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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RSA 120/2016

RAKESH KUMAR

..... Appellant

Through: Mr. J.P. Mishra and Mr. Krishna Dev
Pandey, Advocates.

versus

RAVI KUMAR & ORS

..... Respondents

Through: Mr. Gaurav Kumar Singh, Advocate
for R-1.
Mr. Arjun Singh Bawa, Advocate for
R-2.
Mr. Ripu Daman Bhardwaj, CGSC
with Mr. T.P. Singh, Advocate for
D-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% 01.09.2016

C.M. Appl. Nos. 16389/2016 (for condonation of delay of 450 days in filing the appeal, under Section 5 of the Limitation Act), 16890/2016 (for condonation of delay of 215 days in re-filing the appeal, under Section 151 CPC) and RSA 120/2016

1. Independent of the aspect of delay in filing and re-filing of this appeal of 450 days and 215 days, respectively, counsel for the appellant has been heard on merits.

2. It is found that the judgments of the courts below dismissed the suit of the appellant/plaintiff No. 1 as being barred by limitation and doctrine of *res judicata*. The judgments of the courts below note that the predecessor-in-interest of the plaintiff, i.e., his father Attar Chand had executed a relinquishment deed in favour of his mother Smt. Ram Lubhai on 22.10.1965 and who had further sold the property to the mother of defendant No. 2/respondent No. 2-Sh. P.L. Anand vide an agreement to sell dated 16.11.1965. Also, a suit was filed by Smt. Ram Lubhai against Smt. Krishna Wanti, mother of defendant No. 2, questioning the sale transaction, which suit was dismissed and appeal against the same was also dismissed. Father of the appellant/plaintiff Sh. Attar Chand was a party to these earlier legal proceedings which culminated way back in the year 1975 when Civil Appeal No. 9/1975 was dismissed on 10.10.1975 against the judgment of the trial court dated 31.1.1975.

3. The courts below, therefore, have rightly dismissed the suit as being barred by *res judicata* because appellant claims through his predecessor-in-interest Attar Chand, and who was party to the earlier

proceedings whereby the claim of the predecessor-in-interest of the appellant with the other legal heirs of Attar Chand including his widow Smt. Ram Lubhai was dismissed. A repeat Power of Attorney executed in 2006 would not therefore create a cause of action or extinguish the rights created in terms of the judgments of the courts dated 31.1.1975 and 10.10.1975 dismissing the earlier suit filed by Smt. Ram Lubhai against Smt. Krishna Wanti, mother of defendant No. 2.

4. At this stage, counsel for the appellant, and who is one of the plaintiffs being plaintiff No. 1, other plaintiffs having not challenged the dismissal of the suit with costs, states that the appeal is not pressed on merits and the same be allowed to be withdrawn.

5. In view of the above the present appeal is dismissed as withdrawn.

VALMIKI J. MEHTA, J

SEPTEMBER 01, 2016

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