

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

+ **RFA No.386/2018**

% **8th May, 2018**

RAJ KUMAR & ANR. Appellants
Through: Mr. Suresh Sharma, Advocate.

Versus

MANOHAR LAL & ANR. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.18883/2018 (exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

C.M. No.18884/2018 (for condonation of delay)

2. For the reasons stated in the application, delay of 51 days
in re-filing the appeal is condoned.
C.M. stands disposed of.

RFA No.386/2018

3. 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 31.10.2017 by which trial court has decreed the suit for possession filed by the respondents/plaintiffs against the appellants/defendants with respect to portion shown in red colour in the site plan PW1/G forming part of property bearing no.F-53, G.F, Back Side, B.K. Dutt Colony (Karbala), Aliganj, New Delhi. Appellants/defendants are husband and wife.

4. The facts of the case are that the respondents/plaintiffs pleaded that the appellants/defendants requested the elder brother of the respondent no.1/plaintiff no.1 one Sh. Ram Pal to allow them to stay temporarily in the back side room and kitchen of the suit property for two months and which was allowed as appellant no.1/defendant no.1 was a close friend of the father of the respondent no.2/plaintiff no.2. Appellants/defendants who were husband and wife, after expiry of two months from February, 2008 refused to vacate and hand over possession, and instead filed a suit for permanent injunction to claim rights in the suit property. Accordingly the present suit for possession was filed.

5. The appellants/defendants pleaded that respondent no.1/plaintiff no.1 and his elder brother Sh. Ram Pal, and the father of the respondent no.2/plaintiff no.2 being a close friend of the appellant no.1/defendant no.1 showed their inclination to dispose of a portion of the suit property for a sum of Rs.7 lacs, and therefore, the appellant no.1/defendant no.1 got his wife to dispose of their house no.614-A, Nyay Khand-I, Indirapuram and the amount of Rs.7 lacs was paid for the suit property but no receipt was taken or agreement entered into on account of close relations between the parties. Accordingly, the suit was prayed to be dismissed.

6. After pleadings were complete, trial court framed the issues and parties led evidence and these aspects are recorded in paras 6 to 9 of the impugned judgment and which paras read as under:-

“6. From the pleadings of parties and documents on record, following issues were framed on 30.10.2010:-

1. Whether the plaintiff is entitled for the decree for possession against the defendant in respect of the suit premises? OPP
2. Whether the plaintiff is entitled to damages/mesne profits? If so at what rate and for which period? OPP
3. Relief.
7. In support of his case plaintiff no.1 has examined himself as PW1 and was duly cross examined by the learned counsel for the defendant. PW1 has deposed on the line of plaint.
8. Defendant no.1 examined himself as DW1 and defendant no.2 as DW2. Both the witnesses were cross examined by the learned counsel for the plaintiff.

9. I have heard the learned counsel for both the parties and given my thoughtful consideration to their respective submissions. I have also gone through the evidence on record.”

7. Trial court has decreed the suit because admittedly the appellants/defendants filed no proof of making payment of Rs.7 lacs to the respondent no.1/plaintiff no.1 and his elder brother Sh. Ram Pal. Appellants/defendants also do not have any documents whatsoever that rights in the suit property were transferred to them. Also, even if there existed the documents the same would have been of no legal effect because transfer of rights in an immovable property can take place only by means of a registered instrument in view of provisions of Section 17(1)(b) of the Registration Act, 1908 and Sections 53-A and 54 of the Transfer of Property Act, 1882. Therefore, admittedly there is nothing on record either to show payment by the appellants/defendants to the respondent no.1/plaintiff no.1 and his elder brother Sh. Ram Pal, and also that there is no document to show any alleged transfer of rights in the suit property to the appellants/defendants by the respondent no.1/plaintiff no.1 and his elder brother Sh. Ram Pal, much less a registered document. Trial

court has therefore not committed any illegality in holding that the suit for possession has to be decreed against the appellants/defendants.

8. There is no merit in the appeal. Dismissed.

MAY 08, 2018
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VALMIKI J. MEHTA, J

