

(2019) 10 DEL CK 0183

In the Delhi High Court

Case No : Regular Second Appeal No. 61 Of 2019, Civil Miscellaneous Application No.13269 Of 2019

Aarti Kumari @ Menka

APPELLANT

Vs

Rakesh Kummar Chhabra & Anr

RESPONDENT

Date of Decision : 23-10-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100

Protection Of Women From Domestic Violence Act, 2005 — Section 2(s)

Citation : (2019) 264 DLT 617 : (2019) 10 AD(Delhi) 28 : (2019) 178 DRJ 98

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : B.K. Pandey, Pankaj Pandey, G.K. Sharma

Final Decision : Dismissed

Judgement

Anu Malhotra, J

1. The respondent no.1 was present as the caveator. The appellant and the respondent no.1 have both been heard.

2. The appellant vide the present Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (as amended) seeks the setting aside of the order dated 22.01.2019 of the learned ADJ-02, (East District), KKD Courts, Delhi in Regular Civil Appeal No.70/2018, whereby the said Regular Civil Appeal against the impugned judgment and decree dated 24.04.2018 of the learned Trial Court in Suit No.88/2017 filed by the respondent no.1 herein as the plaintiff of that suit,- was dismissed except with regard to directions of the payment of mesne profits by the appellant herein and the respondent no.2 i.e. the husband of the appellant herein who is the son of the respondent no.1 i.e. the plaintiff of Suit No.88/2017.

3. Vide the judgment dated 24.04.2018 in Suit No.88/2017, the learned Civil Judge-East, KKD Courts, Delhi in a suit filed by the plaintiff thereof arrayed as

the respondent no.1 to the present Regular Second Appeal who is the father-in-law of the appellant herein and the father of the respondent no.2 herein, in a suit filed by the father-in-law i.e. the respondent no.1 herein against the defendants i.e. his son who is the respondent no.2 herein and his daughter-in-law i.e. the appellant herein seeking a mandatory and permanent injunction with mesne profits and damages was decreed as under:-

"36. In view of the aforesaid facts and circumstances, the-Plaintiff is granted the following reliefs:

36.1 Defendants are directed to remove themselves and their Belongings by vacating and handing over a peaceful and vacant possession of the second floor of the suit property i.e. J- 1/C, Laxmi Nagar, Near Jagat Ram Park, Delhi-110092 as shown in red colour in the site plan within two months from the date of this order.

36.2 Defendants are permanently enjoined from creating any third party interest in the suit property i.e. J-1/C, Second Floor, Laxmi Nagar, Near Jagat Ram Park, Delhi--110092 in any manner till handing over the same to the. Plaintiff or thereafter.

36.3 Defendant no.1 is ordered to pay user charges w.e.f. 10.07.2013 at the rate of Rs.3,000/- per month till vacation of the suit premises.

36.4 Defendants are jointly and severally ordered to pay user charges 31.01.17 at the rate of Rs.3,000/- per month till vacation of the suit premises.

37. Keeping in mind the relationship of the parties, no order as to costs. Let a decree sheet be prepared in the aforesaid terms. Site plan shall form part of the decree. All pending applications, if any, are disposed off as not pressed. File, be consigned to record room after necessary compliance."

4. The learned Civil Judge-East, KKD Courts Delhi vide the judgment dated 24.04.2018 held that the plaintiff of the suit i.e. the respondent no.1 herein in view of the GPA Sale transaction through documents i.e. GPA, Agreement to Sell, Affidavit, Will and receipt etc. in relation to the property J-1/C, Laxmi Nagar, Near Jagat Ram Park, Delhi-110092 though, he did not become an absolute owner as in the case of a sale deed transaction and did not have a perfect title of property in his favour, nevertheless he had a better title over the suit property in comparison of the defendants of that suit i.e. his son and his daughter-in-law who are arrayed as the respondent no.2 and the appellant respectively to the present petition, who had no valid claim of ownership over the suit property at all.

