

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

+ **RFA No. 78/2019**

% **30th January, 2019**

SURESH KUMAR Appellant

Through: Mr. Dinesh Kumar and Mr.
K.S. Kashyap, Advocates
(Mobile No. 9811197419) with
appellant in person.

versus

KAVITA GURNANI & ORS. Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 4381/2019 (for exemption)

1. Exemption allowed, subject to just exceptions.

C.M. stands disposed of.

C.M. Appl. Nos. 4380/2019 and 4383/2019 (for delays)

2. For the reasons stated in the applications the delays of 36 days in filing the appeal and 5 days in re-filing the appeal stand condoned, subject to just exceptions.

C.Ms. stand disposed of.

RFA No. 78/2019 and C.M. Appl. Nos. 4379/2019 (for stay), 4382/2019 (under Order 41 Rule 27 CPC)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by Sh. Suresh Kumar, impugning the Judgment of the trial court dated 14.08.2018, by which the trial court has decided two cross-suits. One suit was the suit for possession and *mesne* profits filed by the respondents herein, and who are owners of the suit property being Flat No. 2A/9, Khasra No. 1668, Village Kishan Garh, Vasant Kunj, New Delhi-110070. This flat ad measures 900 sq. ft. This suit for possession and *mesne* profits which was filed by the respondents, being ***Suit No. 446/2017*** was decreed for possession and *mesne* profits at Rs. 10,000/- per month from 01.01.2002 till recovery of possession. By the self-same impugned judgment, the suit filed by the present appellant Sh. Suresh Kumar, and who was the defendant in the suit filed by the respondents being ***Suit No. 445/2017***, was dismissed and this ***Suit No. 445/2017*** the

present appellant Sh. Suresh Kumar had claimed ownership of the suit property on the ground that he was engaged as a labour contractor by the respondent/plaintiff and in token of his services he was granted ownership of the suit flat.

4. At the very outset, this Court would like to note that the present appellant, Sh. Suresh Kumar, had filed an earlier appeal being ***RFA No. 884/2018*** against the self-same impugned judgment. The said ***RFA No. 884/2018*** challenged the self-same impugned judgment dated 14.08.2018, but ***RFA No. 884/2018*** challenged the Impugned Judgment dated 14.08.2018 to the extent that the impugned judgment dismissed the ***Suit No. 445/2017*** filed by the present appellant for declaration and injunction as regards claiming ownership of the suit property. Though the said earlier RFA did not challenge the judgment passed in the ***Cross-Suit No. 445/2017*** filed by the appellants, however, it is noted that the issues in both the suits were common and identical i.e. whether the present appellant is the owner of the suit flat or it is the respondents who were the owners of the suit flat of which the appellant was in illegal possession and therefore was bound to deliver the possession of the suit flat to the respondents and also pay

mesne profits for the period of illegal possession. Putting it in other words, the defence of the appellant in the suit filed by the respondents being **Suit No. 446/2017** was the cause of action in the suit filed by the appellant in his **Suit No. 445/2017** being the claim of the present appellant Sh. Suresh Kumar to ownership of the suit flat on account of having provided labour contractor services for construction of the entire property in which one flat was the suit flat/property.

5. The earlier **RFA No. 884/2018** was filed on behalf of the appellant by a different set of lawyers being Mr. Dhiraj Yadav, Advocate and Mr. Rakesh Kansal, Advocate. After detailed arguments the earlier **RFA No. 884/2018** was not pressed, and the present appellant, (and who was also the appellant in **RFA No. 884/2018**), only took time to vacate the suit premises upto 31.03.2019 and **RFA No. 884/2018** was accordingly disposed of vide Order dated 31.10.2018. This Order dated 31.10.2018 reads as under:-

“1. After arguments, this appeal is disposed of as not pressed but the appellant as prayed for is granted time upto 31.3.2019 to handover vacant peaceful possession of the suit premises to plaintiff No.2 to whom the suit property is said to have been sold by the plaintiff No.1. In case, the possession is not received by plaintiff No.2, the appellant is entitled to deposit keys of the suit property in Court.

2. The appeal is accordingly disposed of in terms of the aforesaid order.”

6. Now a different set of Advocates, being Sh. Dinesh Kumar, Advocate and Sh. K.S. Kashyap, Advocate have filed the present appeal, and the said advocates have also argued this present appeal today, and it is stated that the present appeal was filed because the earlier **RFA No. 884/2018** had only challenged the self-same impugned judgment limited to the extent of decreeing of the **Suit No. 446/2017** filed by the respondents and that the earlier **RFA** did not challenge the self-same impugned judgment so far as dismissal of the **Suit No. 445/2017** filed by the appellant, and dismissal of this **Suit No. 445/2017** is challenged by means of the present appeal.

