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

Reserved on : 22nd May, 2018

Date of Decision: 1st June, 2018

+ **RFA 366/2017 & CM APPLs. 13890/2017, 34278/2017 & 37212/2017**

MOHD RAFIQ

..... Appellant

Through: Mr. Manish Tanwar, Advocate (M-9953993355).

versus

SHOBHA AGGARWAL

..... Respondent

Through: Mr. Satyakam Saini, Mr. A.S. Saini & Mr. Rajesh Pandey, Advocates (M-9810679083).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present appeal arises out of judgment and decree dated 26th December, 2016 by which a decree of possession and injunction was granted in favour of the Respondent/Plaintiff Mrs. Shobha Aggarwal (*hereinafter 'Plaintiff'*) against the Appellant/Defendant Mohd. Rafiq (*hereinafter 'Defendant'*) in the following terms:

“30. Since, issues no.3 and 4 have been decided in favour of plaintiff and against the defendant therefore, plaintiff is entitled for decree of possession of the suit property bearing no. RZ- 13/350, West Sagar Pur, New Delhi-110046 ad-measuring about 25 Sq yds built up to second floor as shown in red colour in the site plan Ex PW1/2 filed. Plaintiff is also entitled for decree of permanent injunction thereby directing the defendant and his family members servants, agents and other

claiming through him by an order and injunction not to be let out, alienate, sale, transfer, assign or part with possession of the suit property in any manner to any third party. Accordingly, suit of the plaintiff is decreed. Decree sheet be prepared accordingly. File be consigned to record room.”

2. The Plaintiff had filed a suit for possession, permanent injunction and recovery of rents based upon rent agreement dated 25th May, 2009 for property bearing no. RZ-13/350, West Sagar Pur, New Delhi admeasuring 25 Sq. yds. built upto second floor (*hereinafter ‘suit property’*) on a rent of Rs.2000/- per month for a period of 11 months i.e. from 25th May, 2009 to 24th April, 2010. It is the Plaintiff’s case that the Defendant paid rent only for one month. Upon demand, the Plaintiff claimed that the Defendant issued a cheque for Rs.1,52,600/-, which was dishonoured. Despite repeated requests the Defendant did not vacate the suit premises and accordingly, a suit seeking possession and recovery of a sum of Rs.2,67,200/- and injunction was filed.

3. The Defendant filed his written statement and in brief his case was that the suit property was sold to him by the Plaintiff. He relies on a *bayana* receipt dated 24th July, 2007 to plead that there was a transaction of sale between the parties. The *bayana* amount paid was Rs. 50,000/-. He further submitted that an additional Rs.1 lakh was given to the Plaintiff through her brother, which is also acknowledged at the back of the *bayana* receipt. The Defendant further states that the Plaintiff did not execute the sale documents and started demanding further amount of Rs.3 Lakhs. He claimed that the Plaintiff became dishonest as she received an offer for a higher amount and hence the sale transaction did not go through.

4. On the pleadings of the parties, the following issues were framed by the Trial Court.

- i) *Whether the suit has been valued correctly for the purpose of court fee and jurisdiction? ...OPP*
- ii) *Whether plaintiff is entitled for decree and possession, as claimed? ...OPP*
- iii) *Whether plaintiff is entitled for relief for permanent injunction? ...OPP*
- iv) *Whether plaintiff is entitled to recover a sum of Rs.2,67,200/- from the defendant, as claimed? ..OPP*
- v) *Relief.”*

5. Plaintiff appeared as PW-1. Defendant appeared as DW-1. In support of his case the Plaintiff produced one Mr. Mahabir Prasad Sharma and Mr. Deepak Jain as DW-2 and DW-3. The impugned judgment, thereafter, came to be passed on 26th December, 2016.

6. The Trial Court arrived at a finding that the *bayana* receipt does not contain the Plaintiff's signature and only has the signature of Mr. Manish Goel, the Plaintiff's brother, appearing at the place of vendor. Apart from the signature of Mr. Manish Goel (*signed as M.K. Goel*), the Defendant's signature and signatures of two other witnesses, Mr. Mahavir and Mr. Sandeep appear on the *bayana* receipt. The sale consideration is stated as Rs.5,25,000/-, however, only Rs.1,50,000/- is claimed to have been paid. But since there were no signatures of the Plaintiff on the said *bayana* receipt, the Trial Court concluded that there was no privity of contract between the Plaintiff and Defendant. The Trial Court also came to the conclusion that the Defendant is an unauthorized occupant in the suit

property. However, insofar as recovery of rent is concerned, the Trial Court held that the execution of the rent agreement was not proved and hence the Plaintiff is not entitled to arrears of rent or liquidated damages.

