

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

% **Date of decision: 26<sup>th</sup> April, 2018.**

+ **CS(OS) 70/2016**

**ASHOK BAJAJ**

**..... Plaintiff**

Through: Mr. D.D. Singh, Mr. Navdeep Singh  
& Ms. Seeratdeep Singh, Advs.

Versus

**LALIT BAJAJ & ANR.**

**..... Defendants**

Through: Mr. Sangram Patnayak, Ms. Tania  
Sharma, Ms. Rukmini Mukherjee, Mr.  
Sangam Singh & Mr. Sumeet Kaul,  
Advs. for D-1&2.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. The plaintiff has instituted this suit pleading i) that the plaintiff is the sole and exclusive owner of property No.296, Asian Games Village Complex, Siri Fort Road, New Delhi allotted by the Delhi Development Authority (DDA) in the name of the plaintiff in the year 1987; ii) that the plaintiff holds an Overseas Citizen of India Card and resides along with his wife between USA and India and the plaintiff and his family reside in the aforesaid property whenever in India and the plaintiff has been paying property tax and utility bills with respect to the property; iii) that the plaintiff allowed the defendants no.1 and 2, being the brother of the plaintiff and the wife of the said brother of the plaintiff, to reside in the aforesaid property due to the fact that the financial condition of the defendant no.1 was weak and he was living in a rented accommodation at that time; sometime thereafter in the year 1993-94, the parents of the plaintiff who were then residing at Kanpur, also shifted to Delhi and started residing in the aforesaid property along with the two defendants; iv) that the plaintiff also executed a

General Power of Attorney (GPA) dated 14<sup>th</sup> April, 1987 in favour of defendant no.1, to enable the defendant no.1 to look after the property during the absence of the plaintiff; the said GPA was cancelled vide public notice dated 15<sup>th</sup> June, 2013; v) that the father of the plaintiff and the defendant no.1 died in the year 1996; vi) that the plaintiff, in the year 2017, got the leasehold rights in the property converted into freehold by paying the requisite charges therefor; vii) that the plaintiff, during his visit to India in November, 2012, requested the defendants to find another accommodation; viii) that the defendant no.1 requested the plaintiff to grant some time to the defendant no.1 to look for accommodation and promised to vacate by 31<sup>st</sup> March, 2013; ix) however in April, 2013, the mother of the plaintiff filed a false suit which was pending in the Court of Civil Judge, District South, Saket Courts, New Delhi; the said suit was got filed in the name of the mother by the defendant no.1, taking advantage of the old age of the mother; the said suit was disposed of on the plaintiff making a statement in the Court not to dispossess the defendants save by due process of law; and, x) that the defendants thereafter blocked the access of the plaintiff to the aforesaid property except one room therein and thereafter the belongings of the plaintiff and his family lying in the said property were also removed.

2. On the aforesaid pleas, the plaintiff seeks the reliefs of i) eviction / ejection of the defendants from the aforesaid property and of recovery of possession thereof; ii) mandatory injunction directing the defendants to remove themselves and their belongings from the property; and, iii) permanent injunction restraining the defendants from disturbing the use by the plaintiff of the property and from creating any third party interest in the property or parting with possession thereof to any other person.

3. The suit was entertained and the defendants have filed a written statement pleading i) that the defendants have been residing in the property since the date of allotment thereof in the year 1987 and the suit has been filed beyond the period of limitation; ii) that the defendants no.1 and 2 are not licensees of the plaintiff in the property and no license deed was ever executed between the parties; iii) that the suit has not been properly valued for the purpose of court fees and jurisdiction; iv) that the plaintiff, his wife and children are permanently settled outside India; v) that the plaintiff took up a quarrel with the mother on the occasion of the marriage of the daughter of the defendants in November, 2012 inasmuch as the plaintiff wanted the mother to sign some papers which the mother had refused and the plaintiff used the said quarrel to extract jewellery from the mother; vi) that the plaintiff had attempted to forcibly dispossess the defendants and the mother of the parties from the property and which led to the institution of the suit for injunction by the mother and in which regard a police complaint was also filed; vii) that the plaintiff had entered into a Family Settlement after the death of the father of the plaintiff and the defendant no.1 and according to which the aforesaid property was to be transferred by the plaintiff to the defendant no.1 as the plaintiff had already taken entire sale consideration of the property and most of the jewellery of the parents as well as Rs.9.40 lacs from the father of the parties; viii) that the payment for purchase of the aforesaid property had to be made in foreign currency as per the DDA and it was not possible for anyone else except the plaintiff to arrange the foreign currency and thus the property was purchased in the name of the plaintiff; and, ix) that all the bills with respect to the property have been paid by the defendants.

