

\$~A-1 (2019)

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

Date of decision: 6th December, 2021

+ **RSA 154/2019 & CM APPLs. 34609/2019, 34610/2019,
34611/2019, 40341/2019**

USHA

..... Appellant

Through: None.

versus

BIMLA DEVI

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. None appears for the parties. Substantial questions of law are yet to be framed in the present second appeal.
3. The order dated 11th September, 2019 passed in this case, reads as under:

“ This appeal had to be adjourned on 08.08.2019 because the arguing counsel was not available. An application for early hearing was moved which was not prosecuted as there was no appearance on it being taken up on 03.09.2019. The matter has been listed again today on the application for pre-ponement. When it was called out in the morning, none appeared. The matter was adjourned but while the court was about to dictate the order, the counsel came in and sought opportunity to be heard. On being asked to make his submissions, the counsel was clueless. He then sought the matter to be passed over. To facilitate

his preparation, the file of the court was handed over to him. When it is again taken up late in the afternoon, the counsel is still not ready. He now seeks an adjournment.

Be listed on 13.09.2019.”

4. Thereafter, adjournments have been taken on behalf of the Appellant on three occasions. Since inception, this appeal has in effect not been argued on behalf of the Appellant. None appears even today.

5. The brief background of the matter is that the Respondent/Plaintiff (*hereinafter, “Plaintiff”*) instituted a suit for permanent and mandatory injunction, seeking actual, vacant and peaceful possession of the property bearing no.53-A, Gali No.9, Swami Shrdhanand Park, Bhalsva, Jahangirpuri, Delhi-110042, ad measuring 25 sq. yds. After completion of pleadings in the suit bearing no. **83/08**, evidence was led before the Trial Court. Vide order dated 10th February 2009, the following issues were framed in the suit:

- “i.) Whether the plaintiff is entitled for a decree of mandatory injunction, as prayed for. (OPP)*
- ii) Whether the plaintiff is entitled for a decree of recovery of mesne profits. If so, at what rate and for what period. (OPP)*
- iii) Whether the plaintiff is entitled to a decree for permanent injunction, as prayed for. (OPP)*
- iv) Whether the plaintiff is entitled to the award any injunction? If so, at what rate and for what period. (OPP)*
- v) Whether the plaintiff is guilty of concealing of material facts. (OPD)*
- vi) Whether the defendant has purchased the suit property from the plaintiff. (OPD).*
- vii) Relief.”*

6. After hearing the parties, vide judgment/decreed dated 1st November 2011, the Id. Civil Judge, Central District -01, Delhi, held that the Plaintiff had failed to prove her rights and title in the property, as the documents in respect of the same were not registered and that the Defendant was in possession of the suit property. Accordingly, the suit of the Plaintiff was dismissed by the Trial Court.

7. Thereafter, vide order dated 3rd May, 2013, passed by the Id. ADJ-03, Central District, Delhi, the order of the Trial Court was set aside and the matter was remanded for fresh adjudication on all the issues. In the second round, vide judgment/decreed dated 21st September, 2013 passed by the Id. Civil Judge-01, Central District, Delhi, the suit was decreed in favour of the Plaintiff. It was held that the Defendant was unable to show in her defence that she had purchased the property from the Plaintiff, and thus the suit was decreed in the following terms:

“34. In view of the aforementioned facts and circumstances, the suit is decreed in favour of the plaintiff and against the defendant. The defendant is directed to hand over the vacant and peaceful possession of the suit property measuring 25 sq. yards land in plot bearing no.53A, Gali No.9, out of Khasra No.43, Estate of Village Bhalswa and Colony known as Swami Shrdhanand Park, Bhalswa, Jahangirpuri, Delhi-110042 as shown in the red colour in the site plan filed by the plaintiff, to the plaintiff. The defendant is further directed to pay Rs.1,42,800/- as mesne profits alongwith future interest at the rate of 9% p.a. from the date of decree till its realization on decretal amount. The defendant is further directed to pay Rs.2,000/- p.m. to the plaintiff from the date of decree till the date possession of suit property is handed over to the

plaintiff. The defendant and her representatives are further restrained from creating a third party interest in the suit property. Costs are also awarded in favour of the plaintiff and against the defendant.