7. In my opinion, this is a fit case for sending of the present judgment passed today to the Bar Council of Delhi as also for initiating criminal complaint case against the appellant inasmuch as the order passed in the earlier **RFA No. 884/2018**, resulting in affirming the Impugned Judgment dated 14.08.2018, operates as *res judicata* against the appellant and bars the appellant from filing the present appeal inasmuch as the issues in the present appeal were

identical to the issues in *Suit No. 446/2017* and *RFA No. 884/2018*, and as already stated above decides as to whether the appellant was or was not the owner of the suit flat as contended by him on account of providing labour contractor services to the respondent. I may note that the claim of the appellant to the suit property was/is not based on any documentation be it an agreement to sell (much less registered), or even a sale deed or any other document (much less registered) showing transfer of the suit property to the appellant. It need not be gainsaid that ownership of an immovable property can only be taken by means of a registered document by virtue of Section 17(1)(b) of the Registration Act, 1908, and if rights are claimed under an agreement to sell encompassing the doctrine of part performance, then such an agreement to sell had to be a registered agreement to sell bearing proportionate stamp duty as is clear from Amendment of Section 53A of the Transfer of Property Act, 1882 by Act 48 of 2001 with effect from 24.09.2001 read with the provisions of Section 17(1A) of the Registration Act which was brought in and which prevented any document in the nature of an agreement to sell from being looked into under Section 53A of the Transfer of Property Act, unless such a

document was registered and stamped with stamp duty of 90% of the consideration of the sale value of the property.

8. The Ld. counsel for the appellant argued that the appellant has disclosed the factum with respect to filing of the earlier appeal at para 'E' in this appeal, and therefore there is no misdemeanor or illegality by the appellant and his counsel. I cannot agree. It is an abuse of the process of law that an issue which is heard and finally decided is sought to be re-agitated on technical grounds, inasmuch as, by not pressing of earlier **RFA No. 884/2018** the issue with respect to ownership of the suit flat vesting in the respondents achieved finality with the consequential effect of appellant not being the owner of the suit property. Also, the issue which is argued before this Court today that the suit of the present appellant should be decreed because respondents were not the owners of the suit property as the land on which the property is constructed had vested in the Government is a palpably frivolous and illegal stand for many reasons. Firstly, the appellant in his suit claiming ownership of the suit flat from the respondents cannot claim by a self-destructive plea that he has become owner of the suit flat from respondents but that the

respondents are not the owners of the flat because plot on which these flats were constructed, including the suit flat, vested in the Government. Secondly, this defence of the respondents not being the owners and the plot of the land vesting in the Government would be an issue not in the suit filed by the appellant but a defence in the suit which was filed by the respondent for possession because by this defence appellant could have prayed for dismissal of the suit filed by the respondents, i.e. in a suit filed by the appellant claiming ownership of the suit flat and that too from the respondents, there cannot be any claim that the respondents are not the owners. It is also already noted above, that the issue of ownership of the suit flat vested in the respondent has achieved finality in terms of order dated 31.10.2018 passed in **RFA No. 884/2018**.

9. In this view of the matter, the present appeal is dismissed firstly on the ground of *res judicata* on account of the impugned judgment achieving finality as regards the issue pressed in this appeal being identical in the earlier **RFA No. 884/2018** which was withdrawn. The present appeal is secondly also barred by the principle of *estoppel* inasmuch as the present appellant, who was the

appellant in **RFA 884/2018**, took time to vacate the premises upto 31.03.2019 and this undertaking to the Court is on the basis that the appellant has no right in the suit property which is now once again claimed through the present appeal.

10. This appeal is therefore dismissed with costs of Rs. 1,00,000/- which shall be paid by the appellant with the website **www.bharatkeveer.gov.in** within a period of four weeks from today and receipt thereof be filed within one week thereafter, failing which Registry will list the matter in Court for taking appropriate action against the appellant.

11. I also find the present to be a fit case where copy of this judgment be sent to the Bar Council of Delhi treating the present judgment as complaint against the present Advocates who are present in person today, and who have argued this appeal that such Advocates who abuse the process of law ought to be proceeded against accordingly by the statutory body being the Bar Council of Delhi inasmuch as it is unacceptable that the Advocates knowing the finality of an earlier litigation in **RFA No. 884/2018** which concluded the issues which were re-agitated in this appeal, yet have chosen to file

this appeal in spite of the Order dated 31.10.2018 disposing of the appeal **RFA No. 884/2018** as not pressed and appellant being granted time to vacate upto 31.03.2019.

12. The appeal is accordingly dismissed and disposed of with the aforesaid observations.

13. At this stage, it is prayed that the appeal be allowed to be withdrawn. The appeal is therefore allowed to be withdrawn, but as agreed, appellant will deposit costs of Rs. 25,000/- with the website **www.bharatkeveer.gov.in** within four weeks from today.

14. In view of the withdrawal of the appeal, the directions given hereinabove with respect to imposition of costs of Rs. 1,00,000/- and sending of copy of this judgment to the Bar Council of Delhi will not come into operation.

JANUARY 29, 2019

AK

VALMIKI J. MEHTA, J