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

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Date of Judgment: 15.07.2022

+ **RFA 288/2022 and C.M. Nos. 29861-863/2022**

MANOJ AND ANR

..... Appellants

Through: Mr. Akshay Bhatia, Advocate.

Versus

M/S MONK TRADING PVT LTD AND ORS Respondents

Through: Mr. Sandeep P. Aggarwal, Senior Advocate alongwith Mr. Ayush Gupta, Mr. Tushar Sannu and Ms. Ankita Bhadouriya, Advocates for respondent No.1.
Ms. Prachi Hasija and Mr. Kartik Choudhary, Advocates for respondent No. 3.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

GAURANG KANTH, J. (ORAL)

1. The present appeal is emanating from the judgment dated 09.05.2022 passed by the learned Additional District Judge-06, Central, Tis Hazari Courts, Delhi in CS DJ 15203/2016, titled as M/s Monk Trading Pvt Ltd Vs Rajbir Singh & Ors. While decreeing the suit filed by the respondent herein with cost, the learned Trial Court held that the respondent (Original plaintiff) is entitled to recover the possession of the suit land from the appellants (Original defendant Nos. 1 to 3). It is further held that the respondent is entitled to recover a sum of Rs. 20,000/- per month, alongwith interest @ 9% per annum from Appellants from 10.12.2007 till the date of realization. The



learned Trial Court also restrained appellants from encroaching or trespassing the adjoining land belonging to the respondent Company, as shown in blue colour in the site plan (Ex PW-1/1).

2. The facts relevant for consideration in the present appeal are as follows: -

- i. Late Shri Kale Ram was the owner of the land measuring 31 bighas 8 biswas within the revenue estate village Gadaipur, New Delhi. After the demise of Shri Kale Ram, his property was inherited by his legal heirs, including his three sons, namely, Shri Gyasi Ram (original defendant No. 4), Shri Shyam Lal and Shri Rambal. After the demise of Shri Rambal, his share was inherited by Shri Rajbir Singh (original defendant No. 1).
- ii. Thereafter, Shri Rajbir Singh (original defendant No. 1) vide two separate registered sale deeds dated 09.10.1986, sold 1/3rd share of his entire property, which was 4 bighas 10 biswas, to Shri Daya Ram.
- iii. As per the revenue records, Shri Gyasi Ram, Shri Shyam Lal and Shri Daya Ram are the recorded owners in equal parts of the entire property. The respondent herein purchased land in khasra no. 30, measuring 4 bighas 18 biswas, in khasra no. 51/2 measuring 3 bighas 15 biswas, in khasra no. 51/1 measuring 2 bighas 0 biswas, in khasra no. 28/2 measuring 0 bigha 12 biswas and in khasra no. 28/1 measuring 0 bigha 8 biswas situated within the revenue estate of Village Gadaipur, New Delhi (“suit property”) from Shri Gyasi Ram,



Shri Shyam Lal and Shri Daya Ram vide four separate sale deeds dated 24.10.1994.

3. It is the case of the respondent that Shri Gyasi Ram, Shri Shyam Lal and Shri Daya Ram duly executed the sale deeds dated 24.10.1994 and handed over peaceful and vacant possession of the property to the respondent.

4. It is further the case of the respondent that on 10.12.2007, the original defendant No. 1 through his sons, i.e., the present appellants (original defendant Nos. 2 & 3) fraudulently tried to encroach upon the land situated in khasra No. 51/1 and 51/2 ("suit land"). The respondent filed a police complaint on 11.12.2007, but the police did not take any legal action and consequently, the original defendant Nos. 1 to 3 built a temporary shed in khasra No. 51/1 overnight.

5. The original defendant No. 1, thereafter, filed a civil suit bearing No.785/2007 for permanent injunction and the learned Trial Court in the said suit passed an order of status quo in favour of the original defendant No. 1. The respondent further averred that when the representative of the respondent was trying to put fencing over rest of the land, the original defendant Nos. 1 to 3 tried to stop the said work and created hindrances. The respondent was forced to call police and with their assistance the work was completed.

