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

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Date of Decision: December 05, 2016

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**RSA 363/2016**

SATISH VERMA & ORS

..... Appellants

Through: Mr.Rajeev Sharma, Ms.Radhalakshmi  
R. And Mr.T.Raajat Krishna,  
Advocates.

versus

SHARBATI DEVI

..... Respondent

Through: None.

**CORAM:**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**JUDGMENT (Oral)**

CM No.44864/2016

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

CM No.44865/2016 & CM No.44866/2016

1. For the reasons stated in the applications, two days delay in filing and two days delay in re-filing the appeal is condoned.
2. Both the applications are disposed of.

**RSA 363/2016**

1. This Regular Second Appeal has been filed by the appellants impugning the concurrent judgments by the Courts below; judgment dated 08.07.2014 passed by the learned Trial Court dismissing the suit filed by the appellants and judgment dated 20.07.2016 passed by the First Appellate Court upholding the decision of the learned Trial Court.
2. Learned counsel for the appellants has submitted that in the statement

before the police the respondent/defendant admitted himself to the tenant under Chander Mal. The appellants are claiming their ownership on the basis of Will executed by Sh.Chander Mal thus being a tenant the respondent/defendant cannot challenge the ownership of the landlord or dispute the relationship of landlord and tenant between the parties. Thus, the findings by the Courts below being perverse are liable to be set aside.

3. In brief the case of the appellants is that Civil Suit No. 293/2011 was filed by the appellants/plaintiffs against Smt.Sharwati Devi widow of late Sh.Phool Singh praying for a decree of ejectment in respect of the suit property as well decree for recovery of ₹31,000/- with interest towards damages and mesne profit with effect from 1.8.2011.

4. The case of the appellants/plaintiffs before the learned trial Court was that respondent/defendant was a tenant of Sh.Chander Mal at monthly rent of ₹30 excluding other charges. Sh.Chander Mal left behind him a Will in favour of the appellants/plaintiffs which was duly registered with the Sub-Registrar on 21<sup>st</sup> April, 1980. **Since the respondent/defendant had not paid any rent for a period of 30 years prior to filing of the suit, the legally recoverable rent for the preceding three years was claimed** vide notice dated 10<sup>th</sup> July, 2011. It was pleaded that the tenancy was in respect of open land hence provisions of Delhi Rent Control Act are not applicable to the suit property. After the expiry of period of 15 days from the service of notice, the status of the defendant in the said property has become that of an unauthorized occupant. It was also pleaded that the suit property can fetch rent of ₹50,000/- per month and claimed ₹29920/- towards damages from 01.08.2011 till the filing of the suit.

5. The suit was contested by the respondent/defendant by filing written statement pleading that Sh.Phool Singh, husband of the defendant had been

in possession of the suit property since 1959 and after his death his legal heirs are in possession of the suit property which is duly constructed house and all of them are residing there. The suit property is assessed to house tax and mutated in the name of the respondent/defendant in the records of MCD. The respondent/defendant claimed to be owner in possession of the suit property which was uninterrupted, open and hostile throughout. Any relationship of landlord and tenant either between Sh.Phool Singh and Sh.Chander Mal was denied. The liability to pay any rent, damages or mesne profit was also denied as there existed no relationship of landlord and tenant between the parties.

6. Since the findings of the Courts below have been challenged mainly on the ground of an answer appearing during cross-examination of a witness which was in the context of the statement recorded by the police in case FIR No. 635/74 Ex.P-4, learned trial Court has considered the same to be beyond pleading. Learned trial Court has also referred to the statements made vide Ex.P-4 recorded on 18.12.1994, on 26.10.1994 observing that Sh.Chander Mal was never admitted to be owner of the suit property i.e. Plot No.WZ-66, Khampur. Learned trial Court held that there existed no relationship of landlord and tenant between the parties and dismissed the suit.

7. The First Appellate Court re-appreciated the entire evidence and concurred with the findings of the learned Trial Court for the reasons given in para Nos. 13 to 15 as under:-

*“13. In the present case, the suit of the plaintiff would fail if no evidence is produced on record by the parties regarding the existence of the relationship of landlord and tenant between the plaintiff and the defendant. The plaintiff would fail in the absence of the proof of the existence of relationship of landlord and tenant between the parties. The perusal of the record*

*reveals that the plaintiffs have alleged that the tenancy of suit property was created by one Sh.Chandermal. The plaintiffs has failed to produce any evidence regarding the creation of the tenancy in favour of the defendant. The plaintiffs have failed to prove any other documents regarding the existence of the relationship of the landlord and tenant between the plaintiffs and the defendant. The plaintiff have neither proved the existence of the tenancy during the lifetime of Sh.Chandermal, nor with the present plaintiff.*