4. Needless to state, the plaintiff has filed a replication denying the defence of the defendants.

5. The suit was originally filed before the District Judge as per the valuation thereof. The plaintiff filed an application under Order VI Rule 17 of the CPC for amendment of the plaint enhancing the valuation of the suit for the purposes of court fees and jurisdiction by valuing the property at Rs.12.5 crores and which application was allowed and plaint returned to the plaintiff for filing in the Court of appropriate pecuniary jurisdiction. Thereafter, the plaint was filed in this Court along with court fees of Rs.12.5 lacs.

6. The following issues were framed in the suit on 20<sup>th</sup> July, 2015, when the suit was in the District Court and the tenor of the orders in the present suit shows that the proceedings before this Court were continued from the stage at which proceedings in the suit were before the District Court and the certified copy of the suit file before the District Court has been filed before this Court:

*“Issue No.1 Whether the plaintiff is entitled to relief of mandatory injunction as prayed for?      OPP*

*Issue No.2 Whether the plaintiff is entitled to relief of permanent injunction against selling, alienating or creating any third party interest in the suit property and further from creating any hindrance of egress and ingress of the plaintiff in the suit property?      OPP*

*Issue No.3 Whether the present suit is not maintainable for want of cause of action and concealment of facts?      OPD*

*Issue No.4 Whether the present suit is barred by law of limitation?      OPD*

*Issue No.5 Whether the present suit has not been valued correctly and property court fees has not been affixed?      OPD*

*Issue No.6 Relief.”*

7. The plaintiff concluded his evidence and the suit was listed before the Joint Registrar on 5<sup>th</sup> April, 2018 for evidence on behalf of the defendants. The order dated 5<sup>th</sup> April, 2018 of the Joint Registrar records that the

defendants had neither filed any list of witnesses nor any affidavits by way of examination-in-chief. Accordingly, the Joint Registrar directed the suit to be put up before this Bench for yesterday. Yesterday, when the suit came up before this Court, the counsel for the defendants sought time to file list of witnesses and affidavits by way of examination-in-chief and offered costs therefor. However, it was felt that on the basis of pleadings aforesaid, a decree at least qua the relief of possession / ejectment could have been passed forthwith against the defendants and there was indeed no need for trial. Attention of the counsel for the defendants was also drawn to **R.S. Madanappa Vs. Chandramma** AIR 1965 SC 1812 and **Bhagwati Prasad Vs. Chandramaul** AIR 1966 SC 735 holding that in a suit for possession of immovable property, even if the *mesne profits* / damages for use and occupation have not been claimed, the Court has the inherent power and rather a duty to award *mesne profits* / damages for use and occupation and the counsel for the defendants was informed that the Court, while passing the decree for possession / ejectment against the defendants, would also pass a decree for *mesne profits* / damages for use and occupation taking judicial notice of the prevalent letting value of the similar properties in the locality in which the property is situated.

8. It was at that time informed that the plaintiff had separately sued for *mesne profits* and suit in that regard is pending before the District Court.

9. Yesterday, upon the counsel for the defendants stating that the defendants were old, it was proposed that subject to the defendants giving an undertaking to this Court to vacate the premises and suffering a decree for ejectment, the plaintiff will not press the relief of recovery of *mesne profits* against the defendants. Such proposal was also made considering the fact

that the parties are closely related. On request of the counsels to take telephonic instructions from their respective clients, the matter was passed over but then could not reach again and hence posted for today.

10. Today, a different counsel appears for defendants and states i) that the defendants are senior citizens; ii) that after the amended plaint was filed in this Court, no issue with respect to the relief of ejectment or possession has been framed; and, iii) that the mother of the parties has since died and has left a Will whereunder she has bequeathed the aforesaid property to the defendant no.1.

11. The said Will is however not on record and the counsel for the defendants from his file gives a copy of the same. Needless to state, there is no plea also in the written statement in this regard.

