

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.113 of 2012 & C.M. No.17432 of 2012**

Decided on : 10th May, 2013

NAJAN-UR-REHMAN CHAWLA Appellant
Through: Mr. R.M. Bagai, Mr. Yasin & Ms. Damini
Khaire, Advocates.

Versus

SHASHI BALA JAIN Respondent
Through: Mr. Ramesh Kr., Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant under Section 100 CPC against the order dated 18.2.2012 passed by the learned Additional District Judge in R.C.A. No.48/2010 titled *Najan-Ur-Rehman vs. Shashi Bala Jain* upholding the judgment dated 13.1.2005 passed by the learned Civil Judge dismissing the suit of the appellant.

2. Briefly stated the facts of the case are that the plaintiff/appellant herein filed a suit bearing No.876/02/91 for possession and damages on account of illegal use and occupation against Shashi Bala Jain, the defendant/respondent herein claimed himself to be the owner of the

ground floor of property bearing Municipal Nos.5884 to 5887 and 6010 to 6014 situated at Ward No. XIV, Basti Harphool Singh, Sadar Bazar, Delhi. It was claimed by the plaintiff/appellant herein that he had purchased the aforesaid property from one Satish Kumar Makhija. It was alleged that the defendant/respondent herein had wrongfully and illegally occupied a portion of the suit property, more particularly, shown in red colour in the site plan attached to the plaint. On account of having become the owner by purchase, the plaintiff/appellant filed the suit for possession and claimed damages @ ₹1,000/- per month. The aforesaid suit was challenged by the defendant/respondent.

3. On the pleadings of the parties, following issues were framed :-

- “1. *Whether the suit is bad for non-joinder of necessary parties?* *OPD*
2. *Whether the plaintiff has locus standi to file the present suit and suit is not maintainable?* *OPD*
3. *Whether the plaintiff is the owner of the entire property in suit in view of sale deed dated 15.4.1988?*
OPP
4. *Whether the plaintiff is entitled for the relief of possession and damages as prayed?* *OPP*
5. *Relief.”*

4. So far as Issue Nos.3 and 4 are concerned, the plaintiff failed to prove the said issues in his favour and the learned Civil Judge dismissed the suit on 13.1.2005 holding that the plaintiff/appellant was not entitled to the possession as he was not able to establish his ownership.

5. Feeling aggrieved, the appellant herein preferred the first appeal bearing R.C.A. No.48/2010 against the judgment and decree dated 13.1.2005 passed by the learned trial court. The first appellate court vide order dated 18.2.2012 dismissed the appeal of the appellant.

6. Feeling aggrieved by the said order, the appellant has filed the present regular second appeal.

7. I have heard the learned counsel for the appellant and have gone through the record. Mr. Bagai, the learned counsel for the appellant has contended that the substantial question of law arises in the instant case, that is whether the first appellate court has failed to appreciate that the respondent has not been able to establish her ownership with respect to the suit property. It has been further stated that this fact was decided by the learned Rent Controller in an Eviction Petition No.66-E/68. It was contended by the learned counsel that the finding arrived at by the Rent

Controller's court holding that the respondent was not the owner of the suit premises is a finding which is *res judicata* so far as the finding arrived at by the first appellate court declaring the respondent to be the owner is concerned. The learned counsel for the appellant has referred to a case titled *Sulochana Amma vs. Narayanan Nair*; AIR 1994 SC 152 in order to substantiate his point.

8. I have gone through the said judgment, but the judgment relied upon by the learned counsel for the appellant is not applicable to the facts of the present case.

9. The point which has been urged by the learned counsel is that in an eviction petition filed by one Mooloo Bai or even by Shashi Bala she has not been able to get a decree for eviction on bona fide requirement in which one of the requirements to be established is the ownership of the party. Having failed to do, the respondent could not be considered to be the owner of the suit property in the present suit.

10. I do not agree with this submission because the question of title is to be decided by the Civil Court only and not the Rent Controller's Court. Competence of the Court to decide the issue is one of the most important ingredient before a bar of Section 11 CPC comes into play.

11. So far as the suit filed by Shashi Bala Jain was concerned, the same was dismissed holding that Shashi Bala Jain was not able to prove that she was the owner of the suit premises. Shashi Bala Jain preferred an appeal bearing R.C.A. No.49/2010 against the said judgment and decree dated 13.1.2005 passed by the learned trial court. The appellate court on appreciation of facts and evidence arrived at a finding that Shashi Bala Jain was able to establish her ownership in respect of the suit property and accordingly, remanded the matter back to the learned Civil Judge for the purpose of deciding the question as to what relief Shashi Bala Jain is entitled to in terms of the suit filed by her.

