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

% **Date of Decision: 23rd September, 2016**

+ RSA 229/2013 and C.M. Appl. Nos.15764/2013 & 15766/2013

RAVINDER KUMAR KAIN Appellant
Through: Mr. C. Mohan Rao, Mr. Deepak
Khadaria and Mr. Lokesh Kumar
Sharma, Advocates

versus

SMT RAJNI Respondent
Through: Mr. Rohit Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant filed a suit for possession of property bearing No.C-412, Basti Nanak Chand, Mohan Gali, Kotla Mubarakpur, New Delhi, against the defendant which was dismissed by the learned Civil Judge vide judgment dated 08th October, 2012. The appellant's appeal against the aforesaid judgment was dismissed by the learned Additional District Judge on 04th May, 2013.
2. The learned Civil Judge dismissed the plaintiff's suit on the sole ground that the plaintiff failed to prove the ownership of the suit property though no specific issue was framed in this regard.
3. The first appellate Court dismissed the first appeal on the ground that the appellant's case was hit by principles laid down in ***Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana*** (2012) 1 SCC 656.
4. Learned counsel for the appellant submits that in ***Hardip Kaur v. Kailash*** 193 (2012) DLT 168, this Court has held such suits to be

maintainable under Section 202 of the Indian Contract Act. It is further submitted that the Supreme Court in **Suraj Lamp and Industries Pvt. Ltd.** (supra) reiterated the rights in an immovable property under Section 53A of the Transfer of Property Act, 1882 as well as Section 202 of the Indian Contract Act, 1872. It is further submitted that the similar view has been taken by this Court in the cases of **Ram Kumar v. S.K. Gulati** 2014 (1) CLJ 218 Delhi, **Ramesh Chand v. Suresh Chand** 188 (2012) DLT 538 and **Bharat Kumar v. Ashok Sahdev** 2013 (138) DRJ 99.

5. Learned counsel for the respondent, on instructions from the respondent, present in Court, gives up the objection to the maintainability of the suit in view of the clear position of law laid down in **Hardip Kaur** (supra).

6. In view of the above, the plaintiff's suit for possession is held to be maintainable and all contrary findings of the Trial Court as well as the first appellate Court are hereby set aside.

7. Learned counsel for the appellant submits that the appellant is entitled to the decree for possession in view of the findings of the learned Trial Court on all the issues in his favour.

8. This Court has gone through the findings of the learned Trial Court on the issues. It appears that since the Trial Court had made up its mind to dismiss the plaintiff's suit on the ground of maintainability, the issues were not considered thoroughly. This Court is of the view that it is the duty of every Court to discover the truth and then do justice. In **Ved Prakash Kharbanda v. Vimal Bindal** 198 (2013) DLT 555, this Court has discussed in detail the principles relating to the discovery of truth.

9. Since the trial Court has not adjudicated the issues in accordance with the well settled principles of law, the findings on the issues are also set aside and the case is remanded back to the learned Trial Court for fresh decision

after hearing the parties afresh.

10. The appeal is allowed. The impugned judgments of the learned Trial Court as well as the first appellate Court are set aside. The plaintiff's suit is held to be maintainable. Both the parties shall appear before the Trial Court on 20th October, 2016, when the learned Trial Court shall fix a date for hearing the final arguments of the parties.

11. Considering the appellant instituted the suit in May, 2011, the learned Trial Court shall decide the suit within a period of six months from today. Learned counsels for both the parties agree not to seek any unnecessary adjournment before the learned Trial Court.

12. The respondent shall not be permitted to object to the maintainability of the suit in view of ***Hardip Kaur*** (supra) and the statement made before this Court today.

13. Learned counsel for the appellant submits that the respondent be directed to pay the charges for use and occupation of the subject premises. The appellant is at liberty to file an application for this prayer before the learned Trial Court.

14. It is clarified that this Court has not examined the claims of the parties on merits, except to the extent as to whether the Trial Court has examined the case on merits in accordance with law.

15. The Trial Court record be returned back forthwith.

16. The pending applications are disposed of.

17. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

J.R. MIDHA, J.

SEPTEMBER 23, 2016

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