6. In these circumstances, the respondent filed the present suit for possession, permanent and mandatory injunction, and mesne profit before the learned Trial Court. In the said suit, late Shri Rajbir Singh was arrayed as defendant No. 1 and his two sons were arrayed as defendant Nos. 2 & 3.



Shri Gyasi Ram – son of late Shri Kale Ram, was arrayed as defendant No.4. The legal heirs of Shri Shyam Lal – son of late Shri Kale Ram, were arrayed as defendant Nos. 5 to 7. The legal heirs of Shri Daya Ram were arrayed as defendant Nos. 8 to 10.

7. In the said suit, the respondent prayed for the recovery of the possession of the suit land as shown in red colour in the site plan attached with the plaint and prayed for grant of injunction thereby restraining original defendant Nos. 1 to 3 from encroaching or trespassing on the adjoining land belonging to the respondent as shown in blue colour in the site plan attached to the plaint. The respondent further prayed for granting mesne profit and user charges @ Rs. 50,000/- per month from 11.12.2007 onwards against original defendant No. 1 to 3.

8. The original defendant No. 1 filed the written statement, wherein it was stated that he neither sold nor handed over the possession of his share in the property which he inherited from his late father Shri Rambal son of late Shri Kale Ram to Shri Daya Ram. Defendant No. 1 further averred that the alleged sale deeds dated 09.10.1986 was not registered and never acted upon, as possession of the said land was never handed over to Shri Daya Ram. The original defendant Nos. 2 & 3 (appellants herein) filed a joint written statement, in which it is contended that the suit property is an ancestral property of defendant Nos. 2 & 3. According to defendant Nos. 2 & 3, defendant No. 1 had only 1/36th share in the property of late Shri Kale Ram and hence, he could not have executed the sale deeds dated 09.10.1986 in favour of Shri Daya Ram. Defendant Nos. 8 to 10 also filed a joint written statement supporting the case of the respondent. The original defendant Nos.4 to 7 were proceeded *ex parte* vide order dated 01.06.2009.



9. Based on the pleadings, the following issues were framed for the final adjudication.

“(1) Whether the plaintiff is the owner of the suit property and entitled to recover its possession from the defendants? OPP

(2) Whether the defendant no. 1 has sold the part of the suit property to Late Shri Daya Ram, if so, its effect? OPP

(3) Whether the defendant no. 1 has forcibly trespass into the suit property on 11/12.12.2007? OPP

(4) Whether the plaintiff is entitled to reliefs of injunction as have been claimed? OPP

(5) Whether plaintiff is entitled to recover mesne profit for use and occupation of suit property from defendants no. 1 to 3, if so, at what rate and for which period? OPP

(6) Relief.”

10. Subsequently, the following issue No. 7 was framed as an additional issue:-

“Whether suit is instituted by duly authorized person and whether the suit has been verified by a proper person and authorized person, if so, its effect? OPP”

11. The parties led their respective evidence and produced documents to substantiate their cases. The respondent examined eight witnesses to prove their case. The original defendant No. 1, 2 & 3 examined themselves as D-1, D-2 & D-3 respectively.

12. The learned Trial Court after hearing the parties, vide impugned judgment dated 09.05.2022, decided all the issues in favour of the respondent and against the appellants. Being aggrieved by the impugned judgment, the appellants preferred the present appeal.

**Submission on behalf of the appellant**

13. It is submitted by learned counsel for the appellants that the suit property is an ancestral property belonging to the family of the appellant. Shri Kale Ram was the original owner of the suit property and after his death, the property devolved to his wife, three sons and three daughters jointly. Hence, no sale deed could have been executed by original defendant No. 1 without the consent of all the legal heirs of late Shri Kale Ram. It is the case of the appellant that their father (original defendant No. 1) was the owner of only 1/36th share of the property of late Shri Kale Ram and thus, he could not have executed the sale deed dated 09.10.1986 in favour of Shri Daya Ram for the sale of 1/3rd share.

