

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

+ **RFA No.437/2018**
RFA No.438/2018

% **Judgment reserved on: 22nd May, 2018**
Judgment pronounced on: 28th May, 2018

+ **RFA No. 437/2018**

BALWINDER SINGH VIRDI & ANR. Appellants

Through: Mr. Tarun Sharma, Advocate
with Mr. Varun Gupta, Advocate.

versus

PARAMAJEET KAURRespondent

Through: Mr. Amit Bhatia, Advocate.

+ **RFA No. 438/2018**

BALWINDER SINGH VIRDI & ANR. Appellants

Through: Mr. Tarun Sharma, Advocate
with Mr. Varun Gupta, Advocate.

versus

PARAMAJEET KAUR Respondent

Through: Mr. Amit Bhatia, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

Caveat No. 488/2018 in RFA No. 437/2018

1. Counsel for the caveator enters appearance.

Caveat stands discharged.

C.M. Appl. No.21600/2018 (for exemption) in RFA No. 437/2018

C.M. Appl. No.21608/2018 (for exemption) in RFA No. 438/2018

2. Exemptions allowed subject to just exceptions.

C.Ms. stand disposed of.

RFA No.437/2018 and C.M. Appl. Nos. 21599/2018 (under Order XLI Rule 27 CPC), 21598/2018 (for stay)

RFA No.438/2018 and C.M. Appl. Nos. 21607/2018 (under Order XLI Rule 27 CPC), 21606/2018 (for stay)

3. These are two Regular First Appeals under Section 96 of the Code of Civil Procedure, 1908 (CPC). Both the appeals are filed against the common judgment dated 12.1.2018. By the impugned judgment two suits have been decided. The first suit is the suit filed by the respondent/plaintiff for possession and recovery of damages. The second suit is the suit filed by the appellants/defendants for declaration and injunction for seeking declaration as null and void the documents of title executed in favour of the husband of the respondent/plaintiff dated 13.11.1980 and the subsequent sale deed dated 19.4.2005 executed by the husband of the respondent/plaintiff in favour of the

respondent/plaintiff. The suit property is property admeasuring 128 sq. yards bearing no. 1119, Rani Bagh, Shakur Basti, Delhi.

4. The facts of the case are that respondent/plaintiff pleaded that the suit property was originally owned by one Sh. Amar Singh. Sh. Amar Singh had by the sale deed dated 11.2.1953 sold the suit property to Sh. Veer Singh. Sh. Veer Singh by the usual documentation being the agreement to sell, Will, receipt, etc dated 13.11.1980 had transferred rights in the suit property to Jathedar Baldev Singh, the husband of the respondent/plaintiff. Jathedar Baldev Singh had transferred the suit property to his wife the respondent/plaintiff in terms of the sale deed dated 19.4.2005. It was pleaded that the appellants/defendants were the cousin brothers of the husband of the respondent/plaintiff and were allowed as licensees to stay in the suit property. When after the purchase of the suit property, the respondent/plaintiff asked the appellants/defendants to vacate, they demanded a sum of Rs.2,00,000/- for vacating the property and thereafter refused to vacate the same. In an earlier suit for injunction filed by the respondent/plaintiff against the appellants/defendants, appellants/defendants disputed the ownership of the

respondent/plaintiff, and therefore the present suit for possession and damages was filed.

5. The case of the appellants/defendants was that they are owners in possession of the suit property since the year 1972-73. It was pleaded by the appellants/defendants that the suit property was in the ownership of three persons, being, the husband of the respondent/plaintiff namely Jathedar Baldev Singh, the father of the appellants/defendants Sh. Sewa Singh and one Sh. Harbhajan Singh. It was pleaded by the appellants/defendants that these three persons came into occupation and possession of property admeasuring 162 sq. yards and became the owners thereof. It was also pleaded by the appellants/defendants that their father in the year 1973 had given a cash amount of Rs.3,000/- to Jathedar Baldev Singh for giving No Objection Certificate (NOC) to their father so that the appellants'/defendants' father could get mutated in his name equal share in the suit property, but inspite of receiving this amount of Rs.3,000/- Jathedar Baldev Singh did not issue any NOC. It was then pleaded by the appellants/defendants that they have contributed a lot of money for the construction on the suit property and therefore they

are owners of the suit property of which they are in possession since the year 1972-73. Appellants/defendants claim to have been paying the house tax, electricity and water charges. The suit was therefore prayed to be dismissed.

