

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA No. 163/2018**

Judgment reserved on : 15.11.2018

Date of decision : 27.11.2018

AJAY KUMAR & ANR Petitioner
Through: Mr. Pawan Sharma, Advocate
versus

HARKA BAHADUR GURUNG Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant vide the present second appeal under Section 100 of the Code of Civil Procedure, 1908, as amended assails the impugned judgment dated 03.08.2018 of the learned ADJ-02, Waqf Tribunal/ New Delhi District, Patiala House Courts, New Delhi in RCA/DJ No.77/2017 vide which the first appeal filed by the appellants herein against the impugned judgment dated 16.08.2017 of the Civil Judge-02, PHC, New Delhi District, New Delhi in CS No.57219/2016 (Old No. CS 128/2013), - was dismissed.

2. Vide the judgment dated 16.08.2017 of the Civil Judge-02, PHC, New Delhi, the suit for possession, mandatory and permanent injunction filed by Harkh Bahadur Gurung as plaintiff thereof arrayed as respondent to the first appeal and also arrayed as respondent to the present second appeal, vide which suit, the plaintiff thereof (the

respondent herein) had sought a decree of possession against the defendants of the said suit Shri Ajay Kumar, his son and Nisha Gurung, his daughter-in-law/wife of his son Ajay Kumar both arrayed as appellants to the present appeal and had sought a decree of possession and directions that the defendants (i.e. the present appellants) be directed to vacate the property bearing No. V-172, Old Nangal, Delhi Cant, New Delhi and sought an injunction against them from interfering in his peaceful and continuous possession of the suit property which suit was decreed by the learned trial Court in favour of Shri Harkh Bahadur Gurung.

3. Vide the judgment and decree dated 16.08.2017 in CS No.128/2013, the issues framed on 17.04.2014 to the effect:

- I. Whether the plaintiff is entitled to a decree of possession against the defendants in respect of the suit property? OPP*
- II. Whether the plaintiff is entitled to decree of permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff in the suit property and from creating any third party interest in the said property? OPP*
- III. Whether the present suit is time barred? OPD*
- IV. Whether the present suit is not maintainable in its present form and contents? OPD*
- V. Whether the suit is liable to be dismissed for deficiency of Court FEES? OPD*
- VI. Whether the plaintiff is not entitled to the relief claimed as he has concealed that he is not the absolute owner of the suit property? OPD*
- VII. Whether the plaintiff has no locus standi to file the present suit against the defendants? OPD*

VIII. *Whether the suit property is in nature of a copracenary property? OPD*

IX. *Relief.*”

were disposed of whereby issue nos.1 & 2 were decided in favour of the plaintiff (respondent herein) and issue nos.6, 7 & 8 were decided against the defendant (appellants herein) and in favour of the plaintiff and issue nos.3, 4 & 5 were all also decided in favour of the plaintiff i.e. the respondent herein as arrayed to the present regular second appeal.

4. The facts put forth as per the impugned judgment of the learned trial Court read to the effect:

“2. The plaintiff’s case, in brief is that he is 76 years old widower retired from Army and has been living in the suit property. The suit property was purchased by him from Shri Chand on 01.03.1995 vide GPA, agreement to sell, affidavit etc. dated 05.10.1995. His wife expired on 08.12.1998 and his elder son was recently posted to Delhi. The defendant no. 1 is his younger son and defendant no. 2 is his daughter-in-law, both of whom are residing with him in the suit property. Both the defendants had requested him to temporarily accommodate them in the suit property and in return they promised to take care of him. They further assured that as and when the plaintiff would require the premises, they would vacate it within 7 days. They further assured that they would bear the electricity expenses and will provide food to the plaintiff. The plaintiff, thus, allowed them to reside in the suit property as licensees till they were able to arrange alternative accommodation. However, the defendants failed to keep their promises. The plaintiff despite his old age, was constrained to take food from outside a Dhaba, The defendants with an intent to grab the suit

property from the plaintiff, threatened him with death and tried to obtain forcible possession of the suit property from him. A complaint with the police of PS Sadar Bazaar, Delhi Cantt., was also lodged on 08.03.2013. On 24.03.2013, the defendants dragged him out of his room and again tried to take forcible possession of the premises. On 25.03.2013, the plaintiff went to the local police to lodge a complaint but no action was taken. Subsequently, FIR bearing no, 200/2013 under Section 511/441/448/506 IPC was registered against the defendants. The plaintiff has debarred the defendants from all his movable immovable properties and a publication in this respect was also issued in newspaper, A legal notice dated 08.10.2013 was issued to the defendants whereby their license was terminated and they were given 15 days time vacate the premises. The defendants gave reply dated 26.10.2013 to the said legal notice but did not vacate the premises. Hence, the suit.

