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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. NO.36 OF 2013

Decided on : 18th February, 2013

SHAQEELA BANO

..... Appellant

Through: Mr. S.K. Sharma, Advocate.

Versus

HAJI REHMAN ELLAHI

..... Respondent

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

C.M. No.2839/2013 (for exemption)

Exemption allowed, subject to the deficiency being rectified.

The application stands disposed of.

R.S.A. No.36/2013 & C.M. No.2838/2013 (for stay)

1. This is a regular second appeal under Section 100 of the CPC against the order dated 22.11.2012 passed by the learned Additional District Judge-1, South District, Saket Courts partly allowing the appeal bearing RCA No.28/2012 titled Shaqeela Bano vs. Haji Rehman Ellahi whereby the judgment and decree dated 17.2.2012 passed in Civil Suit

No.230/2010 by the learned Civil Judge-1, South District was partly upheld.

2. Briefly stated that facts of the case are that the respondent herein filed a suit for possession, mesne profits/damages and permanent injunction.

3. The respondent/plaintiff had stated in the plaint that he is the friend of the father of the appellant/defendant. The respondent claimed himself to be the owner of entire property bearing Khasra No.52, measuring 300 square yards situated at Chhattarpur, Ambedkar Colony, Mehrauli, New Delhi. It is alleged in the plaint that the father of the appellant had requested the respondent to give one room, kitchen and bathroom, etc., to the appellant for a short duration without payment of any charges. The respondent had obliged the father of the appellant and thus, the appellant was allegedly occupying the aforesaid portion of the property in the capacity of a licensee. The respondent alleged that on 10.4.2009, he requested the appellant to vacate the property in question but the latter showed her inability. Consequently, the respondent terminated the permissive use/license of the appellant on 30.5.2009 and filed a suit for

possession and mesne profits/damages against her. The appellant filed the written statement on 8.4.2010 and contested the claim. The respondent also claimed the damages at the rate of ₹5,000/- per month along with interest at the rate of 18 per cent per annum. The appellant/defendant claimed herself to be a tenant in the property in question on a monthly rent of ₹200/- per month. It was alleged that the husband of the appellant was employed by the respondent for managing the property in the year 1994-1995 at a salary of Rs.3,000/- per month out of which an amount of ₹2,800/- was being retained by the respondent on the mutual agreement that he will execute documents transferring 100 square yards of the suit property to the appellant as and when the said amount would accumulate to a sum of ₹3 lacs. The balance amount of ₹200/- was being adjusted towards payment of rent till that period of time. This was disputed by the respondent in his replication and on the pleadings of the parties, following issues were framed :

- “1. Whether the plaintiff is entitled to the relief of possession as prayed for in prayer (i)? OPP*
- 2. Whether the plaintiff is entitled to decree for damages at the rate of ₹5,000/- per month from 26.8.2009 onwards? OPP*

3. *Whether the plaintiff is entitled to permanent injunction as prayed for in prayer (iv)? OPP*
4. *Whether the plaintiff is entitled to interest @ 18 % as prayed for? OPP*
5. *Whether the plaint has not been properly valued for the purposes of jurisdiction and court fees? OPD*
6. *Whether the plaintiff has come with unclean hands? OPD*
7. *Whether the defendant was handed over possession of the property in part performance of oral contract of sale in the year 1994? OPD*
8. *Relief.”*

4. After the parties adduced their evidence, all these issues were decided against the appellant by a detailed speaking order/judgment dated 17.2.2012. So far as the damages are concerned, the court decreed the suit that the respondent was entitled to *pendente lite* as well as future damages at the rate of ₹1,000/- per month till the actual possession is handed over to the respondent. The relief of permanent injunction was also granted to the respondent restraining the appellant from creating any third party interest in respect of the suit property.

5. Feeling aggrieved by the said judgment, the appellant preferred an appeal before the court of the learned Additional District Judge-1, South District, Saket Courts. The learned Additional District Judge upheld the judgment and the decree passed by the trial court with the modification that so far as the damages/mesne profits, both *pendente lite* as well as future, till the actual handing over of the possession of the suit property are concerned, the same were reduced from ₹1,000/- per month to ₹600/- per month. To that extent, the appeal of the appellant was partly allowed.

6. Thus, there is a concurrent finding of fact by the courts below that the respondent herein is entitled to possession and mesne profits/damages for wrongful use and occupation of the property and the same has been fixed at the rate of ₹600/- per month till the time of handing over of the possession by the appellant and the appellant has also been restrained from creating any third party interest.

7. Still feeling dissatisfied, the appellant has preferred the present regular second appeal.

8. I have heard the learned counsel for the appellant *in extenso*. The learned counsel for the appellant has failed to formulate any substantial question of law which would warrant entertaining of this appeal. The learned counsel for the appellant has also drawn the attention of the court to page No.9 of the appeal where three substantial questions of law are purported to have been formulated by the appellant which are as under :-

- “A. Whether the courts below committed gross illegality by rejecting the application of amendment filed by the appellant herein for amending the written statement filed by her on the ground that the application was not signed by the applicant/defendant?”*
- B. Whether the courts below committed serious mistake and failed to appreciate that the application for amendment could be filed at any stage during the proceedings in the suit?”*
- C. Whether the documents of alleged ownership filed by the plaintiff/respondent herein in respect of the property in question were forged and fabricated and were unregistered and could not confer ownership on the plaintiff in respect of the said property?”*

9. A perusal of the aforesaid three questions would clearly show that these are essentially questions of fact which have already been adjudicated by the two courts below and a concurrent finding has been returned against the appellant. It is not a case where the learned counsel

for the appellant is making a submission that the finding of the courts below is perverse as no evidence was adduced by the respondent in support of his pleas. Therefore, in the absence of such a submission, the questions of facts which are sought to be raised cannot be treated by this court to be questions of law and convert an appeal of factual matrix into a regular second appeal which does not involve any substantial question of law.

10. Accordingly, the appeal is dismissed.

V.K. SHALI, J.

FEBRUARY 18, 2013
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