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

+ RSA 321/2015 & C.M. Nos.18090-91/2015

NARESH KUMAR & ANR

..... Appellant

Through: Mr. Vikram Baweja, Advocate

versus

MAHA SINGH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

04.09.2015

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1. The present second appeal is directed against the judgment dated 02.06.2015 passed by the learned ADJ-07 (Central), Tis Hazari, Delhi in RCA No.25/2015 preferred by the appellants/defendants in the suit. The said first appeal had been filed to assail the judgment and decree dated 18.05.2013 passed by the learned Civil Judge in the suit filed by the respondent being Suit No.681/10/2002 for recovery of possession and damages.

2. The plaintiff filed the said suit on the premise that late Sh. Ram Saran was the owner of House No.1884, Gali Koliyan, Suiwala, Daryaganj, New Delhi-110002. The plaintiff stated that the said late Sh. Ram Saran during his lifetime executed a registered will dated 22.05.1982 thereby bequeathing

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the said property in favour of his three sons, namely, the plaintiff Maha Singh; the second son Durge Singh, and; the third son Chhattar Singh. The said will demarcated – in a plan annexed to the will, the specific portions which were bequeathed to the three sons. Sh. Chhattar Singh has since passed away and the defendant/appellant are the heirs of late Sh Chhattar Singh. In terms of the said will, read with the plan annexed to the said will, the plaintiff inherited the portion shown in 'kathai' colour, Sh. Durge Singh inherited the portion was shown in blue colour, and Sh. Chhattar Singh inherited portion was shown in red colour. The plaintiff stated that all the sons of the plaintiff had their shops on the ground floor, while first and second floor are residential portions. The plaintiff and Durge Singh have let out their shop to the tenants and are receiving rent from them. The plaintiff claimed that the defendants, who are heirs of Chhattar Singh and are owners of the red colour portion, had been permitted to use the first and second floor portion of the plaintiff and to Durge Singh for residential purpose, as licensee.

3. The said defendants preferred a civil suit being Suit No.520/1993 against the plaintiff and Sh. Durge Singh to seek a permanent injunction. In the said proceedings, Sh. Chhattar Singh admitted the execution of the will dated 22.05.1982. The plaintiff claimed that the defendant started damaging the first and second floor of the property of the plaintiff. Consequently, the suit was preferred after issuing a legal notice dated 18.02.2002 requiring the defendants to hand over the peaceful and vacant possession of the suit property. The plaintiff also claimed damages @ Rs.500 per month w.e.f. 01.03.2002. The defendants/appellants filed their written statement raising

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their objection and denying the claims made in the suit.

4. The Trial Court framed the following issues on 05.03.2003:

- i) Whether plaintiff is entitled to decree of possession as prayed? OPP
- ii) Whether the plaintiff is entitled to a decree of damages as prayed? If any, at what rate and for which period? OPP
- iii) Whether the suit of the plaintiff is not maintainable in the present form in view of para 1 to 4 of P.O. in the WS? OPD
- iv) Relief

5. The plaintiff examined Sh. Mahe Singh as PW-1; Sh Durga Singh as PW-2; Sh. Subash Chand as PW-3. The defendants did not lead any evidence in their defence. The plaintiff's witness duly exhibited the original registered will dated 22.05.1982 as Ex. PW-1/1; the registered site plan of the will as Ex. PW-1/2; the notice dated 18.02.2002 as Ex. PW-1/3; the postal receipts as Ex. PW-1/4 to 1/6, and; acknowledgment duly signed by the defendant as Ex. PW-1/7 to 1/9.

6. On the basis of the evidence led by plaintiff, the Trial Court returned the finding that the original owner late Sh. Ram Saran duly executed the registered will bequeathing the demarcated share in the suit property to his three sons, as aforesaid. The Trial Court returned the finding that the defendants had not been able to establish their defence and, consequently, the defendants were not the owners of the portion constituting the suit property. Since their license had been terminated, the Trial Court decreed the suit by passing a decree for possession in favour of the plaintiff and against the defendants with respect to the first and second floor of the suit property. The plaintiff was also awarded damages @ Rs.200 per month

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w.e.f 01.03.2002 till the delivery of possession. Costs were also awarded in favour of the plaintiff.

7. The first appeal of the appellant has been dismissed by the First Appellate Court affirming the findings returned by the Trial Court.

8. The submission of Counsel for the appellant is that without obtaining partition by metes and bounds of the suit property, the suit could not be decreed, as the appellants - being heirs of late Sh. Chhattar Singh, also have a share in the suit property.

9. There is absolutely no merit in this submission for the simple reason that the will itself demarcated the portions bequeathed to his three sons by late Sh. Ram Saran in the plan which was annexed to the will Ex. PW-1/2 - by clearly demarcating the portions in different colours. The suit property is demarcated and bequeathed to the plaintiff by the said will Ex. PW-1/1. It was not that the testator had bequeathed undivided share in the said property in favour of his three sons.

10. The appellant has not been able to point out any perversity or patent illegality in the impugned judgments and decrees. There is no reason to interfere with the consistent findings of fact premised on appreciation of evidence led by the parties. No substantial question of law arises for consideration by this Court. Accordingly, the appeal is dismissed.



VIPIN SANGHI, J

SEPTEMBER 04, 2015

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