3. On notice, the defendants appeared and filed a joint written statement wherein they took preliminary objections as to non-maintainability of suit; non-payment of appropriate court fees, bar of suit by limitation; concealment of material facts etc. On merits, while denying the averments of the plaint, the defendants submitted that the suit property was acquired by defendant no.1, his brother and the plaintiff jointly and the documents relied on by the plaintiff were forged and fabricated, The land of which, the property is built is a government land and it is not permissible for any private party to sell or purchase it. The house was built by the joint funds of the plaintiff, defendant no. 1 and his brother. The suit house consists of two floors. The defendants were exclusively occupying room no. R-2 and R-3 on the ground floor, room no. R-6 on the first floor besides the kitchen and toilet. They were also enjoying common entrance, hall and staircase. The defendant no. 1 was serving in Indian Army and remained

posted to different units. His wife Asha Lata Gurung died in December 1998 before the marriage of defendant No. 1 with defendant no. 2. The defendant no. 2 has been residing in the suit property since her marriage which is matrimonial home and has been taking care of her widower father-in-law (the plaintiff). After his retirement on 30.06.2003, the defendant no. 1 started residing in the suit property. On 18.08.2000, the defendant no. 2 gave birth to a female child namely Anisha who is now studying in 8th standard and who also has been residing with her parents since her birth. The plain was occupying only one room bearing no. R-1 at ground floor. The rooms bearing no. R-4 and R-5 were earlier given on rent but for the last one a half years these are lying vacant. On 15.04,2013, the plaintiff locked his room no. R-1 and shifted himself to room no. R-2 and did not allow defendants to enter in it. The plaintiff is in the habit of taking liquor on basis and calls sex workers at night. He intends to sell the suit property at throw away prices for which he has already approached the land mafia. In September 2012, some persons of land mafia came to the suit property for physical verification. When the defendants objected, the plaintiff started misbehaving with them and threatened to kill them. A criminal complaint bearing 504/13 was also lodged which is pending before the Ld. Metropolitan Magistrate, New Delhi. Hence, the suit is liable to be dismissed.”

5. The plaintiff (respondent herein) examined himself and two witnesses Mr. Ram Chander and Mr. Mohan Gurung as PW2 and PW3 respectively before the learned trial Court. The defendants (the appellants herein) examined themselves as DW1 and DW2. The plaintiff (respondent herein) urged before the learned trial Court that the suit property was purchased by him out of his own funds and that

the same belongs to him exclusively and that the documents on record were in his name alone and that the defendants (appellants herein) had no right title or interest in the same and that the defendants' (appellants herein) license had been cancelled by the plaintiff vide legal notice dated 08.11.2013 and that the defendants (appellants herein) had no right to stay in the suit property and since the suit property was built on defence land, registered documents in favour of the plaintiff could not be executed but the defendants have been harassing him and he was compelled to take food from outside and electricity bills were paid by him and that he, the plaintiff was a senior citizen and entitled to enjoy his property and that the defendants (appellants herein) be directed to vacate the suit premises and peaceful possession be handed over to him.

6. The defendants (appellants herein) contended that the suit was barred by limitation and they had been residing in the same since 1995 and that the suit had been filed in the year 2013 and that they had acquired title to the suit property by adverse possession and that the plaintiff (respondent herein) was not the sole owner of the suit property situated in the defence area and that no one could be the owner of the premises which was situated on government land and that documents of title filed on record by the plaintiff only showed that the malba was purchased by him and not the entire suit property and that the plaintiff had not filed any documents and had not paid proper court fee and had undervalued the suit and that the suit was bad for non-joinder of necessary parties as the Delhi Cantonment Board to whom the suit land belonged had not been made a party.

7. The plaintiff who is arrayed as respondent to the present second appeal through his testimony before the learned trial Court admitted that the land on which the suit property was built belonged to the Delhi Cantonment Board and further admitted that there was nothing on record to show that a license was granted by him to the defendants and also stated that he had no chain of title documents in respect of the super structure/ malba given to him by the previous owner Shri Chand at the time of the execution of the documents in relation thereto.

8. The plaintiff (respondent herein) had further stated that at the time of purchase of the super structure/ malba, four rooms were constructed on the plot of land and he got the remaining construction done in the year 1996-97 and stated that he had received a sum of Rs.17,000/- from the Army at the time of his retirement and at the time of his testimony, he was receiving a sum of Rs.10,000/- as pension and admitted that the suit property was a government property but added that person from whom he had purchased was a postman and government employee and further stated that he had purchased it for Rs.400-500/- and had purchased only the malba.