14. During the course of arguments, learned counsel emphasized that in fact, the original defendant No. 1 never executed the alleged sale deed dated 09.10.1986 in favour of Shri Daya Ram – as alleged by the respondent, as he denied his signatures on the sale deed. It is further the submission of the learned counsel for the appellant that the possession of the suit property was never handed over to the respondent and hence, the suit property was never identified at site. The appellants, being the great-grand children of late Shri Kale Ram, were always in possession of the suit property. The learned Trial Court, without appreciating the case of the original defendant No. 1 and the appellants herein, decreed the suit in favour of the respondent. The appellants further submitted that in the absence of any evidence the learned Trial Court fixed the mesne profit without any rational basis. Hence, the same is liable to be set aside.



Submissions on behalf of the respondent

15. Learned senior counsel appearing on behalf of the respondent purported the impugned judgment dated 09.05.2022 and submitted that the impugned judgment passed by the learned Trial Court is based on the documentary evidence and is in accordance with the law. Hence, in view of the said submissions, the learned senior counsel for the respondent prayed for the dismissal of the present appeal.

Legal analysis based on the facts

16. This Court heard arguments advanced by the learned counsels for the parties and has examined the documents placed on record by the appellants.

17. The appellant's basic contention is that the two sale deeds dated 09.10.1986 executed by the original defendant No. 1 in favour of Shri Daya Ram (Ex. PW-1/4 and Ex. PW-1/5) are forged and fabricated. The learned Trial Court examined the evidence adduced by the parties in detail and came to the conclusion that the sale deeds are not forged and fabricated. The learned Trial Court also held that the respondent is the owner of the suit land and is entitled for the recovery of the said land.

*"It is case of the plaintiff company that it purchased the suit property from Shri Gyasi Ram, Shri Shyam Lal and Shri Daya Ram by way of four registered sale deed dated 24.10.1994 (Ex.PW1/7 to Ex.PW1/10).The defendants have not disputed the above mentioned sale deeds, however, the defendants have disputed two sale deeds Ex.PW1/4 and Ex.PW1/5 dated 09.10.1986 (hereinafter referred to as "**impugned sale deeds**") by which share of the defendant no. 1 was allegedly sold to Shri Daya Ram.*

(ii) There are two sets of defence: Firstly, the defendant no. 1 has contended that Ex.PW1/4 and Ex.PW1/5 are forged and fabricated. Secondly, the defendants no. 2 and 3 have not disputed



the above mentioned sale deeds, however, have contended that the defendant no. 1 was not competent to execute the sale deeds.

*(iii) As the impugned sale deeds are registered, therefore, heavy onus was upon the defendant no. 1 to prove that the Ex.PW1/4 and Ex.PW1/5 were forged and fabricated. The defendant no. 1 was required to establish that the signature existing on the above mentioned sale deed does not belong to him. The defendant no. 1 could get the sale deeds examined from the handwriting expert, however, he has failed to do so. Mere averments in the written statement can not be sufficient to discard the authenticity of the impugned registered sale deeds. Reliance is placed on case titled as **Smt. Sheela Devi & Anr. Vs. Smt. Santosh Devi**, RSA No.104/2011 wherein the Hon'ble High Court of Delhi has observed as follows:*

"22. In this case, due registration of sale deed by the plaintiff has been proved which means that the sale deed was duly executed. If defendant challenges such due execution, onus shifts on her to dispute the same which could had been done in this case by calling the executants or the witnesses to the sale deed of the plaintiff."

The defendant no. 1 has even failed to examine the witnesses to the impugned sale deeds.

(iv) The contention of the defendants no. 1 to 3 is that the plaintiff is not the owner of the suit property. On the other hand, the plaintiff has pleaded that Shri Gyasi Ram, Shri Shyam Lal and Shri Daya Ram duly executed sale deeds and handed over peaceful and vacant possession of the suit property.

(v) Moreover, PW-1 has also relied on the plaint (Ex.PW1/16) which was filed by defendant no. 1 in the suit for permanent injunction. In the said suit, the defendant no. 1 has categorically stated that he has sold 1/6th of his share to Shri Daya Ram. The relevant extract is reproduced herein below for ready reference:

"7. That the plaintiff states that the plaintiff has disposed of 1/6 share out of the total property to one Shri Daya Ram in the year 1986 vide registered sale deeds."