7. In the present appeal notice was issued on 18th September, 2017. On 12th March, 2018, parties were directed to seek an adjournment before the Executing Court and thereafter, arguments have been heard.

8. The main plank of the argument of Ld. Counsel for the Defendant is that the Defendant is not a tenant but he is, in fact, the owner of the property as there was a transaction of sale entered into with the Plaintiff. Since the Defendant had paid the entire sum of Rs.5,25,000/-, the property belongs to him and that he cannot be evicted. It is further submitted that the Defendant has been in possession since 2007 and, therefore, enormous prejudice will be caused to him if he is evicted. It is further submitted that the Defendant is a man of poor means and that the Plaintiff has defrauded him through her brother. It is further claimed that since the rent agreement itself was not proved, the Plaintiff is not entitled to any relief.

9. On the other hand, learned counsel for the Plaintiff submitted that the Defendant had admitted the signature on the rent agreement and the transaction, which is claimed by the Defendant, is not with the Plaintiff, who is the owner of the suit property. Any transaction with a third party, even if he is brother of the Plaintiff, cannot vest any ownership rights with him.

10. The Plaintiff has restricted her relief in the present case towards possession. The Plaintiff Mrs. Shobha Aggarwal claimed that she rented out the property since 2009 to the Defendant. She claimed that the rent agreement was entered into in the Tis Hazari Court. Even the stamp paper was purchased by the Defendant. She admitted that her brother was looking

after the matter and there may have been some mistakes in calculating the arrears of rent. According to her only the first floor was let out to the Defendant but he forcibly took the possession of the ground and the second floors. She denied the receipt of Rs.1.5 Lacs or the entire sale consideration. The transaction with the third-party Mr. Subhash Gupta was denied by the Plaintiff.

11. The Defendant appeared and deposed that he recognized the signature of Mr. Manish Goel on the *bayana* receipt Ex.DW-1/1. He also admitted that he did not have any receipt to show the payment of the entire sale consideration of Rs. 5,25,000/- to the Plaintiff. The only document that he based his claim on is the *bayana* receipt. He admitted that he gave a cheque to Mr. Manish Goel and that it bore his signatures. He denied that he was inducted as a tenant or he has trespassed in the ground and second floors. He claimed that some persons had visited the suit property along with the Plaintiff and tried to forcibly evict the Defendant.

12. A perusal of the evidence reveals that the Defendant has admitted his signatures on the rent agreement dated 25th May, 2009 at points 'A' and 'B'. However, he denies his signatures on the second page of the document i.e. at point 'C'. He claimed in his evidence that he had put his signature on a blank document. The Defendant further deposed that the cheque, which had bounced, was given to the Plaintiff's brother for obtaining a loan but was misused. DW-2 Mr. Mahavir Prasad Sharma admitted that the *bayana* receipt was prepared by him and that a sum of Rs.50,000/- was paid by the Defendant to Mr. Manish Goel. As per DW-2 Rs.1,00,000/- was to be paid within 1 month and Rs.3,75,000/- was to be given within 2-3 months. DW-2 stated that the possession of the suit property was not given in his presence.

He stated that he was a witness to the *bayana* receipt along with Mr. Sandeep and that the money was paid to Mr. Manish Goel as he was the brother of Mrs. Shobha Aggarwal. DW-3 was a hand writing expert, who claimed that the first and the 2nd pages of the rent agreement were executed at different points of time.

13. An analysis of the evidence reveals that the entire case revolves around two documents namely the rent agreement Ex.PW-1/3 and the *bayana* receipt Ex.DW-1/1. The ownership of the Plaintiff Mrs. Shobha Aggarwal is not in dispute. The registered sale deed in her name from one Ms. Pinki Sharma being Ex.PW-1/1 has been placed in record.