9. Rakesh Chander, PW-2, the witness of the plaintiff who was a neighbour of the plaintiff also deposed that the plaintiff had purchased the suit property on 01.03.1995 from Shri Chand and the documents in relation thereto were executed on 05.10.1995 and he further stated that the defendant no.1 (i.e. the appellant no.1 herein) i.e. the son of the plaintiff used to quarrel with the plaintiff after drinking and used to ask the plaintiff to leave the house and he had seen the defendant no.1

beating the plaintiff at two instances as his house is right in front of the plaintiff's house.

10. Another neighbour of the plaintiff (i.e. the respondent herein) Mr. Mohan Gurung examined as PW-3 also stated that he has seen the plaintiff bleeding from his mouth and nose in March, 2013 and that he was not aware of the reason of the quarrel .

11. The defendant no.1 i.e. the appellant no.1 in his statement before the learned trial Court stated that his father i.e. the plaintiff (the respondent herein) had retired in the year 1971 after which he worked in an ordinance factory at Dehradun and after that he had started working at Oberoi Hotel Delhi and stated that he was around four years old when his father retired and admitted that his father had purchased the suit property from Shri Chand at which time, he was not married and stated that he joined the Army on 04.05.1987 and was never remained posted at Delhi and at time of his marriage, he was posted at Dehradun. He admitted that for the sale purchase transactions, no registration of documents were being done by the residents of old Nangal Raya and further admitted that he was not in Delhi when the suit property was purchased by his father in 1999 and at the time of purchase of the suit property, only some portion of the ground floor existed and his father got the ground floor renovated and constructed two rooms on the first floors and that the first floor was constructed jointly by himself and his father.

12. The defendant no.2 arrayed as appellant no.2 to the present appeal admitted that the suit property was owned by her father-in-law but added that the land belonged to the Delhi Cantonment Board and

that there was no legal document for it and admitted that there were no title documents in her favour or in favour of her husband and that her father-in-law purchased the suit property in the year 1995. She further admitted that the plaintiff used to prepare his own food and used to take meals from outside.

13. DW-3, Meena, neighbour of the defendant nos.1 & 2 also deposed that the suit property was constructed on government land and no one can sell or purchase the same and further stated that the house in question was built by the combined funds of the defendant no.1 and his brothers and stated that the plaintiff (respondent herein) was in the habit of consuming liquor on a daily basis and used to call sex workers at night.

14. DW-4 Laxmi, who is also a neighbour of the defendant no.1 also stated that she herself had purchased the suit property and the plaintiff had been leaving there before her. She further admitted that the plaintiff was residing at one room of the premises.

15. DW-5 Moti Ram examined by the defendants (appellants herein), the neighbour of the parties who deposed on similar lines as DW-2 and DW-3. DW-5 also stated that he was not aware of the contents of the affidavit DW-5/A.

16. The findings of learned trial Court qua issue nos.1, 2, 6, 7 & 8 are to the effect that

“25. Admitted position is that defendant no. 1 is the plaintiff’s son and defendant no. 2 is his daughter-in-law. The plaintiff is aged about 76 years.

26. Admittedly, the suit property was purchased by the plaintiff and construction over it was raised by him. In the cross

examination, defendant no. 1 admitted that the plaintiff retired from the army in 1979. Thereafter he worked in ordinance factory at Dehradun. After that, he worked at Oberoi Hotel. He was around 4 years old at the time of his father's retirement. He further admitted that the suit property was purchased by his father from Shri Chand. Prior to that, the plaintiff used to reside on rent at old Nangal Raya. He further admitted that for sale and purchase transaction, the documents are not got registered by the residents at Old Nangal Raya, It is also admitted that when the property was purchased by the plaintiff in 1995, its some portion on the ground floor was in existence. The ground floor was renovated and the plaintiff got constructed two rooms on the first floor. Similarly, defendant no. 2 in the cross-examination, admitted that she was residing in the suit property owned by her father in law. It was further admitted that the property was purchased by the plaintiff in 1995 and it was in his occupation since then. It can well be inferred that the plaintiff has right, title and interest in the property. It was purchased by him and substantial amount was spent on it on raising construction. The defendants have not claimed or proved if any amount was shared or contributed by them for the purchase of the suit land or over any construction. The defendants have attempted to challenge plaintiff's ownership claiming that the suit land is owned by the Delhi Cantonment Board. Undisputedly, the suit land is owned by Delhi Cantonment Board and construction over it seems unauthorized. However, the defendants who have no better title or interest have no locus standi to challenge the right, title interest of the plaintiff in the suit land. It is for the competent authority to initiate legal proceedings, if any, against the plaintiff for unauthorized construction, if any. The defendants cannot challenge the plaintiffs locus standi to file

the suit against them in the absence of any right in their favour.

