

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

+ **RFA No.473/2016**

% 18th September, 2018

BEBO DEVI & ANR.

..... Appellants

Through: Mr. F.K.Jha, Advocate
(9810055432)

versus

MAMTA GOLA

..... Respondent

Through: Natwar Rai, Advocate
(9818906064)

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 38053/2018 (for restoration)

There is no opposition to this application which is allowed and the appeal is restored to its original number. Costs of Rs. 20,000/- have already been paid by the appellant to the respondent.

CM stands disposed of.

RFA No. 473/2016

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the judgment of the Trial Court dated 26.04.2016 whereby the trial court has decreed the suit for possession filed by the respondent/plaintiff who also is the daughter and sister of the appellants no. 1 and 2 respectively. Appellant no.1/defendant no.1 is the mother of the respondent/plaintiff and appellant no.2/defendant no.2 is the brother of the respondent/plaintiff. The suit property being an area of 34 sq. yds bearing Municipal No. 3116, Gali Dharam, Behind Kali Masjid, Bazar Sita Ram Ward-VIII, Delhi-110006.

2. The case of the respondent/plaintiff was that she purchased the suit property by means of a registered Sale Deed dated 18.12.1998 from its owner. It was pleaded in the plaint that appellants no. 1 and 2/defendants no. 1 and 2 requested the respondent/plaintiff to allow them to stay in the ground floor of the suit property and they were allowed to do so as licensees without rent. Since in spite of requests the appellants no. 1 and 2/defendants no. 1 and 2 failed to vacate the suit property, therefore, the license of the appellants no. 1

and 2/defendants no. 1 and 2 was terminated by the Legal Notice dated 23.09.2011, and thereafter the subject suit was filed for possession and mesne profits.

3. It is noted that appellants no. 1 and 2/defendants no. 1 and 2 did not appear in the suit and were proceeded ex parte and respondent/plaintiff led ex parte evidence and an ex parte decree dated 24.01.2013 was passed in favour of the respondent/plaintiff. However, this ex parte decree on an application filed by the appellants no. 1 and 2/defendants no. 1 and 2 on an application made under Order 9 Rule 13 CPC was set aside on 04.08.2014. appellants no. 1 and 2/defendants no. 1 and 2 thereafter filed the written statement. Before referring to the pleas in the written statement it is noted that appellants no. 1 and 2/defendants no. 1 and 2 in spite of repeated opportunities did not lead evidence, and their evidence was resultantly closed. Therefore, in the present case evidence was led only on behalf of the respondent/plaintiff and there is no evidence as led by the appellants no. 1 and 2/defendants no. 1 and 2 which exists on record of the trial court.

4. The case of the appellants no. 1 and 2/defendants no. 1 and 2 in the written statement was that the Sale Deed in favour of the respondent/plaintiff is forged and fabricated as this Sale Deed was never disclosed to the appellants/defendants. It was pleaded that the appellants no. 1 and 2/defendants no. 1 and 2 were residing in the suit property since the last 50 years. It was contended that how the original owner Smt.Chhano Devi was said to be the owner and how she had executed the documentation in favour of the husband of the respondent/plaintiff has neither been stated nor explained by the respondent/plaintiff. The respondent/plaintiff is also now said to have been divorced from her husband Mr. Dipti Gola.

5. The following issues were framed in the suit:

“1. Whether the plaintiff is entitled for a decree of possession against defendants qua suit property i.e ground floor and first floor of property bearing No.3116, Gali Dharam, Sita Ram Bazar, Delhi-6? OPP

2. Whether the plaintiff is entitled for a decree of mesne profit/damages against the defendants, if so, at what rate and for which period? OPP

3. Whether the defendants/counter claimants are entitled for the decree of declaration against the plaintiff thereby declaring the sale deed registered as document No.4407, Book No.1, Volume No.973, Page 168 as null and void? OPD

4. Whether the defendants/counter claimants are entitled for a decree of permanent injunction against the plaintiff thereby restraining the plaintiff permanently from selling, transferring, alienating or creating

third party interest in the suit property bearing No.3116, Gali Dharam, Sita Ram Bazar, Delhi-6 in any manner? OPD

