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

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Date of Decision: 16.12.2015

% **RSA 441/2015**

PRADEEP KUMAR PRAHARAJ

..... Appellant

Through: Mr. Pratap Sahani and Mr Mukesh
Kumar, Advocates

versus

SUDERSHAN PATRA

..... Respondent

Through: Mr. Ramesh Kumar and with Ms.
Anjali Chopra, Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

C.M. No.31025/2015

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

Cav No.1297/2015

The caveator has put in appearance and accordingly the caveat stands discharged.

RSA 441/2015 & C.M. No.31024/2015

1. The present second appeal is directed against the judgment and decree dated 14.09.2015 passed by the First Appellate Court, namely, learned ADJ-04 (NW), Rohini Courts in RCA No.33/2015, whereby the said first appeal has been allowed and the judgment and decree dated 14.05.2012 passed by the Trial Court, namely, Sr. Civil Judge cum Rent Controller in Suit No.381/2012, preferred by the respondent/plaintiff, has been set aside.

2. The respondent/plaintiff had filed the suit to seek the relief of possession, recovery of arrears of rent, and damages/mesne profits against the appellant/defendant by claiming himself to be the owner of the suit property bearing no.C-448, Sector 1, Avantika, Rohini, Delhi. The plaintiff claimed that the appellant/defendant was a tenant on the first and second floor constructed in an area admeasuring 32 sq. mtrs. The plaintiff claimed that he had purchased the suit property from the previous owner Sh. Shambu Prasad Goyal against payment of valuable consideration vide agreement to sell, GPA, SPA, receipt, affidavit, possession letter and registered will – all dated 31.03.1997.

3. The plaintiff claimed that the monthly rent was initially fixed at Rs.3,200/- besides water and electricity charges on 01.07.1998. However, the same was periodically increased and became Rs.7,000/- w.e.f January 2010. The defendant had paid the rent lastly in April 2010. Thereafter, the defendant did not make payment of rent and was in arrears of rent w.e.f. May 2010. The plaintiff stated that he served a notice dated 06.06.2012 through his counsel terminating the contractual tenancy by the end of 30.06.2012, and calling upon the defendant to make payment of rent @

Rs.7,000/- p.m. w.e.f. 01.05.2010 till 30.06.2012 alongwith interest. Since the premises was not vacated and rent not paid, the plaintiff filed the suit in question.

4. The appellant/defendant filed his written statement to contest the suit. The defendant denied that there was any rent agreement between the parties. He also denied that the plaintiff was the owner of the suit property. He stated that the suit property comprising of ground floor was purchased in the year 1997 by both – the plaintiff and the defendant, from Sh. Shambhu Prasad Goel and that the sale consideration was equally contributed by them. He also claimed that it was agreed that the documents such as agreement to sell, GPA, SPA, receipt, affidavit, possession letter and registered will etc. would be executed in favour of the plaintiff. He also claimed that the defendant of his own resources built up the first and second floor comprising of two rooms, kitchen and toilet on the first floor, and one room, kitchen and toilet on the second floor. He claimed that the parties were in occupation of the respective portions, i.e. the plaintiff was occupying the ground floor, and the defendant was occupying the first and second floor constructed by his own resources.

5. He pleaded that it was agreed between the parties that after the construction is over, the seller Shambhu Prasad Goel shall execute the sale deed in favour of both the plaintiff and the defendant. The defendant also pleaded that disputes arose between the parties on 01.11.2004. At that stage, an agreement was entered between them that the defendant shall sell the first and second floor to the plaintiff for a total consideration of Rs.3,37,500/-. He claimed that the plaintiff had also paid a sum of Rs.50,000/- as part

payment/token amount. However, later on, the plaintiff resiled.

6. On the basis of pleadings of the parties, the court, inter alia, framed the issue – whether the plaintiff is entitled for a decree of possession as prayed for. The parties led their respective evidence. The plaintiff tendered in evidence the conveyance deed executed by the DDA in his favour as Ex. PW-1/1. I may note that this conveyance deed was executed on 14.09.2012, i.e. after the filing of the suit on 18.08.2012. He also led in evidence the electricity bill in his name as Ex PW-1/7. He produced one Sh. Sushil Jain as PW-2, who stated that he knew both the parties and that the defendant was inducted as a tenant initially @ Rs.3,200/- p.m., which was raised to Rs.7,000/- p.m.

7. The defendant examined himself as DW-1. He produced documents to show that he was a resident of the suit property. The defendant also summoned a witness from the DDA who was examined as DW-2. He produced the record pertaining to the allotment of the flat in question.

8. The Trial Court returned findings against the appellant/defendant insofar as his claim of being a joint owner of the suit property was concerned. The Trial Court, however, held that the plaintiff had not been able to establish that the defendant was the plaintiff's tenant on the first and second floor on a monthly rent of Rs.7,000/-. Consequently, the Trial Court dismissed the suit as the plaintiff had not been able to establish the jural relationship of landlord and tenant between the parties.

9. The First Appellate Court has, however, reversed the said judgment on the premise that the ownership of the plaintiff stood established in respect of the suit property, and if the appellant/defendant was not a tenant in the

suit property, his position, at the highest, could be considered to be that as of a licensee. Since the plaintiff owner did not want to continue the defendants occupation, he was held entitled to recovery of possession of the suit property.

10. The submission of learned counsel for the appellant is that the respondent/plaintiff shifted his stand by earlier claiming that the appellant/defendant was a tenant, and before the First Appellate Court, he was claimed to be only a licensee.

11. Having heard learned counsel for the appellant and perused the record, I am of the view that there is absolutely no merit in the present appeal, and it does not raise any substantial question of law for consideration by this court. The title of the respondent/plaintiff stand established from the conveyance deed executed in his favour by the DDA. Though the plaintiff filed the suit on 18.08.2012, denying any right of ownership of the appellant/defendant, the appellant/defendant has neither been able to establish his defence before the Trial Court, nor has the defendant filed any independent proceedings to assert his right of ownership in the suit property within the period of limitation thereafter. In fact, the defendant did not even assail the findings returned against him by the Trial Court by preferring any cross objections before the First Appellate Court. Thus, it stands established that the defendant has no right title or interest in the suit property. The plea of the defendant himself was that he was not a tenant in the suit property. This plea was accepted by the Trial Court. That being the position, the occupation of the suit property by the defendant could at the highest be described as a licensee, and nothing more. When the First Appellate Court

held that if the appellant/defendant was not a tenant, his possession could – at the highest, be in the capacity of licensee, it did not tantamount to the respondent shifting his stand. The said conclusion naturally follows once it is established that the relationship of landlord and tenant has not been established between the parties, the appellant has no other right title or interest in the suit property. The only other conclusion that could be drawn was that the defendant was a trespasser.

12. In the aforesaid circumstance, there is no merit in the present appeal and the same is, accordingly, dismissed.

VIPIN SANGHI, J

DECEMBER 16, 2015

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