

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.81/2015 & C.M. No.3337/2015**

Decided on : 24th February, 2015

NARESH KUMAR SODHI & ORS Appellant
Through: Mr. D.K. Singh, Ms. Archita Phookun &
Mr. Pradeep Shukla, Advocates.

Versus

HARI RAM CHAURASIA & ANR Respondents

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed against the judgment dated 13.1.2015 passed by the learned Additional District Judge in R.F.A. No.3112/2012 by virtue of which the judgment dated 17.10.2011 passed by the learned Civil Judge in Suit No.616/1998 titled *Hari Ram & Anr. vs. Santosh & Others* was partially upheld.

2. The learned counsel for the appellants has contended that respondent No.1 has not chosen to file replication to the written statement filed by the present appellants denying that the shop in respect of which a decree for possession was passed had a dimension of 5' x 4' and not 5' x 9'.3". He has sought to place reliance on *Mateshwar Dayal vs. Amar Singh*; AIR 1983 P&H 197 and *Ram Lal & Another vs. Santosh Kumar Puri*; 2009 SCC OnLine P&H 697, the two judgments of the Punjab &

Haryana High Court to contend that non-filing of rejoinder by respondent No.1 tantamounts to an admission of this aspect of the matter in the written statement.

3. I have considered the submissions and have also gone through the two judgments relied upon by the learned counsel for the appellants. The judgments which have been sought to be relied upon by the appellants, in the instant case, have no applicability and do not lay down the propositions that non-filing of replication to the written statement would tantamount to an admission of a fact. Order VI Rule 1 CPC clearly lays down that pleadings constitutes of only the plaint and the written statement. Therefore, replication not being a part of the pleadings, need not be filed by a party.

4. Similarly, in the second judgment also, the court has observed that the rejoinder is to be read along with the plaint as a pleading. But in none of the two judgments, it has been held that non-refutation of an averment in the written statement would be treated as an admission.

5. In the case of *Ram Lal (supra)*, there was an amendment which was allowed by the court to the written statement and it was in that context that the court came to observe that the rejoinder having not been filed by the party denying the averments to the written statement may be taken against the plaintiff because the rejoinder is to be read as a part of the plaint itself.

6. The issue which is involved in the instant case is as to whether the shop in question in respect of which a suit for possession was filed by respondent No.1 was having a dimension of 5' x 9'.3" or 5' x 4'. The respondent Nos.1 and 2 had filed a suit for possession against Satpal, the seller (since deceased) and the present appellants was seeking recovery of possession of shop measuring 5' x 9'.3". He had based his claim on the documents which were duly registered with the Sub-Registrar wherein the dimensions of the shop were given as such.

7. The appellants were defending the claim by stating that they too are subsequent purchasers of rear portion of the shop measuring 5' x 4'.3" from Satpal (since deceased) only in the year 1998. So far as their documents were concerned, they were not registered with the Sub-Registrar and were only notarized. So far as the dimension of the shop in the documents of respondent Nos.1 and 2 is concerned, it was stated by them that the same is inadvertently written to be 5' x 9'.3" on account of a typographical error.

8. The learned trial court after analysis of the evidence came to the conclusion that the dimensions of the shop in question were 5' x 9'.3" as reflected in the documents of respondent Nos.1 and 2 which were duly registered and evoke better credibility in comparison to the documents of the appellants which were only notarized. Moreover, so far as the plea of their being a typographical error in the documents of the respondent with regard to the dimension of the shop is concerned, it was observed by the trial court that this plea could have been taken only by the seller and not

by the present appellants, who had not executed the document in favour of respondent Nos.1 and 2. Accordingly, the suit for possession was decreed by the trial court against the present appellants in respect of the entire shop measuring 5' x 9'.3".

9. Feeling aggrieved, the present appellants preferred an appeal being R.C.A. No.3/2012, where also they were unsuccessful.

10. Still not feeling satisfied; now the present regular second appeal has been filed. The second appeal is permissible only when a substantial question of law is arising from the appeal. The question as to whether the dimension of the shop was 5' x 9'.3" or 5' x 4' is essentially a question of fact and not a question of law what to say a substantial question of law.

11. The present regular second appeal, in my view, is not at all maintainable. Accordingly, the same is dismissed.

V.K. SHALI, J.

FEBRUARY 24, 2015
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