



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

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Reserved on : 13th July, 2023

Pronounced on: 27th July, 2023

+ **RFA 489/2023**

PRADEEP KUMAR & ANR.

.....Appellants

Through: P.K. Shrivastava, Advocate

versus

RAJ KUMAR

..... Respondent

Through: Mr. Kuldeep Rana, Advocate

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. The instant appeal has been filed under Order XLI read with Section 96 Code of Civil Procedure (CPC) assailing impugned judgment and decree dated 07th February, 2023 passed by Ld. ADJ, Dwarka Courts, Delhi in case bearing CS No.1013/2019 titled as ***Raj Kumar v. Pradeep Kumar & Anr.***

The Suit

2. The respondent/plaintiff had filed a suit for mandatory and permanent injunction, claiming to be the owner and in possession of property bearing no. B-140, Partap Garden, Bindapur, New Delhi-110059,



admeasuring 200 Sq.Yards, since 1987. The appellant/defendant no.1 was the son and appellant/defendant no.2, the wife of defendant no.1 was daughter-in-law of the respondent/plaintiff. As per the plaintiff, he had given oral permission to the defendants to live in a part of the suit property.

3. The defendant/appellants would, however, regularly quarrel with the respondent/plaintiff. By using threats and coercion; they retained permissive possession of the suit property. No money was ever paid by the defendants to the plaintiff at any point of time. Besides the threats, the plaintiff was assaulted by the defendants as well, and also on occasions when defendant no.1 was under the influence of alcohol. They also threatened to file a false case under section 498A IPC.
4. The plaintiff was left with no option but to disown both of them by way of publication in daily newspaper '*Virat Vaibhav*' dated 07th December, 2019 severing all relations with the defendants. Thereafter, he kept on persuading them to leave the said property and manage a living on their own but he continued to be threatened and assaulted by them.
5. In the month of November, 2019, the defendant no.1 in an inebriated condition broke open the lock of kitchen, almirahs and locker of the plaintiff, removed his belongings and when the plaintiff objected, the defendant no.1 started assaulting him. PCR was called, however, no complaint was registered. Later a police complaint was filed to the SHO and other higher officers.



6. Therefore, the suit was filed for possession of the said property and payment of unauthorized usage and occupation charges at the rate of Rs.2,000/- per day, as also praying for mandatory and permanent injunction against the defendants for alienating said property of the plaintiff or creating any third party rights.

The Written Statement

7. The defendants took the objection that they were in possession of the property since the plaintiff had orally mortgaged the suit property with them having taken loan of Rs 12,38,700/- in cash from the defendants on 6 different occasions from 2007 to 2019. They also claimed that a mortgage deed was executed on 28th May, 2019. Accordingly, it had been agreed that the defendant no.1 would let out rooms of the property and collect the rent. It was further alleged that the suit was barred by the law of jurisdiction as per aw of Specific Relief Act. Further, in the para-wise reply of the written statement, general denials of averments of the plaint were made.

The Impugned Judgment

8. The suit was decreed in favour of the plaintiff while deciding an application under Order XII Rule 6, CPC filed by him on the basis that the defendants, in their written statement, did not deny ownership of the plaintiff *qua* the suit property being his self-acquired property and they had no right, title or interest with respect to the same. The only defence taken was of alleged mortgage deed. As regards the mortgage deed, the



Ld. Trial Court raised a query to the defendants requisitioning the original mortgage deed but the defendants claimed to have lost the same after filing the written statement. Further an argument was raised by the counsel for the defendants that in light of the judgment of this Court in *Avneet Kaur Vs Sadhu Singh* bearing Neutral Citation No.2020/DHC/002453, the Court had no jurisdiction to try the suit by virtue of the bar created under section 7(1)(d) of the Family Courts Act, 1984, and hence the plaint ought to have been rejected. This was countered by the counsel for the plaintiff stating that *Avneet Kaur* (supra) was distinguishable since there was no matrimonial dispute pending either between the defendant nos.1 and 2, or between defendants and the plaintiff. Further, even the plaintiff, by way of present suit, was not seeking the eviction of his daughter-in-law only but he was also seeking eviction of his son along with the daughter-in-law. For this, he relied upon the decision of this Court in *Ravneet Kaur v. Prithpal Singh Dhingra* in RFA No.832/2018.

