

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

% *Date of Judgment: 03.12.2010*

+ **RSA No.86/2010 & CM No.8148/2010 (for stay)**

SMT.SHOBHA YADAV Appellant
Through: Mr. Mr.M.M.Singh & Mr.S.K.Singh,
Advocates.

Versus
SMT.ANITA VERMA Respondent
Through: Nemo,

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 4.3.2010 which had endorsed the finding of the trial judge dated 22.9.2009 whereby the suit of the plaintiff/respondent Anita Verma seeking possession of the suit property bearing No.4/2932, Shri Ram Colony, SS Block, Bhola Nathl Nagar, Shahdara, Delhi had been decreed in her favour.

2. Admittedly an unregistered lease deed dated 3.6.2006 had been executed between the plaintiff and the defendant. The rent was RS.5500/- per month. The lease was for a period of 11 months which expired by efflux of time on 30.4.2007. During the course of the proceedings, the defendant was proceeded ex parte on 23.5.2008. Application under Order 9 Rule 7 Code of Civil Procedure was dismissed on 18.8.2008. However, right to cross-examine the witnesses of the plaintiff was granted to the

defendant. The defendant, however, did not put in appearance. Preliminary decree was passed on 05.3.2009. An application under Order 9 Rule 13 of the Code of Civil Procedure had been preferred which was allowed; result of which was that the defendant was permitted to cross-examine the witnesses of the plaintiff. Suit was thereafter decreed for possession and mesne profits on 22.9.2009.

3. First appellate Court vide the impugned judgment and decree dated 4.3.2010 had endorsed the finding of the trial judge.

4. This is a second appeal before this Court. It has been urged that the lease deed dated 3.6.2006 had been altered; it could have been proved in the manner in which it was sought to be proved.

5. The perusal of the record shows that the lease deed dated 03.6.2006 has been proved as Ex.PW-1/1. The contention now raised before this Court that this document had been altered and the document produced before the court was not the true copy of the original lease deed can be gone into at the stage in a second appeal. This contention was neither raised before the trial judge nor before the first appellate Court. The second submission of the learned counsel for the appellant that he had filed a suit for permanent injunction in which an ex parte order was perused which is operating in his faovur was not looked into by the first appellate Court is also an argument to be noted and to be rejected. It has been noted in the impugned judgment that mere filing of a suit for permanent injunction would not give any right to the defendant over the suit property. Neither the plaint nor the written statement or said order in her favour had been filed in the absence of which the Court below had rightly not taken note of the same.

6. The substantial questions of law have been formulated on the page 2 of the body of the appeal. No question of law much less any substantial question of law having arisen, the appeal also the application is dismissed in limine.

INDERMEET KAUR, J.

DECEMBER 03, 2010
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