12. The counsel for the defendants, yesterday, also argued that the plaintiff has purchased the property in foreign currency as it could be purchased only in foreign currency but the father of the plaintiff and defendant no.1 had reimbursed the purchase money to the plaintiff in Indian currency. It was thus suggested that the property was not of the plaintiff but of the father of the parties and on whose demise the defendant no.1 also has a share in the property.

13. It was yesterday enquired from the counsel for the defendants, whether not the argument aforesaid of the defendants was in the teeth of the Prohibition of Benami Properties Transactions Act, 1988 and how can the defendants be permitted to lead evidence on a plea which is barred by law.

14. It appears that the counsel who appeared for the defendants yesterday, though present in Court, has not even informed the counsel who is appearing today of what has transpired in the Court yesterday and the counsel for the

defendants appearing today also is thus unable to address as to how the plea aforesaid constitutes a defence in law or can be permitted to be taken in evidence. The defendants and their counsels seem to ignore the Prohibition of Benami Properties Transactions Act.

15. As far as the plea with respect to the Will of the mother raised today is concerned, when mother of the parties had no title to the property and title to the property is admittedly in the name of the plaintiff, the fact of the mother of the parties bequeathing the property under the Will to the defendant no.1, is of no avail.

16. As far as the arguments yesterday urged on behalf of the defendants, of (i) the suit being barred by limitation; (ii) there being no Licence Deed between the parties; (iii) the suit being not properly valued for the purposes of court fees and jurisdiction; (iv) the plaintiff living outside India and having threatened to forcibly dispossess the defendants; (v) the Family Settlement between the plaintiff and the defendant no.1; and, (vi) payment of bills with respect to the property by the defendants, are concerned:-

- (A) Mere long residence of the defendants in the property does not make this suit for recovery of possession on the basis of title barred by time.
- (B) Time/limitation for instituting a suit for recovery of possession of immovable property on the basis of title, as the present suit is, provided for in Article 65 of the Schedule to the Limitation Act, 1963 is of 12 years commencing from the date when the possession of the defendant becomes adverse to that of the plaintiff. The defendants have nowhere in their written statement pleaded having denied the title of the plaintiff or

having claimed adversely to the plaintiff. In fact the plaintiff in its evidence has proved as Exhibit PW1/1, Conveyance Deed of freehold rights in the property executed by the Delhi Development Authority (DDA) in favour of the plaintiff as late as on 5<sup>th</sup> October, 2007. The plaintiff in its evidence has also examined the Zonal Inspector, House Tax Department (South Zone), South Delhi Municipal Committee as PW3 and proved the property subject matter of the present suit to have been assessed in the name of the plaintiff. The plaintiff has also examined the official of the DDA as PW4 to prove that leasehold rights and thereafter freehold rights in the property have been conveyed in favour of the plaintiff. The defendants, in cross-examination of either of the aforesaid two witnesses have not given any suggestion, of the defendants at any time having set up title adversely to that of the plaintiff vis-a-vis the said property. The plaintiff has also examined as PW2, the official of the Bank of Baroda to prove remittance of foreign exchange and payment for acquisition of rights in the property aforesaid therefrom. A perusal of the cross-examination of the plaintiff by the counsel for the defendants also does not show any case of the defendants of having claimed adversely to the plaintiff or of the defendants at any time having declared themselves as owners of the property or having exercised any ownership rights in the property. The plea of limitation, on account of being in possession of the property since the year 1987, is without any legal basis and is in layman's terms.

- (C) Once it is established that the plaintiff has title to the property, the plaintiff is entitled to recover possession of the property from the defendants. The relationship of siblings between the plaintiff and the defendant no.1 is not in dispute and it is the plea of the plaintiff that the defendants were allowed to occupy the property on account of such relationship. Such occupation in law is as a licence and for a plea of licence, a deed in writing is not essential.
- (D) The plea, of the suit being not valued appropriately for the purposes of court fees and jurisdiction has also lost its significance after the plaint in the suit as filed in the District Court, was permitted to be amended and after amendment, returned and re-filed in this Court. The plaintiff has now valued the suit for the purposes of recovery of possession at Rs.12,50,00,000/- and paid court fees of Rs.12,22,400/- thereon. The defendants, in their cross-examination of the plaintiff, are not found to have suggested the valuation of the property to be higher than that at which the plaintiff has valued the suit for the purposes of court fees and jurisdiction.
- (E) Mere fact that the plaintiff, his wife and children are permanently settled outside India or that the plaintiff may have threatened the defendants and the mother with forcible dispossession and/or that the plaintiff may have had other quarrel with the mother, as argued by the counsel for the defendants, have no relevance to the matter in controversy. It is not as if the plaintiff, on account of living abroad, is disentitled

from suing for recovery of possession of his property.