9. On the basis of the pleading, the Ld. Trial Court was of the opinion that there was no doubt that the ownership of the suit property was of the plaintiff, since it had not been specifically denied by the defendants and the only defence was of usufructuary mortgage by the said mortgage deed propounded by the defendants. It was seen that the same was executed on a plain paper which is neither properly stamped nor registered and therefore, is inadmissible due to the bar created by Section 49 of the Registration Act and Section 35 of the Stamp Act.



Thus, there was no plausible defence that the defendants had been able to produce.

10. The relevant provisions adverted to by the Ld. Trial Court are being reproduced hereunder for ease of reference:

Registration Act, 1908

49. Effect of non-registration of documents required to be registered.—No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), *** or as evidence of any collateral transaction not required to be effected by registered instrument.]

Stamp Act, 1899

35. Instruments not duly stamped inadmissible in evidence, etc. — No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped : Provided that—

a) any such instrument [shall] be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;



- b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;*
- c) Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;*
- d) nothing herein contained shall prevent the admission of any instrument in evidence in proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (V of 1898);*
- e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.*

11. As regards the decision in **Avneet Kaur** (supra) and the argument that only Family Courts having jurisdiction, the Ld. Trial Court was of the opinion that there was no matrimonial dispute between the parties and the plaintiff was not seeking eviction only of his daughter-in-law but that of his son as well, and the question of bar of jurisdiction, therefore, does not arise. Consequently, the suit was decreed for possession in favour of the plaintiff and the defendants were directed to hand over the vacant possession of the area marked in the site plan of the suit property and restrained from creating any 3rd party interest.

Submissions of the appellant



12. The only ground which has been raised by the learned counsel for the appellants before this Court is the bar created under section 7 (1) of the Family Courts Act, 1984. No other ground was canvassed. It was submitted that, this being a dispute between the father on one hand and the son and daughter-in-law on the other would have to be referred to the Family Court Act as the Ld. Trial Court would have no jurisdiction. For this purpose, the relevant section is extracted below for ease of reference.

The Family Courts Act, 1984

“Section 7(1)

(1) Subject to the other provisions of this Act, a Family Court shall- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends. Explanation.-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;



(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;
(e) a suit or proceeding for a declaration as to the legitimacy of any person;
(f) a suit or proceeding for maintenance;
(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.”

13. Reliance in particular was placed, by the appellants’ counsel, to section 7 (1) *Explanation* (d) of the Family Courts Act, as per which a suit / proceeding arising out of a marital relationship would be under the jurisdiction of the Family Courts.
14. While the term ‘*marital relationship*’ is not defined under the Act, learned counsel has adverted to the decision in ***Avneet Kaur*** (supra) where this Court has interpreted Clause (d) of *Explanation* to Section 7 (1) of the Act stating that it should not be subjected to ‘*unduly strange interpretation*’ and the dispute which was before the Court in that matter would be within its scope and purview. The dispute in that matter was between the respondent/plaintiffs who were in-laws of the appellant/defendants. The parents-in-law had filed the suit since as per them the daughter-in-law continued to harass them and went to the extent of involving them in criminal cases. Considering the disputes between the daughter-in-law and the parents-in-law, the daughter-in-law ultimately went to stay with her parents and left the matrimonial home.



Both the son and the daughter-in-law used to reside in the suit premises. Thereafter, a suit was filed seeking a decree of permanent injunction restraining the daughter-in-law from entering the suit property and to remove her belongings from there. The objection was taken for transfer of proceedings to the Family Courts. This Court, in those circumstances, had held that for Clause (d) to apply, all that was required was : (i) there was a marital relationship; (ii) the marital relationship has resulted in a certain set of circumstances & (iii) the order of injunction which is sought in the suit, is sought in those circumstances. The court opined that foundation of the relationship between the daughter-in-law and the parents-in-law arose out of a marital relationship and therefore would be covered under the said Clause (d) of Sections 7 (1) of the Family Courts Act.