(vi) The defendant no. 1 who was examined as DW-1 was confronted with the judgment dated 06.12.2016 (Ex.DW1/P1) wherein it has been specifically mentioned that the defendant no.1 had disposed of his 1/6 share out of his total property to one Shri Daya Ram in 1986 vide two registered sale deeds as contended by him.

(vii) It is pertinent to mention here that defendant no. 1 has failed to cross-examine plaintiff (PW-1). The testimony of PW-1 with respect to defendant no. 1 remained unrebutted and uncontroverted. The plaintiff company has successfully proved on record the due execution of the impugned sale deeds.

(viii) The defendants no. 2 and 3 have contended that their father i.e. defendant no. 1 was not competent to transfer his share as it was an ancestral property. It was on the defendants no. 2 and 3 to prove that the suit land was an ancestral property. Both the defendants examined themselves as DW-2 and DW-3. Except the bald oral averments, nothing was brought on record to prove that the suit land was ancestral. The above said defendants had the opportunity to bring on record Jamabandis (Record of Rights) to prove that the suit land was ancestral property. However, the defendants failed to bring on record Jamabandis of relevant period.

(ix) On the other hand, the plaintiff company has brought on record intkal no. 3600 and 2601 as Ex.PW3/A and Ex.PW3/B wherein registration number and date of sale deeds is mentioned.

(x) It has been argued by the defendants that as per section 58 of the Registration Act, 1908, the sale deeds (Ex.PW1/7 to Ex.PW1/10) relied by the plaintiff do not transfer any rights as at the time of their registration, Shri Daya Ram had already expired. The argument does not hold good as the sale deed operates from the date of presentation and not from the date of registration as per section 47 of the Registration Act, 1908.

(xi) It is pertinent to mention here that the plaintiff approached the Hon'ble High Court of Delhi by filing WP(C) No. 10954/2006 where the Hon'ble High Court vide its order dated 16.10.2008 (Ex. PW1/11) directed the Sub-Registrar (South) to register the sale deeds. The relevant extracts thereof are reproduced herein below for ready reference:



"....The Sub-Registrar (South), which I am informed is the Registering Authority, is directed to register the sale deeds presented at Sl. Nos. 101 to 105 dated 24.10.1994 within a period of two weeks from today and handover the same to the petitioner."

(xii) In the instant matter, the sale deeds were presented for registration on 24.10.1994 and at that time, Shri Daya Ram was alive.

(xiii) In view of the above discussion, this court has no hesitation to hold that Ex.PW1/4 and Ex.PW1/5 are not forged and fabricated. It is proved on record that defendant no. 1 has transferred 1/6th share each out of his total property to Shri Daya Ram and subsequently, Shri Daya Ram has sold the suit property to the plaintiff company. Therefore, the plaintiff company is entitled to recover its possession from defendants no. 1 to 3."

18. Both the sale deeds dated 09.10.1986 are registered documents and bear the signatures of original defendant No. 1. The respondent examined PW-5, Shri Sevajit, Record Attendant, Government of NCT of Delhi, Department of Delhi Archives and proved on record the certified copies of the sale deeds (Ex. PW-1/4 and Ex. PW-1/5) dated 09.10.1986. Hence, the respondent successfully proved the execution and registration of the sale deeds dated 09.10.1986. It is the case of the original defendant No. 1 that the said sale deeds do not bear his signatures. Hence, the burden of proof was on the original defendant No. 1, to prove that the sale deeds do not bear his signatures and thus, they are forged and fabricated. The original defendant No. 1 had examined himself as DW-1. During his cross-examination, he was confronted with Ex. PW-1/16, the plaint filed by him in case No. 625/2013, titled as **Rajbir Vs. Ghyasi Ram**, wherein he admitted the factum of sale of 1/6th of his share to Mr. Daya Ram. Even though, he denied his signatures in the said document, the respondent proved on record the said



document through PW-6, Shri Vijay Kumar, JA, in the court of Shri Balwinder Singh, learned CJ, Tis Hazari Courts, Delhi by summoning the court record pertaining to the said case. The original defendant Nos. 1 to 3 either examined any witnesses to the sale deeds dated 09.10.1986, nor lead any expert evidence to show that the signature appearing in the sale deeds are not that of the original defendant No. 1. Hence, this Court is of the considered opinion that the original defendant Nos. 1 to 3 miserably failed to prove that Ex. PW-1/4 and Ex. PW-1/5 are forged and fabricated documents. This Court finds no perversity in the findings of the learned Trial Court and hence, it requires no interference from this Court qua issue Nos. 1 & 2.