27. It is also not in dispute that initially, the plaintiff and his wife were in occupation of the suit land. Defendant no.1 was in army. He married defendant no.2 on 12.5.1999. He started living in the suit land in 2003 along with his wife after the death of plaintiff's wife. In the cross-examination, it has been admitted by the defendants that the electricity connection is in the plaintiff's name and the electricity charges are being paid by the plaintiff. The defendants have admitted that since 2003 they have stopped paying electricity charges. The defendants have not claimed or proved as to under what right, title or interest in their individual capacity they are in occupation of the suit land. Since the relationship between the parties is close, and relations were cordial in the beginning, apparently, the plaintiff had permitted the defendants to stay in die suit property without charging any rent or lisencc fee. The defendants possession was apparently permissible. It has come on record that the relations between the parties have turned sour and the defendants have started treating the plaintiff with cruelty, physical or mental. The plaintiff has lodged FIR No, 200/2013 against the defendants. Its outcome is not clear. The defendant no. 2 had also instituted proceedings against the plaintiff under Domestic Violence Act in 2013. Its outcome is also not clear. It is on record that the plaintiff is in occupation of only one room of the suit land, He gets his meals from outside. These circumstances speak volume as to under what miserable circumstances the plaintiff resides in the suit land and the defendants have neglected to maintain the plaintiff in his old age. The defendants can't be permitted to enjoy the property created by the plaintiff with his hard earned income and to compel him to leave the same by creating miserable conditions for him.

28. PW2 Ram Chander and PW3 Mohan Gurung have supported the plaintiff on material facts. They have also spoken as to how the defendants used to quarrel with the plaintiff and at one occasion he was beaten. The defendants have not vacated the premises in question despite service of legal notice dated 08.10.2013, Since the plaintiff does not wish to keep them in the suit premises, they had no legal right title or interest to remain in occupation against his wishes. In **Jyotsna kv. Lakhpat Rai, RSA No. 352/2016** decided on 02.12.2016, (Dl) the Hon'ble HC has observed that right of daughter-in-law is dependant on the right of the husband. The husband could have resided in the house as a matter of right if he process that he has contributed in the purchase of the suit property.”

17. The learned trial Court observed to the effect that the license was terminated vide legal notice dated 08.10.2013 and the suit filed on 28.11.2013 was clearly within time and as regards the adverse possession, the defendants had not shown as to from when the possession became adverse to the plaintiff (respondent herein) and the plaintiff had not been able to prove their title on the basis of adverse possession. *Inter alia* the learned trial Court also held to the effect that the land belonged to the Delhi Cantonment Board which was not a necessary party to the adjudication of the *lis*.

18. The First Appellate Court vide the impugned judgment upheld the verdict of the learned trial Court and dismissed the first appeal filed by the appellants herein and observed to the effect that the learned trial Court whilst relying on the testimony and cross examination of DW-1 (i.e. the appellant no.1) rightly concluded that

the ownership of the suit property was not disputed by the appellant and adverted to the cross examination of DW-1 to the effect:

“It is correct that the before purchasing the suit property, my father was residing at rent at Old Nangal Rai. It is correct that my father had purchased the suit property from Shree Chand.”

19. The First Appellate Court also held that the respondent’s claim that he had purchased the suit property from Shri Chand vide Ex. PW1/7 and Ex. PW1/8 had not been disputed by the appellant no.1, his son rather admitted that *“There is no property document in my name in respect of the suit property.”*

20. The testimony of DW-2 i.e. the appellant no.2 herein was also categorical to the effect:

“It is correct that the property where I am residing presently is owned by my father in law. (Vol. The said land belongs to the Cantonment and there are no legal documents for it). It is correct that there are no property document in the name of my and my husband with respect to the suit property.....It is correct that my father in law had purchased the suit property in the year 1995 and he has been residing there since then. Hence appellant no.2 also admitted the ownership of the respondent.”

21. The First Appellate Court observes further to the effect that undoubtedly the suit property belonged to the Delhi Cantonment Board and the construction over the same appeared to be unauthorized and that the learned trial Court rightly held that the appellants had no right or locus standi to challenge the right, title or interest of the

respondent in the suit property and observed that this was because purchase of the suit property by the respondent stands admitted and that it was also admitted that the appellants did not have any title or interest at least no better title or interest in the suit property as against the respondent.

