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

+ **Date of Decision: 19.08.2015**

% **RSA 305/2015**

SAROJ YADAV Appellant

Through: Mr. A.K. Mishra & Mr. Hemant
Payak, Advocates.

versus

UTTRA CHAUDHARY & ORS Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

C.M. No.15810/2015

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

RSA 305/2015 and C.M. No.15809/2015

3. The appellant has preferred the present second appeal to assail the judgment and decree dated 11.05.2015 passed by the learned Additional District Judge-06, South District, Saket Courts, New Delhi in RCA 9/2015, preferred by the appellant/ defendant, challenging the judgment and decree passed by the Civil Judge (West) in Suit No.631/2010 - filed by respondent

No.1.

4. Respondent No.1/ Smt. Uttra Chaudhary had filed the suit in question to seek possession and permanent injunction against the defendants, and in particular, defendant No.3/ Smt. Saroj Yadav – the appellant herein. Defendant No.1 was stated to be the original owner of the suit property, which was described as a plot of 190 sq. Yards out of Khasra No.1577, No.701-1/9 Sangam Vihar, situated in the revenue estate of village Tughlakabad, Delhi. Defendant No.2/ Sh. Charanjit was stated to be the attorney of the original owner, who had executed the agreement to sell, power of attorney, etc. in favour of the plaintiff. Defendant No.3 was impleaded as the person in occupation of the suit property and against whom the relief was directed.

5. The case of the plaintiff was that she had purchased the plot through defendant No.2 on 30.04.1985 against consideration of Rs.22,000/-. Defendant No.2 was claimed to be the lawful attorney of defendant No.1/ the original owner. In terms of the agreement to sell, the plaintiff claimed that she was handed over the possession of the suit property. The plaintiff alleged that in the month of June 1996, defendant No.3/ appellant and her husband threatened the plaintiff to dispossess her from the suit property. Consequently, the plaintiff made a written complaint at PS – Sangam Vihar on 24.07.1996. The plaintiff then filed a suit for injunction impleading defendants No.2 & 3 and one Sh. Ravi Kumar as party defendants. At that stage, defendant No.3/ appellant had claimed to have purchased the suit property from one Sh. Ravi Kumar, s/o Sh. Bure Ram, who was claimed to be the lawful attorney of the Defendant No.2.

6. In those proceedings, the Patwari from Kalkaji was summoned, who brought the record pertaining to Khasra No.1577. He had made a statement that the suit property was situated in Khasra No.1577, and not in Khasra No.1581. This issue arose as the defendant/ appellant herein, in her documents claimed that she had purchased the land falling in Khasra No.1581 and the common predecessor-in-interest/ attorney was defendant No.2/ Sh. Charanjit. The Patwari had deposed in those proceedings that the suit property did not fall in Khasra No.1581. The plaintiff claimed that Defendant no.3 and her husband had forcibly taken away possession of the suit property in the year 1997. Since the plaintiff had not been able to establish her possession in the suit property, the said suit for injunction was dismissed.

7. Consequently, the plaintiff preferred the suit in question. The defendant No.1 filed his written statement, denying authority given by her to Defendant No.2 to sell the suit property to the plaintiff. He denied having executed the power of attorney in favour of the Defendant No. 2, or the factum of sale of the suit property for consideration of Rs.22,000/-. However, after filing the written statement, defendant No.1 stopped appearing in the suit and, therefore, proceeded ex-parte. This defence of defendant no.1 was, therefore, not substantiated. The appellant/ defendant No.3 urged that the present suit was barred by the principles of *res judicata*. This averment was premised on the dismissal of the earlier Suit No.604/1998, and that the judgment passed in the said suit had attained finality.

8. The Trial Court on the basis of the pleadings framed the following

issues:

- (i) Whether the Plaintiff has no locus standi to file the present suit ? OPD
- (ii) Whether the suit has not been properly valued for the purposes of court fees and jurisdiction? OPD
- (iii) Whether the suit is not maintainable due to lack of cause of action? OPD
- (iv) Whether the suit is barred by limitation? OPD
- (v) Whether the suit is bad for mis joinder and non joinder of necessary parties? OPD
- (vi) Whether jurisdiction of this court is barred in view of preliminary objection No. 9? OPD
- (vii) Whether the Plaintiff is entitled for relief of possession as prayed for? OPP
- (viii) Whether the Plaintiff is entitled to relief of declaration as prayed for? OPP
- (ix) Whether the Plaintiff is entitled to relief of injunction as prayed for? OPP 10

9. The plaintiff examined herself as PW-1. She exhibited the Site Plan as Ex.PW 1/A, certified copy of the judgment and decree passed in the suit for permanent injunction, i.e. Suit No.604/1998 as Ex.PW 1/B, Agreement to sell by which the suit property was purported to be purchased by defendant

No.2 as Ex. PW 1/C, General Power of Attorney executed in favour of the plaintiff as Ex. PW 1/D, Receipt of consideration of Rs.22,000/- as Ex. PW 1/E & Certified copy of judgment and decree dated 05.01.2002 passed in Suit No.604/1998 as Ex. PW 1/F.