19. Regarding the issue No. 3, the learned Trial Court held that the original defendant No. 1 had forcibly trespassed into the suit land. The findings of learned Trial Court, in this regard, read, *inter alia*, as follows:-

“Issue No. 3: *Whether the defendant no. 1 has forcibly trespass into the suit property on 11/12.12.2007? OPP*

(i) It is the case of the plaintiff that defendant no. 1 through his sons namely Manoj and Satbir who are defendants no. 2 and 3, illegally trespassed into the suit property, as shown in red colour in the site plan Ex.PW1/1. The plaintiff has successfully proved on record sale deeds Ex.PW1/4 and Ex.PW1/5 as well as sale deeds Ex.PW1/7 to Ex.PW1/10. As per the sale deeds Ex.PW1/4 and Ex.PW1/5, the defendant no. 1 has handed over the actual and physical possession to Shri Daya Ram on 09.10.1986. The relevant extracts thereof are reproduced herein below for ready reference:

"That the actual physical vacant possession of the said land has been delivered by the vendor to the vendee on the spot."

(ii) As per the sale deed Ex.PW1/7 to Ex.PW1/10, Shri Daya Ram subsequently delivered the physical possession of the suit property to the plaintiff company on 24.10.1994.



(iii) *Once the plaintiff company has proved on record due execution of sale deeds, can the contesting defendants dispute the terms of the sale deed wherein it has been mentioned that vacant & physical possession has been delivered to the plaintiff company? And the answer to that is, emphatically no as it is barred under section 92 of the Indian Evidence Act, 1872. Even otherwise, none of the executants have disputed the fact that the possession was not handed over to the plaintiff at the time of execution of the sale deeds, which proves that the possession of the suit property was duly handed over to the plaintiff at the time of execution of the sale deeds.*

(iv) *It is the case of the plaintiff that defendants have forcibly trespassed into the suit property on 11/12.12.2007. The plaintiff has proved on record the police complaint and FIR as Mark PW1/14 and Ex.PW1/15 respectively regarding the trespass in the suit property. The relevant extracts of complaint and FIR are reproduced herein below for ready reference:*

"Now Shri Manoj and Satbir both sons of Shri Rajbir R/o 501, Ghitorni are unauthorizedly, illegally, forcefully and without any right, title or interest trying to encroach upon to the abovesaid land of the company by erecting some temporary structure upon the abovesaid land with muscle power and threatening to face dire consequences if they are stopped from doing so.

Hence it is most respectfully prayed that this illegal and unlawful practice and act on the part of Manoj and Satbir is stopped without any delay and the legitimate right of the complainant company is saved without any fear and threat."

(v) *The onus shifts on the defendants to show that they were in possession before 10/11.12.2007.*

*Admittedly suit land is an agricultural land, therefore, the person claiming to be in possession has to show that it is being enjoyed and cultivated by him (Reliance is placed upon **Anathula Sudhakar vs P Buchi Reddy (Dead) By Lrs & Ors**, Appeal (civil) 6191 of 2001, decided on 25.03.2008). The contesting defendants are claiming to be in possession from last many years. The contesting defendants had the opportunity to bring on record the*



relevant Khasra Girdawari and other revenue records, to show continuous possession before the alleged date of trespass. However, contesting defendants have failed to bring on record any document to prove their continuous possession.

