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

+ **RSA 78/2016**

Date of Decision: 25.05.2016

PRABHJINDER SINGH Appellant
Through Mr.Khushbir Singh and
Ms.Shaiza, Advocates.

versus

SWINDER KAUR Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

CM Appln.9807/2016

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM Appln.9808/2016

For the reasons stated in the application, the delay of 19 days in re-filing the appeal is condoned.

The application is allowed and disposed of accordingly.

RSA 78/2016

1. The appellant, Prabhjinder Singh, has challenged the judgment and decree dated 20.12.2012 passed by the Civil Judge-III (North), Tis Hazari Courts, Delhi in CS No.433/2011 whereby the suit for a decree of declaration, permanent injunction and mandatory injunction as

against the respondent/defendant was dismissed as well as against the judgment dated 29.10.2015 passed by the Additional District Judge-01 (West), Tis Hazari Courts, Delhi in RCA No.6/2013 whereby the judgment and decree of the Trial Court was affirmed and upheld.

2. The appellant claimed to be the tenant in Shop No.A-149, Hari Nagar, Gandhi Market, New Delhi, belonging to the respondent, Swinder Kaur for a monthly rental of Rs.350/- since 1982. His father late Avtar Singh (original defendant No.2) after his retirement from the Government service came to stay with him in the aforesaid shop. The shop was run under the name and style of M/s.Panjrath Electronics. The appellant has averred in his plaint that because of the strained relationship between him and his father, his father, in collusion with the respondent landlady, surrendered the tenancy of the shop to her.

3. The appellant/plaintiff, therefore, challenged the aforesaid surrender of tenancy at the instance of his father who was never the tenant and also prayed for his possession of the shop being restored.

4. The suit was contested on the ground that the tenancy was in favour of the father of the plaintiff who had surrendered the tenancy and that the appellant/plaintiff was nobody to challenge such surrender of tenancy.

5. The Trial Court, based on the pleadings of the parties, vide order dated 21.02.2006 framed the following issues:-

1. *Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD*

2. *Whether the plaintiff is entitled for the decree of declaration as claimed? OPP*
3. *Whether plaintiff is entitled for decree of permanent injunction as claimed? OPP*
4. *Whether plaintiff is entitled for decree of mandatory injunction as claimed? OPP*
5. *Whether the suit is not maintainable in the present form? OPD*
6. *Relief.*

6. At the trial, the appellant/plaintiff examined himself as PW-1 after tendering his evidence by way of an affidavit (Exh.PW-1/A). He has relied upon the documents namely site plan (Exh.PW-1/1); written note dated 23.10.2004 to the SHO Hari Nagar (Exh.PW-1/2); complaint dated 23.08.2005 (Exh.PW-1/4) and receipt of payment of fee (Exh.PW-1/5), in support of his contention. He has admitted of not being in possession of any document pertaining to tenancy but at the same time has also denied the tenancy of his father (original defendant No.2) in the suit property. According to the appellant/plaintiff, his father, late Avtar Singh had bungled in the suit property.

7. The Trial Court, on finding that no document was furnished by the appellant/plaintiff to establish his status as a tenant in the suit premises and that the only material which was relied upon by the appellant/plaintiff was the inspection report of the MCD of the premises indicating M/s.Panjrath Electronics as an old tenant, did not accept the plea of the appellant/plaintiff as being the tenant in the said property. The tenancy was said to have been created in the year 1982

but the inspection report of the MCD of tenancy was only for post 1992. This coupled with the evidence of the respondent/defendant of the firm M/s.Panjrath Electronics belonging to the father of the appellant led the Trial Court to observe that the appellant had miserably failed in proving the factum of his tenancy in the suit property. On the other hand, respondent Swinder Kaur who presented herself as DW-1 before the Trial Court affirmed the fact that M/s.Panjrath Electronics belonged to Avtar Singh, the father of the appellant and that Avtar Singh had been paying the rent of the shop to her husband. It was further stated by her that the premises was taken after retirement of Avtar Singh.

8. Mr.Tarshem Singh (DW-2) has stated before the Trial Court that M/s.Panjrath Electronics was formed by Avtar Singh which he ran from the shop belonging to the respondent.

9. Harbhajan Singh Sahni (DW-3) has deposed that the time of vacating the suit premises by Avtar Singh, the appellant/plaintiff was not present.

10. The Trial Court doubted the assertion of the appellant/plaintiff on the following grounds: viz. (i) no document regarding tenancy despite the claim of the tenancy since 1982; (ii) not impleading the LRs of late Avtar Singh who passed away in March, 2008 during the prosecution of the trial; (iii) the declaration of Avtar Singh (Exh.DW-2/1) of his surrendering tenancy of the suit property to the owner thereof and (iv) no effort on the part of the appellant/plaintiff to create doubt about the genuineness of the aforesaid document (Exh.DW-2/1).

Thus the Trial Court rejected the prayer of the appellant for the decree of declaration that he was the tenant of the suit property.

11. The MCD Inspection Book only reflects the status of M/s.Panjrath Electronics as an old tenant is of the year 1994 and the aforesaid report cannot be used as an evidence in favour of the appellant/plaintiff for such report is only for the purposes of assessment of tax of the suit property and definitely not for ascertaining or establishing the possession of the appellant/plaintiff over the suit property.

12. Since the status of the appellant/plaintiff as a tenant in the suit property could not be established, the Trial Court did not grant the relief of permanent and mandatory injunction as was prayed by him. Even the locus of the appellant to have filed the suit was rejected by the Trial Court.

13. The First Appellate Court affirmed the aforesaid findings of the Trial Court by holding that the appellant could not even produce bank account in the name of M/s.Panjrath Electronics, even though such firm was in existence for a long time or any evidence with regard to the mode of payment of monthly rental of the suit property. The First Appellate Court also took note of the fact that even the declaration of the father of the appellant namely Exh.DW-2/1 was not challenged and no specific questions were put to the witnesses regarding the genuineness of the aforesaid document. During the course of trial of the suit, the father of the appellant died but his LRs were not substituted. Even the mode of proof of Exh.DW-2/1 was not objected to.

14. Thus the First Appellate Court also agreed with the findings of the Trial Court and dismissed the appeal.

15. This Court finds no good reason to interfere with the concurrent findings of the fact.

16. No substantial question of law has been raised.

17. The second appeal is dismissed but without costs.

CM Appln.9806/2016

1. In view of the petition having been dismissed, the application has become infructuous.

2. The application is disposed of accordingly.

ASHUTOSH KUMAR, J

MAY 25, 2016

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