

7. PW2 Mahesh Chander Dhanetia proved the record of Jamabandi for the year 1978-79, Village Titar Pur. PW3 Sanjay Kumar proved the Jamabandhi for the year 1947-48 of village Titar Pur. PW4 M. Kujur proved the record of Dhakhil Kharij for the year 1926-27. PW5 Ram Singh was the villager whose affidavit was filed to prove that the plaintiff was a Proprietor of the village Titar Pur and that Murti Devi was tenant in respect of one room. PW6 Girish Mohan proved the Assessment record in respect of the Property bearing no.WZ-5 and 6, Titarpur. PW6 (it should have been PW7 and for the sake of convenience, he shall be referred to as PW7) Prem Pahwa proved the record in respect of the electricity connection in property no WZ-5, village Titarpur. PW8 & PW9 was Kishan Kumar was proved the Sale Deed executed by Vinod Kumar in favour of defendant no.3 and 6 and rent agreement dated 07.01.2011 executed by one Sh. Baljeet Singh in favour of Sushant Adlakha. Thereafter Plaintiff's Evidence was closed.

8. Defendant also examined 9 witnesses in its support. DW1 Ashok Kumar proved the registration of the partnership firm M/s. Ram Kishan Band. The certified copy of FORM A & B are Ex.DW1/A and DW1/B. DW2 Sanjay Kumar was summoned for producing the record of letter dated 06.08.1973 and 09.03.1969 but could not produced the record as according to him such record was not available. DW3 Ramesh Kumar from Jal Board has proved the water connection. DW4 is Jai Prakash i.e. defendant no.4. DW5 Surinder Kumar has proved the Status report dated 01.02.2003 with respect to Khasra no.26. DW6 Umed Singh has proved the Status report and copy of FIR No.1123/96, PS Rajouri Garden. DW7 is Om Prakash, defendant no.3. DW8 and 9 both are Vinod Kumar one is defendant no.1 and the other is defendant no.9.”

7. Trial court has held the respondent no.1/plaintiff to be the owner of the suit property on account of his father being the original resident of village and therefore the proprietor of the land comprised in the suit property. For holding the respondent no.1/plaintiff to be the owner, trial court has relied upon Jamabandi of the year 1978-79 Ex.PW2/1 to Ex.PW2/3 and Survey Report of the MCD Ex.PW1/17 showing that the respondent no.1/plaintiff was the owner of the suit property. In the Jamabandi of the year 1978-79, the suit land comprised in Khasra no.22/11/2/1 measuring 1 bigha and 4 biswas was shown to be in the ownership of Sh. Tej Ram, the father of the respondent no.1/plaintiff to the extent of 1/32 share. Sh. Tej Ram is shown to be the cultivator and therefore the original proprietor of the Village Titar Pur and hence owner of Abadi Land comprised in the suit property. Trial court has also relied upon another Survey Report of the MCD of the year 1976-77 exhibited as Ex.PW6/4 which showed that Sh. Ram Kishan and Sh. Tilak Raj were the tenants in the property bearing No.WZ-5, Village Titar Pur and which document was over 30 years old and thus presumption had to be validly drawn in terms of Section 90 of the Indian Evidence Act, 1872. Trial court has

also referred to the fact that in the eviction petition filed by the respondent no.1/plaintiff against the appellant no.2/defendant no.2, the appellant no.2/defendant no.2 had admitted that she was a tenant and eviction order dated 26.5.2003/Ex.PW1/5 was upheld right till the Supreme Court. Accordingly trial court has by making the aforesaid observations held the respondent no.1/plaintiff to be the owner of the suit property. I may note that the only document relied upon by the appellants/defendants to show ownership was a report of Patwari Ex.DW5/1 but this report of the Patwari only talks of a house being constructed in 150 sq. yards in possession of Smt. Murti Devi/appellant no.2/defendant no.2/alleged predecessor-in-interest of the appellants/defendants, without in any manner showing as to how the said report of the Patwari was based on any document or how the Patwari was entitled and competent to issue such a report and how was/could appellant no.2/defendant no.2 the owner of the suit land.

8. It is also relevant to note that trial court has rejected the case of the appellants/defendants of entitlement to ownership under Section 8 of the Delhi Land Reforms Act, 1954 on the ground that Section 8 of the Delhi Land Reforms Act would only come into force

if it is found that claimant was in fact in possession of the suit land on the passing of the Delhi Land Reforms Act in the year 1954 and that the appellants/defendants and Smt. Murti Devi had led no such evidence.