22. The First Appellate Court placed reliance on the testimony of DW-1 which was to the effect that:

“It is correct that at the time the suit property was purchased only some portions of the ground floor existed. It is correct that my father had renovated the ground floor and got constructed two rooms on the first floor.”

23. The First Appellate Court held that though the defendant no.1 i.e. the appellant no.1 herein claimed that the 1st Floor was constructed by him, there was no document that he had in his favour.

24. The First Appellate Court also observed to the effect:

*“10.6 In fact the above statement **“It is correct that at the time the suit property was purchased only some portions of the ground floor existed”**, also puts to rest the controversy as raised by the appellants that only the Malba was purchased and not the land. The undisputed documents on record i.e. GPA, agreement to sell, receipt etc. are not only in respect of Malba but they are in respect of structure/Malba. Structure obviously refer to the existing ground floor, which existed at the time of purchase of the suit property by the respondent. Hence respondent had not merely purchased the Malba but he had purchased a structure, property constructed upto ground floor which forms part of the suit property and upon that existing*

structure the respondent constructed another floor i.e. first floor. It will be pertinent to highlight that Ld. Trial court had rightly observed that the documents were executed in favour of the respondent in respect of structure/Malba as the suit property being a government land, the structure being constructed on a government land, the land underneath the structure, suit property could not have been sold to or purchased by the respondent. In fact DW1 went on to state "It is correct that for sale/purchase transactions, no registration of documents is being done by the residents of Old Nangal Rai". This was also the stand of appellant no. 2 and other defendant's witnesses. Hence it was the respondent who had purchased the suit property and spent money in further development, construction of the suit property."

25. The First Appellate Court also held that as the learned trial Court held that it was not disputed that the suit property was purchased by the respondent (i.e. the appellants herein) and as there was an admission by the appellants that they had no title documents in their favour in respect of the suit property then irrespective of the defect in the title, the respondent (appellants of the civil suit) had better title, right and interest in the suit property as compared to the appellants and that the respondent had better entitlement of possession of the suit property as well and that the appellants had no right whatsoever in the suit property and that though the documents i.e. Agreement to Sell, Power of Attorney, etc do not strictly confer ownership rights as a sale deed, however, such documents created certain rights in an immovable property, though which were strictly not ownership rights but definitely the same could be construed as

entitling the persons who had such documents to claim possession of the suit property.

26. The First Appellate Court placed reliance on the verdicts in *Smt. Shashi Bala Nasval Vs. Rama Kant Shah* in RSA No.13/15 dated 02.08.2016, *Govindan Soman Vs. Atam Prakaah Malik and Anr.* in RSA No.159/12 dated 27.07.2016, *O.P. Assarwal and Anr. Vs. Akshav Lai and Ors* in RFA no.127/04 dated 15.03.2012 and *Sachin and Anr. Vs. Jhabbu and Anr.* in RSA no. 136/2016 and CM no.19123/2016 decided on 24.11.2016 by the Hon'ble High Court of Delhi and on the verdict in *Vasudha Gupta Vs. DDA and Anr WP (C) No.6258/2013* dated 24.09.2014 wherein it has been observed to the effect:

"So far as the judgment in Suraj Lamp & Industries Pvt. Ltd's case (supra) is concerned, the same judgment also observes that it will not affect the validity of sale agreements and powers of attorney executed in genuine transactions which may have taken place before the pronouncement of judgment dated 11.10.2011. The court has made it abundantly clear that the purpose is not to make all transactions as illegal, but to ensure that the parties are not able to circumvent the law so as to cause loss to the exchequer by depriving it of payment of stamp duty or registration charges. This note of caution has been struck by the judgment in Suraj Lamp & Industries Pvt. Ltd's case (supra) wherein it has been observed that the purpose of meting the transactions inadmissible on account of non registration is not to deprive genuine parties of their rights qua local bodies."

27. The First Appellate Court further observed to the effect:

“10.9 The suit property was admittedly purchased by the respondent in 1995 therefore reliance on Suraj Lamp (supra) is misconceived as the said judgment does not have retrospective effect. At this stage, it will be pertinent to go through the observations made by Hon’ble Apex Court in Mava Devi Vs. Lalta Prasad (2015) 5 SCC 588 as well as Lamp and Industries (P) Ltd. (2) Vs. State of Haryana (2012) 1 SCC 656 and Suraj Lamp and Industries (P) Ltd. Vs. State of Haryana (2009) 7 SCC 363. It was held by the Hon'ble Apex Court in Maya Devi's case (supra) as under:

" What has also escaped the attention of the executing court is that Suraj Lamp (1), (2009), 7 SCC 363 has prospective operation, thereby rendering it inapplicable to the subject 2006 transaction."