5. Whether defendants have not valued the counter claim properly for the purpose of court fees? OPP

6. Whether the counter claim is barred by limitation? OPP

7. Relief.”

6. Respondent/plaintiff led evidence and the evidence which is led on behalf of the respondent/plaintiff is that as recorded in paras 21 to 27 of the impugned judgment and these paras read as under:-

“21. The onus to prove this issue is on the plaintiff. The plaintiff has examined Sh. S.K. Jha, Asstt. Zonal Inspector, Property Tax Department City Zone, Near Delight Cinema, Delhi as PW 1. He is the official witness and he proved on record the Mutation Letter No.TAX/SPZ/03-04/459 dated 03-10-2003 in the name of Mamta Gola W/o Sh. Dipti Gola as Ex.PW1/A. He also proved on record the application for the mutation by Smt. Mamta Gola as Ex.PW1/B.

22. PW2 Sh. Raghubir Singh is from the office of BSES Kamla Market, New Delhi. He proved on record the electricity bill for the month of January 2015 in the name of Smt. Bibo Devi as Ex.PW2/A. He deposed that the new electricity connection is provided on the basis of ration card. He further deposed that Smt. Bibo Devi provided the copy of Old Ration card which he proved as Ex.PW2/B. He further deposed that she also provided the copy of new ration card in her name and the same is Ex.PW2/C and another document she provided to the department is the sale deed executed in the name of Smt. Mamta Gola dated 18-12-1998, he proved the same as Ex.PW2/D. He further deposed that on the basis of the aforesaid three documents BSES Yamuna Power Ltd issued on 04-03-2008 electricity connection vide meter No.13874919 in the name of Smt. Bibo Devi. He also proved on record the application for new connection by Smt. Bibo Devi as Ex.PW2/E and the computer generated slip which reflect the date of issuing of new meter as Ex.PW2/F.

23. PW 3 Harish Kumar Sharma, head clerk, Delhi Jal Board deposed that in the entire property bearing No.3116, Gali Dharam, Behind Kali Masjid, Sita Ram Bazar, Delhi there is only one water connection which is in the name of Smt. Mamta Gola. He further deposed that on 17-4-2007, a letter has been given by Smt. Mamta Gola as Sh. Munshi Ram had left the possession of the above premises and on the basis of the said letter and sale deed in favour of Smt. Mamta Gola, meter was transferred in the name of Mamta Gola. He proved the letter as Ex.PW3/A.

24. PW4 is the plaintiff herself and she tendered her evidence by way of affidavit Ex.PW4/A. She proved on record copy of the sale deed as Ex.PW4/1 (OSR) which bears the signatures of plaintiff at point X to X2, Site Plan as Ex.PW4/2; Water bill of Delhi Jal Board dt 14.06.11 as Ex.PW4/4; copy of notice dt 23.09.2011 as Ex.PW4/5; postal receipts as Ex.PW4/6 & PW4/7; Acknowledgement card as Ex.PW4/8 & Ex.PW4/9; Water bills, electricity bills etc. 64 in numbers are exhibited as Ex.PW4/10 (OSR) to Ex.PW4/73(OSR); Electricity bills and the bills in chronological order as Ex.PW4/74 (OSR) to Ex.PW4/88 (OSR) (15 in numbers), Visiting Card of Defendant no.2 who is a member and organizer of Bajrang Dal as Ex.PW4/95; Gas delivery voucher in the name of the plaintiff as Ex.PW4/97 (OSR); House Tax receipt dated 26.09.2003 as Ex.PW4/98 (OSR); She also relied upon the Letter to the Assistant Assessor & Collector, MCD, SP Zone, Delhi dated 14.07.2003 as Ex.PW4/99 mentioned in her affidavit and same has already been exhibited as Ex.PW1/B (OSR); House Tax Receipt No.0708552 dated 09.09.2004, receipt no.39856 dated 27.03.2010, receipt no.474079 dated 27.09.2003, receipt dated 18.06.2011, receipt dated 30.06.2012 and receipt dated 30.06.2013 as Ex.PW4/100 (OSR) to Ex.PW4/105(OSR); complaint dated 13.04.2010 to the SHO PS Chandni Mehal as Ex.PW4/107 which bears her signatures at point X; Another complaint vide D.D. No.19B dated 11.07.2013 as Ex.PW4/108 which bears her signatures at point X. She also proved on record certain documents which had been filed on record on 13.10.2014 but due inadvertent mistake the same were not mentioned in her affidavit, the same are exhibited as Ex.PW4/109 which is the certified copy of the order and statement dt 15.04.2005 in Suit bearing no.500/04 titled as Mamta Gola vs. Hukum Chand and Anr in the court of Ms. Navita Kumari, Ld. Civil Judge, Receipt for a sum of Rs.30,000/- dt 29.10.1990 paid by Sh. Diputy Gola to Smt. Channo Devi as Ex.PW4/110 (OSR).