15. Reliance was also placed on the decision of this Court in ***Geeta Anand v. Tanya Arjun & Anr.*** dated 1st June, 2023 in CS (OS) 601/2022 where the defendants in relation to a suit filed by the mother-in-law for permanent injunction against the daughter-in-law from entering the suit property, had placed reliance on ***Avneet Kaur*** (supra). The said order was however restricted to framing of issues, one of which was '*whether the said suit be exclusively be tried by the Family Court*'. However the said decision is of no relevance as only issues were framed in that suit.

Submissions of the respondent

16. Learned counsel for the respondent sought to distinguish the decision in ***Avneet Kaur*** (supra) stating that in that case there was a single house



and issue had arisen since they were living together, whereas in the instant matter, there are different houses and all that the plaintiff was seeking was the defendants to vacate his self-acquired property. Further, pursuant to their disownment, it is stated that there could be no permissive possession. In this matter there was no matrimonial-based complaint and the suit involved dispossession of the son himself and not just the daughter-in-law.

17. As regards the mortgage deed, the respondent contended that there was no documentary evidence and only a photocopy had been produced and despite the Court's query, no original had been produced.

Analysis

18. Despite that there are certain background facts relating to the misbehaviour of son and daughter-in-law towards the plaintiff, the suit primarily does not arise of any matrimonial dispute between the son and the daughter-in-law or even between the plaintiff-father and the daughter-in-law. The problem clearly arises by virtue of the misbehaviour meted out by the son towards his father and the conduct of the daughter-in-law in addition to this. The fulcrum of dispute is not a marital relationship but dissonance which arose between the son and the father. The fact that the dispute arose after the marriage of the son, is not germane to the issue and is merely incidental. Further, the permissive possession of the suit property (owned by the plaintiff-father), was given by the father-plaintiff to his son and his family, while the plaintiff and his wife i.e. the parents of the son lived in a separate property. Having



disowned his son *vide* a publication in the newspaper, it was within his rights to disentitle the son and son's family from any benefit being gratuitously provided by the father. Even though the appellants had made denial in their written statement, it is clear that they were bald denials and there is no claim to ownership of the suit property. Therefore, the admission regarding the ownership of the suit property being with the respondent-father is clearly implicit.

19. The other bald and evasive denials do not provide a firm basis for defence in the suit. The expansive interpretation in *Avneet Kaur* (supra) cannot possibly extend to all situations where there is merely a factum of marriage as part of the background facts. If such an enlarged and expansive interpretation were to be given beyond what *Avneet Kaur* (supra) seems to decide (in the particular facts and circumstances of that case), then it would bring under purview any matter between the parents and their married children wherever there is a misbehaviour towards the parents.
20. In any event, the appellants are not non-suited in any manner nor their stand has been ill-considered. A regular civil court has heard and considered the matter and the pleas of the parties. It was also pleaded by the respondent counsel that the respondent was an extremely harried father, a senior citizen, who had suffered the last straw, in successive incidents of misbehaviour by his son, which included threats and intimidation, including in inebriated state. Needless to state, absence of any documentary proof of the mortgage decree would not give any



toehold to the appellants to support their plea. Unregistered documents relating to immovable property cannot be accepted as evidence to establish the possessory right of the appellants. Even assuming there was a mortgage deed, it proves that the ownership of the property was with the plaintiff.

21. In this context, it is also worthwhile to take note of the opinion expressed by various Benches of this Court relating to the right of possession of a son in the house owned by the father. A son does not have any vested right to stay in a self-acquired property of the parents and can only be allowed permissive possession at the will of the parents. In ***Sachin & Anr. V. Jhabbu Lal & Anr.*** (2016) SCC OnLine Del 6098 a Single Judge of this Court observed as under:

‘15. Where the house is self acquired house of the parents, son whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents upto the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout his life.’

(emphasis supplied)

22. This was noted with approval by the Division Bench of this Court in ***Shadab Khatri & Anr. V. The State & Ors.*** (2018) SCC OnLine Del 7626 wherein it was held in the context of the Maintenance and Welfare and of Parents and Senior Citizens Act, 2007 and Rules made thereunder, and Delhi Maintenance and Welfare of Parents and Senior Citizens Act, 2016 that in fact there was a statute that enabled an



effective mechanism to ensure welfare and maintenance of parents and senior citizens and noted as under:

“18. A plain reading of the above extracted Rules clearly reflect that a senior citizen is entitled to institute an application seeking eviction of his son, daughter or other legal heir from his self-acquired property on the ground of ill-treatment and non-maintenance.

