

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

+ **RSA No.366/2014**

Decided on : 22nd January, 2015

SHEELA DEVI Appellant

Through: Mr.S.C.Jain, Adv.

versus

KRISHNA & ORS Respondent

Through

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant.
2. I have heard the learned counsel for the appellant.
3. The learned counsel for the appellant has contended that the appellant had filed a suit for declaration with consequential relief and permanent injunction seeking to be declared owner of suit property bearing No.512, Gali No.9, Kanti Nagar, Delhi which was earlier known as Plot No.34, Block-B, out of Khasra No.61/229/2 situated at Village Ghondli in the abadi of Sant Nagar, Shahdara, Delhi, which has been negatived by the two courts below by a concurrent finding.

4. In this regard, it has been contended by the learned counsel for the appellant that the impugned order has not taken note of the fact that the appellant had proved the documents regarding her ownership of the suit property.

5. It has also been contended by the learned counsel for the appellant that the court has taken into consideration the factum of dismissal of the petition filed by the appellant/plaintiff before the Addl.Rent Controller under Sections 14(1)(a) & (b) of the Delhi Rent Control Act for eviction of the respondents/defendants from the suit property on account of non payment of rent and sub-letting and accordingly he raised a question as to whether the finding returned by the court of Addl.Rent Controller could be treated as a ruling binding upon the Civil Court with regard to taking a view as to the ownership in a suit for declaration. The learned counsel for the appellant has contended that this constitutes a substantial question of law.

6. I have considered the submission made by the learned counsel for the appellant as well as gone through the record of the case.

7. I am of the considered opinion that the case does not involve any substantial question of law and accordingly does not deserve even

issuance of notice to the opposite party.

8. As a matter of fact, the husband of the appellant had earlier appeared and sought permission to withdraw the appeal which was not permitted by the court on account of the fact that the counsel for the appellant was not present.

9. On the next date of hearing, the counsel did not appear and the husband of the appellant stated that he never made such a statement. Consequently, the court was compelled to fix the case for formulation of a substantial question of law.

10. Be that as it may, it may be pertinent to here to give a brief facts of the case to understand the submission made by the learned counsel for the appellant to see as to whether any question is involved in the matter or not.

11. The appellant/plaintiff filed a suit for declaration with a consequential relief of permanent injunction against the respondents/defendants seeking to be declared to be declared the owner of the suit property. This was contested by the respondents/defendants. The trial court framed issues in the matter on 10.03.2004 where issue No.1 was as follows:

“Whether the plaintiff is the owner of the property in question?”

12. The appellant/plaintiff examined six witnesses in support of her case, but did not herself enter into the witness box. On her behalf, the son of the plaintiff appeared in the witness box as her attorney who is stated to have proved the documents of ownership with respect to the suit property.

13. The court, after hearing the arguments, has taken note of these documents and has noted that first of all the non appearance of the appellant/plaintiff in the witness is fatal to the case of the appellant/plaintiff. For this purpose, the testimony of the PW-5, her attorney, was not relied upon by the court as establishing the ownership of the suit property as the court commented that the apex court has categorically observed that the appellant/plaintiff may file a suit through the attorney, but the attorney can testify only with regard to testify only with regard to that portion of the testimony which is known to him or her. In the instant case, the attorney did not know about the entire transaction having taken place between the appellant/plaintiff and the respondents/defendants. In this regard, the

trial court has placed reliance on *Janki Vasudev Bhojwani & Anr. Vs. Indus Ind Bank Ltd. & Ors.*; AIR 2005 SC 439 and *Sudhir Engineering vs. Nitco Roadways*; 1995 RLR 286.

14. The second aspect on the basis of which the ownership of the suit property was deemed to have been not established was that the complete chain of title documents was not brought on record. Because of these reasons, the appellant/plaintiff was not held to be the owner of the suit property and thus the suit was dismissed. The first appellate court has agreed with the finding returned by the trial court which is sought to be assailed by the appellant/plaintiff now by filing the present regular second appeal.

15. The contention of the learned counsel for the appellant as to whether the finding returned by the Addl. Rent Controller would be binding on the civil court is of no consequence. The trial court has also taken note of the fact that before filing the present suit for declaration, the appellant/plaintiff had filed an eviction petition against the respondents/defendants under Sections 14(1)(a) & (b) of the Delhi Rent Control Act, 1958 which was dismissed. The said order of dismissal was challenged by the appellant/plaintiff before the

learned appellate court which confirmed the finding returned by the Addl.Rent Controller. The findings of the Addl.Rent Controller and the Addl.Rent Control Tribunal were not challenged any further and thus attained finality. Hence, the issue raised by the appellant/plaintiff is barred by the principles of *res judicata*. This observation has prompted the learned counsel for the appellant/plaintiff to raise a question before this court as to whether the finding returned by the Addl.Rent Controller is binding on the civil court or not. But as a matter of fact, there was no occasion for him to do so nor is the judgment of the Addl.Rent Controller is to be treated as *res judicata* because the finding returned by Addl.Rent Controller is that there is no relationship of landlord and tenant between the appellant/plaintiff and the respondents/defendants while as in the civil court, the question involved was with regard to ownership of the suit property. A landlord need not be necessarily a owner but every owner is necessarily a landlord. Therefore, the issues before the Addl.Rent Controller and the Civil Court were totally different. De hors the judgment of the Addl.Rent Controller, since the appellant/plaintiff has not been able to establish her ownership, which is a question of fact

and has been affirmed by the first appellate court, the said question does not raise any substantial question of law so far as the present forum is concerned.

16. I accordingly feel that the present appeal does not involve any substantial question of law and the same is dismissed.

V.K. SHALI, J

JANUARY 22, 2015/dm