

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

+ **RFA No. 202/2018**

% **26th February, 2018**

VED RAM @ BED RAM Appellant

Through: Mr. Puneet Mittal, Sr. Adv.
with Ms. Vasudha Bajaj,
Advocate.

versus

KAMLESH Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 7281/2018 (exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 7351/2018 (delay of 33 days in re-filing)

For the reasons stated in the application, delay in re-filing is condoned.

CM stands disposed of.

RFA No. 202/2018 & CM No. 7280/2018 (stay)

1. This Regular First Appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) by the plaintiff in the suit impugning the judgment of the trial court dated 11.10.2017 by which

the trial Court has dismissed the suit filed by the appellant/plaintiff for recovery of possession and *mesne* profits with respect to the property bearing No.44/1, Village Mochi Bagh, Near Nanakpura, New Delhi. Respondent/defendant is the real sister of the appellant/plaintiff.

2. Appellant/plaintiff claims that the suit property bearing No.44/1 was purchased by him from his father in terms of documentation dated 6.6.1997 being the Agreement to Sell, General Power of Attorney, Will, receipt etc and which have been proved by the appellant/plaintiff before the trial court as Ex.PW1/2 and Ex.PW1/3. The father Sh. Meer Singh expired on 24.9.2000. The case of the appellant/plaintiff was that his sister being the respondent/defendant requested the appellant/plaintiff for staying in two small rooms admeasuring 15x15 feet and which was allowed by the appellant/plaintiff on account of natural love and affection but the respondent/defendant failed to vacate the suit property in spite of termination of her licence w.e.f. 30.11.2005 in terms of the legal notice dated 9.9.2005, hence the subject suit was filed.

3. Respondent/defendant contested the suit and pleaded that the respondent/defendant was not in possession of the property

bearing No.44/1 but was owner and in possession of the property bearing No.87/1, Village Mochi Bagh, New Delhi and which property was sold to her by the father Sh. Meer Singh in terms of documentation dated 30.6.1997 being the General Power of Attorney, Will, Affidavit, etc. These documents were proved by the respondent/defendant as Ex.DW1/2 to Ex.DW1/5. Accordingly, it was prayed that the suit be dismissed as respondent/defendant is in possession of property bearing No.87/1 and not in possession of property bearing No.44/1.

4. In the replication appellant/plaintiff contended that the respondent/defendant at her request was allowed to use the address of the appellant/plaintiff being No. 87/1 for correspondence etc but the respondent/defendant actually is in possession of property bearing No.44/1 and not of No. 87/1. Suit was therefore prayed to be decreed for the property bearing No.44/1.

5. After pleadings were complete, trial court framed the following issues:-

- “1. Whether the plaintiff is entitled to the possession of the suit premises as prayed for? OPP
2. Whether the plaintiff is entitled to damages and mesne profit? If so, at what rate and for what period along with interest as prayed? OPP

3. Whether the defendant is owner of property bearing No.87/1, Village Mochi Bagh near Nanakpura New Delhi? OPD
4. Whether the plaintiff has wrongly mentioned the address of the defendant as 44/1? village Mochi Bagh near Nanakpura New Delhi? OPD
5. Relief.”

6. The relevant issues to be decided were Issue nos.1, 3 and 4 and these issues have been dealt with together by the trial court in the impugned judgment. The issue requiring determination was as to whether the respondent/defendant is in possession of the property bearing No.87/1 of which she is the owner or whether she is in possession of property bearing No.44/1. This issue was crystallized in para 24 of the impugned judgment and which reads as under:-

“24. In this background, the first and real controversy which is required to be gone into is what is the number of the property under occupation of the defendant. Whether it is 44/1 as claimed by plaintiff or 87/1 as claimed by defendant. So far as ownership of the property is concerned, it is worthwhile to note that both are claiming ownership of the suit property through Sh. Meer Singh but neither party has produced any evidence to the effect that suit property was owned by Meer Singh, the father of the parties. Hence, there is no reliable evidence about the ownership of Sh. Meer Singh vis-a-vis third party. However, in the present matter since both plaintiff and defendant are claiming to have derived their titled from Sh. Meer Singh so the inter-se dispute can be taken up and can be decided assuming that Sh. Meer Singh had titled to the property so far as plaintiff and defendant are concerned.”

