

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

+ **RFA No. 777/2017**

% **1st February, 2018**

SUSHMA KUMARI Appellant

Through: Mr. Raman Gandhi, Advocate.

versus

GIRIJESH GUPTA & ANR. Respondents

Through: Mr. Prashant Diwan and Mr.
Brijesh Diwedi, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RFA No. 777/2017 and C.M. Appl. No. 33032/2017 (for stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the daughter-in-law/defendant no. 1 impugning the judgment of the trial court dated 22.7.2017 whereby the trial court has decreed the suit filed by the mother-in-law/respondent no.1/plaintiff and has passed a decree for possession with respect to the third floor of the property bearing no. WZ-3335, Mahendra Park, Near Rani Bagh, Delhi-110034.

Appellant/defendant no. 1 has also been enjoined from handing over the suit property being the third floor to anybody else.

2. The facts of the case are that respondent no. 1/plaintiff, a widow, filed the subject suit pleading that she was the owner of the suit property being the third floor of WZ-3335, Mahendra Park, Near Rani Bagh, Delhi-110034, in terms of a registered sale deed dated 16.9.2013. The second floor of the property WZ-3335 was also purchased by the respondent no.1/plaintiff in terms of registered sale deeds dated 30.4.2008 and 5.10.2016. Respondent no. 1/plaintiff pleaded that she had two sons and the appellant/defendant no.1 was the wife of one son being the defendant no. 3 in the suit, namely Sh. Gagan Gupta i.e Sh. Gagan Gupta was the husband of appellant/defendant no. 1 and the son of respondent no.1/plaintiff. In the plaint it is further pleaded that after marriage the appellant/defendant no.1 stayed in the second floor of the premises up to 15.2.2014 and thereafter left on 16.2.2014 to stay with her parents and she lived at her parental home till 3.6.2015. Appellant/defendant no.1 is stated to have filed false complaint in the Crime Against Women (CAW) Cell. Appellant/defendant no.1 is pleaded to have

illegally entered into the possession of the suit property and with respect to which respondent no.1/plaintiff pleads that various police complaints were made. Respondent no.1/plaintiff pleaded that since she is the absolute owner of the suit property on 4.6.2015 and appellant/defendant no. 1 was in illegal possession of the same as she forcibly occupied the suit property being the third floor, therefore the suit for possession and injunction was prayed to be decreed in favour of the respondent no.1/plaintiff and as against the appellant/defendant no. 1.

3. Defendant no.2 in the suit is the real mother of the appellant/defendant no.1. They filed a joint written statement. It was denied that appellant/defendant no.1 had trespassed into third floor being the suit property and it was pleaded that actually the third floor being the suit property was purchased from the money which the respondent no.1/plaintiff received from the parents of the appellant/defendant no.1 prior to the marriage. It was pleaded that respondent no.1/plaintiff took Rs.5,00,000/- from the parents of the appellant/defendant no.1. It was also pleaded that appellant/defendant no. 1 did not stay in her parents' house till 3.6.2015 but she had in fact

come to her “matrimonial home” being the third floor of the property on 5.5.2015 in view of the proceedings before the CAW cell. The suit was hence prayed to be dismissed.

4. After pleadings were complete, the following issues were framed:-

- “1) Whether the suit does not disclose any cause of action? OPD
- 2) Whether the suit property is a joint family property being purchased from the joint funds / resources, as alleged in preliminary objection no.6 of the WS? OPD
- 3) Whether the plaintiff is entitled to a decree of possession of the suit premises as per prayer clause (a) of the plaint? OPP
- 4) Whether the plaintiff is entitled to a decree of mesne profits/damages @ Rs.15,000/- per month against the defendants no.1 & 2, as per prayer clause (b) of the plaint? OPP
- 5) Whether the plaintiff is entitled to a decree of permanent injunction in respect of the suit property, as per prayer clause no. (c) of the plaint? OPP
- 6) Relief.”

5. Evidence was thereafter led by the parties and which is recorded in paras 26 and 27 of the impugned judgment which read as under:-

“26. In order to prove her case, plaintiff has examined herself as PW-1 and filed her affidavit in evidence as Ex.PW1/A. She has proved on record the documents viz., i) Ex.PW1/1 – Copy of registered Sale Deed; ii) Ex.PW1/2 – Copy of Sale Deed; iii) Ex.PW1/3 – Copy of Sale Deed; iv) Ex.PW1/4 – Site Plan; v) Ex.PW1/5 – Pen Drive; vi) Ex.PW1/6 (Colly) – various complaints made by the plaintiff to the Police Officers; vii) Ex.PW1/7 – copy of newspaper and viii) Ex.PW1/8 – emergency casualty registration card.