6. Issues were framed, and thereafter the parties led evidence, and which aspects are recorded in paras 6 to 8.1 of the impugned judgment and these paras read as under:-

“ISSUES

"6. On the basis of pleadings, following issues were settled in suit no. 58295/16 on 17.04.2012 and in Suit no. 58744/16 on 21.10.2010 and additional issue on 17.04.2012. The name of plaintiffs and defendants have been modified as per para no.2 (Supra) in the issues as detailed below:

Issue no. 1: Whether the plaintiff No. 1 is entitled to decree of possession as prayed for? OPP.

Issue no. 2: To what amount, if any, is plaintiff No. 1 entitled from defendants? OPP.

Issue no. 3 Whether the suit (bearing no. 58744/16) is not properly valued for the purposes of court fees and jurisdiction? OPP

Issue no. 4: Whether the defendants are the owners of the suit property bearing no. 1119(back portion), Rani Bagh, Shakur Basti, Delhi? OPD

Issue no. 5: Whether the defendants are entitled to the decree of declaration as per prayer in clause (A) of the plaint of suit no. 58295/16? OPD.

Issue no. 6: Whether the defendants are entitled to the decree of permanent injunction as per prayer in clause (B) of the plaint in CS No. 58295/16? OPD.

Issue No. 7: Whether the suit (CS No. 58295/16) is time barred and not maintainable as per preliminary objection no. 1 and 2 of WS? OPP

Issue No. 8: Whether suit (CS No. 58295/16) is properly valued for the purposes of court fees and jurisdiction? OPP

Issue No. 9: Whether suit (CS No. 58295/16) does not disclose any cause of action? OPP

Issue No. 10: Relief.

PLAINTIFF EVIDENCE

7. Plaintiff no. 1 in order to prove her case has examined Sh. Baldev Singh (P-2) as PW-1. He has tendered his evidence by way of affidavit Ex. PW1/A and has relied upon the following documents:

- a) Ex. PW1/1 is the Agreement to Sell dated 13.11.1980.
- b) Ex. PW1/2 is the Receipt dated 13.11.1980.
- c) Ex. PW1/3 is the Will dated 13.11.1980 executed by Sh. Veer Singh.
- d) Ex. PW1/4 is the Registered Sale Deed dated 24.01.1952.
- e) Ex. PW1/5 is the Registered Sale Deed dated 28.04.2005.
- f) Ex. PW1/6 is the Certified copy of WS filed by defendants before Ld. Civil Judge, Tis Hazari Courts, Delhi.
- g) Ex. PW1/7 are the certified copies of the statement of the parties and decree sheet.
- h) Ex. PW1/8 is the Site plan.
- I) Ex. PW1/9 is the GPA dated 13.11.1980 executed by Sh. Veer Singh.

7.1 PW-2 is Smt. Parmjeet Kaur (P-1). She has tendered her evidence by way of affidavit Ex. PW2/A and has relied upon documents already Ex. PW1/5 and Ex. PW1/8.

7.2 PW-3 is Sh. Vishal Singh, JJA, Record Room, Civil, Tis Hazari Courts, Delhi. He has proved the summoned record of Suit bearing no. 296/08 titled as "Parmjeet Kaur Vs. S. Balwinder Singh". He proved the WS filed in the said suit as Ex. PW3/1 and also proved the statement of the parties recorded on 13.01.2009 as Ex. PW1/7.

7.3 PW-4 is Sh. Ranbir Singh, Record Keeper of receipt book, A&C Department, Rohini Zone, North DMC. He proved the summoned record i.e. receipt book of the house tax payment made by Smt. Parmjeet Kaur with respect to the suit property. He proved the receipt dated 29.06.2010, 11.06.2011, 25.06.2013 and 28.06.2014 as Ex. PW4/1 (colly.) He further proved the Challan Register of June, 2012 regarding deposit of house tax as Ex. PW4/2.