- (F) The Family Settlement argued by the counsel for the defendants also is of the plaintiff having agreed to transfer the property to the defendant no.1. The defendants have not filed any document regarding the said Family Settlement. The defendants, in cross-examination of the plaintiff, have not given any suggestion qua the same as they ought to have done. Even if it were to be believed that there is such a Family Settlement, the defendants were required to seek specific performance thereof and which has admittedly not been done. The defendants on such pleas cannot resist the claim of the plaintiff for recovery of possession.

17. Thus, none of the defences of the defendants are such which, even if believed, can disentitle the plaintiff from the relief claimed.

18. The question of considering whether the defendants are entitled to lead any evidence does not arise since on the facts aforesaid, the plaintiff is found entitled to a decree for the relief of possession and ejectment forthwith under Order XII Rule 6 read with Order XV Rule 1 of the CPC.

19. That brings me to the aspect of *mesne* profits. As aforesaid, the plaintiff in this suit has not sought any *mesne* profits but has separately filed a suit for the same. However, also as aforesaid, notwithstanding the same the Court is empowered in a suit for recovery of possession of immovable property to also award *mesne* profits. Having heard the counsels, I am still of the view that on account of close relationship between the parties, further litigation between the parties should be curtailed and the parties should not remain embroiled in litigation in the other suits for *mesne* profits as well.

The property subject matter of the suit is a flat *ad measuring* 1829 sq. ft. in Asian Games Village Residential Scheme and comprising of a living and dining room, three bedrooms, servant quarter, toilets etc. Taking judicial notice of the prevalent rents in the locality, the said property would have a minimum letting value of Rs.25,000/- per month and rather much more. It is not deemed essential to order an enquiry on *mesne* profits. However it is still deemed appropriate to provide an incentive to the defendants to finish off the litigation. If the defendants vacate and handover vacant peaceful physical possession of the property to the plaintiff on or before 30<sup>th</sup> June, 2018, the decree for *mesne* profits shall also stand satisfied and the plaintiff shall also not be entitled to proceed with the separate suit against the defendants for recovery of *mesne* profits. However if the defendants do not so handover possession, the plaintiff shall not only be entitled to execute the decree for possession and decree for *mesne* profits but shall also be entitled to pursue the separate suit filed for recovery of *mesne* profits and in which proceedings, the *mesne* profits recovered under the decree in this suit shall be taken into account.

20. A decree is accordingly passed, in favour of the plaintiff and jointly and severally against the defendants:-

- (i) of recovery of possession of property no.296, Asian Games Village Complex, Siri Fort Road, New Delhi;
- (ii) of permanent injunction restraining the defendants from parting with possession of the property to any person other than the plaintiff or from, by professing any title in the property, otherwise dealing with the property;
- (iii) of recovery of *mesne* profits / damages for use and occupation

from the date of institution of this suit i.e. 6<sup>th</sup> February, 2016 till the date of delivery of possession/recovery of possession @ Rs.25,000/- per month; and,

(iv) of recovery of costs of the suit with counsel's fee assessed at Rs.2,00,000/-.

21. However, if the defendants on or before 30<sup>th</sup> June, 2018 handover and deliver vacant peaceful physical possession of the property to the plaintiff, the decree for *mesne* profits and costs shall stand satisfied and the plaintiff shall also then be not entitled to pursue the separate suit filed for recovery of *mesne* profits against the defendants; however if the possession is not so delivered, the plaintiff shall be entitled to execute the decrees aforesaid including of *mesne* profits and shall also be entitled to pursue the separate suit filed for *mesne* profits and in which the *mesne* profits recovered under this decree shall be taken into account.

22. Decree sheet be drawn up.

**APRIL 26, 2018**  
gsr / 'pp'..

**RAJIV SAHAI ENDLAW, J.**