27. Smt. Sushma Kumari appeared as DW-1 and proved her affidavit in evidence as Ex.DW1/A. In her affidavit, she deposed on the lines of her Written Statement. No document has been proved by her on record.”

6. Before this Court on behalf of the appellant/defendant no.1 only one aspect was argued that the judgment of the Supreme Court in the case of ***S.R. Batra and Another Vs. Taruna Batra (Smt.) (2007) 3 SCC 169*** did not apply which held that daughter-in-law has no right in the property of the parents-in-law inasmuch as it is argued on behalf of the appellant/defendant no.1 that a Division Bench of this Court in the case of ***Navneet Arora Vs. Surender Kaur & Ors.*** being FAO (OS) No. 196/2014 decided on 10.9.2014 has held that the judgment in the case of ***S.R. Batra (supra)*** will not apply when the daughter-in-law has been continuously residing in the matrimonial home and it has been held in the case of ***Navneet Arora (supra)*** by a Division Bench of this Court that ***S.R Batra's*** case (*supra*) ratio will only apply when the daughter-in-law has left the matrimonial home and thereafter seeks to re-enter the matrimonial home. Therefore, the issue in the present case boils down to as to whether the appellant/defendant no.1 entered the third floor being the suit property by breaking open of locks or whether the third floor was the matrimonial home of the appellant/defendant no.1 either originally or subsequently on account of a compromise before the CAW Cell

wherein as per the case of the appellant/defendant no.1 the respondent no. 1/plaintiff agreed to put the appellant/defendant no.1 in possession of the third floor/suit property.

7. Para 7 of the plaint filed by the respondent no.1/plaintiff shows that the same contains a clear cut averment that appellant/defendant no.1 and her mother/defendant no.2 illegally entered the suit property being the third floor of House No. WZ-3335, Mahendra Park, Near Rani Bagh, Delhi-110034 on 4.6.2015 by breaking open the locks. In the plaint it is also pleaded that appellant/defendant no.1 had resided in the second floor of WZ-3335, Mahendra Park after the marriage and not in the third floor/suit property. As per the plaint, the appellant/defendant no.1 stayed in the second floor of the property up to 15.2.2014 and thereafter on 16.2.2014 she went to her parental home at Mehrauli New Delhi and stayed there till 3.6.2015 and then on 4.6.2015 the appellant/defendant no.1 and her mother/defendant no.2 forcibly broke open the locks and entered the suit property being the third floor.

8. In response to para 7 of the plaint it is stated by the appellant/defendant no.1 that on 5.5.2015 before the Mediation Centre

of CAW Cell matter was settled between the appellant/defendant no.1 and the respondent no.1/plaintiff and since the respondent no.1/plaintiff was ready to call back the appellant/defendant no.1 in the house hence she directly came back to the third floor/suit property from CAW Cell. I may note that as per the list of dates given at page 6 of this appeal, the appellant/defendant no.1 has stated that there was a compromise in the CAW Cell on 5.5.2015 and which was an oral compromise between the appellant/defendant no.1 and the respondent no.1/plaintiff as per which the respondent no.1/mother-in-law agreed to take back the appellant/daughter-in-law to the matrimonial home/shared household.

9. In my opinion, it has to be held that the judgment of the Supreme Court in the case of **S.R. Batra** (*supra*) applies in the facts of the present case and not the ratio of the judgment of the Division Bench of this Court in the case of **Navneet Arora** (*supra*) because the appellant/defendant no.1/daughter-in-law in fact forcibly broke open the locks of the third floor/suit property and entered the same forcibly. It is not in dispute and an admitted position appearing from record including from the admissions made by the appellant/defendant no.1

in her cross-examination on 21.3.2017 that the appellant/defendant no.1 after her marriage had stayed in the second floor of the property and not in the suit property which is at the third floor. This aspect is also stated by the respondent no.1/plaintiff in para 5 of the plaint and para 5 of the plaint is specifically admitted by the appellant/defendant no.1 in her written statement para 5. Therefore, it is clear that the matrimonial home/shared household was the second floor of the property no. WZ-3335, Mahendra Park and the third floor which is the suit property of WZ-3335, Mahendra Park was not the matrimonial home at least originally.

10. The next aspect however to be examined is that whether there was a compromise with the appellant/defendant no.1 before the CAW Cell whereby on 5.5.2015, the respondent no.1/plaintiff had agreed to bring the appellant/defendant no.1 back to the matrimonial home and the appellant/defendant no.1 was given possession of the suit property being the third floor of WZ-3335, Mahendra Park, Near Rani Bagh, Delhi.

