

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

+ **RSA No. 58/2009 & CM No. 6632/2009**

% **30th August, 2016**

ATUL KHANNA

..... Appellant

Through: Mr. Ashish Mohan, Mr. Mohit Kumar
and Mr. Chetan Wahi, Advocates.

Versus

SUSHIL KUMAR & ANR.

..... Respondents

Through: Mr. Abhishek Yadav and Mr. Narender
Singh Yadav, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/plaintiffs against the Judgment of the First Appellate Court dated 3.1.2009, and by which judgment the first appellate court set aside the Judgment of the Trial Court dated 5.7.2004. Trial Court by the Judgment dated 5.7.2004 had decreed the suit for possession filed by the appellant/plaintiffs with respect to the suit property being a passage, shown in the red colour in the site plan Ex.PW1/2, forming the property no. 1903, Part-A, Chandni Chowk, Delhi. Originally there were three plaintiffs in the suit who were the original appellants herein. Appellant no.1 died leaving

behind appellant nos.2 and 3/sons as his legal representatives. Appellant no.2 transferred/gifted his share in the suit property to appellant no.3 by way of a Gift Deed dated 31.3.2010. Therefore, appellant no.3 now is the sole appellant in the present second appeal.

2. Trial court in its judgment by a detailed discussion of the evidence led on behalf of the respondents/defendants has held that the respondent no.1/defendant no.1 though claimed right as a tenant in the suit property, however, failed to prove so as he could not lead evidence of any rent agreement or rent receipt either from the earlier owner Smt. Bimla Rani or the alleged other transferees/owners from Smt. Bimla Rani viz Sh. Om Prakash Gupta and his wife Smt. Saroj Gupta, and therefore, respondents/defendants had no right to the suit property. Trial court has also held that even as per the case of the respondents/defendants, the right in the suit property was claimed through one Sh. Mukesh Sharma but even title of Sh. Mukesh Sharma as a tenant in the suit property was not established by any evidence.

3. The first appellate court by its impugned judgment has set aside the judgment of the trial court by holding that the plaintiffs have failed to prove their title to the suit property, inasmuch as, the admitted facts on record are that though the earlier owner Smt. Bimla Rani had executed an Agreement to Sell dated 25.1.1982 in favour of the plaintiffs of the suit property and with respect

to which suit for specific performance filed by the appellant/plaintiffs in this Court was compromised by passing a decree, but, there is pending a civil suit between the appellant and Sh. Om Prakash Gupta and his wife Smt. Saroj Gupta for declaration and cancellation of the Sale Deeds dated 25.3.1983 executed by Smt. Bimla Rani in favour of Sh. Om Prakash Gupta and Smt. Saroj Gupta.

4. Therefore, it is still an issue which is yet to be finally decided that whether the appellant is the owner of the suit property or that Sh. Om Prakash Gupta and Smt. Saroj Gupta became the owners of the suit property by the Sale Deeds dated 25.3.1983, and which would only achieve finality once the civil suit between the appellant and Sh. Om Prakash Gupta and Smt. Saroj Gupta is finally decided. In case, appellant succeeds in this suit filed as against Sh. Om Prakash Gupta and Smt Saroj Gupta by getting the Sale Deeds dated 25.3.1983 executed by Smt. Bimla Rani in favour of Sh. Om Prakash Gupta and Smt. Saroj Gupta set aside and hence the appellant being declared as owner of the suit property, then at that stage appellant can revive the present second appeal which is disposed of for the time being in view of the fact that as of today there is no final judgment of a court holding that as between the appellant and Sh. Om Prakash Gupta and Smt. Saroj Gupta, it is the appellant who has title to the suit property.

5. Of course, if in the court case between the appellant and Sh. Om Prakash Gupta and Smt. Saroj Gupta, the Sale Deeds dated 25.3.1983 executed by Smt. Bimla Rani in favour of Sh. Om Prakash Gupta and Smt. Saroj Gupta are held to be valid and operative and thus Sh. Om Prakash Gupta and Smt. Saroj Gupta are taken as owners of the suit property, then in such a case present appellant would have no right to seek any further relief in the present second appeal because he would not be the owner of the suit property. However, Sh. Om Prakash Gupta and Smt. Saroj Gupta may in place of the appellant/plaintiffs seek their substitution and thereafter pursue the present second appeal.

6. This second appeal is accordingly disposed of for the time being with liberty to the appellant to seek revival of the same in case in the litigation between appellant and Sh. Om Prakash Gupta and Smt. Saroj Gupta, the appellant is declared as owner of the suit property.

7. The Regular Second Appeal is accordingly disposed of for the time being with the aforesaid observations.

AUGUST 30, 2016
ib

VALMIKI J. MEHTA, J