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

+ **Date of Decision: 02.07.2015**

% **RSA 71/2015 & C.M. Nos.2959/2015, 5653/2015, 6774/2015,  
7036/2015**

JHAMMAN LAL

..... Appellant  
Through: Mr. Sachin Chopra and Mr. Kamal  
Bansal, Advocates

versus

TARA CHAND SHARMA

..... Respondent  
Through: Mr. S.N. Gupta, Advocate

**CORAM:  
HON'BLE MR. JUSTICE VIPIN SANGHI**

**VIPIN SANGHI, J. (OPEN COURT)**

1. The present second appeal under Section 100 CPC is directed against the judgment rendered by Sh. R.K. Gauba, District & Sessions Judge (South District), Saket, New Delhi (as his lordship then was) in RCA No.35/2013 titled Jhaman Lal v. S. Tara Chand Sharma dated 14.10.2014.
2. The learned Judge by the impugned judgment dismissed the first appeal preferred by the appellant and affirmed the judgment and decree passed by Ms. Richa Gusain Solanki, Civil Judge in Suit No.283/2008.
3. The appellant was the defendant in the said suit. The suit had been

preferred to seek possession and damages in respect of an immovable property bearing no.U-2, Humayun Pur Colony, Arjun Nagar, Delhi on the basis of title claimed by the respondent/plaintiff vide registered sale deed dated 14.03.2008 executed by the erstwhile owner Sh. Gurdev Singh.

4. The case of the plaintiff was that the defendant was inducted as a licensee by the earlier owner Sh. Gurdev Singh at a monthly license fee payable at Rs.6500/- per month. It is claimed that the defendant had promised that he would vacate the suit property within 15-20 days when the plaintiff was contemplating purchase of the suit property from the erstwhile owner Sh. Gurdev Singh. However, the defendant did not so vacate the premises and consequently the suit was preferred to claim possession along with damages @ Rs.15,000/- per month from 16.04.2008 till 15.07.2008 and from 16.07.2008 till actual possession of the suit property.

5. The appellant/defendant contested the suit by filing a written statement. Pertinently, the defendant admitted that Sh. Gurdev Singh was the owner of the suit property. However, it was claimed that in the year 2002, Sh. Gurdev Singh donated/gifted the suit property for the purpose of establishing a temple in front of many people. At the time the suit property consisted of ground floor only. It was claimed that after the said declaration made by Sh. Gurdev Singh, people in the area started collecting funds for the purpose of construction of the proposed temple and the defendant was appointed by the people/devotees as the person in charge of all activities with regard to the proposed temple. The defendant claimed that from funds raised till 2004, the first floor was constructed with a view to utilise the same for the residence of Pujari of the temple. The defendant claimed that

he was appointed as the Head Pujari of the temple. The ground floor of the building was kept for the purpose of temple and the first floor was kept for residential purpose of the Pujari and other devotees. The temple is now called as 'Hanuman Mandir'. The defendant claimed that even Sh. Gurdev Singh could not take back the suit property as he had donated the same for temple and the temple had invested a lot of funds in maintaining/reconstructing the building. It was also stated that Sh. Gurdev Singh had not raised any objection over the years.

6. The Trial Court framed two issues, namely, whether the plaintiff is entitled to decree of possession and whether the plaintiff is entitled for decree of damages as prayed for. The onus of these issues obviously fell on the respondent/plaintiff. Subsequently, an additional issue was framed, namely, whether Sh. Gurdev Singh has made gift of suit property or not. The onus was placed on the defendant. The plaintiff examined himself as PW-1. He relied on the sale deed in his favour dated 14.03.2008, which was led in evidence as Ex. PW-2/1. He also led in evidence the sale deed dated 04.08.1971 which was the sale deed in favour of Gurdev Singh as Ex PW1/C. During cross-examination, he denied the suggestion that there was a Hanuman Mandir in the suit property when he purchased the same.

7. The plaintiff also produced Sh. Kiran Thapdiyal, UDC from the Sub Registrar office as PW-2 with the summoned record, i.e. sale deed dated 14.03.2008 as PW2/1. Pertinently, one of the witnesses to the sale deed Sh. Parvinder Singh was also produced by the plaintiff as PW-3, who stated that he was related to Sh. Gurdev Singh. He identified the signatures of Gurdev Singh on each page of the sale deed. He identified the signatures of other

witnesses, Sh. Niranjan Dass Negi and his own signatures on the sale deed.

8. The defendant examined two witnesses. He examined himself as DW-1 and in his examination in chief on affidavit, he deposed in terms of his written statement. In his cross examination, he stated that he had not taken any permission from the MCD for carrying out construction in the suit property. He also stated that there was no registered trust of the temple and the contribution of the devotees was not reflected in his income tax return or of his family. Pertinently, he identified the photograph of Gurdev Singh at point E of the sale deed. At this stage, I may note that learned counsel for the appellant/defendant submits that of the two photographs on the sale deed, only one was admitted while the other was disputed. The defendant also produced Sh. Madan Lal Shah as DW-2, who stated that he was a regular visitor of the temple since 6-7 years. He further stated that the defendant was the priest of the said temple. In his cross examination, he stated that he was living at Dwarka for the past 6-7 years and prior to that he was residing at Vasant Vihar.

