

\$~46

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

Date of Decision : 10.02.2020

+ **RSA 22/2020 & CM No.5366/2020, 5369/2020**

MRS.PRAVIN CHATTERJEE Appellant
Through: Mr.Ranjay N., Mr.Gulwant Singh,
Advs.

versus

MR.LAKSHMAN DAS BHATIA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

CMs 5370-71/2020

Exemption allowed, subject to all just exceptions.

RSA 22/2020 & CM Nos.5366/2020, 5369/2020, 5365/2020

1. There is a delay of 124 days in filing the appeal. In the application seeking condonation of delay, the only ground urged for seeking condonation of delay is as under:

“5. However, owing to poor health of the mother of the Appellant, she had to be hospitalized due to severe dehydration and was admitted to the hospital for treatment, the Appellant could not

invoke the jurisdiction of this Hon'ble Court in the given time period. It is also pertinent to mention here that the Appellant's mother is bed-ridden and requires constant supervision and care. The Appellant herself is an old woman who is suffering from ailments of old age and was bed ridden for a good number of days in October 2019 due to severe viral.

A copy of the medical records of the mother of the Appellant have been enclosed herewith and marked as ANNEXURE-12.”

2. The above explanation does not constitute sufficient cause for the delay.
3. The application for condonation of delay is therefore, liable to be rejected. However, even on merit, the appellant has not been able to make out any case to warrant interference by this Court.
4. The present appeal challenges the Impugned Judgment and Order dated 06.08.2018 passed by the learned Additional District Judge-03, South District, Saket Court, New Delhi in RCA No.8873/2016 titled ***Mrs.Pravin Chatterjee vs. Mr.Laxman Dass Bhatia*** by which the appeal filed by the appellant herein challenging the judgment and decree dated 18.03.2016 and 11.04.2016 passed by the Court of the learned Civil Judge, Tis Hazari Courts, Delhi in CS No.98/2007 was dismissed.

5. The respondent herein had filed the abovementioned suit seeking recovery of the possession, use and occupation charges with respect to DDA Plot No.J-36B, Ground Floor, Sheikh Sarai, Phase-II, New Delhi-110017.

6. It is the case of the respondent that the appellant was a tenant in the said property paying monthly rent of Rs.5,000/- payable on or before 7th of each month vide Lease Deed dated 21.08.2006. It was further alleged that since the appellant failed to pay the monthly rent, the tenancy was terminated by the respondent vide legal notice dated 28.10.2006. Though the appellant made payment of rent upon receipt of said legal notice, she again defaulted forcing the respondent to serve yet another legal notice dated 16.01.2007 terminating the tenancy. Thereafter, the respondent filed the abovementioned suit against the appellant.

7. It is the case of the appellant that the respondent is not the owner of the suit property and the property was in fact, purchased by the grandmother of the appellant-Late Smt. Surjeet Kaur Seth, for the benefit of the appellant and her sister-Ms.Sonia Bhatia, who is the wife of the respondent, herein. The full consideration of Rs.7,90,000/- for the said flat was paid by the Late Grandmother of the appellant.

8. It was further alleged that the suit property was thereafter gifted by the grandmother to the appellant and the wife of the respondent. It was further alleged that the appellant had taken

the documents in relation to the suit property on the pretext that the same were required for purpose of taking a loan against the same. The Lease Deed dated 21.08.2006 was executed by the appellant in favour of the respondent on the pretext that the same was required to be shown to the DDA for purposes of conversion to freehold and transferring absolute title to the appellant.

9. Both the learned Trial Court and the learned Appellate Court found no merit in the defence set up by the appellant, inasmuch as, the respondent was able to prove the execution of the Conveyance Deed dated 06.11.2006 as well as the Lease Deed dated 21.08.2006.

10. The learned counsel for the appellant submits that the appellant has challenged the Conveyance Deed executed by the DDA in favour of the respondent in a civil suit as having been obtained by fraud. He submits that in light of the above suit, the Impugned Judgment and order cannot be sustained.