10. Defendant No.3/ appellant examined herself as DW-3. She led in evidence Certified copy of agreement to sell dated 18.05.1995 executed in favour as Ex. DW3-1/A, Certified copy of GPA as Ex.DW3-1/B, Certified copy of affidavit as Ex. DW 3-1/C, Certified copy of receipt as Ex. DW3-1/D, Certified copy of GPA, Agreement to Sell, Affidavit and Receipt executed in favour of Sh.Ravi Kumar as Ex. DW3-1/E, F, G, H respectively. Certain other documents were also led in evidence, which are not necessary to be taken note at this stage.

11. The Trial Court observed that it was essential - for deciding the issue of ownership of the property in dispute, to determine the correct description and identification of the suit property. The Trial Court relied upon the observations made by the learned Civil Judge Delhi in Suit No.604/1998 in its judgment dated 05.01.2002 on the aspect of identity of the suit property. The Halka Patwari, Area Tughklabad, Delhi, had been examined as witness in the earlier suit, who had categorically stated that the suit property falls in Khasra No.1577, and not in Khasra No. 1581. The chain of documents relied upon by the appellant, on the other hand, described the property claimed to have been acquired by the appellant/ defendant No.3 as falling in Khasra No.1581.

12. The Trial Court observed that the defendant/ appellant had ample

opportunity to cross-examine the Halka Patwari in the earlier suit, and she had the opportunity to summon the Halka Patwari in the present suit as well with the relevant record to establish that she was in occupation of the plot acquired by her falling in Khasra No.1581. However, the defendant No.3/ appellant did not examine any witness from the Revenue Department to establish that the suit property falls in Khasra No.1581, and not in Khasra No.1577. Consequently, the said issue was decided in favour of the plaintiff. The other ancillary issues were also decided in favour of the plaintiff, and consequently, the suit was decreed for possession and permanent injunction, as prayed for. Injunctive relief was also granted by the Trial Court.

13. The First Appellate Court reaffirmed the judgment and decree passed by the Trial Court. The submission of learned counsel for the appellant is that the appellant had moved an application under Order XL Rule 27 CPC before the First Appellate Court to bring on record the NCR preferred by her husband in respect of the documents pertaining to purchase of the plot in Khasra No.1581, which were reported as lost. The appellant also sought to place reliance on certified copy of the statement of witnesses recorded in the earlier suit bearing No.604/1998. The submission is that the First Appellate Court did not decide the said application one way or another, and proceeded to pass the impugned judgment.

14. The next submission of learned counsel for the appellant is that the respondent No.1/ plaintiff had admitted that the defendant No.3/ appellant is the owner of plot admeasuring 200 sq. yards out of Khasra No.1581 situated in the revenue estate of village Tughlakabad, Delhi. Learned counsel further

submits that it was not established by the plaintiff that the suit property falls in Khasra No.1577.

15. Having heard learned counsel and perused the impugned judgment of the First Appellate Court and that of the Trial Court, as well as the application preferred under Order XL Rule 27 before the First Appellate Court, I am of the view that there is no merit in this appeal. It was the appellant, who sought to place reliance on the judgment rendered in the earlier suit for injunction filed by the respondent/ plaintiff. In those proceedings, admittedly, the Halka Patwari had categorically deposed that the suit property falls in Khasra No.1577, and not in Khasra No.1581, as claimed by the defendant/ appellant herein. This finding of fact was rendered *inter partes* and binds the appellant even in the present suit. The appellant did not seek to lead any evidence to establish that the suit property falls in Khasra No.1581, and not in Khasra No.1577. The documents on which the claim of ownership of the defendant was founded pertain to a plot in Khasra No.1581.

16. The failure of the First Appellate Court to deal with the appellant's application under Order XL Rule 27 CPC has not had any material bearing on the determination of the First Appellate Court to the prejudice of the appellant. This is for the reason that by seeking to lead additional evidence, all that the appellant sought to establish before the Court, was that the chain of documents produced by her as photocopies, had been lost and the said loss has been reported to the Police. The same could not have carried the case of the appellant any further since, admittedly, the said chain of documents pertains to Khasra No.1581, and not Khasra No.1577. Therefore,

non-consideration of the said application of the appellant has not, in any manner, adversely effected the rights & interest of the appellant and it has had no bearing in adjudication of inter se rights of the appellant.

17. The admission attributed to the plaintiff/ respondent No.1 in the suit is only to the effect that defendant No.3 is the owner of plot admeasuring 200 sq. yards in Khasra No.1581. The plaintiff nowhere admitted that the appellant/ defendant No.3 was the owner of the said property falling in Khasra No.1577 – to which the suit pertained.

18. Both the Trial Court and the First Appellate Court have based their findings on cogent evidence. The findings are consistent and being consistent findings, this Court in second appeal would not interfere with the same, particularly when the appellant had failed to establish that the said findings are illegal, or perverse.

19. Consequently, in my view, no substantial question of law arises for consideration in the present appeal. The same is, accordingly, dismissed.

VIPIN SANGHI, J

AUGUST 19, 2015

B.S. Rohella