

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

+ RFA No. 107/2019 & CM Nos. 23593/2018 & 40831/2018

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7th February, 2019

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..... Appellant

**Through: Ms. Ankita Patnaik (DHCLSC)
for the appellant (9873519308)**

versus

MUKESH RANA & ANR.

..... Respondents

**Through: Mr. Manish Kumar and Mr.
Deepak Sahni, Advocates for
R-1. (9312914670)**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? YES

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no. 2 in the suit, and who is the sister-in-law of the respondent no. 1/plaintiff, impugning the Judgment of the trial court dated 20.03.2018, by which the trial court has decreed the suit filed by the respondent no.1/plaintiff/brother-in-law against the appellant/defendant no. 2/ sister-in-law, to the extent of the relief of possession, under Order XII Rule 6 CPC by holding that it stands admitted as per the pleadings in

the suit that the respondent no. 1/plaintiff was the owner of the property purchased in terms of a Sale Deed registered with the Sub-Registrar on 12.12.2015 and the owner is thus entitled to possession from the appellant/defendant no. 2 who was a gratuitous licensee.

2. The facts of the case are that the respondent no. 1/plaintiff filed the subject suit for possession, injunction and *mesne* profits pleading that the suit property being House No. 198/28, Khasra No. 421, Village Chandrawali @ Shahdara, Delhi was owned by the respondent no. 1/plaintiff as he had purchased the same in terms of a Sale Deed registered with the Sub-Registrar on 12.12.2015 as Document No. 1072 in Additional Book No. 1, Volume No. 37 at Page No. 163 to 168. It was pleaded that the respondent no. 2/defendant no. 1 was the younger brother of the respondent no. 1/plaintiff and that the appellant/defendant no. 2 was the wife of the respondent no. 2/defendant no. 1. Both the defendants in the suit, including the appellant who is the defendant no. 2, sought permission to stay in one room on the first floor of the suit property from the respondent no. 1/plaintiff, and accordingly, a temporary license was granted to the appellant/defendant no. 2 and the respondent no.

2/defendant no. 1 to stay in the suit property and to shift as soon as an alternate arrangement of a premises was made. Temporary license was granted out of natural love and affection because the respondent no. 2/defendant no. 1 was the real brother of respondent no.1/plaintiff and the appellant/defendant no. 2 was the wife of respondent no. 2/defendant no. 1. Since the appellant/defendant no. 2 and respondent no. 2/defendant no. 1 failed to vacate the suit premises, a Legal Notice dated 14.10.2016 was served for terminating the license and thereafter, the subject suit was filed. It was also pleaded in the plaint that appellant/defendant no. 2 is a quarrelsome lady who has on multiple occasions physically assaulted the wife of the respondent no. 1/plaintiff causing severe injuries and resulting in registration of criminal complaints. It is also pleaded that the appellant/defendant no. 2 is habitual in creating a scene and calling the police, thereby, disturbing family harmony. It was further pleaded that the appellant/defendant no. 2 not only picked up quarrels with respondent no. 1/plaintiff but also with his old and ailing father who was a heart patient and he expired on 03.08.2016.

3. The suit was essentially contested only by the appellant/defendant no. 2, and it was pleaded by her that instead of her harassing the family members, on the contrary, she had been harassed and she had registered criminal complaints against the respondent no. 1/plaintiff as also the other family members. While replying to paras 1 to 3 of the plaint, and which refer to the ownership of the respondent no. 1/plaintiff in terms of a registered Sale Deed, it was stated that these paras are a matter of record. In order to appreciate the issue of admission for the suit being decreed under Order XII Rule 6 CPC, paras 1 to 3 of the plaint and the corresponding reply of the appellant/defendant no. 2 to these paras in the written statement are required to be noted and these paras are reproduced as under:

Paras 1 to 3 of the plaint

"1. That the Plaintiff is an Indian Citizen and is a resident of Delhi. The parties to the suit are related to each other. The Defendant No.1 is the younger brother of the Plaintiff, while the Defendant no.2 is the wife of the Defendant No.1 and the sister-in-law of the Plaintiff.

2. That the Plaintiff is the sole, absolute and exclusive owner of the property bearing House No. 198/28, built on a plot of land admeasuring 118.5 sq. yards, out of khasra No.421 situated at Village:Chandrawali alias Shahdara, in the abadi of Shri Ram Nagar, Gali No.1, Shahdara, Delhi (hereinafter "Suit Property"). A site plan of the Suit property is annexed herewith as **Annexure-A.**

3. The Plaintiff purchased the suit property from one Sh. Devendra Prakash vide a Sale Deed registered with Sub-Registrar(IV-A), Shahdara on 12-December-2015 as Document No. 1072 in Additional Book No.1,

Volume No. 37 on Page No. 163-168. A copy of the Registered Sale Deed of the Suit Property is annexed herewith as **Annexure-B.**"

Paras 1 to 3 of written statement of appellant/defendant no.2:-

"1-3 That the contents of the Para No.1-3 of the suit filed by the plaintiff are matter of record, hence needs no reply."

4. However, it was also pleaded by the appellant/defendant no. 2 in para 7 of the preliminary objections of her written statement that it was her father-in-law i.e. the father of the respondent no. 1/plaintiff, who was the owner of the suit property and the father-in-law had expired on 03.08.2016.