9. The relevant observations of the trial court for holding the respondent no.1/plaintiff to be the owner of the suit property read as under:-

“In the light of above said judgment it has been seen where plaintiff is the owner of the suit property. Plaintiff in its support has relied upon the Jamabandhi of the year 1978, 1979 Ex. PW2/1 to Ex. PW2/3, 1947-1948 and has also the survey report of the MCD which Ex. PW1/17 to show that he is the owner and in possession of the suit property. He has relied upon the documents which he had filed for taking the electricity connection. The Jamabandi of the year 1978-1979 shows that in Khasra no. 22/11/2/1 admeasuring 1 bigha & 4 Biswa, Tej Ram son of Changa is the owner of 1/32nd share in khasra no. 17/10/1, 11/1/1 Tej Ram is shown to be the cultivator, therefore, the father of the plaintiff was a proprietor of village Titar Pur and therefore, owner of Abadi Land in village Titar Pur. PW6 is a witness Girish Mohan from House Tax Department who has proved the Survey Report. As per his testimony MCD in the year 1976-77 has carried out the survey and the survey report was exhibited as Ex. PW6/4. The bare perusal of Ex. PW6/4 shows that Ram Kishan Band and Tilak Raj are the tenants in the property bearing no. WZ-5 village Titar Pur. In the cross examination there is no real challenge to the survey report moreover the said document is a document which is 30 year old document and as per upheld Section 90 of the Indian Evidence Act there is a presumption in favour of such documents. The said document clearly shows that M/s. Ram Kishan Band and Tilak Raj are the tenants in WZ-5. Defendants also admits that Ram Kishan Band was working from the said property as they have examined DW1 to prove the registered certificate of the partnership deed in which Murti Devi and Rajesh son of Ram Kishan were partners, therefore, it stands established that Ram Kishan and Tilak Raj were the tenants in respect of the two rooms of property bearing no. WZ-5, Titar Pur. If that be so then it belies common sense that person who is the owner of the adjoining land would become the tenant in one of the rooms. Even

otherwise, in eviction petition initiated by the plaintiff, defendant no. 2 has admitted that she is a tenant which fact has been noted in the judgment passed by the Ld. ARC and eviction order dated 26.05.2003 (Ex. PW1/5) was passed, the said order was upheld till the Hon'ble Supreme Court of India, applying the principle of pre-ponderance of probabilities it can be safely concluded that the person who was the tenant in one portion of the premises could not have become the owner of the other portion by virtue of possession.

The reliance of defendants on the Ex. DW5/1 is wholly mis-conceived and misplaced. DW5/1 is only a report prepared by Patwari which is not approved by any competent authority and the reliance on the said documents to prove that the title is mis-conceived. Ex. DW5/1 records that a house has been constructed in 150 sq. yards, which is in possession of Murti Devi, however, Lal Dora certificate cannot be issued as the village has been urbanized. It is not a Lal dora certificate and it is for this reason, the General Power of Attorney which was executed by Murti Devi wife of Ram Kishan in favour of defendant no. 1 does not even record the existence of said document.

The reliance upon Section 8 of the Delhi Land Reforms Act is without merits as it was held in

Ramphool Vs. Municipal Corporation of Delhi & Anr, 2016 SCC Delhi 4028 that “the non-agricultural land was the land essentially falling in the village abadi or the village lal dora or extended lal dora. However, to get the benefit of Section 8 of the Act appellant/plaintiff had to prove that that there existed a building on the name of the appellant/plaintiff and his forefathers on the suit land as on the date of passing of the Act in 1954 before the appellant/plaintiff could seek any benefit of Section 8, and since appellant/plaintiff has failed to prove that appellant/plaintiff was owner of the suit land in 1954 or that any building existed in the suit plot in 1954, on benefit can be taken by the appellant/plaintiff of Section 8 of the Delhi Land Reforms Act.”

In the light of the judgment of the Hon'ble Delhi High Court it is not case of the defendant no. 2 that there was any building which was situated on the said land and under the possession of Sumer Chand from whom defendant no. 2 had derived her tenancy rights. Moreover there are no pleadings to this effect. In the entire written statement filed by the defendant no. 2 there is not even a whisper, that Sumer Chand had acquired ownership right in the suit property by virtue of Section 8 of the Delhi Land Reforms Act, 1954. There is no averment that Sumer Chand was in possession of the suit property since per-independence days and therefore, any cross-examination on this aspect cannot be looked into as it is beyond the pleadings.”

10. I completely agree with the aforesaid reasoning, discussion and conclusions of the trial court as there is no illegality or error in the said reasoning, discussion and conclusions.