25. She was cross examined and in her cross examination she stated that the sale deed was executed by Dipti gola her Ex-husband in her favour. She further deposed that no divorce had taken place between here and Dipti Gola but the divorce was granted in a Panchayat. She further stated that the witnesses are Amar Singh and D.K. Singh and she cannot say whether they are alive or not. She further stated that she was born in the suit property and her father was a tenant of Chhanno Devi. She denied the suggestion that Chhanno Devi was not the owner of the suit property. She further denied the suggestion that she got the sale deed executed in connivance with her husband Dipti Gola. She denied the suggestion that the property is owned by Abdul Aleem. She denied the suggestion that she had filed the suit on the basis of forged and fabricated sale deed.

26. PW5 Sh. S.K. Sharma is the LDC from the office of the Sub-Registrar-III, Asaf Ali Road, New Delhi. He brought the summoned record in respect of the sale deed and deposed that as per their record sale deed dated 18-12-1998 was executed by Sh. Dipti Gola S/o Sh. Hem Chand R/o 3116, Gali Dharam behind Kali Masjid, Bazar Sita Ram Delhi-06 in favour of Smt. Mamta Gola and after seeing the Ex.PW4/1 in the judicial file he stated that the same is correct as per the summoned record brought by him.

27. In his cross examination he stated it to be as correct that in their record there is over writing in digit 7 while the same is neither appearing in the original sale deed nor in the copy which he has seen in the Court which is Ex.PW4/1.”

7. A reading of the aforesaid paras shows that respondent/plaintiff has quite clearly proved that she is the owner of the suit property. The receipt and documents executed by Smt. Chhano Devi in favour of the husband of the respondent/plaintiff Mr. Dipti Gola were proved as Ex.PW4/100 to Ex.PW4/105. The Sale Deed in favour of respondent/plaintiff by her husband was proved by the respondent/plaintiff as Ex.PW4/1. The various documents showing the mutation of the property in the name of the respondent/plaintiff has been proved as Ex.PW1/A and Ex.PW1/B. Electricity and water bills are also in the name of the respondent/plaintiff and as detailed in para 24 of the impugned judgment which is reproduced above.

8. In my opinion, the trial court has committed no error in decreeing the suit for possession and mesne profits because the respondent/plaintiff is proved that she is the owner of the suit property in terms of the dozens of documents filed and proved by the respondent/plaintiff. No argument is urged on behalf of the appellants no. 1 and 2/defendants no. 1 and 2 before this Court in any manner to disbelieve the detailed evidence of as many as five witnesses alongwith the necessary documents, which have been led and proved by the respondent/plaintiff in the trial court. The appellants no. 1 and 2/defendants no. 1 and 2 have to fail in the facts of the present case where the respondents/plaintiffs led evidence and proved her case, no evidence whatsoever is led by appellants/defendants.

9. I may note that it is not open to the appellants no. 1 and 2/defendants no. 1 and 2 to question the title of the respondent's/plaintiff's, once respondents/plaintiffs husband who executed the Sale Deed in respondent's/plaintiff's favour does not question the same and nor is the original owner Smt. Chhano Devi questioning transfer of rights in the suit property to Mr. Dipti Gola. Also, if Smt. Chhano Devi or thereafter Sh. Dipti Gola was not the

owner then which other person was the owner has neither been pleaded and nor proved by the appellants no. 1 and 2/defendants no. 1 and 2.

10. In view of the aforesaid discussion, I do not find any merit in the appeal and the same is therefore dismissed. Any amount deposited by the appellants no. 1 and 2/defendants no. 1 and 2 in this Court alongwith accrued interest be released by the Registry of this Court to the respondent/plaintiff within a period of three weeks from today.

SEPTEMBER 18, 2018/ib

VALMIKI J. MEHTA, J