

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

RESERVED ON : 14th DECEMBER, 2017
DECIDED ON : 15th JANUARY, 2018

+ RSA 97/2017
RAJ PATI & ORS Appellants
Through : Mr.Deoraj Singh, Advocate.

versus

MEENA DEVI Respondent
Through : Mr.Nilesh Kumar, proxy counsel.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present Regular Second Appeal has been filed by the appellants to challenge the legality and correctness of a judgment dated 30.11.2016 of learned Addl. District Judge in RCA No.89/2016 whereby findings of the learned Civil Judge, Delhi recorded vide judgment and decree dated 28.02.2014 in Suit No.438/08/10 were endorsed. The appeal is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. Suit for possession, permanent injunction, damages and mesne profits was filed by the appellants against the respondent. It was averred that Ram Sumer - the predecessor-in-interest of the appellants was allotted a plot bearing No.461, Block-27, Trilok Puri, Delhi (hereinafter 'the suit property') by Delhi Development

Authority and its possession was handed over to him vide slip No.9197 dated 18.09.1976. Ram Sumer raised construction over the said plot after obtaining loan from State Bank of India, Himmatpuri. The suit property was let out from time to time to various tenants. It was further urged that the respondent who lived nearby was on good terms with the appellants and was requested to collect rent from the tenants. The respondent subsequently turned dishonest and started claiming herself to be the owner of the suit property. She also filed a frivolous suit for permanent injunction against the appellants which was ultimately dismissed. It was further urged that on 05.11.1999, Raj Pati - appellant No.1 went to her native place and in her absence the respondent committed tress pass in the suit property. A complaint was lodged with the police on 02.12.1999. The respondent continues to be in illegal and unlawful possession of the suit property since November, 1999. Damages @ ₹1,500/- per month were also claimed for illegal use and occupation of the suit property.

3. The suit was contested by the respondent. She denied the averments of the appellants and claimed that the suit property was purchased by her from Ram Sumer vide Agreement to Sell, GPA, affidavit and Will dated 20.01.1980 and its possession was handed over to her along with possession slip. She further claimed that after purchase of the property, she raised construction over it in March, 1980.

4. To establish their respective claims, the appellants examined PW-1 (Raja Ram), PW-2 (Siya Ram), PW-3 (Hari Ram Morya), PW-4 (Dilip Kumar), PW-5 (Om Prakash) and PW Satish

Kumar. The respondent examined herself as DW-2 besides examining DW-1 (Romanus Ekka), Record Clerk. After considering the rival contentions of the parties and upon perusal of the evidence adduced by the parties, the learned Civil Judge dismissed the suit. The challenge in appeal (RCA No.89/2016) did not yield any result and it was dismissed on 30.11.2016 by the Appellate Court. Being aggrieved and dissatisfied, the instant Regular Second Appeal has been filed.

5. It is not in dispute that the suit property was allotted to Ram Sumer - the predecessor-in-interest of the appellants by DDA and slip No. 9197 dated 18.09.1976 was issued in this regard. Respondent's claim from the very inception was that the suit property was purchased by her from Ram Sumer and he executed various documents i.e. Agreement to sell, GPA, affidavit and Will dated 20.01.1980 for a consideration of 25,000/-. It was heavily upon the appellants to prove that after the suit property was allotted to Ram Sumer, he and after his death, they remained in continuous possession of the suit property till it was allegedly trespassed by the respondent on 05.11.1999 in her absence. The appellants, however, did not produce any credible document on record to show if the suit property remained in their possession from 1976 to 05.11.1999, as urged. No document whatsoever showing the physical or constructive possession of the suit property with the appellants has been produced. It was also not specifically averred as to who were the tenants to whom the suit property was let out from time to time. Names of such tenants and the duration for which they lived in the rented accommodation were not revealed. No rent receipts showing payment of rent by them have

been placed on record. PW-5 (Om Prakash) appeared in the witness box to claim that he was a tenant in the suit property from October, 1982 till the last day of 1987. He, however, did not place on record any document to show whether he lived as a tenant for such a long period in the suit premises or ever paid any rent to the appellants. Admittedly, PW-5 was acquainted with the appellants. In the cross-examination, he admitted that Raj Pati was known to him since October, 1982 when she lived at Trilokpuri. He admitted that he did not have any document or receipt to show if he ever resided in the suit property as a tenant. No implicit reliance can be placed on the testimony of this interested witness. PW-1 (Raja Ram) who tendered evidence by way of affidavit (Ex. P) in the cross-examination disclosed that he had let out the suit property to several tenants but was unable to disclose that as to who were the tenants and what were the duration of their tenancy. Similarly, PW-3 (Hari Ram Morya), in the cross-examination, deposed that he did not have any receipt for the rent collected by the respondent from the tenants in the suit property on his behalf. It was not disclosed as to for what period the respondent was authorised to collect rent, and if so, if the rent collected by her was ever accounted for. It was also not disclosed as to till which date the respondent collected any such rent from the tenants in the suit property.

6. The respondent Meena Devi filed her evidence by way of affidavit (Ex.DW-2/A) and claimed herself to be in possession of the suit property on the basis of the documents executed in her favour by Ram Sumer. In the cross-examination, she reiterated that these

documents were got prepared by Ram Sumer and he had handed over them to her. She further disclosed that Ram Shankar and Ram Chander were present at the time of preparation of the said documents. The payment of ₹25,000/- was made in cash by her to the vender and possession of the suit property was handed over to her on the day, the documents were prepared.

7. These documents have been placed on record; these are on stamp paper. The appellants did not deny signatures of Ram Sumer on these documents.

8. No worthwhile evidence has emerged on record as to when the respondent allegedly committed tress-pass in the suit property. The present suit for recovery of the possession was filed by the appellants on 23.01.2008. The inordinate delay in filing the suit for possession has not been explained. It is relevant to note that before that the respondent had also filed a suit for permanent injunction against the appellants in 1999. In the said suit, she had claimed herself to be owner in possession of the suit property on the basis of the documents executed by Ram Sumer in her favour. The said suit was disposed of by a judgment on 13.03.2002. Even after dismissal of the said suit in 2002, the appellants did not bother to get back possession of the suit property for such a long time. The said suit came to be dismissed as the documents produced on record by the respondent to prove ownership were not registered documents.

9. The Courts below have given concurrent findings of facts regarding the possession of the suit property with the respondent on the basis of the documents executed in her favour under Section 53A

of the Transfer of Property Act holding that these documents, however, did not confer any ownership title upon the respondent. These findings based upon fair appreciation of the evidence deserve no intervention. It was specifically noted by the Courts below that the appellants were unable to establish beyond doubt that the documents produced by the respondent regarding her possession under Section 53A of the Transfer of Property Act were fake or forged; they did not sought any declaration for the cancellation of these documents.

10. In the light of above discussion, the present appeal is devoid of merits and is dismissed.

11. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

JANUARY 15, 2018 / tr

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