11. Counsel for the appellants/defendants sought to argue that Smt. Murti Devi had the benefit of Section 8 of the Delhi Land Reforms Act however when queried to show any document as to Smt. Murti Devi or her predecessor being in possession of the suit property in the year 1954 when the Delhi Land Reforms Act was passed, no such document could be shown. Obviously Smt. Murti Devi, and earlier to her husband Sh. Ram Kishan, were only the tenants in one room and shed, and they were only encroachers upon the suit property which was in the ownership of respondent no.1/plaintiff. Accordingly argument of the appellants/defendants to claim ownership of the suit property on the basis of Section 8 of the Delhi Land Reforms Act is rejected.

12. No other argument or issues were urged on behalf of the appellants/defendants before this Court. This is noted inasmuch as the trial court has by the detailed reasoning and discussion also granted

mesne profits as per the findings on issue no.4 as per para 13 of the impugned judgment and which para 13 reads as under:-

“13. **Issue no.4:-**

Whether the plaintiff is entitled for the relief for mesne profits, as prayed?

OPP

The onus to prove this issue is upon the plaintiff. Plaintiff has examined PW-9 to prove the prevailing market rent, as per the lease deed Ex. PW9/1, the market rent of one shop was Rs. 10,000/-. However, the said lease deed was with respect to November, 2010 and for a period of 2 years. The said lease deed thus, is of no help to the plaintiff.

The Hon'ble Delhi High Court in **M.C. Aggarwal HUF Vs. Sahara India & Ors. 183 (2011) DLT, 105** has held that even though the Landlord has not been able to lead any evidence regarding the prevalent rent in the area still judicial notice of increase of rent in the urban areas can be taken by applying the provisions of Section 114 & 57 of the Evidence Act 1872. The SLP bearing no. 4104/12 against the said judgment was dismissed on 21.03.2012 as noted in **Marudhar Services Ltd. Vs. Ved Prakash RFA 374/04** decided on 04.05.2012.

Similarly, the Hon'ble High Court of Delhi in **Suman Verma Vs. Sushil Mohini Gupta, 2014 (140) DRJ 595** has distinguish the judgment of **National Radio and Electronics Company Vs. Motion Pictures Association, 2005 (122) DLT 659** and has observed that it can not be lost sight of the fact that the court are for doing justice between the parties and not for, on hyper technicalities, allowing the parties to suffer injustice. Reliance can also be placed upon the judgment of **Binod Khanna Vs. Bakshi Sachdev RIR 1996 Delhi 32, S. Kumar Vs. B.K. Kathpalia 1991 (1) RCR 431** which were also relied by the Hon'ble Delhi High Court in the case of **Suman Verma (supra)** wherein even when the landlord had not led any documentary evidence, the decree of mesne profits was upheld. In the judgment of **Suman Verma (supra)** it was also laid down that Section 2 (12) of the CPC 1908 includes award of interest.

In the light of the authoritative pronouncement of the Hon'ble Delhi High Court, judicial notice of the mesne profits can be taken.

In the light of the above plaintiff is entitled to relief of mesne profits at the rate of Rs.1500/- per month from 06.01.2004 till 06.05.2005 and @ Rs. 2500/- per month from 08.05.2005 till 07.05.2008, @ Rs. 3500/- per month from 08.05.2008 till 07.05.2011, @Rs. 3500/- per month 08.05.2011till 07.05.2014, @ Rs.4200/- per month from 08.05.2014 till 08.05.2017 and @Rs. 5,000/- per month from 08.05.2017 till the date of possession. The aforesaid amount shall carry a simple interest @ 6% p.a.. Defendant no. 1 is liable to pay the amount from 06.01.2004 till 13.01.2004. Defendant no. 3 to 6 are liable to pay the amount jointly and

severally from 13.01.2004 to 22.02.2006 and defendant no.7 is liable to pay the amount from 22.02.2006 till the handing over of the actual physical vacant possession of the suit property. Defendant no. 2 is not entitled to pay any mesne profits as it is her case that she had sold the property to defendant no. 1 on 06.01.2014, the date from which plaintiff has demanded mense profits. The issue is accordingly decided.”

13. Accordingly, it is held that once Smt. Murti Devi/appellant no.2/defendant no.2 had no right, title and interest in the suit property, she could not have transferred any alleged ownership rights to the appellants who are the defendant nos.1, 3 to 6 and 7 in the suit, and respondent no.1/plaintiff therefore is rightly held to be the owner of the suit property and with respect to which impugned judgment and decree has been passed for possession and *mesne* profits.

14. There is no merit in the appeal. Dismissed.

MARCH 08, 2018
Ne/ib

VALMIKI J. MEHTA, J