14. Insofar as the rent agreement is concerned, the same is dated 25th May, 2009 and as per this agreement the first floor of the property was let out to the Defendant at a monthly rent of Rs.2000/-. The Defendant has seriously disputed the signature on the 2nd page of the rent agreement. However, even going by the first page, which is an admitted portion of the rent agreement, the tenancy was for a period of 11 months. The recital in the rent agreement and one clause are set out below:

“Whereas the landlady is the exclusive owner of the house property bearing H.No. RZ-13/350, West Sagarpur N. Delhi constructed upto second floor.

And whereas the landlady has agreed to let out one room kitchen, latrine and bath room at First Floor of the above house property on rent of Rs.2,000/- (Rupees two thousand only) per month excluding electricity and water chrges w.e.f. 25th day of May 2009 to 24th day of April 2010 for a period of 11 months only for residential purposes and the tenant has agreed to take on rent above portion of the said property on the following terms and conditions:-

NOW THIS AGREEMENT WINTESSETH AS UNDER:

1. That the tenant shall pay monthly rent @ 2000/- per month according to English Calender on the before 25th day of each month in the advance to the landlady.”

15. These 3 clauses are sufficient to show the ownership of the Plaintiff being admitted, the extent of the suit property given on rent, the rent payable and the duration of the tenancy. Thus, there can be no dispute that the tenancy was only for a period of 11 months. The signatures of the Defendant on the first page, being admitted, the Trial Court was in error in refusing to accept the rent agreement. The rent agreement stands proved and it is held accordingly.

16. The *bayana* receipt is dated 24th July, 2007, however, the signature of the Plaintiff does not appear on the same. It appears that there were some negotiations between the Plaintiff's brother and the Defendant due to which Rs.1,50,000/- may have been paid by the Defendant to the Plaintiff. However, the said transaction does not appear to have gone through. It is unclear as to how the Defendant came into the possession of the ground floor and second floor of the suit property. Even during arguments despite repeated queries, the Defendant was unable show any proof of the remaining payment of Rs.3,75,000/-. Thus, though there appears to have been some negotiation/transaction towards the purchase of the property. However, on this basis, the Defendant cannot be declared as the owner of the suit property. The rent agreement is subsequent to the *bayana* receipt and the signatures on the rent agreement have been admitted by the Defendant. If the suit property was actually purchased by the Defendant, there was no reason whatsoever for him to enter into a rent agreement almost two years

after the execution of the *bayana* receipt. The issuance of the cheque for Rs.1,52,600/- on 10th September, 2011, which was dishonoured, is also admitted by the Defendant. These facts go to show that the Defendant may have initially intended to purchase the suit property, however, thereafter he decided to take the property on rent as the sale transaction did not go through. Therefore it cannot be held that the Defendant has any ownership rights in the suit property especially because the Defendant was well aware that the owner of the suit property is the Plaintiff and not her brother.

17. The rent agreement was only for a period of 11 months from 25th May, 2009 to 24th April, 2010 and thereafter, the Defendant is an unauthorized occupant.

18. The Defendant has been in possession of the suit property without paying any rent for several years. The tenancy was only in respect of the First Floor. In respect of the Ground and Second floor, the Defendant has no document whatsoever. In view of the evidence of DW-2 who stated that there was some transaction for sale of the property and the *bayana* receipt it is clear that the Plaintiff failed to disclose the said transaction. She admitted in her cross examination that her brother was having some dealings on her behalf. Though, the *bayana* receipt does not vest any ownership right as the complete consideration has not been paid, owing to the nature of transactions, this Court is of the view that the Defendant ought to be given some time to vacate the property, the Defendant is also not liable to pay any user and occupation charges for the period during which he was under occupation of the suit property.

19. Decree for possession is upheld. However, the Defendant has, consented in Court to vacate the suit property if some time is given.

Defendant is given 6 months' time to vacate the suit property. The Defendant shall file an undertaking that he would hand over vacant and peaceful possession to the Plaintiff within 6 months i.e., on or before 30th November, 2018. The affidavit of undertaking shall be filed within 6 weeks. The Defendant is directed to vacate the suit property on or before 30th November, 2018.

20. Appeal is disposed of in the above terms. All pending applications are also disposed of.

21. List for reporting compliance on 10th December 2018.

**PRATHIBA M. SINGH
JUDGE**

JUNE 01, 2018/dk