DEFENDANT'S EVIDENCE

8. Defendants have examined Sh. Balwinder Singh (D-1) as DW-1. He has tendered his evidence by way of affidavit Ex DW1/A and has relied upon the photocopy of receipt issued by Delhi Vidyut Supply Sansthan as Mark A.

8.1 DW-2 is Sh. Amarjeet Singh (D-2). He has tendered his evidence by way of affidavit Ex DW2/A."

7. Trial court by the impugned judgment has decreed the suit for possession and *mesne* profits filed by the respondent/plaintiff

and has dismissed the suit for declaration and injunction filed by the appellants/defendants by holding:-

(i) Respondent/plaintiff had proved the entire chain of title documents starting from the ownership of Sh. Amar Singh and then of Sh. Veer Singh and then of Jathedar Baldev Singh and then of the respondent/plaintiff. These documents exhibited and proved by the respondent/plaintiff have been referred to in para 7 of the impugned judgment which has been reproduced above.

(ii) Whereas the respondent/plaintiff proved ownership of the suit property by filing and proving the chain of title documents, the appellants/defendants did not claim any right in the suit property by purchase but on the ground that their father Sh. Sewa Singh, Jathedar Baldev Singh and Sh. Harbhajan Singh came in occupation and possession and hence ownership of the property of 162 sq. yards, and that their father Sh. Sewa Singh had given a sum of Rs.3,000/- to Jathedar Baldev Singh for getting NOC for mutation in the name of Sh. Sewa Singh, however no documentary evidence whatsoever was filed by appellants/defendants to prove giving of the sum of Rs.3,000/-

by Sh. Sewa Singh or the appellants/defendants to Jathedar Baldev Singh or the respondent/plaintiff.

To this aforesaid conclusion arrived at by the trial court I would like to add that once it is the case of the appellants/defendants that their father paid a sum of Rs.3,000/- to Jathedar Baldev Singh to get NOC, this very aspect showed admission of ownership of the suit property of Jathedar Baldev Singh inasmuch as there did not arise any issue as to why if Sh. Sewa Singh or the appellants/defendants were the owners of the suit property then why in the year 1973 would the father of the appellants/defendants namely Sh. Sewa Singh would seek any NOC from Jathedar Baldev Singh. Obviously, NOC could have been sought by Sh. Sewa Singh only if Jathedar Baldev Singh was the owner of the suit property and therefore by the appellants/defendants taking up a stand that their father Sh. Sewa Singh applied for NOC from Jathedar Baldev Singh (the husband of the respondent/plaintiff) shows the admission on the part of appellants/defendants of ownership of the suit property of Jathedar Baldev Singh.

(iii) Appellants/defendants have admitted that neither they nor their father Sh. Sewa Singh ever issued any notice to Jathedar Baldev Singh

right from the year 1973 till the disputes arose between the parties in the year 2009 as to why NOC is not being given by Jathedar Baldev Singh to Sh. Sewa Singh or appellants/defendants inspite of Rs.3,000/- having been given to Jathedar Baldev Singh by Sh. Sewa Singh in the year 1973. Also, late Sh. Sewa Singh never during his lifetime ever asserted any claim of ownership of the suit property.

(iv) Appellants/defendants claim to have incurred considerable money for making construction but admittedly no documentary evidence whatsoever was filed that the appellants/defendants or their father Sh. Sewa Singh incurred expenses for any construction on the suit property.

(v) The witness of the appellants/defendants, one Sh. Amarjeet Singh/DW-2, admitted in his cross-examination that the suit property was owned by Sh. Veer Singh. Sh. Veer Singh is admittedly the person from whom Jathedar Baldev Singh purchased the suit property. Therefore it becomes clear that it was Jathedar Baldev Singh who became the owner of the suit property on account of having purchased the suit property from Sh. Veer Singh.

