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

+ RFA 473/2015

GHASITA SINGH

..... Appellant

Through: Mr.Anil Panwar, Mr.Apoorva Srivastava
and Mr. Chetan Prakash, Advocates

versus

RAM PRAG KOIREE

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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21.07.2015

CAVEAT 731/2015

1. The matter has been called out. Since there has been no appearance on behalf of the caveator, the caveat stands discharged.

CM No.12629/2015 (Exemption)

2. Allowed subject to just exceptions.

RFA 473/2015 and CM No.12628/2015 (stay)

3. The case set up by the appellant / defendant before the trial court was that he was owner of the suit property bearing no.D-563, Mahavir Enclave, Part-III, New Delhi-110045, admeasuring 100 sq. yds.

3.1 The appellant / defendant had claimed that the aforementioned suit property was purchased by him from one, Mr. Triveni, who died on 18.06.1995.

3.2 Admittedly, the original documents said to have been executed in the

appellant/defendant's favour i.e., the agreement to sell, general power of attorney, receipt, etc. were not filed.

3.3 Leave was sought by the appellant / defendant to lead secondary evidence, which was not granted, by the trial court. In fact, the trial court had earlier passed a judgment against the appellant / defendant, which is dated, 28.01.2010, qua which, an appeal was preferred by the appellant / defendant herein, which was numbered as : RFA 576/2010. This appeal was allowed to a limited extent whereby, the respondent/plaintiff, was given liberty to cross examine the five (5) witnesses cited by the appellant/defendant in respect of whom, affidavits of evidence had already been filed.

3.4 Pertinently, no leave was given by this court vide its judgment dated 22.11.2011, passed in RFA 576/2010, to lead secondary evidence.

3.5 The trial court, in the impugned judgment, though, that is in the second round, has come to the conclusion that the appellant/defendant has not been able to establish that he is the owner of the suit property, and that, the said suit property was purchased by him from the deceased, Triveni i.e., the brother of the respondent/plaintiff.

3.6 The learned counsel for the appellant has raised one singular argument in support of the appeal, which is, that even the respondent/plaintiff could not prove his ownership, as all that he had by way of evidence with regard to the ownership was, a receipt drawn in his favour by one, Mr. Surender Kumar. Mr. Surender Kumar, according to the counsel for the appellant was the original owner of the suit property.

4. According to me, in so far as the appellant / defendant is concerned, he cannot take recourse to such an argument, for the reason, his entire

defence is based on the fact that the deceased Triveni who, admittedly, is the brother of the respondent/plaintiff had executed documents in his favour, based on which, ownership is claimed by him in the suit property. This aspect has also been noted by the trial court in paragraph 23 of the impugned judgment.

4.1 In so far as the ownership of the suit property is concerned, the trial court has made the following observations in paragraph 24 and 25 of the impugned judgment.

“..24. Sufficient doubt so far as has already been created with respect to genuineness of the documents mark I, J, K, L in favour of the defendant. The defendant has not only failed to place the original documents on record but also failed to remove the cloud of doubt regarding the documents being forged and fabricated which doubt was further confirmed with deposition of PW-11 who was the handwriting expert and had examined the disputed signatures and thumb impression upon the documents i.e., GPA, agreement to sell, affidavit and receipt, all dated 21.02.1995 having compared them with admitted signatures and thumb impression of Triveni from the record room file, Patiala House Courts. In his opinion, the disputed signatures differed from the comparative signatures and were not written in the handwriting of the same person as well as disputed thumb impressions differed from the comparative thumb impressions and were not of the same person. Nothing can be elicited in the cross examination of this witness with respect to incorrectness of his report Ex. PW11/1. DW1 himself also admitted that the application u/s. 73 of Evidence Act filed in the other suit for declaration which was filed by the defendant herein against the plaintiff was disposed off by the court and handwriting expert filed the report that the signatures and thumb impression of deceased Triveni on the alleged documents did not tally with the admitted signatures of Triveni, which was followed by filing of application u/s. 340 Cr. P.C. by the plaintiff herein in the said case.”

25. The cumulative effect of the above discussion leads to the only conclusion that the defendant has miserably failed to prove the sale of the property in question in his favour by the deceased brother of plaintiff. In these circumstances, his possession in the suit property without the consent of the plaintiff remained that of illegal and unauthorized occupant whereby the plaintiff becomes entitled to get back the possession of the same from defendant being the sole legal heir of deceased Triveni. Both these issues are accordingly decided in favour of the plaintiff and against the defendant..”

(emphasis is supplied)

5. In my view, no error can be found in the impugned judgment. Accordingly, the appeal and the pending application are dismissed.

RAJIV SHAKDHER, J

JULY 21, 2015

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