10.10 It was further held as under:

"9. Para 27 of the judgment of this Court in Suraj Lamp and Industries (P) Ltd. (2) reads as follows:

"27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions..... Our observations regarding 'SA/GPA/will transactions are not intended to apply to such bonafide/ genuine transactions."

10.11 Absence of the chain of documents in favour of Shree Chand, from whom the respondent had purchased the suit property would not alter the situation or the rights which the respondent has, as discussed above. This is more so once there is no one else who is claiming the ownership of the suit property and the appellants themselves are admittedly not the owner of the same. Furthermore the appellant's witnesses admitted that in the said area i.e. Old Nangal Rai no sale documents are ever

executed as the land belongs to the government. Hence there cannot be an occasion where the parties, purchasers, have the complete chain, set of documents in respect of the title.

10.12 As far as plea of adverse possession is concerned, no such plea can be entertained. The Ld. Trial court rightly held that the defendants/ appellants failed to prove as to from which date their possession became adverse to the respondent. As per the respondent's case the cause of action arose in his favour when the appellants started misbehaving with him, stopped looking after him and giving food to him etc. The cause of arose in favour of the respondent when he terminated the license granted to the appellants vide legal notice dated 08.10.2013. The suit was filed in November 2013 and considering the relationship of parties and no specific assertions regarding the plea of adverse possession, the date and circumstances in which the appellant's possession became adverse, it can be safely concluded that the plea regarding adverse possession is merely an afterthought. The suit was filed only once the relationship between the parties became inimical and till the filing of the suit there is nothing on record to suggest that the appellants had even tried to set up a claim of adverse possession. Furthermore the law is well settled that a licensee has a very limited right Once a licensee is always a licensee unless it is proved on record by way of cogent, positive evidence that the licensee has acquired title to the suit property or obtained better title than the licensor. The possession continues with the licensor. The Licensee, once the licence is terminated, is only entitled to claim a reasonable time to vacate the premises. The nature of occupancy of a Licensee is clearly permissive and does not amount to possession at all. A licence does not create any interest in the property. It merely permits another person to make use of the property. There is no parting with possession as legal possession continues with the licensor.

Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created; for owner retains legal possession while all that the Licensee gets is a permission to use the premises for a particular purpose or in a particular manner but for the permission so given, the occupation would have been unlawful (Thomas Cook (India) Ltd. v. Hotel Imperial 2006 (127) DLT 431 and Associated Hotels of India Ltd. v. R.N. Kavur AIR 1959 SC 162).”

28. The First Appellate Court also concluded that the possession and occupation of the appellants was undoubtedly a permissive one as licensee which has been revoked by the respondent by issuance of the legal notice.

29. The First Appellate Court also concluded that the suit property cannot be termed to be the shared household of the appellant no.2 and she cannot claim any right to reside in the same inasmuch as the same belonged to her father-in-law and a reference was made by the First Appellate Court on the verdict of this Court in Jotsna @ Jvoti and anr Vs. Lakhpai Rai RSA 352/2016 & CM no. 43607/2016 dated 02.12.2016 wherein it was held to the effect:

“12. The concurrent finding of the Courts below regarding the suit property being self-acquired, the father in law is under no legal obligation to maintain the appellant No. 1 and her adult son i.e. appellant No. 2 in his self acquired property in view of the legal position enunciated in the decision S.R. Batra vs. Taruna Batra 2007 (3) SCC169.

13.....The appellants/ defendants on the other hand failed to place on record any document to controvert the said

*plea of the plaintiff by showing that the suit property was purchased out of the sale proceeds of any ancestral property in which the husband of the appellant no. 1 has right title or interest..... the respondent cannot be compelled to remain under constant threat of false implication and face humiliation at the hands of his daughter-in-law and grandson. The parents in such a case when their life has been made miserable by their daughter-in-law can always ask such son, daughter-in-law or grandson to leave the house and lead their life so that the parents can live in peace. The concurrent finding given by the Courts below are in accordance with the law settled by the judgment of the Supreme Court in **S.R. Batra vs. Taruna Barra** (supra) case which has been followed by the Division Bench of this Court in **Shumita Didi sandhu vs. Sanjay Singh Sandhu & Ors. 174 (2010) DLT 79.***

and also on the verdict of this Court in **Sachin and Anr Vs. Jhabbu Lal & Anr RSA 136/2016 & CM No. 19123/2016** wherein it has been observed to the effect:

“.....(i) The documents i.e. GPA, agreement to sell, receipt and Will being in favour of the plaintiff No. 1 (Father of defendant Nos. 1 & 3) though do not make him absolute owner but he has a better title as compared to the defendants.

