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

+ **RSA 212/2015**

**Date of Decision: 25.01.2016**

ARUN KUMAR

..... Appellant

Through: Mr.Rakesh Patiyal, Advocate.

versus

JAI PRAKASH

..... Respondent

Through: Mr.Venkataraman, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**ASHUTOSH KUMAR, J. (ORAL)**

1. The present second appeal is directed against the judgment dated 31.03.2015 passed by the Additional District Judge-02 (North) Rohini Courts, Delhi in RCA No.81/2014 whereby the judgment and decree dated 23.09.2014 passed by the Trial Court in Suit No.93/11, dismissing the suit of the appellant, was upheld.

2. The appellant preferred a suit for possession, permanent injunction, arrears of rent, damages and interest with respect to two shops namely Shop Nos.2 & 3 on the ground floor of property No.233/A falling in khasra No.23/8 & 23/13 in Village Libaspur Colony, also known as Sarup Nagar.

3. The respondent/defendant, according to the appellant was inducted in the suit property as a tenant on monthly rental of Rs.6000/- excluding water and electricity charges by a duly executed rent

agreement dated 12.07.2010 for a period of 11 months. The aforesaid rent agreement was notarised on 13.07.2010. The respondent is said to have defaulted in making payments of the rent from the month of September, 2000 and, therefore, by invoking Clause (v) of the rent agreement referred to above, a legal notice was served upon him.

4. The suit premises was not vacated, hence, the suit for a decree of possession, arrears of rent of Rs.18,000/- and damage charges at the rate of Rs.10,000/- per month by the appellant/plaintiff. Along with the aforesaid arrears, permanent injunction restraining the respondent/defendant from selling or transferring the possession or creating any third party interest in respect of suit property, was also sought.

5. Initially the defence of the respondent was struck off but under the orders of the High Court, he was permitted to file his written statement subject to deposit of cost of Rs.10,000/-.

6. The case of the respondent/defendant is that the appellant does not have any right, title or interest in the suit property nor has he any locus to institute the suit in the absence of any landlord-tenant relationship between the appellant and the respondent. The respondent had business relationship with the appellant but the suit was filed on the basis of forged documents. The respondent/defendant had never executed any rent agreement. The signatures and the thumb impressions were obtained on various blank papers and stamp papers on the pretext of using the same for securing the loan.

7. In replication, the appellant staked his claim over the suit property on the ground that one of the shops was purchased from one

Rajesh Gupta for a sale consideration on 13.07.2010 and the other from the respondent on the same day i.e. on 13.07.2010.

8. The Trial Court, on 31.08.2012 framed the following issues:-

- i. *Whether the suit has not been properly valued for the purpose of Court fees and jurisdiction? OPD*
- ii. *Whether the plaintiff is entitled for decree of possession as prayed for? OPP*
- iii. *Whether the plaintiff is entitled for arrear of rent as prayed for? OPP*
- iv. *Whether the plaintiff is entitled for recovery of damages as prayed for? OPP*
- v. *Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP*
- vi. *Relief*

9. The suit proceeded ex-parte in the absence of the respondent/defendant.

10. The Trial Court, on perusal and analysis of the evidence tendered by the appellant considered the same to be shaky and doubtful. One of the shops falling in the suit property is stated to have been purchased from the respondent/defendant whereas the other from one Rajesh Gupta on the same day i.e. on 13.07.2010. The Trial Court was of the view that if this statement were true, then how was it that the rent agreement was executed a day prior to the purchase of property by the appellant/plaintiff. The Trial Court also took note of the fact that the appellant/plaintiff could not prove the purchase of shop No.2 from Rajesh Gupta and from the respondent/defendant.

11. Even if the documents regarding sale in favour of the appellant would have been proved, those documents viz. GPA, sale agreement, affidavit, receipt, possession letter etc., Will dated 13.07.2010 (executed by defendant himself), were not registered documents and, therefore, did not constitute sale within the meaning of Section 54 of the Transfer of Property Act. Sale of any immovable property presupposes that the sale deed ought to be registered under the Registration Act. Finding even the ownership of the appellant/plaintiff to be not proved, the suit was dismissed.

12. In the first appeal, the appellant took the plea that the affidavit dated 27.09.2011 given in evidence on 28.09.2011 ought not to have been taken into consideration by the Trial Court in view of the order dated 09.02.2012 passed by the Trial Court on an application under Order IX Rule 7 of the CPC at the behest of the defendant, seeking setting aside the order by which the suit was to proceed ex-parte.

13. By the aforesaid order, the Trial Court had taken note of the fact that the High Court had directed for a de novo trial of the case. Hence the evidence which was later in point of time, after the order dated 09.02.2012, was required to be taken into account.

14. The other ground which was canvassed by the appellant before the First Appellate Court was that the application preferred before the Appellate Court under Order 41 Rule 27, though was dismissed but not on the merits of the application.

15. The Appellate Court was of the view that the Trial Court was absolutely justified in doubting the rent agreement as it was executed on 12.07.2010 whereas the property was conveyed to the appellant a

day after i.e. on 13.07.2010. It would not have made any difference if the date of conveyance of the property was taken to be 12.07.2010 only as that would also have created doubt that the rent agreement is contemporaneous with the conveyance deed more so, when the vendor is the respondent himself. The Appellate Court also took note of the fact that even if it were to be accepted that the sale agreement and possession letter were executed prior to the rent agreement, then also the aforesaid documents through which the ownership was sought to proved, were not registered documents and on the basis of such documents, sale within the meaning of Transfer of Property Act, could not have been proved.

16. Neither the vendor of one of the shops was examined nor the rent agreement was proved. The architect who had prepared the site plan was also not examined. The Appellate Court decided the application under Order 41 Rule 27 of the CPC preferred by the appellant in the negative by referring to the aforestated facts and dismissed the first appeal.

17. I do not find any fault with the concurrent findings of the Courts below. No substantial question of law arises in the instant second appeal.

18. Hence the same is dismissed.

**ASHUTOSH KUMAR, J**

**JANUARY 25, 2016**

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