

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

+ **RFA No.102/2018 and C.M. No.3956/2018(stay)**

% **5<sup>th</sup> February, 2018**

MS. SANGEETA @ SHAHEEN ..... Appellant

Through: Mr. Raj Kumar, Advocate.

versus

ABDUL GHAFAR (DECEASED) THROUGH LEGAL HEIRS

..... Respondents

Through:

**CORAM:**

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

To be referred to the Reporter or not?

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

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the Trial Court dated 25.9.2017 by which trial court has decreed the suit filed by the respondent/plaintiff for possession and damages with respect to suit property bearing no.4685, Gali Razia Begum, Hauz Qazi, Delhi-110006. Trial court has awarded damages at Rs.5,000/- per month.

2. There is no dispute that the respondent/plaintiff is the owner of the suit property and earlier one Sh. Ram Chander was the tenant in the suit premises and on the death of Sh. Ram Chander, his widow Smt. Shanti Devi became the tenant of the suit premises. The appellant/defendant claims that she was adopted by Smt. Shanti Devi and hence being the adopted daughter of Smt. Shanti Devi she could not be evicted as the rent of the suit premises was Rs.40/- per month and appellant/defendant inherited the tenancy rights under Section 2(l) of the Delhi Rent Control Act, 1958 and thereby Section 50 of the Delhi Rent Control Act was a bar for the respondent/plaintiff to file the subject suit in the civil court

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

- “1. Whether the plaintiff is entitled to the decree of possession in respect of one room, one latrine on the ground floor of property bearing no.4685, Gali Razia Begum, Hauz Qazi as shown in red in the site plan? OPP
2. Whether the plaintiff is entitled to mesne profits/user charges @ Rs.250/- per day? OPP
3. Whether the plaintiff is entitled to a decree of permanent injunction as prayed? OPP

4. Whether the plaintiff has no locus standi to file the present suit? OPD
  5. Whether the suit of the plaintiff is not maintainable in view of PO No.2? OPD
  6. Whether the plaintiff has no cause of action for filing the present suit? OPP
  7. Whether the suit of the plaintiff is barred under Section 50 of the DRC Act? OPD
  8. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD
  9. Relief.”
4. Parties led evidence and which is recorded in paras 9 to 11 of the impugned judgment and which paras read as under:-

“9. In order to prove his case the plaintiff examined himself as PW1. PW1 deposed on the lines of the plaint and relied upon the following documents:-site plan which is Ex.PW1/1; certified copy of the statement made by PW1 in the earlier suit for permanent injunction and the order dated 03.02.2015 passed therein which are Ex.PW1/2; certified copies of judgment and decree dated 30.01.1986 and copy of the award dated 10.05.1985 which are Ex.PX (colly.); copies of four rent receipts which are Ex.PW1/4 (colly.); copies of translation of said rent receipts which are Mark D.

10. The plaintiff further examined Sh. M.A. Khan, Translator as PW-2 and he proved the translation of rent receipts Ex.PW1/4 as Mark D. The plaintiff further examined Sh. Divya Prakash Gautam, Draftsman as PW-3 and he proved the site plan of the suit premises prepared by him which is Ex.PW1/1.

11. As against this the defendant examined herself as DW1 and deposed on the lines of her written statement and relied

upon the original Adoption Deed which is Ex.DW1/1. The defendant has further examined Shri Bashir Ahmed @ Babbu, natural father of the defendant as DW2 who deposed regarding the factum of adoption of the defendant by Smt. Shanti Devi. The defendant further examined Shri Satpal Singh and Shri Kripal Singh, nephews of Smt. Shanti Devi as DW3 and DW4 who corroborated the version of the defendant regarding adoption of the defendant by Smt. Shanti Devi.”

5(i) Trial court has held the issue of adoption against the appellant/defendant by holding firstly that the appellant//defendant was admittedly a Muslim and hence under the relevant provision of Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as ‘the Act’) being Section 10 of the Act, adoption cannot take place of a person unless the person who is said to be adopted is Hindu. Therefore adoption of the appellant/defendant, who was a Muslim, by the tenant Smt. Shanti Devi, did not result in the appellant/defendant becoming the adopted daughter of tenant Smt. Shanti Devi.

(ii) Secondly, it has been held by the trial court that adoption can take place by a female, but in case the husband of the female Hindu is alive then consent has to be taken of the husband, but admittedly there is no consent which is proved to have been taken by Smt. Shanti Devi from her husband for adoption of the

appellant/defendant, resulting in the adoption being not valid as required by Section 8 of the Act.

(iii) Thirdly the trial court has disbelieved the adoption deed stated to have been proved by the appellant/defendant as DW1/1 inasmuch as there was no proper identification of the thumb impressions or signatures on the adoption deed and other related aspects.

6. I completely agree with the aforesaid conclusions of the trial court because adoption can only be of a Hindu as per Section 10 of the Act and the appellant/defendant was admittedly a Muslim and therefore there could not have been adoption of the appellant/defendant by the deceased tenant Smt. Shanti Devi. Also, as required by Section 8 of the Act, no consent of the husband of Smt. Shanti Devi was taken by Smt. Shanti Devi for adoption to be valid as per Section 8 of the Act.

7. Also in addition to the reasoning that the appellant/defendant failed to prove the adoption in terms of the adoption deed, the record of the trial court also shows that no evidence has been led by the appellant/defendant of her education record in

which the appellant/defendant is shown as the adopted daughter of the deceased tenant Smt. Shanti Devi and for which reason also, the trial court has rightly arrived at the conclusion of the appellant/defendant not being the adopted daughter of the tenant Smt. Shanti Devi.

8. In law on the death of a tenant only certain legal heirs of the deceased tenant inherited tenancy rights as stated in Section 2(1) of the Delhi Rent Control Act, and though a daughter who was living with the deceased tenant and was dependent on the deceased tenant would have been a legal heir under Section 2(1), however once there is no legal and valid adoption of the appellant/defendant by the deceased tenant Smt. Shanti Devi, in such circumstances the appellant/defendant could not have inherited the tenancy rights. Once the appellant/defendant was not the tenant, the bar under Section 50 of the Delhi Rent Control Act did not come into play.

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

**FEBRUARY 05, 2018**  
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**VALMIKI J. MEHTA, J**