5. The learned Civil Judge-East, KKD Courts, Delhi also held that the license granted by the respondent no.1 herein i.e. the father-in-law/plaintiff of the suit to his son and his daughter-in-law to live in the premises belonging to him i.e. J-1/C, Laxmi Nagar, Near Jagat Ram Park, Delhi-110092 constructed upto the 4th Floor on which the appellant herein and her husband i.e. the son of the respondent no.1 herein were residing on the 2nd Floor of the suit property after

the marriage of the respondent no.2 herein with the appellant, had been terminated by the father-in-law i.e. the plaintiff of the said suit i.e. the respondent no.1 herein by publication of a public notice dated 06.07.2017 in the Newspaper "Rashtriya Sahara" disowning his son and daughter-in-law and specifically revoking the license granted to his son and daughter-in-law vide a legal notice dated 30.01.2017 and by institution of the suit seeking mandatory injunction to his son and daughter-in-law to leave the premises and also seeking a restraint against them creating any third party interest in the suit property.

6. The contention that the appellant herein raised before the learned Civil Judge-East, KKD Courts, Delhi that the said premises on the 2nd Floor of J-1/C, Laxmi Nagar, Near Jagat Ram Park, Delhi-110092 formed her matrimonial home and a shared household, in which she had a legal right to reside and that she could not be dispossessed from the same by her father-in-law,- was rejected by the learned Civil Judge-East observing to the effect that the suit property neither belonged to the husband of the appellant i.e. the respondent no.2 herein nor had it been taken on rent by the husband of the appellant herein nor was it a joint family property of which the husband of the appellant herein was a member nor was it an ancestral property and thus, did not fall within the ambit of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005. The learned Civil Judge-East, KKD Courts, Delhi thus, held that the daughter-in-law of the respondent no.1 i.e. the appellant herein had no right in the suit property in terms of the verdict of this Court in "Savitri Devi Vs. Manoj Kumar and Anr." III (2013) DMC 689, wherein it was held to the effect:-

"In view of the above legal position, the contention of defendant - no.2 regarding her rights under the Protection of Woman from Domestic Violence Act cannot be accepted, Her reliance on Section 17 of the said Act, to claim a right to reside in the suit property is misconceived inasmuch as admittedly her husband has no rights whatsoever in the suit property. The property neither belongs to defendant no.1 nor is taken on rent by him nor is a joint family property. of which defendant no.1 is a member. The said property cannot be regarded as a "shared household" as defined under Section 2(s) of the Domestic Violence Act. Defendant no.2 has no rights to the suit property. Her rights for maintenance etc. against defendant no.1 are not issues in the present suit. There is no averment or submission regarding any such proceedings have been initiated by defendant no.2."

7. Reference was also made by the learned Civil Judge-East, KKD Courts Delhi on the observations of the Hon'ble Supreme Court in "S.R. Batra & Anr. Vs. Taruna Batra" (2007) 3 SCC 169, with specific reliance on the observations in Para 26 of the said verdict, which reads to the effect:-

"26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that becomes a shared household. It is quite possible that the husband and wife may have lived together in dozen of places e.g. with the husband's father, husband's paternal grand parents, his

maternal parents, uncles, .aunts, brothers, sisters, nephews, nieces, etc. If the interpretation canvassed by the Ld. Counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in all these houses of her husband's relative merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.", and reference was also made by the learned Civil Judge-East, KKD Courts, Delhi to the verdict of the Hon'ble Division Bench of this Court in "Shumita Didi Sandhu Vs. Sanjay Singh Sandhu & Ors." 174 (2010) DLT 79, wherein it was observed to the effect:-

"40... Insofar as Section 17 of the said Act is concerned, a wife would only be entitled to claim a right of residence in a "shared household" and such a household would only mean the house belonging to or taken, on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property which neither belongs to the husband nor is taken on rent by him, nor is it a joint family property in which the husband is a member cannot be regarded as a "shared household". Clearly, the property which exclusively belongs to the father-in-law or the mother-in-law or to them both in which the husband has no right, title or interest, cannot be called a "shared household". The concept of matrimonial home, as would be applicable in England under the Matrimonial Homes Act, 1967, has no relevancy in India."

