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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 10th August, 2021
+ **RSA 63/2020 & CM APPLs. 22831/2020 & 22832/2020**
ANUP BHATIA AND OTHERS Appellants
Through: Mr. A.K. Singla, Sr. Advocate with
Mr. Akshit Sachdeva, Advocate
versus
MADAN LAL BHATIA & ANR. Respondents
Through: Mr. B.K. Sood, Mr. Harish Gaur and
Mr. Subhash Sharma, Advocates
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. This is a regular second appeal challenging the impugned judgment dated 27th July, 2020 passed in an appeal challenging judgment/decreed dated 27th October, 2018 passed by the Trial Court.
3. The property in question is property bearing no. 26/67, West Patel Nagar, New Delhi - 110008, a two-storey house on a 100 Sq. Yards leasehold plot (*hereinafter, 'suit property'*). The Plaintiff/Respondent No.1 - Mr. Madan Lal Bhatia (*hereinafter, 'Plaintiff'*) filed a suit for possession against various family members i.e., the children of his brother - Mr. Kishan Chand Bhatia, seeking reliefs of possession, *mesne* profits, etc. The case of the Plaintiff is that by Will dated 6th February, 1985, executed by his mother - Mrs. Ram Lubhai, he became the absolute owner of the suit property. According to the Plaintiff, Mrs. Ram Lubhai was the absolute owner of the suit property in view of the sale agreement dated 8th November, 1960. The suit property was originally allotted in the name of his father – Mr. Ram Chand Bhatia. After the death of Mr. Ram Chand Bhatia, the suit property

was mutated in the name of his mother - Mrs. Ram Lubhai and thereafter, by way of a Will, the same has been bequeathed in favour of the Plaintiff.

4. The Appellants, who are the legal heirs of Mr. Kishan Chand Bhatia, have set up a case that their father i.e., Mr. Kishan Chand Bhatia was one of the co-allottees of the suit property. The allotment was incorrectly issued in the name of Mrs. Ram Lubhai by the authorities i.e., the L&DO, and this allotment in favour of the mother was reversed on 30th August, 1976 by way of a corrigendum. However, litigation ensued between Mrs. Ram Lubhai and Mr. Kishan Chand Bhatia. Finally, a corrigendum dated 17th April, 1978 was issued, reversing the earlier corrigendum which, in effect, meant that the allotment went back in the name of Mrs. Ram Lubhai. The said corrigendum dated 17th April, 1978 was challenged by the legal representatives of Mr. Kishan Chand Bhatia in ***W.P.(C) 66/1979*** titled ***Kishan Chand Bhatia (Thr. LRs) v. UOI & Ors.,***

5. It is a matter of judicial record that initially, certain interim orders were passed on 22nd March, 1979. However, finally, vide order dated 2nd March, 2005, the said writ petition was dismissed and the allotment in favour of Mrs. Ram Lubhai came to be upheld.

6. In the suit for possession, various defences were raised by Mr. Kishan Chand Bhatia and the following issues were framed by the Trial Court on 16th August, 2004:

“1 Whether the defendants are co-owners of the suit property? OPD

2 Whether the plaintiff is entitled to the recovery of possession of the suit property, as prayed for? OPP

3 Whether the plaintiff is entitled to mesne profit and damages to the tune of Rs. 87,500/- as prayed for? OPP

4 Whether the plaintiff is entitled to the interest, if yes, at what rate and for what period? OPP

5 Whether the plaintiff is entitled to mesne profit, interest pendente lite and future, if yes, at what rate and for what period? OPP

6 Whether the suit of the plaintiff is liable to be stayed under section X of the CPC in view of the Civil Writ Petition bearing No. 66/1976 with hon'ble High Court of Delhi? OPD

7 Relief.”

7. Vide judgement dated 27th October, 2018, the Trial Court decreed the suit in favour of the Plaintiff *qua* the relief of possession. Some of the other reliefs including the prayer for mesne profits, were however rejected. An appeal was filed and cross-objections were also filed challenging the said order. Vide the impugned order dated 27th July, 2020, the Appellate Court upheld the decree of possession and also awarded *mesne* profits. The operative portion of the order in appeal reads as under:

“54. In view of the above discussion, appeal filed defendants/appellants against Impugned Judgement and Decree dated 27.10.2018 is dismissed without costs.

