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

+ **Date of Decision: 27.11.2015**

% **RSA 408/2015**

SHANTI DEVI

..... Appellant

Through: Ms. Anjali Chopra, Advocate

versus

GULAB SINGH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

CM Appln. No. 28403/2015 (condonation of delay)

By this application, the applicant seeks condonation of 10 days' delay in refilling the present second appeal. For the reasons stated in the application, the delay is condoned. The application stands disposed of.

CM Appln. No. 28406/2015(exemption)

Exemption allowed, subject to just exceptions.

RSA 408/2015 & CM Appln. No. 28405/2015 (stay)

1. The present second appeal is directed against the judgment and decree dated 30.06.2015 passed by the first appellate court, namely, Additional Senior Civil Judge of Central District at Tis Hazari Courts, Delhi, in RCA No. 4/2010, preferred by the appellant-plaintiff whereby the said appeal has

been dismissed. The said first appeal had been preferred to assail the judgment and decree dated 19.03.2010 passed by the trial court, namely, the Civil Judge (West)-2, Delhi, in Suit No. 841/98 preferred by the appellant-plaintiff to seek the relief of permanent injunction, which had been dismissed.

2. The case of the appellant/plaintiff was that the plaintiff is the owner and landlord of the property bearing No. 10614, Manakpura, Delhi. It was claimed that the suit property originally belonged to Shri Hardeva of whom the plaintiff is the adopted son. The plaintiff claimed that the two wives of Hardeva, namely, Smt. Ghisi and Smt. Budhi executed a registered gift deed dated 17.02.1955 in favour of the plaintiff, gifting the suit property to him. The plaintiff claimed that the defendant was the licensee in respect of two rooms, one store and a water closet in a portion of the suit property which was created on account of love and affection towards the mother of the defendant by the uncle of the plaintiff, namely, one Shri Ram Rattan. No charges were fixed under the said license. Later on, on the insistence of the mother of defendant No. 1, a token amount of 50 paise per month was agreed to be accepted by the plaintiff from the parents of the defendant for use and occupation of the said portion in the suit property. The plaintiff claimed that payment was made by defendant No. 1 till 1989, whereafter it was unilaterally stopped. The mother of defendant No. 1 expired in 1992. Defendant No. 1 has continued in occupation of the suit property without the consent of the plaintiff. It was further claimed that defendant No. 1 had inducted a tenant in one room of the said portion located on the first floor of the suit property without the consent of the plaintiff. Since the defendant

No. 1 did not vacate the premises and also threatened to create third party interest in the portion in his occupation, the suit was preferred to seek a restraint against him from alienating possession of the ground floor to any third party or creating any third party interest there.

3. Defendant No. 1 filed his written statement disclosing that he has already sold the suit property to one Smt. Laxmi Devi by executing the necessary documents and handing over possession to her on 27.11.1998. Consequently, the suit was amended by the plaintiff. Smt. Laxmi Devi was impleaded as defendant No. 2. The plaintiff also sought a decree for possession qua the portion of the suit property in possession of the defendants.

4. The defendants filed a joint written statement challenging the claim of ownership made by the plaintiff in respect of the suit property. The defendants claimed that plaintiff-Prabhati Ram was an illiterate person who has neither signed the plaint, nor engaged any counsel for filing of the suit. Some other person signed the plaint, in his name, and plaintiff was not even aware of the pendency of the suit and the signatures of the plaintiff have been forged and fabricated. One Shri Jeet Ram was stated to be misusing the process of law in collusion with Shri Bhupinder Kumar. The defendants claimed that Smt. Chhajji Devi got the suit property from her ancestors who were the actual owners of the same. Smt. Chhajji Devi was the mother of defendant No. 1 and absolute owner of the suit property. In the alternative, the defendants claimed that Smt. Chhajji Devi became owner of the suit property by adverse possession as she was in actual, exclusive, physical and continuous possession for the last about 60 years and her possession was

hostile and open against everyone including the plaintiff. The defendant claimed that after the demise of Smt. Chhajji Devi, defendant No. 1 became the owner of the suit property. The claim of ownership made in the name of Hardeva was also disputed by the defendants and, consequently, the gift deeds purportedly made by Smt. Ghisi and Smt. Budhi were also stated to be of no avail.

5. One Shri Bhupinder Kumar was examined as PW1 on the strength that he is the power of attorney holder of the plaintiff. He also claimed that he was conversant with the facts of the present case. He exhibited the site plan (Ex.PW1/1) and certified copy of the gift deed dated 17.02.1955(Ex.PW1/2). The judgments passed in other litigations were also led in evidence by the plaintiff. In his cross-examination, this witness admitted that defendant No. 2 was residing in the suit property for the last 35 years. He admitted that Hardeva had not obtained any decree with regard to the title to the suit property since 1955. He also admitted that the suit filed by, inter alia, Ghisi and Budhi, for declaration of title to the suit property had been dismissed by the Court.

6. The trial court dismissed the suit firstly on the premise that the plaintiff did not led his evidence in support of his case. The evidence of Bhupinder Kumar could not be relied upon, as he was a stranger and his deposition was not based on his personal knowledge in relation to the matters on which he deposed. The trial court also held that the plaintiff had not been able to establish his title to the suit property. The first appellate court has also concurred with the said findings and dismissed the first appeal.

7. I may observe that at the first appeal stage, after about 5 years of the filing of the first appeal, the appellant moved an application to lead additional evidence by leading the evidence of the plaintiff. The said application was rejected by the first appellate court.

8. The submission of learned counsel for the appellant, firstly, is that the first appellate court ought to have permitted the appellant to lead additional evidence. This is for the reason that when the evidence was led in the suit, the judgment of the Supreme Court in ***Janki Vashdeo Bhojwani & Anr. Vs. Indusind Bank Ltd. & Ors.*** AIR 2005 SC 439 had not been rendered. Only after this judgment, the appellant became wise that his attorney could not lead evidence unless he was personally acquainted with the facts of the case in respect of which he was deposing. Learned counsel for the appellant further submits that the appellant had produced the certified copy of the registered gift deed executed by the two wives of late Shri Hardeva. It was further argued that even the suit filed by the defendant's mother to claim title to the suit property had been dismissed. Thus, the title of the defendant was also not established.

9. Having heard learned counsel and perused the judgment of the trial court and the first appellate court, I am of the view that there is no merit in the second appeal. For the appellant to obtain relief in the suit filed by him, it was essential for him to establish his title to the suit property which he miserably failed to do. Although he produced certified copy of the registered gift deed executed by Smt. Ghisi and Smt. Budhi in his favour, admittedly, Smt. Ghisi and Smt. Budhi were not the owners of the property as it was claimed that Mr. Hardeva – their late husband, was the owner.

However, the title of Hardeva was not established by the plaintiff. Consequently, in any event, the plaintiff could not have succeeded in the suit. So far as the grievance that the appellant was not permitted to lead additional evidence is concerned, the judgment in *Janki Vashdeo Bhojwani* (supra) merely declared the law as it always existed. The law declared by the Supreme Court in the said decision was the law even when the evidence was led in the present suit. The application under Order 41 Rule 27 CPC was moved only after about five years of filing of the appeal. Moreover, even if the appellant had been permitted to lead additional evidence, the same did not pertain to the title of Hardeva. Consequently, it was purposeless to allow the said application as it would not have improved the situation for the appellant.

10. For all the aforesaid reasons, I find no reason in the present appeal and dismiss the same.

VIPIN SANGHI, J.

NOVEMBER 27, 2015

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