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

+ RSA 161/2012

SHYAM SUNDER & ANR. Appellants

Through: Mr. K.G. Seth, Advocate.

versus

MEENA TANEJA Respondent

Through: Ms. Richa Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

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24.05.2013

Review Application No.286/2013

1. This is an application filed by the appellants under Order 47 Rule 1 read with Sections 114 & 151 CPC seeking review of order dated 6.5.2013.
2. I have heard the learned counsel for the appellants and have gone through the record as well as the submissions made in the application.
3. Before dealing with the review application, it may be pertinent here to mention that this is a regular second appeal filed by the appellants under Section 100 CPC against the judgment dated 1.9.2012 passed by the learned Additional District Judge dismissing the appeal being R.C.A. No.30/2011 of the appellants titled *Shyam Sunder & Anr. Vs. Meena Taneja*.

4. Briefly stated the facts leading to the filing of the regular second appeal are that the plaintiff/respondent herein, Meena Taneja had filed a Civil Suit No.35/10/02 for possession, mesne profits/damages and injunction against the defendants/appellants herein in respect of the ground floor of property No.H-1/28, Lajpat Nagar, New Delhi-110024. The case which was setup by the plaintiff/respondent herein was that the aforesaid property actually belonged to one Bhagat Ram and it was purchased by mother-in-law of the plaintiff, Vidyawanti, from him by virtue of registered sale deed on 3.7.1967. After getting the property mutated in the name of Vidyawanti, she became owner of the suit property. Vidyawanti is stated to have died on 27.6.2000 leaving behind a registered Will dated 1.5.2000 bequeathing the entire property in favour of the plaintiff/respondent. The other legal heirs of Vidyawanti, were her husband (Kishori Lal), sons (Suraj Prakash and Shyam Sunder), daughter-in-law (Radha Taneja) and daughter (Shanti Grover). Kishori Lal (husband) had not disputed the Will and similarly, Suraj Prakash, husband of respondent/plaintiff as well as brother-in-law of the respondent/plaintiff, namely, Shyam Sunder, who is the appellant No.1 in the instant case exhibited the Will dated 1.5.2000, purported to have been executed by Vidyawanti, in favour of the respondent/plaintiff. They also

exhibited a relinquishment deed in favour of the plaintiff/respondent. Similar was the case with regard to Shanti Grover, daughter of Vidyawanti. As a consequence of this relinquishment deed and non-challenge of the Will, the lessor had perfected the title in respect of the suit property in favour of the plaintiff/respondent and she became the owner of the property. The plaintiff/respondent, after becoming the owner of the suit property had entered into a collaboration agreement with one builder, Sanjay Sayal, for the purpose of development and reconstruction of the entire property. It has been disputed that basement, ground floor, first floor, second floor and third floor were constructed on the property which were shared between the owner, that is, plaintiff/respondent and the builder. The second and the third floor along with terrace rights had fallen to the share of the builder or his nominee. So far as the basement, ground and first floor are concerned, they had fallen to the share of the plaintiff/respondent. The plaintiff/respondent is stated to have perfected the title of the builder, Sanjay Sayal, so far as the second and the third floors are concerned by executing the sale deed in which the present appellant Shyam Sunder was a conforming party. In addition to this, it has been stated that he is a conforming party in the collaboration agreement also. It is also stated that after the reconstruction of

the property, Shyam Sunder was living in the ground floor as a licensee along with his wife and father while as the plaintiff/respondent along with her husband Suraj Prakash was living on the first floor. It is stated that the licence of the defendant/appellant, Shyam Sunder, to occupy the ground floor of the suit property was cancelled and he was requested to vacate the premises and since he did not oblige, consequently, the plaintiff/respondent was constrained to file the suit for possession, damages and injunction against the defendants/appellants Shyam Sunder and his wife Radha Taneja. This suit was contested by the defendants/appellants and they filed their written statement. The stand taken by the defendants/appellants was that they were assured to be permitted to live on the ground floor of the suit property despite the fact that they had executed a relinquishment deed and exhibited the Will. The learned trial court, after framing of the issues, permitted the parties to adduce their evidence and decided the suit for possession in favour of the plaintiff/respondent on 2.8.2011; however, no damages were accredited to the plaintiff/respondent.

5. The appellants feeling aggrieved, preferred the appeal being R.C.A. No.30/2011. On 1.9.2012, the appellate court not only confirmed the judgment and the decree for possession but also directed the appellants to

pay damages @ ₹7,500/- per month to the respondent for the period, i.e., during the pendency of the suit and till the possession of the suit property was handed over by the appellants to the respondent.

6. Still feeling dissatisfied, the appellants have filed the present regular second appeal. The appeal had come up for the first time on 26.9.2012 and thereafter, the matter was taken up on number of dates for the purpose of formulation of substantial question of law so that the matter could be heard. As the learned counsel for the appellants was not able to formulate any substantial question of law at various stages when the matter was heard including on 6.5.2013, on which date the learned counsel for the respondent had very fairly acceded to the request of the court that the appellant No.1, who happen to be the real brother-in-law of the respondent and the brother of the husband of the respondent was permitted to either live in the said premises on the ground floor or alternatively, the respondent had agreed to make an arrangement for him and his wife to stay in one room tenement during their lifetime without charging them any rent. Both the parties were directed to file their respective undertakings in this regard and the matter was accordingly directed to be listed before the Registrar for today for the purpose of recording of their undertakings. It is at this stage the appellants

have filed the present review application.

7. I have gone through the averments made in the review application. It has been stated in the prayer clause of the review application that the appellants be declared the owner of the ground floor of the suit property. It has been further stated that the respondent had admitted before them that she is able to play a fraud on the appellants in obtaining their signatures of documents purported to be the corroboration agreement and the relinquishment deed.

8. In addition to this, averments have also been made that the threats were advanced to the appellants as well as to their counsel. None of the averments or the allegations made in the application for review are germane for deciding the question of review of the order dated 6.5.2013. The scope of review is very well laid in Order 47 Rule 1 CPC which is permissible only when there is an error apparent on the face of record in the order or when new evidence which was not within the power and control of a party is sought to be brought before the court.

9. Admittedly in the instant case, the review application does not show that there is any error apparent on the face of the record in the order dated 6.5.2013 nor does the appellants say that they are in possession of some

evidence which was not in their control or knowledge earlier which could have changed the outcome of the order which is purported to have been passed by this court on 6.5.2013.

10. Accordingly, I feel that the review application is totally misconceived and has been filed only to perpetuate the delay in the disposal of the matter. As no substantial question of law has been shown to be arising from the present appeal and the offer which was made by the respondent is not acceptable to the appellants, I have no other option but to dismiss not only the appeal, as it is without any merits, but also the review petition. Ordered accordingly.

V.K. SHALI, J.

MAY 24, 2013
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