55. Cross Objections filed by the plaintiff/respondent is allowed to the extent that plaintiff/respondent would be entitled to mesne profit @ Rs 3000 per month from the date of filing of suit till the date of realization against all Defendants. It is clarified that decree against defendant no. 3 to 5 (mentioned in the impugned judgment) is to be executed as LRs of Karan Dev Bhatia (Main Defendant No.3 at the time of filing of suit) and Decree against Defendant No. 6 to 9 is to be executed as LRs of Shakuntala Chachra (Main defendant No.4 at the time of filing of suit.). Parties are left to bear their own costs.”

8. The present second appeal was first listed on 16th September, 2020, on which date notice was issued to the Respondents. Thereafter, vide order

dated 12th November, 2020, an interim arrangement was passed, directing the Appellants to pay a sum of Rs.15,000/- per month as use and occupation charges to the Plaintiff/Respondent No.1 with effect from 1st September, 2020.

9. Today, the matter has been listed for consideration of any substantial questions of law which arise.

10. Mr. A.K. Singla, Id. Senior counsel appearing for the Appellants submits that the first issue that arises is that the suit was not filed within limitation. As per Section 27 of the Limitation Act, 1963, the right to property shall stand extinguished if the suit for possession is not filed within the limitation which is prescribed under Articles 65 to 67 i.e., within a period of 12 years. Id. Senior counsel submits that the cause of action in this case arose on 17th April, 1978 in favour of Mrs. Ram Lubhai who did not take any action to seek possession from the Appellants or their predecessor-in-interest i.e., Mr. Kishan Chand Bhatia. Thus, the suit is hopelessly barred by limitation, which issue deserves to be considered in the second appeal.

11. The second issue which is raised by Mr. Singla, Id. Senior counsel is that there are two family settlements dated 20th October, 1983 and 21st May, 1987. In terms of these family settlements, it is clear that Mr. Kishan Chand Bhatia was the co-owner of the suit property and, thus, was entitled to occupy the same. Thus, the existence of the family settlements also raises a substantial question of law.

12. Thirdly, Id. Senior counsel submits that a decree for *mesne* profits could not have been passed by the Appellate Court, inasmuch as Mr. Kishan Chand Bhatia, being a co-owner, was not an unauthorized occupant and the

Appellate Court had not arrived at a conclusion that the Appellants were unauthorized occupants. Under such circumstances, the decree for mesne profits is not sustainable.

13. On the other hand, Mr. Sood, Id. Counsel submits that the issue of limitation has not been raised before the Trial Court or in the written statement. Secondly, the family settlements were also not relied upon and, in any event, the allotment in favour of Mrs. Ram Lubhai having been upheld by the Id. Single Judge of this Court vide order dated 2nd March, 2005 and having attained finality, the same cannot be re-opened. Secondly, he submits that the said order clearly upholds the sole ownership of Mrs. Ram Lubhai and the Will which has been executed by her on 6th February, 1985 clearly bequeathed the suit property in favour of Mr. Madan Lal Bhatia. The probate which was granted in respect of the said Will has also been upheld by this Court as well as the Supreme Court. Accordingly, the ownership of Mrs. Ram Lubhai cannot be re-opened in a suit for possession. Id. counsel also submits that the Appellants i.e., the family of Mr. Krishan Chand Bhatia, had enjoyed the suit property for many years and even the cross-objections filed by the Plaintiff have been allowed by the Appellate Court.

14. Mr. Sood, Id. counsel further submits that there are three other suits filed by the Plaintiff, mentioned in paragraph 43 of the impugned judgment dated 27th July, 2020, which were all dismissed. Despite this being the position, the Appellants repeatedly institute proceedings to continue enjoying the suit property and harassing the Plaintiff and his family.

15. This Court has heard the Id. Sr. counsels for the parties. This being a second appeal, unless and until there are substantial questions of law that arise, the same is not to be entertained. Mr. Singla has raised three questions.

On the first question of limitation, this Court is of the opinion that the said question would not arise in the present appeal, inasmuch as though the corrigendum was issued on 17th April, 1978, the same was challenged before this Court in ***W.P.(C) 66/1979*** titled ***Kishan Chand Bhatia (Thr. LRs) v. UOI & Ors.*** Finally, the said allotment/corrigendum in the name of Mrs. Ram Lubhai came to be upheld only on 2nd March, 2005. The suit in the present case was admittedly filed in 1998 and thus, so long as the writ remained pending and some interim order was operating in favour of Sh.Kishan Chand Bhatia, the *lis* had not reached conclusion. No proceedings could have been initiated by Mrs. Ram Lubhai during her life time or after her demise by the Plaintiff, while the writ was pending challenging the corrigendum which resulted in crystallising the rights of Mrs. Ram Lubhai. In view of this, it cannot be held that the suit is barred by limitation.