*14. The plaintiffs have attempted to prove the existence of the tenancy by relying upon the documents Ex.P-4. The careful perusal of the documents Ex.P-4 reveals that there is no specific admission by the defendant in her cross-examination regarding the existence of relationship of landlord and tenant between her and the plaintiff or that Sh.Chandermal regarding the suit property. It is well settled law that the admissions should be clear, specific and unequivocal to be read against a party. A broader analysis of Ex. P-4 of the defendants reveals that there is no admission regarding the existence of the relationship of the landlord and tenant between the plaintiff and the defendant or between the predecessor in interest of the plaintiff and the defendant. Except the documents Ex.P-4, the plaintiffs have fails to produce on record any other documents to prove the existence of the relationship of landlord and tenant between the plaintiff and the defendant regarding the suit property. The plaintiffs have also failed to establish by way of oral testimony, the existence of relationship of landlord and tenant between the parties to the suit.*

*15. The learned trial Court after examining the pleading and material on record has come to the conclusion that the plaintiff has failed to prove the relationship of landlord and tenant between the parties. There is no illegality or infirmity in the*

*findings of the learned trial Court. The findings of the learned trial Court are based on the material produced by the parties on record. The findings of the learned trial Court is in consonance with the material on record. The ground of the appeal raised by the appellants is not tenable in the eyes of law.”*

8. During the course of hearing, learned counsel for the appellants himself has referred to only one line in the cross examination of Smt.Sharbati to urge that substantial question of law arises in this appeal. But without referring to the context in which the cross-examination was conducted. Rather the suggestion given to her was that she was a trespasser. In that case there could not be any relationship of landlord and tenant between the parties which was otherwise not proved by any oral or documentary evidence. The relevant lines of the cross examination of Smt.Sharbati (at page No.86 & 87 of the appeal) on which learned counsel for the appellants contends that substantial question of law arises are as under:-

*‘.....I did not state before the police that father of Bhagwan Dass had a lathi in his hand . It is incorrect to suggest that tooth of Daya Nand was not broken or it was artificial teeth which was taken out himself and it showed the shocket to the doctor. It is incorrect to suggest that our men had assaulted Satish accd. S./o Bhagwan Dass and had threatened to kill him. **It is correct that the father of Bhagwan Dass is the owner of the land and we are lessee. It is correct that we have not paid any rent to the owners for the last more than 20 years. It is incorrect to suggest that the lessee was Daya Nand and we all trespassers. It is correct that Bhagwan Dass was a Mpl.Councilor during those days.....**’*

9. The scope of jurisdiction of High Court while hearing second appeal has been considered by the Supreme Court in Umerkhan vs. Bismillabi @

Babulal Shaikh and Ors. AIR 2012 SC 1646 as under:-

*'13. In our view, the very jurisdiction of the High Court in hearing a second appeal is founded on the formulation of a substantial question of law. The judgment of the High Court is rendered patently illegal, if a second appeal is heard and judgment and decree appealed against is reversed without formulating a substantial question of law. The second appellate jurisdiction of the High Court under Section 100 is not akin to the appellate jurisdiction under Section 96 of the Code; it is restricted to such substantial question or questions of law that may arise from the judgment and decree appealed against. As a matter of law, a second appeal is entertain able by the High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof. Section 100 of the Code provides that the second appeal shall be heard on the question so formulated. It is, however, open to the High Court to reframe substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved at the time of hearing the second appeal but reversal of the judgment and decree passed in appeal by a court subordinate to it in exercise of jurisdiction under Section 100 of the Code is impermissible without formulating substantial question of law and a decision on such question. This Court has been bringing to the notice of the High Courts the constraints of Section 100 of the Code and the mandate of the law contained in Section 101 that no second appeal shall lie except on the ground mentioned in Section 100, yet it appears that the fundamental legal position concerning jurisdiction of the High Court in second appeal is ignored and overlooked time and again. The present appeal is unfortunately one of such matters where High Court interfered with the judgment and decree of the first appellate court in total disregard of the above legal position.*

*14. In Ishwar Dass Jain (Dead) through L.Rs. v. Sohan Lal (Dead) by L.Rs. MANU/SC/0747/1999 : (2000) 1 SCC 434, in paragraph 10 (page 441) of the Report, this Court stated:*

*Now under Section 100 Code of Civil Procedure, after the 1976 Amendment, it is essential for the High Court to formulate a substantial question of law and it is not permissible to reverse the judgment of the first appellate court without doing so.*

*15. In Roop Singh (Dead) through L.Rs. v. Ram Singh (Dead) through L.Rs. MANU/SC/0204/2000 : (2000) 3 SCC 708, this Court reminded the High Courts, in para 7 (page 713) of the report, that the second appellate jurisdiction of High Court was confined to appeals involving substantial question of law. This Court said:*

*It is to be reiterated that under Section 100 Code of Civil Procedure jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 Code of Civil Procedure....'*

10. The evidence led before the learned Trial Court has been correctly re-appreciated by the First Appellate Court while concurring with the finding of learned Trial Court. Since the second appeal cannot be entertained in a casual manner the appellants are required to show that the second appeal raises a substantial question of law.

11. Since no substantial question of law is raised in this Regular Second Appeal, the appeal is hereby dismissed.

12. No costs.

**PRATIBHA RANI, J.**

**DECEMBER 05, 2016**

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