7. Trial court has thereafter in para 30 referred to the fact that the electoral roll, election identity card and the ration card show the address of the respondent/defendant not as No. 44/1 but as No.

87/1. The relevant documents proved by the respondent/defendant in this regard are the election identity card as Ex.DW1/1, ration card as Ex.DW1/6, electricity bills and telephone bills as Ex.DW1/7 and Ex.DW1/8, respectively. Para 30 of the impugned judgment reads as under:-

“30. The electoral roll, election identity card and ration card clearly show the address of the defendant as 87/1, Village Moti Bagh, Near Nanak Pura, New Delhi. In electoral roll Ex.DW1/1 plaintiff has been shown at Sl. No. 29 and his house bears no.44/1 in Village Moti Bagh, Near Nanakpura, New Delhi whereas name defendant appears at Sl. No.621 and that of her husband at Sl. No. 619 in said Moti Bagh Village and their house bears no.87/1. In the plaint, plaintiff himself has shown to be the resident of 87/1, Village Mochi Bagh, Near Nanak Pura, New Delhi and defendant has been shown as resident of 44/1, Village Mochi Bagh, Near Nanak Pura, New Delhi.”

8. Trial court has thereafter recorded and observed that the house tax receipts filed by the appellant/plaintiff and proved as Ex.PW3/6 (colly) bear the No. 44/1 and some of the house tax receipts are in the name of the father Sh. Meer Singh for the property No. 87/1. These house tax receipts of property bearing No.87/1 being in the name of the father were proved as Ex.PW3/6 (colly) and which exhibits collectively are the total house tax receipts in the name of the appellant/plaintiff with respect to property bearing No.44/1 and the father Sh. Meer Singh with respect to property bearing No.87/1. This

para 33 of the impugned judgment discussing these aspects reads as under:-

33. Plaintiff himself has relied upon house tax receipts Ex.PW3/6 (colly). Except one all house tax receipts bears house no.eitehr 44-1/40497F or 44-1/40497C. The other excepted house tax receipts dt. 13.12.1979 is in the name of Sh. Meer Singh and bear house no.87/1/40577, Village Mochi Bagh, Near Nanak Pura, New Delhi. The existence of house tax receipts bearing no.61012 dated 13.12.1979 (collectively exhibited as Ex.PW3/6 (colly) along with other house tax receipts), in the name of Sh. Meer Singh in respect of property bearing no.87/1/46577 tilt the balance against the plaintiff as plaintiff has not explained the said house tax receipts in his evidence. The house tax receipt dated 08.10.1979 which is in the name of the plaintiff bears no.44-1/4497 and the house tax receipt dated 13.11.1979 which is in the name of Meer Singh bears property no.87/1/46577. Plaintiff could not explain how receipts dt.13.11.1979 came to have property No.as 87/1/46577 when alleged previous and subsequent house tax receipts in respect of allegedly same property bear property no.44-1/4497. This shows that two different properties are in existence.”

9. Trial court thereafter in para 34 of the impugned judgment records that respondent/defendant has to be held to be the owner of the property bearing No.87/1 because this is duly supported by the relevant documentation filed and proved by the respondent/defendant. Trial court has discarded, and rightly so, the oral evidence led on behalf of the appellant/plaintiff to contend that respondent/defendant was in possession of property bearing No.44/1 and not No. 87/1.

10. I do not find any error or any illegality in the impugned judgment because respondent/defendant has clearly proved that the property bearing No.87/1 was transferred to her by the father Sh. Meer Singh and the father had transferred the property bearing No.44/1 to the appellant/plaintiff. I do not find any merit in the arguments urged on behalf of the appellant/plaintiff that the appellant/plaintiff is actually residing in the property bearing No.87/1 and which was an address given to the respondent/defendant for her correspondence inasmuch as I have put a pointed query to the learned senior counsel for the appellant/plaintiff whether appellant/plaintiff has filed any documentation to show his ownership of property bearing No.87/1 and it is conceded that there is no evidence led by the appellant/plaintiff that the appellant/plaintiff is the owner of property bearing No.87/1. I, therefore, reject this argument urged on behalf of the appellant/plaintiff.

11. There is no merit in the appeal. Accordingly, the present appeal is dismissed.

FEBRUARY 26, 2018

VALMIKI J. MEHTA, J