11. I do not find any merit in the said submission.

12. The learned Appellate Court in the Impugned Judgment dated 06.08.2018 while also rejecting the application filed by the appellant under Order XLI Rule 27 of the Code of Civil Procedure (CPC), 1908 seeking to place the additional evidence on record, observed as under:

“6.1 In the instant case, the appellant in the written statement has only alleged that the lease deed dated 21.08.2006 is as a result of fraud played upon by her by the respondent and respondent is trying to usurp the ownership rights of the appellant by relying upon fraud lease deed and further the freehold obtained by the respondent is also result of fraud done by respondent and appellant reserves her right to take appropriate action against the same. In the said pleadings, she has never challenged conveyance deed. It is also noteworthy to mention here that during the course of trial before Ld. Trial Court, PW2 witness from DDA was examined and during cross-examination, a categorical question was put regarding the photocopy of the passport of the respondent as proof of possession. The contention of the appellant that the documents provided by the respondent before concerned DDA came to her possession very late but it is surprisingly while conducting cross-examination of respondent on 24.07.2014 the appellant has specifically asked about passport by giving the serial number of passport which shows that appellant was in knowledge of the record by virtue of which conveyance of suit property has happened. Even otherwise, the correctness of conveyance deed in favour of respondent is not subject matter in the instant case. Moreover, it manifests from impugned judgment that Ld. Trial Court has categorically observed in para no.28 that appellant (defendant therein) is aware of the contents of the pleadings and the documents relied by the respondent (plaintiff therein) and appellant (defendant therein) during her evidence has not placed on record any material to show that conveyance deed has been challenged before any competent authority, and though at the stage of

final arguments it was submitted on behalf of appellant (defendant therein) that conveyance deed has been challenged before the competent authority, this Court of the opinion that till date conveyance deed is declared as null and void by the competent authority, it is valid document conferring ownership of the respondent (appellant therein) in respect of the suit property. ”

13. The learned Appellate Court has further observed as under:

“10. I have given careful consideration to the facts of the case and at the outset it cannot be lost sight that the respondent has filed the instant suit based on Lease Deed dated 24.08.2006 Ex.PW1/6 which has not been denied by the appellant/defendant. The only contention raised by the appellant that lease deed was fraudulently obtained by the respondent for the purposes of conversion of suit property from leasehold to freehold. But before Ld. Trial Court the appellant did not lead even a shred of evidence to show that the lease deed in question has been fraudulently obtained except the self serving statements of the appellant. Moreover, the claim of the appellant that they are the co-owners of the suit property has remained bald assertion without any credible document. The two documents namely receipt issued by the original allottee of the suit property and the letter of possession did not inspire any confidence in the trial because the existence of these documents was not proved. Moreover, these documents do not confer any legal title of the appellant/defendant. After having failed on these two accounts the appellant/defendant started picking up holes in the procedure adopted by the

DDA in conveyance of the suit property to the plaintiff/ respondent. The chain of documents provided by the plaintiff/respondent over the suit property demonstrate better title and moreover the leasee has no right to challenge the ownership of the lessor. In so far as minor discrepancy of not disclosing about the passport in the cross examination does not by itself makes the document is a forged passport. The appellant also contended that the documentation provided by the plaintiff to the DDA came into possession very late but it is surprisingly that while conducting cross-examination of the plaintiff on 30.07.2014 she has specifically asked the details about passport by giving the serial number of passport which shows that the appellant defendant was in knowledge of the records by virtue of which transfer/conveyance of the suit property has happened. Even otherwise the correctness of conveyance deed of the property in the favour of the respondent is not subject matter of the instant suit but on the contrary it was upon the appellant to establish her co-ownership which she has failed during the trial.”

14. I do not find any infirmity in the above findings of the learned Appellate Court. Mere filing of a suit later challenging the Conveyance Deed cannot act as a defence to a suit that has been filed seeking possession on termination of a lease. Consequently, the present appeal is dismissed.

NAVIN CHAWLA, J

FEBRUARY 10, 2020

RN