8. Vide judgment dated 24.04.2018, the learned Civil Judge-East, KKD Courts, Delhi thus, concluded that as the plaintiff of the Suit No.88/17 i.e. the respondent no.1 herein i.e. the father-in-law of the appellant herein had a better title over the suit property as compared to the defendants thereto and the defendants were residing in the property as a licensee of the plaintiff, he was thus entitled to the permanent injunction, as prayed for and the defendants to the suit were restrained from creating any third party interest in the same and also granted mesne profits against the defendant no.1 arrayed as the respondent no.2 to the present Regular Second Appeal apart from directing the defendants i.e. the appellant and the respondent no.2 herein to remove themselves and their belongings by vacating and handing over the vacant and peaceful possession of the 2nd Floor of the suit property i.e. J-1/C, Laxmi Nagar, Near Jagat Ram Park, Delhi-110092 to the plaintiff i.e. the respondent no.1 herein.

9. Vide order dated 22.01.2019, the First Appellate Court i.e. of the Court of the learned ADJ-02 (East District), KKD Courts, Delhi, it was held to the effect that the appellant therein i.e. the appellant herein and the respondent no.2 therein i.e. the respondent no.2 herein and her husband occupied the 2nd Floor of the suit property and there was nothing on record to suggest that they were sharing a common mess with the respondent no.1 therein i.e. the respondent no.1 herein, which was one of the criteria in SR Batra's case (supra) to determine a joint family and upheld the view taken by the learned Civil Judge-East that the son and the daughter-in-law of the plaintiff of the suit arrayed as the respondent no.1 herein were not only licensees but only permissive users in the property

owned by the respondent no.1 herein i.e. the plaintiff of the suit and that the appellant and the respondent no.2 herein had no right, title or interest during their lifetime in the suit property and that there was no illegality in the order of the learned Civil Judge-East, KKD Courts, Delhi granting the permanent and mandatory injunction that had been granted.

10. The only modification that the First Appellate Court made was that mesne profits at the rate of Rs.3,000/- per month granted by the learned Civil Judge-East against both the son of the respondent no.1 and his wife i.e. the appellant herein were modified to read to the effect that the mesne profits were payable only by the son of the respondent no.1 i.e. respondent no.2 herein and not by the daughter-in-law of the respondent no.1 i.e. the appellant herein, in as much as it was an obligation of the respondent no.2 herein to maintain his wife.

11. The appellant vide the present Regular Second Appeal seeks to urge the following purported substantial questions of law, which read to the effect:-

"A. Whether the plaintiff/respondent No.1 herein has not failed to establish that he is not the absolute and rightful owner of the suit Property as the ownership documents i.e. IGPA, Agreement to sell, Receipt Will & Possession Letter executed by the person in his favour, has no authority to execute the said documents.

B. Whether the plaintiff/respondent No.1 has not failed to establish before the Ld. Trial Court that the suit property in question was his self acquired property.

C. Whether the suit property is not an ancestral property as the same was purchased by selling the another property of the father of Respondent No.1/ Plaintiff situated in Geeta Colony, Delhi as he admitted the same in the cross examination dated 10.10.2017 ?

D. Whether the appellant is not entitled to reside in the suit property as the same is being her matrimonial/share house hold ?

E. Whether the Respondent No.1 and his son i.e. respondent No.2 have no collusion with each other for illegally dispossessing the appellant by way of filling the Suit No.88/2017 before the Ld. Trial Court for taking revenge from the appellant ?"

12. The appellant has further urged the following grounds, which are to the effect:-

"A. Because the present suit is not maintainable under the eyes of law being misconceived, frivolous, vexatious, baseless, ill-motivated and false to the core.

B. Because the Ld. ADJ has passed the impugned order without applying judicial mind and in a mechanical manner without appreciating the facts of the case.