14..... The respondent Nos. 1 and 2/ plaintiffs may not have proved themselves to the owner of the suit property as may be established in a case of acquiring title under a registered sale deed but surely they would have better rights/entitlement to seek possession of the suit property from his sons who were permitted to live on the first floor only out of love and affection towards them.

15. Where the house is self acquired house of the parents, son whether married or unmarried, has no legal right to live in that house and he can live in that house only at the

mercy of his parents upto the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout his life.

16. *In my opinion in a case such as the present one where the appellants/ defendant Nos. 3&4 have led no evidence to prove that it waived self acquired or co-ownership in the suit property whereas respondents/plaintiffs No. 1&2 have proved their case on the basis of documentary evidence i.e. copies of General Power of Attorney. Agreement to Sell, Receipt possession letter Affidavit etc., the learned trial Court was justified in decreeing the suit which was upheld by the First Appellate Court."*

30. The First Appellate Court also made a reference to the verdict of the Hon'ble Supreme Court in ***SR Batra & Anr. Vs. Smt. Taruna Batra 136 (2007) DLT 1 (SC)*** wherein it has been laid down to the effect:

"17. There is no such law in India, like the British Matrimonial Homes Act 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.

18. Here, the house in question belongs to the mother-in-law of Smt. Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt. Taruna Batra cannot claim any right to live in the said house.

29. As regard Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband or the house

which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it an joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a shared household.”

31. The verdict of this Court in ***Kavita Chaudhri (Dr.) Vs. Eveneet Singh & Anr. 188 (2012) DLT 755*** with observations to the effect:

“In case of S. R. Batra v. Taruna Batra, 1 (2007) SLT 1=136 (2007) DLT 1 (SC) = 1 (2007) DMC 1 (SC)= (2007) 3 SCC 169, and also the judgment passed by the Hon'ble Division Bench in Sumita Didi Sandhu v. Sanjay Singer Sandhu (supra), to take a view that the wife would be entitled to claim a right to residence in shared household and such a shared household would only mean the house belonging to or taken on rent by the husband or the house which belongs to the joint family of which husband is the member. The property which neither belongs to the husband nor is taken on rent by him, nor is it a joint family property in which the husband is a member, cannot be regarded as a "shared household". Clearly, the property which exclusively belongs to the father-in-law or the mother-in-law or to both of them in which the husband has no right, title or interest, cannot be called a "shared household.”

and the verdict of this Court in ***Shumita Didi Sandhu Vs. Sanjay Singh Sandhu & Ors. II (2010) DMC 882 (DB)*** with observations to the effect:

“It is only in that property in which the husband has a right, title or interest that the wife can claim residence and that, too, if no commensurate alternative is provided by the husband.”

were also adverted to by the First Appellate Court.

32. It was also held by the First Appellate Court to the effect:

“10.21 In fact it escaped the Ld. Trial Court's attention that the appellants are owners of a property at Dehradun. DW1 during his cross examination stated "It is correct that I have purchased property in Dehradun.....Again said the said property in Dehradun is in the name of my wife". DW2 during her cross-examination stated as "It is correct that there is a property in my name in Dehradun". Hence the appellants have their own property and it is this property in which the appellant and his wife have and can claim a right to reside therein. The respondent at this juncture of his life has a right to live peacefully in his property - without any disturbance or interference by/from the appellants. He had purchased the suit property from his own funds, is his self acquired property upon which he also raised construction and therefore the appellants cannot dictate any terms to the respondent or continue to occupy the suit property against his will.”

33. It is essential to observe that as the present appeal RSA 163/2018 is a second appeal and the existence of a substantial question of law is a *sine qua* for the exercise of jurisdiction thereunder. The second appeal as laid down by the Hon'ble Supreme Court in **Union of India Vs. Ibrahim Uddin & Anr. 2012 (8) SCC 148** does not lie on the ground of contended erroneous findings of facts based on an appreciation of the relevant evidence. The appellant herein seeks to urge the following as substantial questions of law to the effect that:

“A. The instant second appeal involves another substantial question of law whether a suit for possession, mandatory and permanent injunction is maintainable without seeking declaration of ownership when plaintiff admits that he is not the owner of the suit land.