8. The aforesaid conclusions have been arrived at by the trial court in its impugned judgment in terms of the following observations made in the impugned judgment:-

“12. No document has been filed by the defendants to show that the entire property bearing no. 1119, Rani Bagh ad measuring 162 sq. yards was the joint family property or was co-owned by the husband of plaintiff, their father Sewa Singh and Harbhajan Singh. Except one receipt Mark A issued by Delhi Vidyut Supply Sansthan, no other document has been filed by the defendants to show that they are the owner/co-owner of the suit property. The said receipt by no stretch of imagination can be deemed to be a document conferring any right or title in favour of the defendants.

XXXXX

XXXXX

XXXXX

15. None of DW1 and DW2 have placed on record any document/ receipt about the alleged payment of Rs.3000/- to the plaintiff. From their testimony, it is apparent that they have not demanded any receipt of payment of Rs. 3000/- from P2. Testimony of DW2 regarding the payment is hearsay and no reliance can be placed upon his testimony in this regard. No document has been filed by the defendants to show that they have contributed in the construction of the suit property. On the contrary, PW-1 in his affidavit and during his cross-examination categorically deposed that Sewa Singh was his uncle and he had allowed him and his family to live in the suit property.

16. Defendants have miserably failed to prove that they are the co-owner in the suit property or the suit property has fallen in their share by virtue of any family settlement. They have further failed to prove that they had paid certain amount to the husband of plaintiff or have contributed in the construction of the suit property.

17. On the contrary, PW-1 and PW-2 have placed on record the original documents with respect to the property. They have placed on record the original Sale Deed dated 24.01.1952 duly executed by Amar Singh in favour of Veer Singh. They have also placed on record the original Agreement to Sell, receipt, Will and GPA all dated 13.11.1980 Ex. PW1/1 to Ex. PW1/3 duly executed by Veer Singh in favour of S. Baldev Singh. Though defendants have taken the plea that these documents are forged and fabricated, however, no evidence has been brought by them to prove the said plea. In fact, DW-1 during his crossexamination has admitted that he has not filed any document to show that suit property was originally owned by some other person except Veer Singh and Amar Singh. He further admitted that he has not filed any document to show that his father during his lifetime ever alleged himself

to be the owner of the suit property. Further, DW-2 during his cross-examination deposed that in the year 1972-73, the suit plot was owned by Sh. Veer Singh. He further deposed that Swaran Singh son of Veer Singh is the cousin uncle of his wife and he has disclosed the filing of the present suit to him. He admitted that he had shown all the documents to Swaran Singh and Swaran Singh has not filed any suit or criminal complaint against plaintiff or her husband. Swaran Singh has also not been cited as witness by the defendants.

18. From the testimony of DW-2, it is evident that the suit plot was owned by Veer Singh at some point of time, hence, he had the right to transfer the same, which as per PW-1 and PW-2 has been transferred in favour of PW-1 vide documents Ex.PW1/1 to Ex. PW1/3. It seems that defendants have taken the plea of false and fabricated documents only for the sake of it without any basis or cogent evidence in this regard.

19. Plaintiff has duly proved the Sale Deed Ex. PW1/5 which is a registered document. There is specific stipulation in Ex. PW1/5 that plaintiff has paid the consideration amount of Rs. 1.5 lacs to the seller which is P2. Ld. Counsel for defendants during his arguments has submitted that no transfer was effected by virtue of the Sale Deed as PW-2 during her cross-examination has deposed that the transfer documents were got executed without any sale consideration.” (underlining added)

9. I completely agree with the conclusions arrived at by the trial court as also the reasoning and discussion inasmuch as mere oral averments cannot be taken as discharge of onus of proof. Appellants/defendants have miserably failed to prove any payment of Rs. 3,000/- to Jathedar Baldev Singh or any notice issued to Jathedar Baldev Singh or the respondent/plaintiff for issuing NOC for showing ownership of the suit property in the name of Sh. Sewa Singh or the appellants/defendants, and that the appellants/defendants failed to prove that any amount was ever spent by them for the construction of the suit property, and finally that the witness of the

appellants/defendants DW-2 Sh. Amarjeet Singh themselves admitted that the suit property was owned by Sh. Veer Singh i.e the predecessor-in-interest of Jathedar Baldev Singh.