C. Because the Ld. ADJ failed to appreciate that the respondent No.1/Plaintiff is not the absolute and rightful-owner of the suit Property as the ownership

documents i.e. IGPA, Agreement to sell. Receipt Will & Possession Letter executed by the person in favour of the respondent No.1/Plaintiff has no authority to execute the said documents and as such respondent No.1/Plaintiff cannot seek relief for dispossession of the suit property from the appellant.

D. Because the Ld. ADJ failed to appreciate that suit property is an ancestral property as the same was purchased by selling the another property of the father of Respondent No.1 situated in Geeta Colony, Delhi hence appellant has right to reside and respondent no.1 has no right to dispossess her. Said facts has been admitted by the Respondent No.1 in his Cross examination dated 10.10.2017.

E. Because the Ld. ADJ Court failed to appreciate that the appellant and her daughter has right to reside in the suit property being an ancestral property and the same is being her matrimonial/share house hold also and respondent No. 2 is in collusion with his father/Respondent No.1 in getting dispossess the appellant from the suit property with a view to take the revenge from her.

F. Because the Ld. ADJ did not catch the falsehood of the respondent No.1/plaintiff as he has terminated the license through notice dated 31.01.2017 and asked the appellant and respondent No.2 to vacate the suit property. But true facts are that respondent No.1 has done so only on the recommendation of her son i.e. Respondent No.2 to teach lesion to the Appellant as Respondent No.2 is neither residing with the appellant nor maintaining to the appellant and her child/daughter. Current Electricity Bill and current Gas Connection delivery report are showing the address of Respondent No.2 as J-1/B, 2nd Floor, Laxmi Nagar, Delhi (Suit Property). Gas Agency has given certificate dated 22.06.2018 stating that "Rahul Chabra is Indane gas customer of our agency his consumer No. is CXI673534 and his residence address which is showing in our records is J-1/C, IInd Floor, Laxminagar. He and his family members are taking a gas to us regular basis by our deliverymen Prem Kumar."

Appellant is not having any such cylinder in her kitchen as appellant has been restrained by the respondent No.1/plaintiff to use the same, hence in these facts and circumstances it is clear that father/Respondent No.1 and mother of respondent No.2 are taking the delivery of said gas cylinders at the suit property and to fulfill their ill motive plan respondent No.1/plaintiff with connivance of Respondent No.2 moved the suit before the Ld. Trial Court.

G. Because the Ld. ADJ failed to appreciate the settled law that a person claiming ownership rights over the immovable property is required to show his clear title documents and it is always better to shot down the bogus and vexatious suit at its initial stage so that valuable time of judiciary could be saved and the defendants could be saved from harassment in contesting such bogus and vexatious suit.

H. Because the Ld. ADJ failed to appreciate that Respondent No.2/Husband of appellant has stated in his separate written statement filed before the Ld. Trial Court stating that Suit property has been constructed out of the funds and

contribution provided by him out of his personal source of income and therefore he has equal share in the suit property. He also denied that he started misbehaving with the plaintiff, his wife and younger son on one pretext or other. On the other side Respondent No.1/Plaintiff in his cross examination dated 10.10.2017 stated that:

"I never filed income tax return not more than 2-3 lacks till date" My property of Geeta Colony was sold out at Rs. 20,000/- to 25,000/- It is correct that the amount of sold property of Geeta colony was used to purchase the property bearing No. J-1/C, Laxnninagar, Delhi... It is correct that during the construction I had borrowed some money from other relatives."

It is submitted that the suit property was constructed upto 4 story in the year 2012-2013 and after demolition of previous construction made upon it and Respondent No.1 is saying that he has no income of Rs.2 Lacks per annum that's why he is not filling income tax return, then how he had bear huge expedite of said construction which might had come around Rs. 50 Lacks..

I. Because the Ld. ADJ was duty bound to look into all the facts of the case and questions arisen therein. The Ld. ADJ wrongly decided the appeal."

13. It is essential to observe that the Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (as amended) lies only on questions of law and findings of fact recorded by the First Trial Court of the learned Civil Judge and findings of fact recorded by the First Appellate Court, cannot be interfered with in the Second Appeal unless found to be perverse.