Decree sheet be prepared accordingly. The decree for recovery of mesne profits shall become executable only after payment of court fees on the aforementioned quantum of mesne profits, i.e. Rs.1,42,800/-.

File be consigned to the record room.”

8. An appeal was preferred against the said decree by the Defendant. In appeal, the Id. ADJ-1, North District, Delhi (*hereinafter, “First Appellate Court”*) has held that the Defendant was unable to show that she purchased the property from the Plaintiff. The Appellate court also held that she was also unable to place any documents on record to show that construction was raised by her on the said property. The finding of the Appellate Court reads as under:

“11. The plaintiff has also proved Ex. PW-1/2 to PW-1/6 and there is no rebuttal to this testimony which has remained unchallenged and rebutted. Rather defendant has not placed anything on record vide which she could prove that she purchased this property from plaintiff. There is no documentary evidence to that effect. Earlier, Issue No.6 was decided against defendant and it was held that suit property was not purchased by defendant and there was no appeal or cross-appeal against same though plaintiff has filed the appeal against dismissal of the suit. The Ld. Appellate Court has also not set aside the findings of issue No.6. So, it operates now against defendant. The Ld. Trial Court was directed to give findings on issue No, 2, 3 and 4 also and Ld. Trial Court again while giving findings afresh against defendant and legal and sound principle held that transfer the immovable property

cannot be effected without written registered documents. No oral admission can be considered. No steps have been taken by defendant to get the alleged sale perfected though she has submitted that half of the portion was purchased by Mukesh and thereafter by defendant from her but again it is oral submission. She has rather demolished her case as stated above. She has stated that she has raised the construction but not even a single document has been placed on record. The Ld. Trial Court has rightly held that defendant has failed to prove that she purchased the property from plaintiff and this court cannot go beyond the observation made by Ld. Appellate Court in the judgment dated 03.05.2013 which are binding and those could not have been set aside by defendant by preferring appeal. So findings on issue No.1 and 6 are reaffirmed.”

9. Thereafter, the First Appellate Court also upheld the finding of the Trial Court that the market rent is to the tune of Rs.2,500/-.

10. This Court has perused both the judgment/decreed passed by the Trial Court, as well as the judgment passed by the First Appellate Court. The Plaintiff and the Defendant are sisters. The case of the Defendant in the present second appeal is that the electricity bill, and some other evidence, which was in the name of the Defendant, have not been considered by the Trial Court as well as the First Appellate Court. This Court is of the opinion that so long as the Defendant is in occupation and is permissive use of the property, no rights can be claimed by her by merely relying upon electricity bills, that too without any evidence to show that she has any rights in the suit property. The Supreme Court in ***Maria Margarida Sequeria Fernandes and Ors. v. Erasmo Jack de Sequeria (Dead) through LRs, (2012)5 SCC 370***, has held:

“101. Principles of law which emerge in this case are crystallized as under:

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”

Accordingly, in view of the above decision of the Supreme Court, mere permissive use, and evidence to show the same, cannot be a ground to claim any rights and title in the property.

11. The Supreme Court, recently in ***Hasmat Ali v. Amina Bibi and ors.*** (Civil Appeal No. 7109/2021, decided on 29th November 2021), has held:

“14. In case the appeal does not involve any substantial question of law, the High Court has no other option but to dismiss the appeal. However, in order to come to a conclusion that

the appeal does not involve any substantial of law, the High Court has to record the reasons. Giving reasons for the conclusion is necessary as it helps the adversely affected party to understand why his submissions were not accepted. The Court must display its conscious application of mind even while dismissing the appeal at the admission stage. In our view, the High Court cannot dismiss the second appeal in limine without assigning any reasons for its conclusion”.

12. Accordingly, due to the above discussion, no substantial question arises in the present second appeal. The present second appeal is dismissed. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 6, 2021

Rahul/Ak