.....

20. We do not agree. At the outset, we had elaborated on how beneficial legislation in a welfare State demands a liberal interpretation wide enough to achieve the legislative purpose and be responsive to some urgent social demand in a welfare State. The object for which the Act as well as the subject Rules, extracted hereinabove, were brought into force, namely, for the welfare of parents and senior citizens and for protection of their life and property, leave no manner of doubt that the Maintenance Tribunal constituted under the Act has the power and jurisdiction to render the order of eviction.

21. The issue framed hereinbefore is, therefore, decided against the appellants. Before parting, it would be incumbent for us to observe that the appellants have failed to show any rights to continue to occupy the subject property against the wishes of respondent No. 3, especially when the latter has complained of ill-treatment and harassment at the hands of the former.”

(emphasis supplied)

23. Even though it was not argued by the learned counsel for the appellant-defendants, for the purposes of completeness, it is noted that denial by the appellant-defendants as regards the ownership of the property are vague and not specific, and thus entitled the court to draw inference under Order XII Rule 6 CPC of an admission and thereby decree the suit.



24. This aspect has been considered in decisions by this Court *inter alia* in **Vijaya Myne v. Satya Bhushan Kaura** (2007) SCC OnLine Del 828 wherein it was noted and referred to as under –

‘12. It is not necessary to burden this judgment by extracting from the aforesaid authoritative pronouncement as the learned Single Judge has accomplished this exercise with prudence and dexterity. Purpose would be served by summarizing the legal position which is that the purpose and objective in enacting the provision like Order 12 Rule 6, CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree, inasmuch as such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. The admissions can be in the pleadings or otherwise, namely in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case. No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored.

(emphasis supplied)

25. Reference may also be made to **Tirath Ram Shah Charitable Trust & Ors. v. Mrs. Sughra Bi @ Sughra Begum (Decd)** (2015) SCC OnLine Del 13655 where this decision was noted and it was observed as under -

‘12. In the case of Charanjit Lal Mehra v. Smt. Kamal Saroj Mahajan, reported as (2005) 11 SCC 279, the Supreme Court has



held that an admission under Order XII Rule 6 CPC can be inferred from the facts and circumstances of the case and that Order XII Rule 6 CPC has been enacted to expedite trial and where the courts find that the suit can be disposed of on such admissions, it should not hesitate from doing so. It is also relevant to refer to the observations of a Division Bench of this Court in the case of Vijaya Myne v. Satya Bhushan Kaura, reported as 142 (2007) DLT 483, where in the light of the innumerable authorities on Order XII Rule 6 CPC, it was held that admissions can be constructive admissions and need not be specific or expressive, which can be inferred from vague and evasive denial in the written statement while answering specific pleas in the plaint and further, that admissions can even be inferred from the facts and circumstances of a case.

(emphasis supplied)

26. Reference is also made to ***Shivraj Yadav & Ors. v. Dr. Arun Nirula*** (2022) SCC OnLine Del 2352 where the decision in ***Vijay Myne*** (*supra*) was noted and in the facts of that case it was decided as under –

‘29. From a perusal of para 3 of the written statement, what emerges is that the defendant had, while trying to take vague and general pleas in his written statement that the plaintiff was not the owner of the suit property, also simultaneously contended that as the license granted in his favour had not been terminated by the plaintiff, the suit was not maintainable. This admission by the defendant that he was occupying the premises as a licensee of the plaintiff is indeed categoric and clearly shows that despite the defendant trying to take the plea that the plaintiff was not the owner of the suit property, had admitted that he was a licensee under the plaintiff.’

27. A perusal of the Trial Court Record also reveals that while the respondent-plaintiff had filed their documents of ownership of property, the appellant-defendants had merely made bald and vague denials and



there was no assertion that they had a subsisting right of ownership in the said suit property. In any event, the only issue canvassed before this Court was the issue of maintainability in favour of a Family Court, which aspect has been dealt with above.

Conclusion

28. In view of the above discussion there is no merit in the appeal. The same is dismissed, no costs are being imposed. The respondent shall be at liberty to execute the decree in accordance with law.
29. Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JULY 27, 2023/sm