5. The trial court has decreed the suit so far as the relief of possession is concerned under Order XII Rule 6 CPC by referring to the admissions made in her written statement by the appellant/defendant no. 2 to paras 1 to 3 of the plaint, and these paras 1 to 3 of the plaint specifically refer to the ownership of the respondent no. 1/plaintiff of the suit property, and in terms of the registered Sale Deed. These paras 1 to 3 of the plaint and written statement of the appellant/defendant no. 2 have already been reproduced above. The trial court has referred to the ratio of the judgment of the Hon'ble Supreme Court in the case of ***Charanjit Lal Mehra and Others v. Kamal Saroj Mahajan (Smt) and Another,***

(2005) 11 SCC 279, that an admission can even be inferred from the facts and circumstances of the case i.e. an admission for the purpose of Order XII Rule 6 CPC need not only be a clear and categorical admission. I may note that the object of certain provisions of CPC, including Order XII Rule 6 CPC is to cut down litigation time when litigation should not unnecessarily continue.

6. In my opinion, no fault can be found with the impugned judgment of the trial court decreeing the suit under Order XII Rule 6 CPC inasmuch as when the respondent no. 1/plaintiff in paras 1 to 3 of the plaint made specific pleadings and stated that respondent no.1/plaintiff was the owner of the suit property, and which was purchased by a registered Sale Deed, appellant/defendant no. 2 did not dispute this aspect. Therefore, once there is a registered Sale Deed of the suit property in the name of the respondent no. 1/plaintiff, it is the respondent no. 1/plaintiff who would be the owner of the suit property. It cannot be validly argued by the appellant/defendant no. 2 that since in the preliminary objection no. 7 of the written statement she has stated that the suit property belongs to the father-in-law of the appellant/defendant no. 2, and therefore, there existed a disputed

question of fact requiring trial, inasmuch as the pleadings have to be read as a whole. As already stated above in paras 1 to 3 of the plaint, when specific averments have been made of ownership of the respondent no.1/plaintiff, there is no denial whatsoever that respondent no. 1/plaintiff is the owner of the suit property in terms of the registered Sale Deed. Once the ownership of the respondent no. 1/plaintiff by a registered Sale Deed was admitted, then in para 7 of the preliminary objections in the written statement of the appellant/defendant no. 2, only a vague statement was made that the father-in-law was the owner but without any details whatsoever given as to how the father-in-law of the appellant/defendant no. 2, i.e. the father of the respondent no. 1/plaintiff was the owner of the suit property. Such vague averments in the facts of the present case cannot and do not create a disputed question of fact which would require trial. Surely, the father-in-law could not be the owner on the basis of a simple false statement of the appellant/defendant no. 2 made in preliminary objection no. 7 of the written statement inasmuch as, if the father-in-law was the owner, then reference would have been made to a particular sale deed or any other document by which the ownership

of the suit property was of the father-in-law, and this is all the more so, once the ownership of the respondent no. 1/plaintiff has been admitted, and this ownership was specifically pleaded in terms of the registered Sale Deed in paras 1 to 3 of the plaint.

7(i). The ld. counsel for the appellant/defendant no. 2 sought to place reliance upon the Division Bench judgment of this Court in the case of *Navneet Arora v. Surender Kaur & Ors., 2014 (213) DLT 611*, and attention of this Court was invited to para 43 of the said judgment, that a right of residence under the Protection of Women from Domestic Violence Act, 2005 can also be claimed against the relatives of the husband, and that the respondent no. 1/plaintiff being the brother-in-law of the appellant/defendant no. 2, was a relative of the husband.

7(ii). I cannot agree with the arguments urged on behalf of the appellant/defendant no. 2 inasmuch as para 43 of the judgment in *Navneet Arora's case (supra)* cannot be looked into in its own language without making a reference to the other relevant paras of the said judgment. It is specifically observed in the said judgment that the property to claim a right of residence therein has to be a joint family

property, and that the parties must reside together by having a common kitchen, but in the present case there are no averments made by the appellant/defendant no. 2 in her written statement that the suit property is a joint family property and that the parties had a common kitchen.

7(iii). In my opinion, in any case, the facts in the case of *Navneet Arora (supra)* were completely different because it was specifically found in the said case that all the family members were living together as one family by residing in the same house, with one kitchen and the father and the sons had a joint business and the kitchen was run out of the income of the joint business. This relevant para 118 of the said judgment in the case of *Navneet Arora (supra)* is relevant, which reads as under:-

118. Reverting back to the facts of the instant case, before Navneet Arora married Gurpreet Singh, he was living as one family with his parents Harpal Singh and Surinder Kaur. His brother Raman Pal Singh and his sister Sherry were also residing in the same house. The kitchen was one. The two sons and their father were joint in business and the kitchen used to be run from the income of the joint business. They were all living on the ground floor. Sherry got married and left the house. Navneet married Gurpreet. Raman Pal married Neetu. The two daughter-in-laws joined the company not only of their husbands but even of their in-laws in the same joint family house i.e. the ground floor of B-44, Vishal Enclave, Rajouri Garden, New Delhi. All lived in commensality. Navneet never left the joint family house. She was residing in the house when her husband died. She continued

to reside there even till today. Under the circumstances her right to residence in the suit property cannot be denied, and as regards issues of title, we have already observed that the right of residence under the Protection of Women from Domestic Violence Act, 2005, the same would have no bearing. She may enforce it in civil proceedings. But her right of residence in the shared household cannot be negated.

Therefore, in my opinion, the appellant/defendant no. 2 cannot take any benefit of the judgment in the case of *Navneet Arora (supra)*.

8. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed. All pending applications are also disposed of.

FEBRUARY 07, 2019/ib

VALMIKI J. MEHTA, J