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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 01.12.2017

Judgment Pronounced on: 29.01.2018

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RFA 463/2017

SH. RAJENDER SINGH & ORS Appellants/defendants

Through: Mr. Yograj Gullaiya, Advocate.

versus

SATNAM SINGH Respondent/plaintiff.

Through: Mr. Atul Sheopuri, Advocate.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. Challenge in this Regular First Appeal is the judgment and decree dated 23.08.2016 in Civil Suit No.458/2016 passed by the Court of Dr. Hardeep Kaur, Additional District Judge-02, Shahdara, Karkardooma Courts, Delhi (in short 'learned ADJ') by which the suit of the respondent/plaintiff was decreed in his favour against the appellants/defendants in respect of property bearing No.1/10426 measuring 100 square yards out of Khasra No.388 situated in the area of village Udhanpur in Mohan Park (Rohtash Nagar) Illaqa Shahdara, Delhi-32.
2. The brief facts of the case are that the Respondent filed a suit for Declaration, Possession, Permanent and Mandatory Injunction against the appellants claiming that he is a senior citizen being 70 years (approx.) of age and became owner of the

said property bearing No.1/10426 by registered sale deed dated 20.01.1967 duly registered with Sub Registrar-II, Delhi on 03.02.1967.

3. The Respondent further claimed that he is also owner in possession of another built up property bearing municipal property No.1/10424 measuring 125 square yards adjacent to the previous property and it was purchased by him in the name of his deceased wife late Jasbir Kaur. He pleaded that both these properties are his self acquired properties and he had purchased and constructed the same by his tedious labour and hard earned money. He also alleged that original title documents of the property No.1/10424 are in possession of the appellants.
4. It is further alleged by the respondent that the appellants No.1, 3 and one Bhupinder Singh are his sons. He claimed that he and his elder son Bhupinder Singh along with his family have been residing in property bearing No.1/10424 whereas the appellants No.1 and 3 along with their families have been residing on the first floor of the property No.1/10426 except one room situated on the first floor which has been in his possession. He pleaded that on the ground floor of the property No.1/10426, he along with his elder son Bhupinder Singh have been running the business of manufacturing motor radiator parts since 1991. They had installed requisite machinery there.
5. The respondent pleaded that his wife had passed away on 24.02.2007 and after the demise of his wife the appellants have

committed theft in his house and have taken away the original title documents of the property No.1/10426. The respondent pleaded his strained relations with the appellants. He pleaded that the appellants have been pressurizing him to transfer the said properties in their name. He alleged that the appellants No.1 and 3 have abused and beaten him. He had debarred and disowned the appellants and their successors from all his movable and immovable properties and severed his relations with them. He got issued a notice in this regard in the Newspaper Mahamedha dated 11.09.2013. He asked the appellants several times to vacate the suit property. He also pleaded that the appellants have not been paying the water and electricity charges of the property No.1/10426. The respondent has valued the suit property at Rs.10 lacs for the purpose of court fees and jurisdiction and paid the requisite court fees.

6. In their written statement, the appellants No.1 and 2 have pleaded that the appellant No.1 has also been doing his work in the property No.1/10426 for the last several years and the machinery and tools installed therein belong to him also. In their para-wise reply, the appellants No.1 and 2 have not disputed the ownership of the property No.1/10426 in the name of the respondent. They have also not disputed in their written statement that the property bearing No.1/10424 is in the name of wife of the respondent (i.e. mother of appellants No.1 and 3) but they pleaded that rights in this property bearing No.1/10424

were devolved equally upon all of them including the respondent. It is admitted that respondent has contributed a considerable amount in establishing the said business and in getting machinery purchased and construction of the building. In their written statement, the appellants No.1 and 2 have not denied the physical possession of the respondent and Bhupinder Singh and his family in property No.1/10424. They have also not denied that on the first floor of the suit property one room is in possession of the respondent. They have also not denied their residence on the first floor of the suit property No.1/10426. It is denied that they committed theft as alleged by the respondent.

