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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 11th September, 2019

+ RSA 184/2019 & CM Nos. 40554-57/2019

NEERAJ GUPTA & ANR Appellants
Through: Mr. Sanjeev Kumar, Adv.

versus

KAMLESH GUPTA Respondent
Through

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent is the mother of the first appellant, her husband (i.e. father of the first appellant) having passed away long ago. The second appellant is the wife of the first appellant and, therefore, daughter-in-law to the respondent. She concededly has no legal right to claim in the subject property which is described as House no. 167-C, pocket-E, LIG flats, GTB Enclave, Nand Nagri, Delhi-110093 (hereinafter referred to as the “suit property”).

2. The respondent (hereinafter referred to as “the plaintiff”) had instituted civil suit (CS no. 7590/2016) against the appellants (hereinafter referred to as “the defendants”) praying for a decree of mandatory injunction to the effect of direction to them to vacate and hand over the peaceful vacant physical possession of the suit property and also permanent injunction so as to restrain them from transferring, alienating, subletting, parting with possession or creating third party

interest therein, primarily on the basis that they (the defendants) had been permissive users of certain portion, their presence having become unwelcome, she having disowned them by a notice published in a newspaper on 16.01.2014, thereby severing all connections with them, she claiming to be the owner in possession of the suit property on the strength of documents dated 16.05.2000 in the nature of General Power of Attorney (GPA), Special Power of Attorney (SPA) and Will, executed by the erstwhile owner Pratibha Misri from whom the property was purchased for consideration.

3. On the basis of pleadings which came on record, entertaining the application under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC), the Civil Judge, by his order dated 22.09.2018, passed a judgment on admissions granting a decree of mandatory injunction and permanent injunction, as prayed, though the suit having remained pending for trial in the context of the relief in the nature of damages/*mesne* profits.

4. The afore-said judgment on admissions granted on 22.09.2018 was challenged unsuccessfully before the Additional District Judge, by appeal (RCA no. 85/2019), the appeal having been dismissed by judgment dated 30.07.2019.

5. The appeal at hand is presented as Regular Second Appeal under Section 100 CPC, the submission of the appellant being that a substantial question of law arises to the effect that a judgment on pleadings, in the facts and circumstances noted above, could not have been passed by rejecting the contentions of the appellant (defendant)

by reference to the provisions contained in Prohibition of Benami Transaction Act, 1988.

6. A perusal of the pleadings *i.e.* the plaint and the written statement, which were brought on record of the civil suit, clearly shows that the defendants do not specifically dispute the fact and, thus, impliedly admit that the property was purchased for consideration in the name of the plaintiff by the afore-mentioned documents from the erstwhile owner. The plaintiff, thus, is the recorded owner of the suit property. The defendants also do not specifically dispute in the pleadings and, thus, impliedly admit that the plaintiff has severed her connections with them, disowning them by a formal notice published on 16.01.2014, followed by a legal notice, calling them upon to hand over vacant and peaceful possession, sent on 28.01.2014.

7. The narrow area of contest, as pressed through the written statement, however, has been that a part of the sale consideration paid for purchase of the property was arranged by the first appellant from his own resources, this rendering him, and the plaintiff of the suit, co-owners in respect of the suit property. This contention has been rejected by both the courts below with reference to the provisions of Prohibition of Benami Transaction Act, 1988.

8. The trial Judge, by impugned order dated 22.09.2018, has analyzed the provisions of law and elaborately examined the above noted contention in its light. There is no doubt that the first appellant is a lineal descendant of the plaintiff. He does claim to have paid part consideration from his own resources which, of course, would be a

matter of evidence, the burden of proof being placed at his door. But then, the defendants do not fulfil in any manner the third requisite condition of showing some document wherein the first defendant may have been shown as a joint owner so as to bring their defence within the fourth exception to Section 2 (9) of the Prohibition of Benami Transaction Act, 1988. On being asked, the counsel for the appellants fairly conceded that no such document exists nor can be proved at the trial.

9. The view taken by the Civil Judge has been affirmed by the learned first appellate court, again with reference to Prohibition of Benami Transactions Act. The contention that the courts below could not have gone by the provisions of the said law without giving to the appellants an opportunity to prove their case, cannot be accepted. Even if such opportunity were to be granted, the impermissibility in law of such a defence cannot be glossed over.

10. No substantial question of law arises. The appeal and the applications filed therewith are dismissed in *limine*.

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R.K.GAUBA, J.

SEPTEMBER 11, 2019

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