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HIGH COURT OF DELHI AT NEW DELHI

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RSA No.10/2015

Decided on : 12th January, 2015

PHOOLWATI

..... Appellant

Through: Mr.R.P.S.Sirohi, Adv.

versus

NATHO DEVI & ORS

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

% 12.01.2015

CM No.480/2015

1. Allowed subject to deficiency being rectified.
2. The application stands disposed of.

R.S.A. No.10/2015

1. This is a regular second appeal filed by the appellant against the judgment dated 21.11.2014 passed by the learned Addl.District Judge by virtue of which the appeal of the appellant had been dismissed and the judgment and decree passed by the trial court on 28.03.2013 in Suit No.347/2008 against the appellant has been upheld.

2. The main contention of the learned counsel for the appellant is that the judgment of the trial court as well as the first appellate court suffer from perversity as there is no evidence on record with regard to the factum of ownership of the property in question in respect of which decree has been passed as well as there is no evidence brought on record with regard to the partition of the property owned by one Mr.Tula Ram.

3. I have considered the submission and perused the record.

4. Before dealing with the submission made by the learned counsel for the appellant, it may be pertinent to give a brief facts of the case.

5. It is not in dispute that one Sh.Tula Ram had purchased two properties bearing Nos.7488 & 7489, Sidharth Nagar, Multani Dhanda, Paharganj, Delhi. It is also not in dispute that Sh.Tula Ram died on 27.11.1968 and he was survived by three sons namely Sh.Ram Singh, Sh.Pyare Lal and Sh.Roop Chand and three daughters Smt.Gaura Devi, Smt.Kalawtai and Smt.Kanta Devi.

6. The case which was set up by Sh.Roop Chand in the suit for permanent injunction and possession was that, after the demise of their father Sh.Tula Ram, a partition with respect of above

mentioned properties had taken place amongst the three sons. The property No.7488, Sidharth Nagar, Multani Dhanda, Paharganj, Delhi ('property No.7488' for short) had fallen to the share of Sh.Pyare Lal while as property No.7489, Sidharth Nagar, Multani Dhanda, Paharganj, Delhi ('property No.7489' for short) had fallen to the share of respondent/plaintiff i.e.Roop Chand. In addition to this, there was a room built by Sh.Ram Singh on the first floor of property No.7489 which is purported to have been sold by him to the present appellant/Phoolwati while as other legal heirs of Sh.Ram Singh, i.e. the widow and the daughter are purported to have relinquished their share in the property in favour of the respondent/plaintiff.

7. It was case of the respondent/plaintiff that he had built up a room on the first floor property No.7489 and that room was permitted to be used by the appellant/Phoolwati, widow of Sh.Pyare Lal for the purpose of housing her guests. It was also stated that the appellant had opened a door of this room which was situated at property No.7489 towards property No.7488 to which respondent/plaintiff Sh.Roop Chand did not object. However, later on, the respondent/plaintiff asked the appellant/Smt. Phoolwati to

vacate the premises and hand over the possession to him. As she failed to do so, a suit was instituted in the month of July, 2008. The appellant/defendant filed her written statement and did not contest the factum of partition of the properties amongst the brothers having taken place. She took the plea that the room which was shown to be a part of property in question was wrongly reflected in the site plan. As a matter, the same was part of property No.7488. The court framed the following issues and permitted the parties to adduce their respective evidence.

“1. Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for? OPP.

2. Whether the suit of the plaintiff is under valued? OPD.

3. Relief.

4. Whether the plaintiff is entitled to possession of the property as prayed for? OPP.”

8. So far as the trial court is concerned, after analyzing the evidence produced by the respective sides, the court came to the finding that the room in respect of which the suit had been filed, that was admitted by the appellant to be a part of property No.7489

which had fallen to the share of respondent/plaintiff and, therefore, the respondent/plaintiff was entitled not only to a decree of permanent injunction, but also a decree of possession.

9. The appellant/defendant, feeling aggrieved by the aforesaid judgment and decree, had preferred an appeal which was heard and decided against the appellant by the learned Addl.District Judge vide the impugned order dated 21.11.2014.

10. The main question which is urged by the learned counsel for the appellant to be constituting substantial question of law is the perversity in the finding of the trial court and the first appellate court with regard to the factum of the room in respect of the judgment and decree has been passed.

11. I have gone through the testimony of the parties. However, I find that there is no perversity in the orders passed by the court below. This on account of the fact that if one goes through the affidavit of the appellant/defendant, she has nowhere contested that the room which was alleged by her to be wrongly reflected as part of property No.7489 was actually part of property No.7488. It is not disputed by her in the affidavit or in the cross examination that the partition had not taken place although the learned counsel for

the appellant has now sought to challenge the very factum of partition between the brothers. In addition to this, the trial court has taken note of the fact that the appellant/defendant had admitted in her examination that property No.7489 was exclusively belonging to the respondent/plaintiff Mr.Roop Chand and no other person had any interest in the said property although the case which was set up by the appellant in the written statement was that she had purchased the room which was built by Sh.Ram Singh at property No.4789, does not get reflected in her testimony. On the contrary, the testimony of respondent/plaintiff goes completely unchallenged on the score that he had built a room on the property No.4789 which he had permitted the appellant/defendant to use. It also goes unchallenged that the respondent/plaintiff Sh.Roop Chand had permitted the appellant/defendant to open a door to the said room towards property No.7488 and, therefore, the factum of non cross-examination of the respondent/plaintiff on that score, the case of the respondent/plaintiff has been established by preponderance of probability in his favour and accordingly a decree of possession and permanent injunction has been passed.

12. By no stretch of imagination, it can be said that the finding of the trial court or the first appellate court is perverse. The question of perversity would only arise when a finding is returned without there being an iota of evidence on record. On the contrary, in the instant case, there is ample evidence established on record that appellant was permitted to use the room on property No.4789 as a licensee and since that licence was withdrawn by the respondent/plaintiff, therefore, she was under an obligation to vacate the same.

13. I feel that no question of law much less a substantial question of law is involved in the matter.

14. The appeal is accordingly is dismissed.

CM No.479/2015 (Stay)

1. In view of the dismissal of the appeal, no further directions are called for on this application.

2. Dismissed.

V.K. SHALI, J

JANUARY 12, 2015/dm