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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.67/2015 & C.M. No.2654/2015

Decided on : 13th March, 2015

CHARAN SINGH

..... Appellant

Through: Mr. M. Ahmad for Mr. S.K. Tripathi &
Mr. A.K. Suri, Advocates.

Versus

BHAGMAL

..... Respondent

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the order dated 11.11.2014 passed by the learned Additional District Judge in R.C.A. No.17/2012 upholding the judgment and decree passed by the learned Civil Judge on 16.5.2003.

2. I have heard the learned counsel for the appellant. The learned counsel has not been able to make out any substantial question of law involved in the matter. Before disposing of the matter, it may be pertinent here to mention that the present appellant initiated a suit for possession and recovery of mesne profits against the respondent in

respect of suit property bearing No.85, Dr. Ambedkar Basti, Opposite Khajurwali Gali, Shahdara, Delhi measuring 27 square yards alleging the respondent to be the licensee under the appellant/plaintiff. It was his case that he had purchased the aforesaid property from one Nepal Singh. The respondent filed his written statement and disputed the fact that he is a licensee under the appellant/plaintiff. He had himself claimed to be the owner of the suit property and in occupation for more than 13 years prior to the date of filing of the written statement. It was alleged by him that he was running a furniture shop for that long period of time.

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

- “1. Whether the plaintiff is the owner of the property in suit?*
- 2. Whether the defendant was inducted as a licensee in the property in suit by the plaintiff as alleged in the plaint?*
- 3. Whether the plaintiff is entitled to recover license fee as claimed in the plaint?*
- 4. Whether the suit is not maintainable in view of preliminary objection No.1?*
- 5. Relief.”*

4. Both the parties adduced their respective evidence in support of their case. The appellant/plaintiff examined in support of his ownership his own self as well as PW-3, Nepal Singh, who is purported to have sold the property. The appellant proved various documents Ex. PW 1/1, Ex. PW 1/2, Ex. PW 1/3 and Ex. PW 3/1, which are in the nature of GPA along with agreement to sell, receipt, possession letter, etc. PW-3, Nepal Singh, has admitted that he had executed these documents which are being claimed by the appellant to be the documents of his own ownership. However, during his cross-examination, he fell flat as he was not able to establish his ownership qua the suit property. He had not produced even a single document to establish his own ownership. Therefore, the trial court after analysis of evidence of the appellant/plaintiff arrived at a conclusion that the appellant has not been able to prove his ownership. Moreover, no person can pass on a title better than he has and as the Nepal Singh does not establish his title to the property, he could not have sold the same to the present appellant.

5. As regards the second issue with regard to the respondent being a licensee also, the appellant was not able to prove that the respondent was

a licensee. No receipt and agreement with regard to status of respondent being a licensee was established. Even the oral evidence was not sufficiently corroborated by other witnesses that he is a licensee. Therefore, on both these scores, he failed to prove his case by preponderance of probabilities.

6. The appellant/plaintiff feeling aggrieved preferred the first appeal before the court of learned Additional District Judge, who has upheld the judgment and decree of dismissal passed by the trial court.

7. Still feeling dissatisfied, the present regular second appeal has been filed. The contention of the learned counsel for the appellant is that the documents which are placed by him on record are establishing his ownership and moreover, the respondent has admitted before the police as well as in an application filed by him in these very proceedings that he is the tenant and therefore, these points raise substantial question of law.

8. In my considered opinion, none of the submissions made by the learned counsel raise any substantial question of law as the question 'as to whether the appellant/plaintiff is the owner or not' is a question of fact which has been ruled against the appellant concurrently by the two courts

after appreciation of evidence. Similarly, even if the application purported to have been filed by the respondent before the trial court during the proceedings stating himself to be the tenant is taken into consideration, it nowhere says that he is a tenant under the present appellant and consequently, nor is it the case of the appellant that the respondent is a tenant so as to invoke the doctrine of estoppel. The appellant had setup a definite case that the respondent is a licensee which he had failed to establish. The appellant cannot succeed on the deficiencies of the case of the respondent/defendant.

9. On examination of totality of circumstances, I am satisfied that no substantial question of law is involved in the matter. Accordingly, the appeal is dismissed.

V.K. SHALI, J.

MARCH 13, 2015
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