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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 07.05.2018

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RSA 77/2017 & CM Nos. 9427-28/2017

MD YUNUS

..... Appellant

Through: Mr. Varun Goswami, Mr. Shourya Mehra and Mr. Sahil Agarwal,
Advocates.

Versus

MD ISHAQ & ORS.

..... Respondents

Through: Mr. Pankaj Prasad, Advocate for
Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This Second Appeal under section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment dated 17.01.2017 passed by the First Appellate Court, dismissing the appellant's appeal. The respondents'/plaintiffs' suit had been decreed as under:-

“ The suit of the plaintiff is decreed in favour of the plaintiff and against the defendants; for the relief of possession of the suit property i.e. bearing No.48, New Meena Bazar, Jama Masjid, Delhi as shown in the site plan Ex. PW1/11 along with mesne profit @ 8,000/- per month is granted to the plaintiff for-the unlawful usage of the shop from the date of filing of the suit till actually giving of the peaceful possession of the shop by the defendant to the plaintiff.”

2. The brief facts of the case are that the suit property i.e. property No. 48, New Meena Bazar, Jama Masjid, Delhi (a shop) was owned by one Mr. Mohd. Ibrahim. He died bachelor on 24.09.2008. He was survived by his siblings, namely:-

- (i) Mohd. Ismail
- (ii) Mohd. Ishaq
- (iii) Mst. Hazra
- (iv) Mst. Amna

His third sister Mst. Rabia had pre-deceased him in 2003. She was a spinster. The suit property was allotted by the Delhi Development Authority (DDA) to Mohd. Ibrahim “at a monthly licence fee of Rs.65/-, exclusive of electricity charges for carrying on his business” of cloth/textiles. He allowed his nephew – Mohd. Yunus, the appellant, to use a portion of the shop, at best, as a licensee. With the passage of time, due to incessant tension in the relationship of the family members, Mohd. Ibrahim revoked the license of Mohd. Yunus in respect of the suit property by a notice dated 19.09.2006. After his death in 2008, the respondents deposited a sum of Rs.1,365/- with the Municipal Corporation of Delhi as the licence fee for the suit property, for the period till 30.09.2008. Since the appellant had no right to use the suit property, the respondents filed a suit for possession of their late brothers’ property against the nephew - Mohd. Yunus. The suit was decreed by a judgement and decree dated 25.07.2015. The First Appellate Court upheld the same by the impugned order dated 17.01.2017.

3. At the request of the parties the case was adjourned a few times so that they could explore the possibility of an amicable settlement. Nothing worthwhile came about from the exercise.
4. The appellant is in possession of the suit property. He claims to have settled the matter with his siblings and his aunts, namely, Mst. Hazra and Mst. Amna by way of a Deed of Relinquishment dated 21.01.2011. However, there is no settlement with Mohd. Ishaq – the respondent No.1. Insofar as the rights of Mohd. Ishaq are sought to have been appropriated without any settlement with him, the Deed of Relinquishment would be of no consequence, thus the appellant would have no right in the suit property.
5. The appellant is the son of Mohd. Ismail who passed away in 1983 i.e. almost of a quarter of century prior to the demise of the property owner Mohd. Ibrahim, therefore, the legal heirs of Mohd. Ismail would have no right, interest or claim in the suit property. For Mohd. Yunus to say that he is the rightful owner or claimant of the suit property in view of the settlement with his aunts, is legally an untenable contention. Mohd. Ibrahim's parents had pre-deceased him. He himself dies a bachelor. His only survivors were his siblings, namely, Mohd. Ishaq, Mst. Hazra and Mst. Amna. Therefore, the suit property could have been divided only between these three surviving siblings. There would be no residuary share in the property to trickle down to his second generation relatives i.e. the children of his siblings. Therefore, the appellant, a second generation relative would not be entitled to any share in the estate of Mohd. Ibrahim because the appellant's father had predeceased Mohd. Ibrahim. The generational gap in the succession would oust the appellant from any claim to succession when the deceased had surviving siblings.