B. The instant second appeal involves another substantial question of law whether a suit for possession, mandatory and permanent injunction is maintainable for non-joinder of the owner of the property.

*C. The instant second appeal involves a substantial question of law whether a person merely holding SA/GPA/WILL of **“MALBA/ SUPERSTRUCTURE” AND NOT OF ANY LAND**” can seek a relief of possession, mandatory and permanent injunction of a land when admittedly owner of the land of the suit property is government/ Delhi Cantonment Board.*

*D. The instant second appeal involves another substantial question of law whether protection to SA/GPA/WILL transaction granted vide Para 18 of the judgment in the case of Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr. (SLP(C)13917/2009) Hon’ble Apex Court, only for (1) obtaining specific performance or (2) to defend possession u/S 53A of TP Act, can be extended to the suit for possession, mandatory and permanent injunction and that to on the basis of SA/GPA/WILL merely showing the transaction of sale purchase of **“Malba /super structure”** and not of the landed property which is admittedly of Delhi Cantonment Board.”*

34. On a consideration of the entire available record and submissions that have been made on behalf of the appellant by learned counsel for the appellant, it is essential to observe that as the respondent was admittedly not the owner of the land but the super

structure was raised by him, the appellant could not have sought declaration of ownership of the suit property and thus the question of law at 'A' cannot be framed.

35. As regards the question of law at 'B' to the effect:

B. The instant second appeal involves another substantial question of law whether a suit for possession, mandatory and permanent injunction is maintainable for non-joinder of the owner of the property,

it is essential to observe that the Delhi Cantonment Board not having been arrayed as a party to the *lis*, the grant of any relief in relation to the suit land against the real owner would have no meaning inasmuch as the relief granted between the appellants and the respondent herein is only *inter se* qua them and the findings would not apply to the Delhi Cantonment Board which is not even a party before this Court.

36. As regard question of law at 'C' which reads to the effect:

"C. The instant second appeal involves a substantial question of law whether a person merely holding SA/GPA/WILL of "MALBA/ SUPERSTRUCTURE" AND NOT OF ANY LAND" can seek a relief of possession, mandatory and permanent injunction of a land when admittedly owner of the land of the suit property is government/ Delhi Cantonment Board."

the concurrent findings of facts by the learned trial Court and the First Appellate Court bring forth clearly that the super structure was constructed by the respondent from his own earnings when the appellant no.1 was posted out of Delhi. The testimony of the appellant no.1 also clearly indicates that he gave no contribution towards

construction of the house in question by way of construction of the super structure over the malba of land belonging to the Delhi Cantonment Board. The same too in view of issue nos. A & B have been declined to have arisen in the facts and circumstances of the instant case and the question of law at 'C' too does not arise out of the pleadings of the parties.

37. As regards reliance placed on behalf of the respondents on the verdict of the Hon'ble Supreme Court in ***Suraj Lamp and Industries (P) Ltd. (2) Vs. State of Haryana (2012) 1 SCC 656***, it is essential to observe that the concurrent findings of the facts of the two Courts i.e. of the Court of the Civil Judge-02 and the First Appellate Court, bring forth clearly that the malba/ super structure was purchased by the appellant from Shri Chand in 1995 vide documents including GPA, Agreement to Sell, undoubtedly the right to possession of the suit property on which the malba was in existence where it was purchased by the respondent herein, in the absence of the Delhi Cantonment Board having been arrayed as a party to the *lis*, no permanent rights can accrue in favour of the respondent to the present *lis*, in the malba/ super structure in supersession of the right of the Delhi Cantonment Board. However against the appellants of the present appeal who were mere licensees in the malba from which the super structure was got erected by the respondents, the rights of the respondent in relation to the malba or super structure raised were certainly protected in view of the documents executed. The appellants having been inducted as mere licensees in the super structure raised on the land on which the malba

was laid as purchased by the respondent in the year 1995, the appellants have no locus standi whatsoever to continue in the property i.e. the super structure/ malba at the portion of the suit property and thus in the circumstances of the case, no substantial questions of law arise as sought to be framed by the appellants.

38. In view thereof, RSA 163/2018 and the accompanying applications CM APPL.46998-46999/2018 are disposed of.

39. However, it is reiterated that nothing stated hereinabove in relation to the land on which the super structure was erected by the respondent shall affect any rights of the Union of India or the Delhi Cantonment Board qua which they may seek redressal in accordance with law.

ANU MALHOTRA, J.

NOVEMBER 27, 2018/vm

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