9. The learned Trial Court decided all the issues in favour of the plaintiff. In view of the aforesaid evidence brought on record, so far as the defence of the defendant is concerned, the Trial Court held that the defendant had not produced even a single document to show that the suit property was gifted for construction of a temple. Apart from his ipse dixit, the defendant had not been able to show that the temple was in existence since 2002, i.e. the year when Gurdev Singh allegedly gifted the suit property in the presence of many people. The only other witness produced was DW-2, who stated that he had regularly been visiting the suit property

as a devotee since the last 6-7 years, i.e. much after the alleged oral gift allegedly made in the year 2002.

10. The Trial Court disbelieved this witness since he was residing at Dwarka during the period when he claimed to be regularly visiting the suit property by observing that it is not credible that a person would travel from Dwarka to Arjun Nagar regularly only to visit a temple constructed in a small property when it was not established that the temple was a popular one outside the local area. The Trial Court also held that a gift of immovable property could be effected only by a registered instrument, attested by atleast two witnesses. The defendant did not produce any registered gift deed claiming to have been executed by the erstwhile owner Gurdev Singh for construction of a temple. Consequently, the Trial Court held that the claim of the plaintiff that the defendant was a mere licensee in the suit property was more probable. The plaintiff had duly proved his title to the suit property and was, therefore, entitled to possession thereof. On the aspect of damages, the Trial Court held that the plaintiff had not been able to prove that the monthly rent of the suit property was to the tune of Rs.15,000/-. However, the Court allowed the claim for damages @ Rs.6,500/- per month with yearly increase of 10%.

11. The learned District & Sessions Judge in the impugned judgment concurred with all the said findings of facts returned by the Trial Court. The First Appellate Court held that though the recording made in the sale deed Ex. PW2/1 – to the effect that the vacant possession of the property had been handed over to the vendee/plaintiff and that the same was not under any encumbrance, nor any license had been created in respect thereof, the same

did not impinge on the title of the respondent/plaintiff. The First Appellate Court held that the claim in the written statement that the suit property had been gifted by the original owner for the construction of a temple in the year 2002 was vague. The First Appellate Court held that the written statement/pleadings indicated that the specific month of the year 2002 was to be filled in later, as blank space has been kept for the purpose. However, the month was never filled up. The specific date when the owner Sh. Gurdev Singh declared his intention to make the gift orally is not indicated, and that, admittedly, no gift deed was ever executed or registered. The impugned judgment shows that, in fact, the appellants counsel also candidly admitted during the course of hearing of the appeal that the right, title or interest in an immovable property could be transferred by way of gift, only by execution of an instrument in writing under the Transfer of Property Act and its registration. The First Appellate Court held that since no such formalities/steps were undertaken by Gurdev Singh, the theory of gift was bound to be, and has rightly been rejected.

12. The First Appellate Court also brought out the contradiction in the defendants pleading in the written statement and his deposition. In the written statement, the defendant had not pleaded that the property had been gifted to him, yet in his deposition he had claimed that the property was gifted to him. In the written statement, the defendant had stated that the property was given in gift for the purpose of establishing a temple, and status of the appellant as Head Pujari was conferred because he was appointed in such capacity to look after the affairs of the temple by the people at large. However, no proof of such appointment as Head Pujari had

been adduced.

13. The First Appellate Court held that the word of the sole witness examined in attempt to corroborate the word of the appellant as to his status, vis-a-vis the temple, is not credible in this light. The First Appellate Court while rendering the impugned judgment has gone into several other details which are not necessary to be taken note of. The long and short of it is that the First Appellate Court affirmed the findings of the Trial Court on all the issues.

14. The submission of Mr. Chopra, learned counsel for the appellant is that a substantial question of law arises for consideration in the present appeal, namely, whether an oral gift could be made in favour of a deity. He submits that the courts below have held that a gift of an immovable property could be made only by a registered instrument. He submits that on this premise, the defence of the appellant/defendant has been rejected and suit decreed. In this regard, he places reliance on the judgment of the Andhra Pradesh High Court in *Anisetty Krishna Rao v. Radhakrishna Vasuku Kshetram, Narasaraopet*, 1998 Law Suit (AP) 665. It is submitted that the Andhra Pradesh High Court referred to and relied upon earlier decision of Patna High Court in *Harira Prasad v. C.V. GO Saheb*, AIR 1930 Pat 610 to hold that an oral endowment could be made in favour of a deity.

15. Mr. Chopra further submits that the appellant has also moved an application under Order 41 Rule 27 CPC being C.M. No.6774/2015 to lead additional evidence, as it has only recently been learnt by the appellant that the sale deed set up by the respondent/plaintiff (Ex PW2/1) is not genuine.