10(i). Trial court has also held that challenge by the appellants/defendants in the suit to the documentation dated 13.11.1980 executed in favour of Jathedar Baldev Singh by Sh. Veer Singh and the sale deed dated 19.04.2005 executed by Jathedar Baldev Singh in favour of his wife is time barred, and for this purpose trial court has relied upon the provisions of Articles 58 and 59 of the Limitation Act, 1963 as the documents were of the years 1980 and 2005 and were to be challenged in three years but was challenged only when the suit for declaration and injunction was filed by the appellants/defendants on 30.01.2011.

(ii) In my opinion, even assuming the suit of the appellants/defendants for declaration and permanent injunction was not barred by limitation, but since the respondent/plaintiff had proved entire chain of title documents with respect to ownership of the suit property and as stated in para 7 of the impugned judgment which is reproduced above, the ownership of the suit property has been rightly

held to be proved of the respondent/plaintiff and consequently for the suit for declaration and injunction filed by the appellants/defendants to be dismissed.

11(i). Counsel for the appellants/defendants argued certain aspects which really are nothing but “clutching at straws”. Firstly, it is argued by the counsel for the appellants/defendants that Sh. Baldev Singh is written as the son of Sh. Ishar Singh in the documents dated 13.11.1980 but in the sale deed executed on 19.04.2005 registered on 25.04.2005 Jathedar Baldev Singh is written as the son of Jathedar Mehar Singh but with clarification that Jathedar Mehar Singh's alias was Sh. Ishar Singh, and accordingly it is argued that Jathedar Baldev Singh, husband of the respondent/plaintiff is not the same person in whose favour the documentation dated 13.11.1980 was executed by Sh. Veer Singh.

(ii) This argument of the appellants/defendants is hopelessly misconceived because there is no other Baldev Singh who is claiming ownership of the suit property and therefore obviously Sh. Baldev Singh whose name is written in the documentation dated 13.11.1980 is none other than the husband of the respondent/ plaintiff and whose

father was Jathedar Mehar Singh whose alias was Sh. Ishar Singh. Once Sh. Veer Singh does not challenge the claim of the Jathedar Baldev Singh to the ownership of the suit property then surely appellants/defendants are no one to contend that Sh. Baldev Singh who was the purchaser under the documents dated 13.11.1980 is not Sh. Baldev Singh the husband of the respondent/plaintiff, and whose father was Jathedar Mehar Singh alias Sh. Ishar Singh.

12.(i) Learned counsel for the appellants/defendants then argued that the sale deed executed by Jathedar Baldev Singh in favour of his wife (respondent/plaintiff) states at page 2 in the narration part of the sale deed that he was in possession, and which aspect is reiterated in para 10 of this sale deed stating that physical vacant possession has been delivered to respondent/plaintiff, but that this is clearly a wrong statement because part of the suit property was in possession of the appellants/defendants, and it is therefore argued that the sale deed dated 19.04.2005 registered on 25.04.2005 must fail.

(ii) In my opinion, this argument urged on behalf of the appellants/defendants is nothing but an argument of desperation because the fact of the matter is that once Jathedar Baldev Singh was

the owner of the suit property, then surely by the sale deed dated 19.04.2005 the respondent/plaintiff had become the owner of the property, and with respect to which the issue of ownership the possession aspect is irrelevant. Also, by writing that the respondent/plaintiff had received possession under this sale deed dated 19.04.2005, what was meant to be written was that with respect to portion in possession of Jathedar Baldev Singh the same was handed over to the respondent/plaintiff. Also, appellants/defendants being only licencees it cannot be held that they had legal and physical possession of the suit premises for them to contend that the sale deed dated 19.04.2005 is invalid because of the alleged technical aspect of some partially incorrect narration with respect to physical possession given in the sale deed dated 19.04.2005, which was not given.

13. In view of the above discussion, I do not find any merit in the appeals and the same are hereby dismissed.

MAY 28, 2018

AK/Swrt

VALMIKI J. MEHTA, J