6. Insofar as respondent - Mohd. Ishaq stakes a claim to the property, and now his sisters Mst. Hazra and Mst. Amna too state that they were misled into signing of a document of relinquishment, the appellant - Mohd. Yunus would have no right, title or interest in the suit property.

The impugned order has held:-

“12. Even as per the own case of the appellant as contained in the written statement and as contained in the present appeal, the suit shop bearing no. 48, New Meena Bazar, Jama Masjid, Delhi was allotted in the name of Md. Ibrahim. The appellant before this court is the nephew of late Md. Ibrahim. The respondents are the LR's of late Md. Ibrahim. The case of the appellant before the Ld. Trial Court and even before this court is to the effect that late Md. Ibrahim never asked for the possession suit shop from the appellant despite the fact that the said shop was allotted in the name of Md. Ibrahim. The appellant has vehemently argued that he has always been in exclusive and physical possession of the suit shop.

13. It has to be seen that the case of the respondents/plaintiffs before the Ld. Trial Court was squarely based on the premise that the suit shop was allotted in the name of late Md. Ibrahim and the same was given on license basis to the appellant/defendant by Md. Ibrahim. The respondents/plaintiffs clearly stated before the Ld. Trial Court in the plaint that the license of the appellant was revoked by late Md. Ibrahim by virtue of legal notice dated 19.09.2006. The respondent no. 1/plaintiff no.1 Md. Ishaq placed on record the demand notice dated 26.03.2009, which was issued by MCD in the name of Md. Ibrahim Ex.PW/1 on record of the Ld. Trial Court. The aforesaid demand notice 26.03.2009 squarely states that Late Md. Ibrahim was the allottee of the suit shop. The payment receipt dated 19.06.2009 in the name of Md. Ibrahim issued by MCD was also placed on record by PW1 in the form of Ex.PW/2. The legal notice dated 19.09.2006 issued to the appellant herein by Late Md. Ibrahim was also placed on record in the form of Ex.PW/6 together

with its postal receipts and A/D cards etc. Needless to mention that neither PW1 was cross examined by the appellant nor any evidence in defence was led by the appellant. As such, the testimony of PW1 remains unchallenged and uncontroverted. I have no hesitation to hold that the findings of the Ld. Trial Court as recorded in the judgment 25.07.2015 are not required to be inferred with.

14. The appellant in the present appeal has vehemently argued that the suit shop was allotted in the name of Md. Ibrahim against damages only and after his death, no right survived in favour of the respondents qua the suit shop. I am of the opinion that the abovesaid submission of the appellant as contained in the present appeal is fallacious. Admittedly, the respondents are the LR's of late Md. Ibrahim. Admittedly, the suit shop was allotted in the name of late Md. Ibrahim. The case of the respondents was categorically based on the premise that the appellant was merely a licensee in the suit shop. As such, I have no hesitation to hold that the appellant is no one to challenge the title of the respondents. To my mind, it was sufficient on the part of the respondents to prove that the appellant was merely a permissive user in the suit shop."

7. Under Islamic law inheritance of the assets of a bachelor, whose parents have pre-deceased him, has to be divided first among his siblings. The children of a pre-deceased sibling would have no claim in the estate. The share of inheritance would first be determined between the three surviving siblings of Mohd. Ibrahim viz. Mohd. Ishaq, Mst. Hazra and Mst. Amna. They would have first claim on the suit property. Purported relinquishment of rights by either of the siblings to a third party would not impair or encumber the unfettered right of the other sibling(s) to possession of the estate. In the present case, the right of refusal to the inheritance in the property or the relinquishment of interest of either party, inherently vests

with those equally placed in the same class of heirs to succession to the estate. Mohd. Ishaq, the brother of the deceased Mohd. Ibrahim claims succession to the latter's estate, the shop. He is entitled to it. The decree and the impugned order cannot be faulted for so concluding. No question of law arises for adjudication.

8. The appeal is without merit and is accordingly dismissed.

NAJMI WAZIRI, J.

MAY 07, 2018/sb

