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

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Judgment delivered on: 23.05.2011

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RSA No.87/2009

M/S. K.K. LEE

Through: Mr. Anoop Bagai, Sr. Advocate
with Mr. Rajat Joseph and Mr.
Sunit Anand, Advocates

.....Appellant

Versus

SHRI RAM PRAKASH KALRA & ANR.

Through: Mr. G.D. Chotmurada,
Counsel for R-1

.....Respondent

**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?
3. Whether the judgment should be reported in the Digest?

INDERMEET KAUR, J. (Oral)

For orders see file of RSA no. 84 of 2009.

**(INDERMEET KAUR)
JUDGE**

MAY 23, 2011
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R.S.A. 87 of 2009

Page 1 of 1

11

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

% Judgment delivered on: 23.05.2011

+ **RSA No.84/2009**

K.K. LEE

Through: Appellant
Mr. Anoop Bagai, Sr. Advocate
with Mr. Rajat Joseph and Mr.
Sunit Anand, Advocates

Versus

NDMC & ORS.

Through: Respondent
Mr. Arjun Pant, Advocate for
NDMC
Mr. G.D. Chotmurada, Counsel
for R-2

+ **RSA No.87/2009**

M/S. K.K. LEE

Through: Appellant
Mr. Anoop Bagai, Sr. Advocate
with Mr. Rajat Joseph and Mr.
Sunit Anand, Advocates

Versus

SHRI RAM PRAKASH KALRA & ANR.

Through: Respondent
Mr. G.D. Chotmurada,
Counsel for R-1

**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?

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3. Whether the judgment should be reported in the Digest?

INDERMEET KAUR, I. (Oral)

1. These are two appeals which have impugned the common judgment and decree dated 20.01.2009 which had endorsed the findings of the trial judge dated 19.4.2006 whereby the two suits filed by the plaintiff M/s. K.K. Lee (i.e. a suit for perpetual injunction and the second suit for mandatory injunction and damages) had been dismissed. The impugned judgment while endorsing the findings of the trial judge had, however, modified the judgment of the Trial Judge holding that Section 69 of the Indian Partnership Act, 1932 (hereinafter referred to as the 'Partnership Act') is not applicable; the suit filed by the plaintiff is maintainable. The suit had been dismissed for the reason that the General Power of Attorney (GPA) on the basis of which the suit was filed was not a power of attorney authorizing the attorney holder to depose on behalf of the plaintiff, the court had also noted that even on merits the claim of the plaintiff did not entitle him to a relief.

2. The plaintiff is stated to be a partnership firm. The suit has been filed through its partner Sh. L. Aches Khong. Contention was that defendant no. 2 had constructed a shop on the backside of shop no. 77, Khan Market, New Delhi in

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the year 1983-84. No action was taken against him by municipal body. Act of defendant no. 2 stood confirmed. The plaintiff had taken the said shop on rent from defendant no. 2; intention of defendant no. 2 thereafter became dishonest; defendant no. 2 in connivance with defendant no. 3 got the said shop demolished from defendant no. 1 on 4.3.98. This demolition was made by defendant no. 1 without service of mandatory notice. The plaintiff has been deprived of opportunity of representing his case. Suit was filed seeking restoration of the shop as also a restraint against defendants from interfering in the suit property.

3. Defendant no. 1 (NDMC) contested the suit. It was stated that the action was taken after conforming to the procedure.

4. Defendant no. 2 admitted the construction of the shop; i.e. its letting out to the plaintiff; rest of the averments were denied.

5. Defendant no. 3 did not file any written statement.

6. On the pleadings of the parties following issues were framed:

(i) Whether the suit is not maintainable, part of shop included roof under tenancy of plaintiff having been demolished? OPD,

(ii) Whether the suit of the plaintiff is not maintainable in view of Order 2 Rule 2 CPC, similar suit being pending between the same

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parties? OPD,

(iii) Whether the plaintiff is entitled for the decree of perpetual injunction, as prayed against the defendant? OPP, and

(iv) Relief.

7. The Trial Judge was of the view that suit of the plaintiff has been filed by an unregistered partnership firm. It is not maintainable. The bar of Section 69 of Indian Partnership Act is attracted. It further held that the Power of Attorney Ex. P-1 executed in favour of Mr. Richard Lee did not authorize Mr. Richard Lee to depose on behalf of the firm; the partnership deed had also not been placed on record. Even on merits while disposing of Issue No. 2, the court was of the view that there was no evidence to substantiate the submissions of the plaintiff that construction had been raised in the suit property in the year 1983-84; on merits also, the suit of the plaintiff was dismissed.

8. In appeal the impugned judgment had set aside the finding on the applicability of Section 69 of the Partnership Act; the suit was held to be maintainable. It endorsed the finding that the GPA (Ex. P-1) did not authorize Mr. Richard Lee to depose on behalf of the plaintiff.

9. On behalf of the appellant it has been urged that judgment of two courts below are perverse; it is pointed out that ample authority had been given to Mr. Richard Lee to

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depose on behalf of the firm and judgment retained on this score is liable to be set aside. Reliance has been placed upon (2007) 5 SCC 669; P. Chandrasekharan & Others Vs. S. Kanakarajan & Others; 1962 Supp (3) SCR 549; "Sir Chunilal V. Mehta & Sons Ltd. Vs. Centuray Spinning and Manufacturing Co. Ltd." to support this contention. Reliance has also been placed upon 155 (2008) DLT 267; H.K. Choudhary Vs. N.D.M.C. & Anr. to support his submission that without a show cause notice the suit premises could not have been demolished.

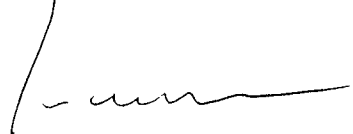
10. Record shows that both the courts below had examined the GPA (Ex. P-1) which has specifically given authority to Mr. Richard Lee to act, appear and plead in any court of original jurisdiction; to sign and verify pleadings and applications and to do all acts which may be necessary for the prosecution of cases. It is relevant to state that this document does not make any reference to the present case; Ex. P-1 (GPA) was specifically silent on the authority of Mr. Richard Lee to depose on behalf of the plaintiff. This has rightly been noted by the two courts below. Sh. K.K. Lee had no authority to depose on behalf of the plaintiff; even otherwise it is admitted fact that the partnership deed was not placed on record; defence of defendant no. 3 was specific to the effect that the plaintiff is not a partner of the firm M/s K.K. Lee; it was

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incumbent upon the plaintiff to have placed the partnership deed on record. It had not seen the light of the day. While disposing of issue no. 2 the findings in the impugned judgment were that the action of the NDMC was neither illegal or arbitrary; defence of defendant no. 1 had been categorical that their action was as per due process of law.

11. Substantial questions of law have been embodied on page 20 of the appeal.

12. No substantial question of law has arisen.

13. The appeals are dismissed in limini.


(INDERMEET KAUR)
JUDGE

MAY 23, 2011

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