12. So far as the suit filed by Najan-Ur-Rehman Chawla (the present appellant) is concerned, the same was dismissed. Feeling aggrieved, the appellant herein also preferred the first appeal bearing R.C.A. No.48/2010 against the judgment and decree dated 13.1.2005 passed by the learned trial court. The said appeal was dismissed by the appellate court vide a separate order dated 18.2.2012. Thus, the net result was that the appeal of Shashi Bala was allowed holding her to be the owner of the

property in question and the matter was remanded back to the trial court to decide what relief to be given to her. The first appeal of the present appellant was dismissed without any merit. The present appellant filed two appeals, one against the order passed on Shashi Bala's appeal and the other on his own appeal.

13. So far as the case of the Shashi Bala Jain is concerned, there was no decree passed by the appellate court and the matter was remanded back to the learned Civil Judge. Section 100 permits second appeal only against the decree passed by an appellate Court so far as the appeal of the Shashi Bala is concerned. Since there was no decree, accordingly, the appeal of the present appellant against Shashi Bala Jain was dismissed.

14. The learned counsel for the appellant has sought to canvass the point before this court in his own appeal that there is a finding returned by the Rent Controller's court dismissing the eviction petition of Shashi Bala Jain holding that she is not entitled to eviction of the tenant as she was not able to establish herself as the owner of the suit property. I have considered this submission of the learned counsel which is being raised as *res judicata* challenging her ownership. So far as the question of title is

concerned, that cannot be adjudicated by the Rent Controller's court but it has to be adjudicated by the civil court. In addition to this, it is not in dispute that the suit property was actually owned by one Mooloo Bai. The present appellant is claiming the title through Mooloo Bai only, that is, through attorney, etc. Similarly, Shashi Bala Jain, who was the Dharam Guru of Mooloo Bai has also claimed title through Mooloo Bai. This aspect has been dealt with *in extenso* by both the learned trial court as well as the learned appellate court, deciding the issue of ownership in favour of Shashi Bala Jain.

15. So far as eviction petition, which is sought to be relied on the ground of *res judicata* by the learned counsel for the appellant is concerned, I have gone through the said judgment which has been admittedly exhibited by the appellant. This judgment was passed in respect of three cases of eviction petition filed by Mooloo Bai, Shashi Bala Jain, etc. against their respective tenants in respect of the suit property. In one of the eviction petitions bearing No.66-E/68, filed against one Abdul Karim, Mooloo Bai had been shown as petitioner No.1 and Shashi Bala Jain as petitioner No.2 and it was a claim for eviction on the ground of

bona fide requirement of self. It was alleged in this petition that Shashi Bala was the Dharam Guru and therefore, her family members and she was entitled to eviction. It is in this context that the Rent Controller's court had been called upon to decide the question of *bona fide* requirement of Mooloo Bai. This petition for *bona fide* requirement was filed by Mooloo Bai claiming herself to be the owner and requiring the eviction of her tenant for the *bona fide* requirement of residence of her Dharam Guru, that is, Shashi Bala Jain. The Rent Controller's court in this context vide order dated 3.5.1971 had held Mooloo Bai to be the owner but she was not entitled to seek eviction of her tenant on the basis of the requirement of her Dharam Guru, namely, Shashi Bala Jain and so far as the eviction petition filed by Shashi Bala Jain is concerned, that was also dismissed on the ground that she was not the owner of the suit property. These petitions were filed much prior to the death of Mooloo Bai. Shashi Bala Jain, was claiming to be the owner on the basis of a registered document which has been examined by the trial court as well as by the first appellate court after the death of Mooloo Bai. Therefore, this judgment which is sought to be relied upon by the appellant by

raising the contention of *res judicata* is totally misconceived and does not apply to the facts of the present case.

16. I have considered other judgments also. There is only one judgment in *State of Rajasthan Vs. T.N. Sahani & Ors.* 2001 (10) SCC 619 with regard to Order 41 Rule 27 CPC which is sought to be relied upon by the learned counsel for the appellant by contending that even at the stage of second appeal, he has filed an application being C.M. No.17432 of 2012 seeking permission to adduce additional evidence and that permission may be granted in order to prove that he is the owner. The judgment which is relied upon by the appellant has held that while deciding the appeal, the appellate court must first decide the application under Order 41 Rule 27 CPC and see what is the relevance of the document which is sought to be relied upon by the party. It is certainly not laying down that at the stage of second appeal, the evidence could be taken on any considered view if this is permitted to be done then there would be no end to the litigation.

17. In the first place, this is a regular second appeal and the regular second appeal is permissible only where a substantial question of law is

involved and there is no judgment cited by the learned counsel which would show that at the stage of second appeal, the court is enjoined to take into consideration the application seeking adducing of additional evidence. This judgment, which is sought to be relied upon, is with regard to the first appeal. Accordingly, this application filed by the appellant for adducing his additional evidence is misconceived and the same is dismissed.

18. I have gone through a judgment titled *P.Chandrasekharan & Ors. Vs. S.Kanakarajan & Ors.* AIR 2007 SC 2306. There is no misreading of the misinterpretation of the documents and hence no question of law arises.

19. In totality of circumstances, since no substantial question of law is involved in the present regular second appeal, therefore, the same is dismissed.

V.K. SHALI, J.

MAY 10, 2013
‘AA’