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

% *Date of Decision: 24th November, 2016*

+ **RSA 136/2016 & CM No.19123/2016**

SACHIN & ANR Appellants

Through: Appellant No.1 in person

versus

JHABBU LAL & ANR Respondents

Through: Mr.Rakesh Kumar, Advocate with
respondents in person

PRATIBHA RANI, J. (Oral)

1. The appellant No.1, who is present in person, requests for an adjournment on the ground that he wants to change his counsel. The appellants are enjoying an ex-parte interim stay granted in their favour on 20th May, 2016 against their dispossession from the suit property.

2. On 29th August, 2016 the appellants requested for a date on the ground that the counsel was suffering from fever. This Court passed the following order:-

“1. Only for the reason that counsel for the appellants is said to be down with fever, therefore, this case is adjourned, otherwise prima facie I find no merits in the appeal where appellants/defendants who are son and daughter-in-law of the respondents/plaintiffs have been evicted from the suit premises.

2. List on 7th September, 2016.”

3. On 7th September, 2016 after hearing respondent No.2, mother of the appellant No.1, with the consent of the parties, appellant No.1 Sachin was directed to pay ₹ 3500/- per month to the respondents/parents with effect from September, 2016. Appellant No.1 Sachin undertook to comply with

this obligation. He also agreed not to stop his elder brother Sanjay (Defendant No.1) from using the second floor of the property. Matter was also referred to the mediation. Mediation report dated 17th October, 2016 received with the report that it was 'Non-Starter'.

4. Today appellant No.1 Sachin was asked as to whether he has complied with the order dated 7th September, 2016 by making payment to his parents, he simply stated that he has no money to pay and sought time to change his counsel. The appellant No.1 was again asked whether he is ready to comply with the directions dated 7th September, 2016 as in that case he can be given time to make the payment to his parents. The appellant No.1 has refused to make any payment to his parents.

5. When the mediation failed on 17th October, 2016, if the appellants intended to change their counsel, nothing prevented them from doing so. The appellants cannot be permitted to abuse the process of law by seeking adjournment on one pretext or the others especially when they are enjoying ad-interim stay against their dispossession from this Court.

6. Heard.

7. The Regular Second Appeal No.136/2016 under Section 100 of the Code of Civil Procedure, 1908 impugns the concurrent judgment of the Court below i.e. of the trial Court dated 16th March, 2015 and of the First Appellate Court dated 13th January, 2016 whereby Civil Suit No.49/14 filed on 11th February, 2014 by the parents of the appellants (respondent Nos.1 & 2 herein) against their two sons and their wives seeking decree of permanent and mandatory injunction has been decreed.

8. The suit was filed by respondent No.1, Sh.Jhabbu Lal and respondent No.2, Smt.Raj Devi pleading that they are senior citizens residing on ground

floor in House No.RZ-H-81, Gali No.4, Nihal Vihar, Nangloi, Delhi-110041 and construction on the said plot has been raised upto second floor. Their elder son Sanjay along with his wife Mamta was permitted to live on the second floor whereas the younger son Sachin along with his wife Neetu was permitted to live on the first floor of the said property out of love and affection for their sons. The parents of the appellant No.1 claimed themselves to be owner of the suit property which was self acquired. It was further pleaded by the parents of the appellants that their sons as well their wives made the life hell for them so much so that they were not even paying the electricity bills. The old parents were constrained to make various complaints to the police and also issued public notice on 5th January, 2007 and 17th May, 2012 disowning their sons and debarring them from their self acquired property. It was also pleaded that said property was purchased by them by selling their earlier property being RZ-H-215A, Nihal Vihar, Laxmi Park, Nangloi, Delhi-110041. Since the behaviour of the two sons and their wives became unbearable, they filed a suit seeking a decree of mandatory injunction directing them to vacate the floors in their possession and also to restrain them from creating any third party interest in the said property.

9. Two separate written statements were filed by the Sanjay and his wife (Defendant Nos.1 & 2) and Sachin and his wife Neetu (Defendant Nos.3 and 4) denying the claims of the plaintiffs to be the exclusive owner of the suit property or that it was their self acquired property. They claimed to be co-owner having contributed towards purchase as well as towards costs of construction for the said property.

10. Perusal of the LCR shows that on 9th September, 2014 following issues were framed:-

1. *Whether the plaintiff is entitled to be relief of mandatory and permanent injunction as prayed? OPP*

2. *Whether the plaintiff is not the exclusive owner of the suit property and the defendant are the co-owners? OPD*
3. *Relief.*

11. Both the plaintiffs filed their examination-in-chief by way of affidavit in support of the averments made in the plaint. However, all the four defendants failed to appear at that stage thus their right to cross-examine PW-1 & PW-2 was closed by the Court. Even at the stage of defence evidence none of the defendants led any evidence to prove that plaintiffs were not the exclusive owner of the suit property or that they were the co-owners. Believing the unrebutted testimony of the plaintiffs which was supported by necessary documentary evidence, learned trial Court decreed the suit inter alia on the following grounds:-

- (i) The documents i.e. GPA, agreement to sell, receipt and Will being in favour of the plaintiff No.1 (Father of defendant Nos.1 & 3) though do not make him absolute owner but he has a better title as compared to the defendants.
- (ii) It has not been denied by the defendants that the property stands in the name of the plaintiff No.1 Sh. Jhabbu Lal and have not claimed any ownership right of their own distinguished from the plaintiffs. No evidence has been led to prove that they are the co-owners having contributed their share towards the purchase of the said property.
- (iii) The testimony of the plaintiffs that defendants were licensees and their license has been revoked stands unrebutted.
- (iv) Suit for mandatory injunction being filed within a reasonable time i.e. within six months period after termination of the license, separate suit for possession is not mandatory. Decree for mandatory and permanent injunction was accordingly passed in respect of the suit property.

12. The first appeal bearing RCA No.63/15 was filed only by defendant

Nos.3 and 4 i.e. younger son Sachin and his wife Neetu. Before the First Appellate Court the grievance was more towards the learned Presiding Officer than on merits.

13. The appeal was dismissed observing that it was a case of gross-negligence on the part of the appellants/defendant Nos.3 & 4 in defending the case. It was further held that in the absence of any evidence being led by the appellants and the testimony of the respondents/plaintiffs having remained unchallenged, the impugned order was not suffering from any illegality. Hence the appeal was dismissed.

14. The appellant No.1 is the younger son of the respondent No.1/plaintiff No.1 Jhabbu Lal who has led detailed evidence both oral and documentary duly corroborated by testimony of his wife, respondent No.2/plaintiff No.2 Smt. Raj Devi to prove their case. The respondent Nos.1 and 2/plaintiffs may not have proved themselves to be the owner of the suit property as may be established in a case of acquiring title under a registered sale deed but surely they would have better rights/entitlement to seek possession of the suit property from his sons who were permitted to live on the first floor only out of love and affection towards them.

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.

16. In my opinion in a case such as the present one where the appellants/defendant Nos.3 & 4 have led no evidence to prove that they waived self acquired or co-ownership in the suit property whereas

respondents/plaintiffs No.1 & 2 have proved their case on the basis of documentary evidence i.e. copies of General Power of Attorney, Agreement to Sell, Receipt possession letter Affidavit etc., the learned trial Court was justified in decreeing the suit which was upheld by the First Appellate Court. 17. In view of the above no substantial question of law arises for this Court to exercise its power under Section 100 of the Code of Civil Procedure. Therefore, the appeal is dismissed leaving the parties to bear their own costs.

PRATIBHA RANI, J.

NOVEMBER 24, 2016

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