This submission is made on the premise that the cheque – which is described as the mode for payment of consideration of Rs.14,15,000/- in the recital of the sale deed, is a bogus cheque.

16. A perusal of the said application being C.M. No. 6774/2015 shows that the appellant claims that one person, who refused to divulge his identity, approached and met the appellant to share some information about the pending court cases of the temple property. He introduced himself as a neighbour of the respondent and informed the appellant that the respondent, in collusion with some relatives of the erstwhile owner of the suit property, had played a fraud and were on the lookout to sell the suit property to a third party. It is submitted that the said person states that no amount was ever paid to anyone for sale/purchase of suit property, and that the said fact could be verified from the bank account. According to the appellant, he also disclosed that the details of the cheque number mentioned in the sale deed were forged and even produced a copy of the statement of account in respect of the bank statement to confirm that the cheque in question did not even exist.

17. The appellant claims that with the particulars provided by the said unnamed person, an inquiry was made from the concerned bank which refused to divulge any information about the statement of account since the appellant had no authority or permission. The appellant has also stated that no money was debited to the account of the vendee and, similarly, there was no credit in respect of the sale consideration in the account of the vendor.

18. Having perused the judgment of the trial court, the first appellate

court, the documents brought on record and the application under Order 41 Rule 27 CPC preferred by the appellant, and heard learned counsel for the appellant, I find absolutely no merit in this appeal. The so-called question of law sought to be raised by the appellant has no foundation in facts. Though, the appellant/defendant claimed in the written statement that an oral gift had been made in favour of the temple by Sh. Gurdev Singh, who was admittedly the owner of the property and from whom both the plaintiff and defendant claimed title, the defendant did not lead any evidence with regard to the alleged oral gift. Pertinently, the defendant claimed in the written statement that the alleged oral gift had been made in the presence of many people. However, not one was produced. The only witness produced by the defendant, apart from himself, was DW-2, who only claimed that he had been regularly visiting the suit property for the last 6-7 years as a devotee. He did not even claim that the so-called oral gift was made in his presence by the original owner Sh. Gurdev Singh.

19. The Trial Court disbelieved DW-2 on the premise that he claimed to be regularly visiting the suit property for the last 6-7 years, even though he was residing at Dwarka during that period. There was no reasonable explanation as to why he would travel from Dwarka to Arjun Nagar to visit a small temple in a locality. The defendant did not establish that the temple had acquired popularity and fame. The said witness did not explain his connection with the so-called temple that he claimed to have visited regularly in the last 6-7 years. His testimony had been led primarily to establish the claim of the defendant that he was the Head Pujari, since the witness stated that he had seen the defendant acting as Head Pujari.

20. In the absence of any evidence whatsoever, even with regard to making of an oral gift, there is no question of this Court entertaining an academic question of law, as it cannot be said that the same is a substantial question of law which arises in the facts of the case. For a question of law to be considered as “substantial”, it is essential that the same arises in the facts of the case. There are no foundational facts established by the appellant/defendant with regard to making of an oral gift in favour of deity. In *Anisetty Krishna Rao* (supra), the plaintiff had filed a suit claiming that the original owner of the suit property had made an oral gift in favour of the deity. Pertinently, there was an admission made by the defendant with regard to the oral gift in favour of the plaintiff. As aforesaid, this foundational fact is missing in the present case.

21. So far as the submission of Mr. Chopra with regard to the application under Order 41 Rule 27 is concerned, once again, I find no merit in the same. The sale deed had been produced by the plaintiff before the Trial Court. If the defendant was so minded, it was for the defendant to make whatever inquiry he had to, in relation to the genuineness of the transaction, including verification of the payment details recorded therein at the stage when the suit was pending. The defendant could have accessed the information which is now sought to be brought on record as evidence. In fact, a perusal of the application shows that the same is merely an attempt to somehow prolong the litigation, so as to deprive the respondent/plaintiff his fruits of the decree for possession obtained by him.

22. The application is vague inasmuch, as, it has recited that one person – who refused to divulge his identity, approached the appellant and shared the

information with regard to the alleged forgery and that no payment had been made under the sale deed by the vendor the vendee. The date, time and place of the alleged visit of this mysterious person is also not disclosed. This omission itself discredits the story now set up by the appellant. The appellant states in the application that he has approached the bank wherefrom the cheque was issued and the bank account of the vendor was maintained, and that the said bank has refused to provide the information to the appellant for want of authority. Thus, the appellant is now seeking the assistance of the Court to embark on a roving and fishing inquiry. In any event, there is no justification for moving this application at this highly belated stage.

23. For all the aforesaid reasons, the appeal is dismissed with costs quantified at Rs.1 lac. Out of the said costs, Rs.50,000/- shall be paid to the respondent, who is represented through counsel, and Rs.50,000/- shall be deposited with the Delhi High Court Legal Services Authority, within three weeks. The proof of payment of costs to the DHCLSA be filed on record within four weeks. In case the same is not so filed, the registry shall list the matter before the court.

24. Interim order stands vacated.

**VIPIN SANGHI, J**

**JULY 02, 2015**

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