

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

+ **R.S.A. No.356/2014**

Decided on : 12th January, 2015

RAJ PAL Appellant

Through: Mr.Daniest Allen, Advocate.

Versus

NEHRU LAL Respondent

Through: None.

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

V.K. SHALI, J. (ORAL)

1. I have heard the learned counsel for the appellant. He has not been able to make out any substantial question of law in the instant appeal and, therefore, the appeal is dismissed.

2. Briefly stated, the facts of the case are that the respondent/plaintiff herein had filed two suits i.e. one for recovery of possession (Suit No.294/2010) and the other permanent injunction (Suit No.295/2010) in respect of the suit property. Both these suits i.e. the suit for recovery of possession as well as the suit for permanent injunction were decreed against the appellant. However, the appellant chose to file an appeal only

against the judgment and decree passed in the suit for possession. The first appellate court upheld the judgment and decree passed against the appellant vide order 25.09.2014. Now the present regular second appeal has been filed only against the judgment and decree so far as the possession is concerned.

3. The case which was set up by the appellant/plaintiff was that one Sh.Phool Singh was the cousin brother of the respondent and he had permitted Phool Singh to occupy two rooms and some other portions of the property in question bearing No.23, Dhirpur Gaon near Nirankari Colony, Kingsway Camp, Delhi – 110009. As a licensee he was permitted to enjoy this license during his lifetime and since he had died, the widow (the present appellant) stepped into the shoes of her husband and continued with the possession of the suit property. The appellant was given a notice to vacate the premises after revocation of license in favour of her husband and since she did not respond, therefore, the suit for possession and permanent injunction was filed.

4. The defendant had taken the plea in the written statement that she is the owner of the suit property and, therefore, there was no question of her vacating the same. Alternatively, she had also taken the plea of adverse possession. No evidence with regard to the adverse possession or

the suit property having been owned by her or her husband by way of a settlement deed having been executed between her husband and the respondent/plaintiff was brought on record. Therefore, the court was left with no other option but to hold that the respondent/plaintiff was the owner of the suit property as he had not only proved the sale deed, but he had established from the oral testimony that he is the owner of the property in question. The present appellant was not able to produce any document or any oral evidence to show that she was in adverse possession or that her husband had become owner of the same by virtue of a settlement deed. In the absence of the same, she could not have been considered as the owner on account of Section 17 of the Registration Act, 1908 and accordingly the judgment and the decree passed by the trial court was upheld by the first appellate court.

5. The contention of the learned counsel for the appellant is that the respondent has not been able to establish his ownership qua the suit property. On the contrary, it has been contended that the appellant was the owner of the suit property by virtue of adverse possession while as the trial court and the first appellate court had wrongly put the burden on them with regard to their proof of ownership. Both these questions are

stated to be constituting a substantial question of law and accordingly it is prayed that the appeal may be admitted.

6. The learned counsel for the appellant has also drawn the attention of the court to the averments made in the application where certain allegations are purported to have been made against the Additional District Judges.

7. I do not consider it appropriate to discuss and analyze the stand of the respondent on account of the fact that all these allegations are bereft of any merit.

8. The contention of the learned counsel for the appellant that the learned ADJ had a bias and therefore ought not to have heard and decided the appeal is essentially beyond the domain of this court. If the appellant felt aggrieved on account of the fact that his appeal was listed before a court which it did not want to consider, the proper course of remedy open to him was to get the matter transferred rather than take this frivolous plea before this court in second appeal.

9. I do not consider that the present matter involves any substantial question of law much less a question which may give him access to the suit property, nor the appellant has been able to show that it involves one.

10. For the reasons mentioned above, I am fully satisfied that the appellant has not been able to make out any substantial question of law in the instant appeal. The appeal is accordingly dismissed.

11. No order as to costs.

V.K. SHALI, J.

JANUARY 12, 2015/dm