14. A bare perusal of the judgment dated 24.04.20108 of the learned Civil Judge-East, KKD Courts Delhi and of the First Appellate Court (East District), KKD Courts, Delhi dated 22.01.2019, brings forth no such perversity nor any infirmity.

15. There is nothing on the record to substantiate the claim of Rahul Chhabra i.e. the defendant no.1 to the Suit No.88/2017 who is the husband of the appellant to bring forth that he was in any manner the owner or tenant of J-1/C, Laxmi Nagar, Near Jagat Ram Park, Delhi-110092 of the 2nd Floor thereof or that there was a joint mess between Rahul Chhabra and his father i.e. the respondent no.1 herein even after the marriage of the appellant to the respondent no.2 herein.

16. The contention that is sought to be raised through the present appeal that the Gas Agency had given a certificate dated 22.06.2018 stating therein to the effect:-

"Rahul Chabra is Indane gas customer of our agency his consumer No. is CXI673534 and his residence address which is showing in our records is J-1/C, IInd Floor, Laxminagar. He and his family members are taking a gas to us regular basis by our deliverymen Prem Kumar.", does not bring forth the sharing of any common mess by the respondent no.1 herein with his son and daughter-in-law i.e. the respondent no.2 and the appellant herein respectively on the 2nd Floor of the premises.

17. The appellant apparently having lived in the suit premises only because of her marriage with the respondent no.2 herein who is the son of the respondent no.1, cannot claim rights in the premises J-1/C, Laxmi Nagar, Near Jagat Ram Park, Delhi-110092 beyond those vested in her spouse, who clearly as per the record was a licensee in the suit premises in which his father i.e. the respondent no.1 has a better title. Furthermore, in the instant case, the suit was filed by the plaintiff between parties inter se and the defendants to the suit filed by the plaintiff, which defendants had no better title and not against any allotting authority and taking into account the factum that the respondent no.1 herein had purchased the property against valuable consideration, he undoubtedly has a better title over the suit property as against his son and daughter-in-law.

18. As regards the contention raised by the appellant that the premises J-1/C, Laxmi Nagar, Near Jagat Ram Park, Delhi-110092 was a shared household of the appellant in terms of Section 2(s) of the Protection of Women from the Domestic Violence Act, 2005, it is essential to observe that Section 2(s) of the said enactment provides as follows:-

"2. Definitions-

.....

.....

.....

....

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

...."

19. As rightly held by the learned Civil Judge-East, KKD Courts, Delhi and the learned ADJ-02 (East District), the suit premises were neither owned nor tenanted by the husband of the appellant nor did the premises belong to the joint family comprising the respondent nos. 1 & 2 and thus, does not fall within the ambit of Section 2(s) of the Protection of Women from the Domestic Violence Act, 2005.

20. In the circumstances, in view of the verdict of the Hon'ble Supreme Court in "S.R. Batra & Anr. Vs. Taruna Batra" (2007) 3 SCC 169, the verdict of this Court in "Manju Gupta Vs. Pankaj Gupta" 2018 SCC OnLine Del 11337, "Jotsna Vs.

Lakhpur Rai" 2016 SCC OnLine Del 6205, "Harish Chand Tandon Vs. Darpan Tandon and Ors." 2015(153)DRJ273, "Sudha Mishra s. Surya Chandra Mishra" 2015(2)Crimes182(Del.), it is held that there is no infirmity nor perversity in the impugned judgment of the learned Civil Judge-East, KKD Courts, Delhi nor of the First Appellate Court (East District), KKD Courts, Delhi, on the findings of facts therein nor do the facts put forth and issues determined by the learned Civil Judge-East and the First Appellate Court give rise to any substantial question of law.

21. As there is no substantial question of law that arises, thus, there is no notice of the second appeal being issued to the respondent no.2.

22. In view thereof, the present Regular Second Appeal No.61/2019 and the accompanying application are thus, dismissed.