

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

% **Date of decision: 27th August, 2018.**

+ **RSA 119/2018, CM No.34555/2018 (for stay) & CM No.34558/2018
(for condonation of 7 days delay in refiling)**

RENU Appellant

Through: M. Hasibuddin, Adv.

Versus

CHAMPA RANI & ANR Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.34556/2018 & CM No.34557/2018 (both for exemption).

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

**RSA 119/2018, CM No.34555/2018 (for stay) & CM No.34558/2018 (for
condonation of 7 days delay in refiling).**

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 7th June, 2018 in RCA No.208917/2016 (Filing No.29144/2016) (CNR No. DLST01-005432-2016) of the Court of the Additional District Judge-02 (South)] of dismissal of First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 30th August, 2016 in Suit No.466/2012 (CNR No.DLST03-000178-2012) of the Court of the Additional Senior Civil Judge (South)] allowing the suit filed by the respondent no.1/plaintiff for mandatory injunction directing the

appellant/defendant and the respondent no.2/defendant to vacate the property no.K-259, Dakshin Puri, New Delhi of the respondent no.1/plaintiff.

4. The appeal is accompanied with an application for condonation of delay of seven days in re-filing thereof.

5. The delay is condoned and CM No.34558/2018 is disposed of.

6. The counsel for the appellant/defendant has been heard.

7. The appellant/defendant is the wife of the respondent no.2/defendant Sanjay Kumar and the daughter-in-law of the respondent no.1/plaintiff Champa Rani. The respondent no.1/plaintiff instituted the suit, pleading to be the owner of the aforesaid property and having allowed the appellant/defendant and the respondent no.2/defendant to reside in the house on account of relationship. It was further the plea of the respondent no.1/plaintiff that the appellant/defendant was creating nuisance in the house and the respondent no.1/plaintiff did not desire the appellant/defendant and the respondent no.2/defendant to continue living with her in her house. It was further pleaded that they refused to vacate inspite of requests.

8. I have enquired from the counsel for the appellant/defendant, whether not the law in this regard is very well settled i.e. that the appellant/defendant as daughter-in-law of the respondent no.1/plaintiff has no right of residence in the house of her mother-in-law and that the right of residence if any of the appellant/defendant is against her husband respondent no.2/defendant only.

9. The counsel for the appellant/defendant does not controvert.

10. Once it is so, no substantial question of law arises in this Second Appeal.

11. Supreme Court, in ***Sir Chunilal V. Mehta Vs. Century Spinning and Manufacturing Co. Ltd.*** AIR 1962 SC 1314, reiterated in ***Kashmir Singh Vs. Harnam Singh*** (2008) 12 SCC 796, held that the proper test for determining whether a question of law raised in a case is substantial, is whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is an open question in the sense it is not finally settled or is not far from difficulty or calls for discussion of alternative views; if the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles, it would not be a substantial question of law. It was further held that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact being the first Appellate Court. Mere appreciation of facts, documentary evidence was held to be not raising a question of law. Even in ***Santosh Hazari Vs. Purushottam Tiwari*** (2001) 3 SCC 179 it was held:

“To be “substantial” a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned.”

Mention may also be made of ***Hero Vinoth Vs. Sheshammal*** (2006) 5 SCC 545 holding as under:

“24. The principles relating to Section 100 CPC, relevant for this case, may be summarised thus:-

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a

document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where

the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

12. The counsel for the appellant/defendant, though does not controvert but contends that it was the plea of the appellant/defendant that the property though standing/recorded in the name of the respondent no.1/plaintiff, the sale consideration thereof had flown from respondent no.2/defendant, being the husband of the appellant/defendant and the son of the respondent no.1/plaintiff.

13. Not only are there concurrent findings of, neither the appellant/defendant nor the respondent no.2/defendant having proved so but even otherwise I have enquired from the counsel for the appellant/defendant, whether not such a plea is barred by the *Benami* Transactions (Prohibition) Act, 1988 now named Prohibition of *Benami* Property Transactions Act, 1988.

14. The counsel for the appellant/defendant has no answer.

15. This Court in ***Satish Kumar Gupta Vs. Shanti Swaroop Gupta*** 2018 SCC OnLine Del 965 has held that a person even if proves having made any contribution to the price for purchase of an immovable property by another, does not have any right, title or interest in the property and the only claim of such person is to sue the purchaser for recovery of the purchase price contributed, with interest.

16. No other argument has been urged.

17. No substantial question of law arises in this Second Appeal.

18. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 27, 2018

‘pp’

