

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

+ **R.S.A. No.154/2015**

Decided on : 29th June, 2015

MOHAN SINGH @ MOHAN LAL Appellant

Through: Mr. Radhey Lal Sharma, Advocate.

versus

CHANDRO DEVI & ORS Respondent

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a regular second appeal against the impugned judgment dated 13.12.2014 passed by the learned ADJ-02 (NE), Karkardooma Courts in RCA No.05/2014.

2. In brief, the facts of the case are that respondent No.1 and respondent No.2 are the sister-in-law and nephew of the appellant respectively. The appellant herein had filed a suit bearing No.204/2008 seeking declaration and injunction against the respondents herein with respect to property being khasra No.276/84/1, Jheel Khranja, Delhi-

110051 bearing MCD No.736/2 (hereinafter referred to as 'suit property') to the effect that the plaintiff is having 25% undivided leasehold rights in the aforesaid suit property and therefore, defendant Nos.1 and 2 be restrained from creating third party interest. Further, it was prayed that the will of late Phool Singh be declared as null and void and a mandatory injunction restraining defendant No.3 from carrying out any mutation proceedings or making correction in revenue records was sought.

3. In the aforementioned suit, the appellant/plaintiff contended that he was the owner of 1/4th undivided share of the leasehold rights of the suit property which were inherited by him after the death of his predecessor-in-interest Sultan Singh, son of the original allottee of the suit property, Dule and sought a declaration regarding the same.

4. It was further contented by appellant/plaintiff that respondent Nos.1 & 2/ defendant Nos. 1 & 2 were not paying his share of rents and profits derived from the suit property, as agreed upon by the family settlement dated 04.10.1956-57 and also threatened to create third party interest. Therefore, an injunction was also prayed for.

5. The respondents/defendants contended in their written statement that the suit property was inherited by them as per the family settlement and the same was transferred to Om Prakash, Ram Avtar and Sat Prakash in satisfaction of a family debt vide sale deed dated 21.09.1961. Therefore, the appellant/plaintiff did not have any right, title or interest left in the suit property.

6. During the course of hearing of the suit, the appellant/plaintiff sought to amend the plaint on the basis of information obtained by filing an RTI application dated 17.07.2008 with DDA/respondent No.3/defendant No.3 regarding will of late Phool Singh (the predecessor-in-interest of the respondent nos. 1 & 2/defendant Nos. 1 & 2) in favour of respondent No.1/defendant No.1, claiming that the said will was a forged and fabricated document. The said application was allowed on 06.01.2010.

7. The defendants were proceeded *ex-parte* vide order dated 17.01.2011 and the suit was dismissed by the SCJ on 27.09.2012 while observing that the appellant/plaintiff had failed to prove the family settlement dated 04.10.1956-57 and further he did not file any document

to prove his ownership and was therefore, was not entitled to the decree of declaration.

8. Feeling aggrieved by the dismissal of suit, the appellant/plaintiff filed first appeal bearing RCA No.05/2014 wherein it was contended that the judgment and decree dated 27.09.2012 has been passed without application of judicial mind and the trial court failed to appreciate the facts of the case. The said appeal of the appellant/plaintiff was also dismissed by the judgment dated 13.12.2014 which has been assailed in the present second appeal.

9. It has been contended by the learned counsel for the appellant that the respondents failed to produce and prove the averments made in their written statements by way of evidence and therefore the trial court as well as the appellate court should have drawn an adverse inference.

10. I have heard the learned counsel for both the parties and also gone through both the trial court order as well as the impugned order.

11. A perusal of the appeal shows that in the present appeal, by way of grounds of appeal, the appellant has challenged the orders passed by the

two courts as if there is misappreciation of evidence and that the trial court has arrived at a wrong conclusion. The learned counsel for the appellant has failed to show to this court that the two judgments which have returned a concurrent finding dismissing the suit of the appellant for declaration and injunction suffer from any perversity. He has also not been able to show that there is any substantial question of law involved in the matter which is a pre-condition for entertaining the appeal. Hence, the present regular second appeal is dismissed.

V.K. SHALI, J.

JUNE 29, 2015
LT/AA'