(vi) It is pertinent to mention here that defendant no 1 filed a suit bearing no. 785/2007 for injunction against other parties for not interfering in the suit property without impleading the plaintiff, though Shri Lalit Gupta (PW-1) registered the complaint dated 11.12.2007 (Mark PW1/14) which subsequently, culminated into the FIR (Ex.PW1/15). The defendant no. 1 in Ex.PW1/16 has categorically stated that on 11.12.2007, Shri Lalit Gupta has threatened him to vacate the premises. However, it is surprising that plaintiff failed to implead Shri Lalit Gupta as defendant, though specific allegations were made in the plaint. It is apparent that the contesting defendants cleverly tried to get the injunction order so that they could not be prosecuted for trespass. The plaintiff company has successfully proved on record that the defendants no. 1 to 3 have trespassed in the suit land.”

20. This Court is in agreement with the findings of the learned Trial Court and finds no infirmity or perversity in the findings of the learned Trial Court. Hence, the findings of the learned Trial Court qua issue No. 3 requires no interference.

21. As a natural corollary to the findings of the learned Trial Court qua issue Nos. 1 to 3, the learned Trial Court granted the permanent and mandatory injunction in favour of the respondent and against the appellants and there is no perversity in the said findings.

22. Regarding issue No. 5, the learned Trial Court held that the respondent is entitled to recover Rs. 20,000/- per month as mesne profit from the appellants alongwith interest @ 9% per annum from 10.12.2007 till the date of realization. The findings of the learned Trial Court reads, *inter alia*, as follows:-



“12. **Issue No. 5:** *Whether plaintiff is entitled to recover mesne profit for use and occupation of suit property from defendants no. 1 to 3, if so, at what rate and for which period? OPP*

Admittedly, the suit land which is presently in the possession of the defendants no. 1 to 3 is an agricultural land, therefore, the mesne profit at the rate of Rs.50,000/- per month, as claimed by the plaintiff, seems to be unreasonable. Per contra, defendants no. 2 and 3 have contended that the suit land can fetch something between Rs.2,000/- to Rs.3,000/- per month, but the same seems to be unjustifiable

In Motor & General Finance Ltd. Vs. M/s Nirulas &Ors. 92 (2001) DLT 97, it was held that, where the defendants are prima facie unauthorized occupants, they cannot be allowed to remain in possession of the premises without paying any amount. The court can take judicial notice of the location of the premises, its area etc. for the purpose of awarding mesne profits to the landlord thereof.

Therefore, this court takes judicial notice of the fact that the suit land is around 5 bigha & 15 biswa, located at Mehrauli in South Delhi. Therefore, this court is of the considered opinion that the suit land can fetch Rs.20,000/- per month. Accordingly, defendants no. 1 to 3 are directed to pay mesne profits for use and occupation @Rs.20,000/- per month alongwith interest @9% per annum from 10.12.2007 till the date of its realization.

In view of above, issue no. 5 is decided in favour of the plaintiff and against the defendants.”

23. This Court finds no infirmity in the findings of the learned Trial Court and hence, no interference is called for.

24. During the course of the arguments, the learned counsel for the appellant sought to contend that the possession of the suit property was never handed over to the respondent and hence, the exact location of the suit property was never identified. This Court notes that the original defendants never raised such a plea before the learned Trial Court and are raising the



same for the first time before this Court in the present appeal, and it is impermissible. The respondent had filed, alongwith the plaint, a site plan Ex. PW-1/1. The suit land is clearly identified in Ex.PW-1/1. The Appellant failed to raise any challenge to the said site plan before the learned Trial Court. Sale deeds dated 09.10.1986 (Ex. PW-1/4 and Ex. PW-1/5) and sale deeds dated 24.10.1994 (Ex. PW-1/7 to Ex. PW-1/10) clearly records that the possession of the suit land was handed over to the respondent. As per the revenue record, the suit property was in the name of Shri Gyasi Ram, Shri Shyam Lal and Shri Daya Ram. All these documents categorically record that possession of the property was with the respondent. Hence, in view of the same, this Court is of the considered view that the argument of the appellant is misconceived and hence, it is hereby rejected.

25. Therefore, in view of the same, this Court finds no infirmity in the impugned judgment dated 09.05.2022 passed by the learned Trial Court.

26. Hence, the present appeal is hereby dismissed. No order as to cost.

GAURANG KANTH, J

JULY 15, 2022

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