

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

% **Date of decision: 17th September, 2018**

+ **RSA 134/2018**

**DELHI URBAN SHELTER
IMPROVEMENT BOARD**

.... Appellant

Through: Mr. Parvinder Chauhan, Adv.

Versus

ASHA DEVI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CMs No.37897/2018 & 37899/2018 (both for exemptions)

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

RSA 134/2018, CM No.37898/2018 (for condonation of delay of 9 days in filing the appeal) & CM No.37900/2018 (for stay)

3. This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 9th May, 2018 in RCA No.01/2017 of the Court of Additional District Judge-01 (East)] of dismissal of First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 12th August, 2016 in Suit No.58/10/01 (New Suit No.8929/2016) of the Court of Additional Senior Civil Judge (East)] allowing the suit filed by the respondent / plaintiff against the appellant / defendant, for permanent injunction restraining the appellant / defendant from dispossessing the respondent / plaintiff from house No.12/421, Phase-I, J.J. Resettlement Colony Kalyan Puri, Delhi.

4. The appeal is accompanied with an application for condonation of nine days delay in filing thereof. However, the question of consideration of the said application would arise only if the appeal was to be entertained.

5. The counsel for the appellant / defendant has been heard and the copies of the suit court record filed along with the memorandum of appeal perused.

6. The respondent / plaintiff claimed to be the allottee of the plot underneath the house vide letter dated 24th June, 1976 of the then Slum Department of Delhi Development Authority (DDA) under the then family planning drive and in lieu of sterilization operation which the respondent / plaintiff had undergone. It was the case of the respondent / plaintiff in the plaint that the defendants i.e. the DDA and the Slum & J.J. Wing of the Municipal Corporation of Delhi (MCD), without issuing any notice to show cause to the respondent / plaintiff, were threatening to seal the said house allotted to the appellant / defendant.

7. The Slum & J.J. Wing of the MCD contested the suit *inter alia* on the ground that the subject property fell in the jurisdiction of Slum & J.J. Department of the MCD and the Slum Department of the DDA had no link therewith. It was further pleaded that the subject house was constructed as a sample house to guide the allottees of J.J. plots of Kalyan Puri to construct their allotted plots on the same pattern and the said house was not for allotment.

8. DDA, in its written statement, also pleaded that the Resettlement Colony Kalyan Puri fell under the jurisdiction of Slum & J.J. Department of MCD and it had no link therewith.

9. The Suit Court, on the basis of aforesaid pleadings and issues framed in the suit, allowed the suit and restrained the defendants therein, “from interfering in the peaceful possession of plaintiff in the suit property i.e. House no.12/421, J.J. Colony, Kalyan Puri, Delhi without due process of law”. It was however clarified that the decree shall not operate qua the portions of the house already sealed as no relief had been claimed in the suit qua the same.

10. Upon first appeal being preferred by the appellant / defendant as the successor of Slum & J.J. Department of MCD, the First Appellate Court agreed with the judgment and decree of the Suit Court, dismissed the appeal and confirmed the decree of the Suit Court.

11. The counsel for the appellant / defendant draws attention to page 38 of the paper book being copy of the allotment letter vide which the respondent / plaintiff claims allotment and has contended that the same also records the house as a model house. It is reiterated that it was not meant for allotment and was never allotted. It is further contended that there was no post of OSD (JJ) in the Slum & JJ Department of the DDA, who is purported to have issued the said letter. It is contended that allotments were of plots only. It is yet further contended that it was *inter alia* the plea in the written statement that without claiming declaration of title, the suit for permanent injunction was not maintainable and which declaration was not claimed.

12. Though the appellant / defendant / its predecessor Slum & J.J. Department of MCD has been lackadaisical in leading evidence in the suit with respect to allotment letter aforesaid, but notwithstanding the same, the decree which has been passed in the suit and which has been confirmed in

the first appeal still gives a second chance to the appellant / defendant to prove that the possession of the respondent / plaintiff is unauthorized, by granting permanent injunction only against forcible dispossession “without due process of law”. The said decree does not come in the way of the appellant/defendant, following the due process of law, recovering possession from the respondent/plaintiff, if prove possession of respondent/plaintiff to be unauthorized.

13. It is borne out from the record that the suit, from which this appeal arises, was instituted as far back as on 25th April, 2001. The respondent / plaintiff claimed to be in possession since the year 1976. The possession of the respondent / plaintiff, even if not from the year 1976, is settled since 25th April, 2001 and the appellant / defendant under the law also is required to take steps in accordance with law for recovery of possession.

14. In fact, it appears that the entire exercise undertaken by the appellant / defendant, of contesting the suit, filing the first appeal and even by preferring this Second Appeal, is to the detriment of appellant / defendant. The appellant / defendant ought to have, on the very first date, had the suit disposed of by making a statement that it would resort to process of law for recovery of possession and immediately commenced the proceedings available to it for recovering possession. Owing to the appellant / defendant having remained embroiled in the suit for the last 17 years, the appellant / defendant has not even taken the action for recovery of possession as it should have taken long back.

15. The appellant/defendant, instead of availing the second chance granted to it, is wanting to flog this Second Appeal, when in suit it has not led proper

evidence and owing whereto this Second Appeal is also likely to meet the same fate as the First Appeal.

16. Moreover, even if this appeal were to succeed, that will still not *ipso facto* get possession to the appellant/defendant and for which the appellant/defendant will still have to resort to the appropriate proceedings.

17. The counsel for the appellant / defendant agrees, but refers to paras no.21 and 27 of the judgment of the Suit Court, affirmed by the First Appellate Court and has contended that the Suit Court has therein given finding of title to the house in favour of the respondent / plaintiff and which finding may come in the way of the appellant / defendant in proceedings initiated by it.

18. The Suit Court and the First Appellate Court though, on the basis of evidence led before them, have indeed found that the respondent / plaintiff had been able to prove the letter of allotment and the appellant / defendant had been unable to disprove the same but notwithstanding the same, has granted the decree only restraining the appellant / defendant from taking possession without due process of law and have also not granted any relief with respect to the portion of the house which has already been sealed by the appellant / defendant, and rightly so. In the said light, the findings which the counsel for the appellant / defendant is claiming to be of title, are merely tentative and only for the purpose of grant of decree as granted. The aforesaid findings will not come in the way of the appellant / defendant in the proceedings which it intends to initiate for recovery of possession or for sealing and in said proceedings it will be open to the appellant / defendant to show that the respondent / plaintiff is in unauthorized occupation of the

house and/or that the letter of allotment claimed is forged or that the issuer thereof had no authority or that the house/plot underneath it was not meant for allotment and it will be for the respondent / plaintiff to prove that her possession is authorized. However, since a doubt has been raised, it is hereby clarified so and further, that the outcome of the said proceeding will not be swayed by any findings of title qua which no declaration was claimed and which declaration could not have been granted in a suit for injunction simpliciter as per the law laid down by the Supreme Court in *Anathula Sudhakar Vs. P. Buchi Reddy* (2008) 4 SCC 594. For issuing such clarification, issuing notice to respondent/plaintiff is not deemed necessary because the respondent/plaintiff is not aggrieved from decree giving such second chance to appellant/defendant.

19. With the aforesaid, the appeal is disposed of.

No costs.

SEPTEMBER 17, 2018
'gsr'..

RAJIV SAHAI ENDLAW, J.