11. Admittedly, and this position is quite clear from the record, and there is no document at all evidencing the fact that there

was any compromise before the CAW Cell on 5.5.2015 where under respondent no.1/plaintiff agreed to put the appellant/defendant no.1 in possession of the suit property at the third floor. In the written statement, appellant/defendant no.1 had deliberately left the issue somewhat vague and had pleaded that on 5.5.2015 matter was settled between the parties before the CAW Cell but it was not stated whether the compromise was oral or written. However since admittedly no written settlement is filed and there is not even an order or proceedings note of the CAW Cell evidencing the compromise, therefore the compromise will only be an oral compromise and as so confirmed by the appellant/defendant no.1 at page 6 of this RFA which contains the list of dates. Respondent no.1/plaintiff has admittedly denied this case of the appellant/defendant no.1 and in fact has stated in her plaint para 12 that as many as 13 complaints were made against the appellant/defendant no.1 on account of misbehavior and in some of the complaints from 11.6.2015 till 1.12.2015 (and which are a total of 8 in number) the respondent no. 1/plaintiff has complained with respect to illegal breaking open of the locks by the appellant/defendant no.1 of the suit property at the third floor on

4.6.2015. There is no dispute that all these complaints have been proved and exhibited by the respondent no. 1/plaintiff before the trial court because these complaints have been exhibited as Ex.PW1/6 (colly). Learned counsel for the appellant/defendant no.1 has argued by placing reliance upon para 11 of the complaint dated 11.9.2015 in which respondent no. 1/plaintiff has stated the breaking open of the locks on 20.7.2015, and though at the first blush the argument appeared to have substance, however, it is seen that the argument is actually without any merit for the reason that this date of 20.7.2015 appears to be a clerical mistake because in all other complaints which have been filed and proved on record by the respondent no.1/plaintiff as Ex.PW1/6 (colly) it is clearly mentioned that breaking open of the locks illegally by the appellant/defendant no.1 is on 4.6.2015. Therefore, just one stray mentioning of the date of 20.7.2015 instead of 4.6.2015 in my opinion will not in a civil case which is decided on preponderance of probabilities entitle the appellant/defendant no.1 to contend that the respondent no. 1/plaintiff should be disbelieved and that the appellant/defendant no.1 in fact entered into legal possession of the third floor and was put in possession pursuant to the

compromise dated 5.5.2015 before the CAW Cell. I, therefore, reject this argument urged on behalf of the appellant/defendant no.1.

12. A reading of the pleadings in the suit, evidence led, cross-examination done of the appellant/defendant no.1 and finally the contents of the police complaints proved by the respondent no. 1/plaintiff as Ex.PW1/6(colly) clearly show that the appellant/defendant no.1 after her marriage came to the second floor of the property WZ-3335, Mahendra Park, Near Rani Bagh, Delhi and was not in possession of the suit property at third floor. The case of the appellant/defendant no.1 that she was given possession of the suit property being the third floor is clearly false because there is no compromise which is shown to be arrived at before the CAW Cell on 5.5.2015 whereby the respondent no.1/plaintiff agreed to put the appellant/defendant no. 1 in possession of the suit property at the third floor. I, therefore, hold that in view of the fact that appellant/defendant no. 1 has forcibly entered into possession of the suit property at third floor by breaking open of the locks, such illegal acts should not be allowed to be perpetrated and continued and such breaking open of the locks and taking possession of the property of the respondent

no.1/plaintiff/mother-in-law will not entitle the appellant/defendant no.1 to contend that the ratio of the judgment of the Supreme Court in the case of *S.R. Batra (supra)* does not apply but the ratio of the Division Bench of this Court in the case of *Navneet Arora (supra)* will apply. The case of *Navneet Arora (supra)* does lay down the ratio that the daughter-in-law who had left the matrimonial home/shared household if she enters into possession of the property of mother-in-law by breaking open the locks yet she will not be entitled to continue to remain in possession of that property.

13. I would like at this stage to note the *malafides* of the appellant/defendant no.1. Appellant/defendant no.1 had the benefit of an *ex-parte* order passed by this Court on 19.9.2017 whereby the operation of the impugned judgment was stayed. Notices were issued for today but the appellant/defendant no.1 did not file process fee. Respondent no.1/plaintiff however had come to know of the pendency of this matter and the *ex-parte* order and appeared *suo moto* without service of any notice from this Court. It is also seen that appellant/defendant no.1 has not filed internal page 17 of the impugned judgment and which page was in some manner relevant

with respect to the issue of appellant/defendant no.1 being in illegal possession of the third floor being the suit property. Counsel for the appellant/defendant no.1 contends that the same is by mistake, and I would not like to take the case further, but one thing is clear that there is negligence on behalf of the appellant/defendant no.1, deliberate or otherwise, and which could be one of the reasons why the issue was held to require examination and for consequent notices to be issued in this RFA.

14. In view of the above discussion I do not find any merit in the appeal and the same is hereby dismissed.

FEBRUARY 1, 2018

AK/ib

VALMIKI J. MEHTA, J