

(2014) 05 DEL CK 0170**Delhi High Court****Case No:** RSA No. 12 of 2013

Davinder Kumar

APPELLANT

Vs

Ram Kaur

RESPONDENT

Date of Decision: May 20, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100
- Delhi Rent Control Act, 1958 - Section 14(1)(a)

Citation: (2014) 2 RCR(Rent) 153**Hon'ble Judges:** Valmiki J. Mehta, J**Bench:** Single Bench**Advocate:** Sudhamu Palo and Bhavesh Kr. Sharma, Advocate for the Appellant; Naveen Kumar Goyal, Advocate for the Respondent**Final Decision:** Dismissed**Judgement**

Valmiki J Mehta, J.

This second appeal is filed u/s 100 CPC impugning the concurrent judgments of the courts below; of the trial court dated 06.02.2010 and the first appellate court dated 20.10.2010; by which the suit of the respondent/plaintiff for possession and damages has been decreed against the appellant/defendant with respect to the property bearing No. A-179, Harijan Basti, Kondli, Delhi-110096 shown in red in the site plan, Exhibit PW1/D. Respondent/plaintiff has also been granted user and occupation charges with effect from 01.11.1999. The case of the respondent/plaintiff, and who is alleged by the appellant/defendant to be his adoptive mother, was that the suit property was purchased by the respondent/plaintiff by means of the documentation of the year 1987. These documents have during the course of trial been approved and exhibited by the respondent/plaintiff as Ex.PW1/A to Ex. PW1/C. The respondent/plaintiff also stated that the appellant/defendant was let out the suit property at Rs. 800/- per month as a tenant and on account of non-payment of rent a petition u/s 14(1)(a) of the Delhi

Rent Control Act, 1958 was filed but this petition was subsequently withdrawn as the suit property was not covered under the Delhi Rent Control Act, 1958. The respondent/plaintiff claimed that the appellant/defendant falsely claimed that he was adopted by the respondent/plaintiff and her husband Nathu Singh Bodh but there was no adoption. Accordingly, the respondent/plaintiff prayed for decree of possession/damages with respect to the suit property.

2. The appellant/defendant had contended in his written statement that he was the adopted son of the respondent/plaintiff and her husband Shri Nathu Singh Bodh. It was also claimed in the courts below by the appellant/defendant, though it was not argued before me, that the suit property was purchased in the name of the respondent/plaintiff from the funds received on sale of a property in the name of the husband of the respondent/plaintiff and therefore the appellant/defendant was a co-owner with respondent-plaintiff. Essentially, the suit was prayed for being dismissed because respondent/plaintiff was not to be the sole owner of the suit property as also the appellant/defendant is the co-owner with the respondent/plaintiff as he is the adopted son of the respondent/plaintiff and her husband Sh. Nathu Singh Bodh.

3. The courts below have held that the appellant/defendant failed to establish his case of alleged adoption. The first appellate court noted this aspect in paras 12 and 13 of the impugned judgment which read as under:-

"12. DW-1 defendant was cross examined. In his cross examination he has stated that he did not know whether the suit property was in the name of the plaintiff. He stated that he did not have any document in his possession to show that the suit property was ever standing in the name of Sh. Nathu Singh Bodh. He has admitted that he had filed a suit for injunction against the plaintiff which was dismissed by the Court of Sh. Sanatan Prasad, Civil Judge in the year 2002 due to lack of evidence. DW-1 has not produced any documents to show that the suit property was purchased from the sale proceeds of property at Kundan Nagar, Laxmi Nagar, Delhi. No document of sale of property No. 471, Kundan Nagar, Laxmi Nagar, Delhi has been filed or prove by the defendant. Defendant has not placed on record any deed of adoption.

13. DW-2 is Sh. Jagroshni who is the wife of defendant. She has deposed by way of affidavit EX. DW2/A which is identical to the affidavit of her husband DW-1. In her cross examination she has admitted that she was not present when the defendant was adopted by Sh. Nathu Singh Bodh. She admitted that she did not have any personal knowledge of the events which took place before her marriage with the defendant. Apart from these two witnesses defendant has not produced any other witness to produce that he was adopted by late Sh. Nathu Singh Bodh. There is no evidence to show that suit property was purchased from the fund generated from sale of property at Kundan Nagar, Laxmi Nagar, Delhi. There is no evidence to show that Sh. Nathu Singh Bodh was owner of the property at Kundan Nagar, Laxmi

Nagar, Delhi. In view of these facts, Ld. Trial Court has rightly held that the defendant could not prove that he is adopted son of Sh. Nathu Singh Bodh and that the suit property was purchased out of the sale proceeds of property at Kundan Nagar, Laxmi Nagar, Delhi. These issues were thus rightly decided in favour of the plaintiff and against the defendant by the Ld. Trial Court."

4. (i) I completely agree with the aforesaid conclusion of the courts below because the appellant/defendant failed to lead any credible evidence whatsoever, much less documentary evidence, to show his adoption by the respondent/plaintiff and her husband Sh. Nathu Singh Bodh. Once the case for adoption is not proved the appellant/defendant cannot be held to be the co-owner of the suit property along with the respondent/plaintiff on the ground that the suit property is in fact the property of both the appellant/defendant and the respondent/plaintiff inasmuch as the respondent/plaintiff had purchased the suit property from the funds of the property standing in the name of the husband of the respondent/plaintiff Shri Nathu Singh Bodh.

(ii) I may also state that the case of the appellant/defendant being a co-owner on the ground that the suit property was purchased from the funds of a property owned in the name of Nathu Singh Bodh, husband of respondent/plaintiff is also misconceived because such a claim would be barred by the provisions of Benami Transactions (Prohibition) Act, 1988 because there is no case pleaded on behalf of the appellant/defendant that there existed an HUF.

(iii) Therefore, looking at in any manner of the appellant/defendant having failed to prove the case of adoption or the fact that the suit property is in the name of the respondent/plaintiff as an exclusive owner, appellant/defendant had no right in the suit property.

5. Learned counsel for the appellant sought to argue before this court that the suit property was in fact of 100 sq. yards and therefore decree be passed only of 50 sq. yards with respect to which the documents Exhibits PW1/A to PW1/C exist. This argument of the appellant/defendant is misconceived because the documents Exhibits PW1/A to PW1/C by which the respondent purchased the suit property shows that the suit property is of an area of 50 sq. yards and only with respect to which possession is claimed. How the appellant/defendant claims that the property is of 100 sq. yards is not understood because I do not find any plea in any pleading of the appellant/defendant or any discussion by the courts below which shows that the suit property is of 100 sq. yards. Therefore, the argument of the appellant/defendant that he should be entitled to continue in occupation of the balance 50 sq. yards is wholly frivolous and misconceived. I, therefore, reject the argument urged on behalf of the appellant/defendant that he should be entitled to continue to occupy 50 sq. yards of A-179, Harijan Basti Kondli, Delhi. In view of the above, I do not find any substantial question of law, and therefore, the appeal is dismissed, leaving the parties to bear their own costs.