7. In their written statement, the appellants No.3 and 4 have also not denied the ownership in the name of respondent with regard to the property No.1/10426. However, it is pleaded that the property bearing No.1/10424 was constructed by tedious labour of all the parties. They have admitted that one room on the first floor of suit property No.1/10426 is under the occupation of respondent. It is pleaded that the appellant No.3 was also a partner in the family business but was expelled by the respondent and now he has no source of income.
8. On 07.07.2014, the learned ADJ framed the following issues:
 1. Whether the plaintiff has not properly valued the present suit for the purpose of court fee and jurisdiction? (OPD 1 & 2)
 2. Whether the plaintiff is entitled to the relief for declaration as claimed? OPP
 3. Whether the plaintiff is entitled to the relief for possession as claimed? (OPP)

4. Whether the plaintiff is entitled to the relief for permanent injunction as claimed? (OPP)
 5. Whether the plaintiff is entitled to the relief for mandatory injunction as claimed? (OPP)
 6. Relief.
9. In support of his case, the Respondent has examined himself as PW1. The appellant No.2 has examined herself as DW1. The appellant No.1 has examined himself as DW2. The appellants No.3 and 4 have examined themselves as DW3 and DW4 respectively.
10. After hearing the parties, the learned ADJ decided all the issues in favour of the respondent. However, on issues No.2 and 3 with regard to property No.1/10424, the learned ADJ has held that the dispute with regard to this property cannot be decided in the present suit as the Respondent had filed a Suit for Declaration, Possession and Injunction and no relief of partition has been prayed.
11. I have heard learned counsel for the parties and perused the record.

ISSUE NO.1

12. On this issue, the appellants have not adduced any evidence to prove to their allegation/defence that the value of the property was more than Rs.1 crore. In the absence of anything to the contrary the learned ADJ has rightly decided the issue by observing that the respondent has valued the suit for the purpose of court fees and jurisdiction at Rs.10 lacs and affixed the requisite court fees on the same.

ISSUES NO.2 & 3

13. With regard to the property bearing No.1/10426 the respondent has placed on record the sale deed dated 20.01.1967 Ex.PW1/A in his favour. In their respective written statements, the appellants have also not denied the title of the respondent on the property No.1/10426. The appellant No.2 while appearing as DW1 and appellant No.1 while appearing as DW2 have admitted in their cross-examination that the suit property is in the name of the respondent. When the respondent appeared as PW1 and was cross-examined by appellants No.1 and 2 it was suggested to him that the appellant No.1 had also contributed towards sale consideration of the suit property but they have not adduced any evidence. Therefore, the learned ADJ has rightly decided issues No.2 and 3 in respect of suit property bearing No.1/10426 that this is self acquired property of the respondent.
14. The appellants are in possession of the first floor of the property No.1/10426 except one room, which is in possession of the respondent and they have not vacated the suit property despite several demands by the respondent. Therefore, the learned ADJ has rightly held that the respondent is entitled to a decree of possession of 1st floor of property No.1/10426 in his favour and against the appellants.

ISSUE NO.4

15. In their written statement, the appellants No.1 and 2 as also the appellants No.3 and 4 have not denied that the respondent and

his elder son Bhupinder Singh have been in possession of the ground floor of the suit property bearing No.1/10426 and carrying the business of manufacturing motor radiator parts since 1991 and installed the machinery. The appellants No.1 and 2 have admitted that the respondent had spent lot of money in purchase of machinery and construction of building i.e. property bearing No.1/10426. The appellants No.1 and 2 pleaded that appellant No.1 has also been doing his work for last several years. They pleaded that the machinery and tools installed therein belong to Appellant No. 1 also. The appellant No.3 has pleaded that he was also a partner in the family business but he was expelled by the respondent and he has no source of income. However, miserably the appellants have not adduced any evidence that they have contributed any capital in the business which is being carried by the respondent and his elder son Bhupinder on the ground floor of property No.1/10426. The possession of the respondent in one room on the first floor of property No.1/10426 is also not disputed. Therefore, the learned ADJ has rightly decided issue No.4 in favour of respondent.

ISSUE NO.5

16. As regards, the electricity and water consumption charges, it has been deposed by PW1 that the appellants have not been paying usage charges for electric and water consumption. He testified that municipal taxes have also not been paid by the appellants.

Admittedly, the appellants are in possession of first floor of suit property No.1/10426 except one room. They have not adduced any evidence that they have paid the usage charges for electricity and water consumption and the municipal taxes. In the circumstances, the learned ADJ has rightly decided issue No.5 directing the appellants to pay usage charges for electricity & water consumption and the municipal taxes till they hand over the possession of the property No.1/10426 to the respondent.

17. In view of the above discussions, I do not find any infirmity in the judgment and decree passed by the learned ADJ. Resultantly, the appeal is dismissed with costs.

(VINOD GOEL)
JUDGE

JANUARY 29th, 2018
“sandeep”