16. Insofar as the second question of the family settlements is concerned, these family settlements were allegedly executed at the time when Mrs. Ram Lubhai was alive. Mr. Sood submits that these settlements were not pleaded in the written statement. After the decision in ***W.P.(C) 66/1979*** titled ***Kishan Chand Bhatia (Thr. LRs) v. UOI & Ors.***, once it was clearly held that Mrs. Ram Lubhai would be the sole allottee of the suit property, the said family settlements would have no meaning.

17. Finally, insofar as *mesne* profits are concerned, considering that the Appellants, who are stated to be in possession of the suit property, are the nephews and nieces of the Plaintiff, this Court put it to the counsels for the parties to seek instructions for agreeing on some monetary terms. Ld. Counsels for the parties upon consultation with their respective clients, have

instructions to finally resolve their disputes on the following terms and conditions:

- i) The Appellants undertake before this Court that they do not claim any right, title or interest in the suit property. The Appellants, who are in possession of the suit property, undertake and agree to hand over vacant and peaceful possession of the suit property, on or before 31st March, 2022, to the Respondent No.1 - Mr. Madan Lal Bhatia i.e., the Plaintiff in the suit who is stated to be 85 years of age. It is submitted by Mr. Sood, Id. counsel that in case Mr. Madan Lal Bhatia is under any incapacity or is not available to accept possession, the vacant and peaceful possession may be handed over to his daughter-in-law - Ms. Preeti Bhatia.
- ii) Insofar as the *mesne* profits are concerned, the Appellants undertake and agree to pay a lumpsum amount of Rs.3 lakhs, as *mesne* profits, to which the Respondents have consented.
- iii) The Appellants have already deposited a sum of Rs.1.17 lakhs with the Registry of this Court. Apart from the said amount, the Appellants have also paid Rs.45,000/- to the Plaintiff/Respondent No.1, pursuant to the interim arrangement which was directed on 16th September, 2020. Thus, a total amount of Rs.1.62 lakhs has already been deposited/paid by the Appellants.
- iv) The Appellants undertake and agree to pay the remaining amount of Rs.1.38 lakhs to the Plaintiff/Respondent No.1 on or before 30th November, 2021. Upon the said payment being made, the Appellants are permitted to retain possession of the suit property till 31st March, 2022. If the payment is, however, not made, no further

time would be granted to the Appellants after 30th November, 2021 to handover vacant and peaceful possession of the suit property and the Plaintiff would be entitled to avail of his remedies in accordance with law, including filing of a contempt petition before this Court.

v) The Appellants undertake and agree to not create any right, interest or entitlement in favour of any third party during the time that they are in possession of the suit property.

vi) The Appellants undertake and agree to clear all the electricity, water and other charges for civic amenities or municipal charges payable.

18. All the Appellants shall file undertakings in terms of the conditions set out above within a period of two weeks. The impugned judgment dated 27th July, 2020 is modified in terms of the conditions mentioned above. If the terms and conditions set out above are not adhered to by the Appellants, the impugned decree/judgment would come back into operation and the Plaintiff would be entitled to avail of his remedies in accordance with law.

19. Accordingly, the Registry is directed to release the amount Rs.1.17 lakhs deposited in this Court in favour of the Plaintiff - Mr. Madan Lal Bhatia. Ld. Counsel to furnish the bank account details to the Registry. The interest which may have accrued on the said deposit shall also be released to the Plaintiff, after deducting TDS on the interest component as per the applicable rules. The said release shall be made in favour of the Plaintiff/Respondent No.1 directly into his bank account within a period of two weeks. For this purpose, list the matter before the Registrar on 2nd September, 2021. The Registrar shall also receive the affidavits of undertaking on behalf of all the Appellants and examine the same.

20. List before Court on 13th September, 2021 for receiving the report in respect of release of payments and filing of undertakings.

21. The appeal is disposed of in the above terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

AUGUST 10, 2021

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