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

+ RFA 462/2019 & CM. Nos. 23036/2019, 23037/2019 and 23038/2019

RAMAN KAPOOR & ANR

..... Appellants

Through: Mr. Kumar Sushobhan and
Ms. Neeta, Advs.

versus

BILLA KAPOOR & ANR

..... Respondents

Through: Mr. M. Parvez and Mr. Sandeep
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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14.05.2019

CM Nos. 23036/2019 & 23038/2019 (for exemption)

Exemption allowed, subject to all just exceptions.

Applications stand disposed of.

RFA 462/2019

1. The challenge in this appeal is to the judgment / decree dated May 06, 2019 passed by Sh. Naresh Kumar Laka, Additional District Judge-03, South East, Saket Courts, New Delhi which is primarily an order passed in application under Order 12 Rule 6 CPC filed by the respondent No.1 herein.
2. The brief facts as noted from the impugned order are that the plaintiff / respondent No.1 has filed the suit for possession of the suit property being A-1/144, Lajpat Nagar, New Delhi against the appellants herein, who were

the defendant Nos.1 and 2 before the Trial Court. The appellant No.1 is the brother of the respondent No.1. It is the case of the respondent No.1 / plaintiff before the Trial Court that her father late Sh. Darbari Lal was the owner of suit property by way of registered lease deed dated October 27, 1985 and after his death, the whole property was mutated in the name of his wife Smt. Rampyari, i.e. mother of the respondent No.1 and the appellant No.1.

3. It is stated that a family settlement dated August 14, 2013 was entered into between late Smt. Rampyari; the appellant No.1 and the respondent No.1. Pursuant thereto, the appellants had vacated the portion of suit property in their possession on payment of Rs.12,00,000/- which was duly received and acknowledged by the appellants in the judicial proceedings being Suit No. 251/2006 titled as ***Sh. Raman Kapoor vs. Smt. Ram Pyari*** which was a suit for partition, declaration and permanent injunction.

4. It is also averred by the respondent No.1 that the appellant No.1 Sh. Raman Kapoor relinquished his rights qua the ground floor of the whole property in favour of his mother, late Smt. Rampyari. It is averred that late Smt. Rampyari the mother of the appellant No.1 and the respondent No.1 had bequeathed the suit property being A-1/144, Lajpat Nagar, New Delhi in

favour of the respondent No.1 vide a registered Will dated May 06, 2009.

5. A written statement was filed by the appellants where the appellants denied the claim of the plaintiff and it is specifically alleged that the appellant No.1 is residing in the said property since beginning and after marriage with appellant No.2, she is also residing along with appellant No.1.

6. It is the case of the appellants that the suit property is a joint property and the respondent No.1 has no absolute right over it. The learned trial court has noted that the entire suit property was owned by late Sh. Darbari Lal and after he expired, his wife and children became the owners. All the children (except the respondent No.1) executed the registered relinquishment deeds in favour of the mother late Smt. Rampyari and, therefore, the mother became the absolute owner of the said property, out of which some of the portion / floor were sold out. The ground floor, first floor, second floor and terrace were claimed to be in possession of the respondent No.1 and her mother. The mother of the respondent No.1 has already expired. The trial court has given a reference of previous suit filed for injunction by the appellant No.1 against the mother wherein a settlement took place and a statement was made by the appellant No.1 which was recorded before the Court concerned on August 14, 2013.

7. A reference is also made that as per the said settlement, the appellant No.1 has received total consideration amount of Rs.12,00,000/- (Rs.10,00,000/- in cash and Rs.2,00,000/- by way of cheque) and it was indicated that he has already vacated the portion in his possession along with his family i.e. appellant No.2, his wife. A plea was taken on behalf of the appellants that they are residing in the suit property only and that they have never vacated the same and the appellant No.1 had also denied receiving the payment of Rs.12,00,000/-. The trial Court has noted the specific averments made in Para Nos.8 and 9 of the plaint to the extent that the appellant No.1 had settled the suit for injunction vide the proceedings dated August 14, 2013. In reference to the said paragraphs the appellants have stated in their written statement that the said averments made are a “matter of record”. The trial Court drew a conclusion that it clearly proves that the aforesaid claim of the plaintiff has been specifically admitted by the appellants and that there is no dispute about the settlement and court proceedings.

8. According to the learned trial Court, once the said court proceedings and the settlement have been admitted, the contents of the written statement have to be read as admission. The learned trial Court had also recorded that the address of the appellant No.1 recorded at the time of said settlement,

read as “*R/o. 1359, Jamrud Pur, Gali No.5, Near Gurdwara, Amar Colony, New Delhi*” which acknowledges the plea of the respondent No.1 / plaintiff that the appellants herein (the defendant Nos.1 and 2) have vacated the suit property.

9. A reliance placed by the counsel appearing for the appellants on various ID proofs has been disbelieved by stating that the same could have been procured by the appellants on the basis of their earlier documents of the said property. The trial court held that what is required to be seen is the physical possession, and not constructive. A reference is also made to an FIR by the appellant No.2 to the police on October 08, 2012 stating that the respondent No.1 and Anjani Rajput are restricting her, her husband and children from entering into the suit property wherein it is also noted that the appellant No.2 has requested that the possession of the ground floor may be given to her and her husband. In other words, it is the conclusion of the learned trial court that the appellants were not in possession of the property.

10. A reference is also made to the inquiry report, prepared pursuant to the investigation carried out by the Police Authority wherein the IO is stated to have made inquiries from the neighbours who also confirmed that the appellants and their family had already left the said address 3-4 years ago

and that they were not residing in the said property.

11. Based on the aforesaid findings, the learned trial Court has passed the impugned order granting possession to the plaintiff / respondent No.1 directing the appellants and the respondent No.3, who is the brother-in-law of the appellant No.1 to hand over the physical vacant possession of the suit property.

12. Learned counsel for the appellants has made two submissions, one is with regard to different IDs, the appellants possess, reflecting their address as that of the suit property, and the second being that the settlement has not been acted upon. Insofar as the first submission is concerned, I agree with the finding of the learned trial court that the said documents could have been procured on the basis of documents existing before the settlement.

13. Insofar as the second submission is concerned, the same is controverted by the counsel appearing for the respondent No.1 who appeared on advance notice. Insofar as payment of Rs.10,00,000/- is concerned, he has placed before me an order sheet dated August 14, 2013 in Suit No. 251/2006 wherein the statement of Sh. Raman Kapoor appellant No.1 was recorded. In his statement, it is clearly stated that Sh. Raman Kapoor has received a sum of Rs.10,00,000/- in cash. In fact Rs.10,00,000/-

consisted of notes in the denomination of Rs.1000/- and 500/- . In fact, I see Sh. Raman Kapoor has put his signature in acknowledgement of his statement on the said date.

14. A plea was taken that the cheque for Rs.2,00,000/- was got dishonoured and the said amount has not been re-paid. This aspect is controverted by the counsel appearing for the respondent No.1 by stating that the cheque which got dishonoured has been returned back to the respondent No.1 and in lieu thereof, an amount of Rs.2,00,000/- was paid in cash. If that be so, insofar as the impugned order is concerned, I do not find any infirmity in the same. There is no merit in the appeal, the same is dismissed. No costs.

CM No. 23037/2019 (for stay)

Dismissed as infructuous.

Dasti.

V. KAMESWAR RAO, J

MAY 14, 2019/aky