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

+ **FAO(OS) 262/2016 & CM Nos.33367, 33368, & 33370/2016**

MANITA VERMA

..... Appellant

Through : **Mr. Rajiv Shankar Dwivedi, Adv.**

versus

ASHOK SHAH

..... Respondent

Through : **Ms. Sumedha Dua, Advocate**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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11.04.2017

The appellant's grievance is with respect to an order dated 26.05.2016 whereby the learned single Judge framed issues and directed the appellant/defendant to lead evidence first.

The learned single Judge also noticed that since the appellant/defendant did not file the original documents despite several opportunities, therefore, the consequences of default would follow.

It is urged that the appellant/defendant is seriously prejudiced by the said impugned order, inasmuch as, the normal rule whereby the plaintiff is placed under onus to prove his case, has been reversed. Considering that the appellant/defendant did not admit the plaintiff's/respondent's case so as to enable the learned single Judge to reverse the trial Court's finding, learned counsel submitted that the impugned order is erroneous.

It is also stated that the appellant/defendant is prejudiced on account of the observation that the consequences of default in non-filing of the original documents would have to be borne.

Learned counsel emphasized here that the appellant/defendant has filed a suit i.e. Civil Suit No. 2554/2016 which is pending adjudication and in that suit, the original documents were filed. Certified copies were applied for on 07.06.2016 and consequently, the original documents could not be filed along with the written statement.

It is urged that the learned single Judge also erred in not framing an issue of title.

Learned counsel for the respondent/plaintiff resisted the submission and stated that the original documents were not filed within time and therefore, the appellant/defendant would have to bear the consequences. It is also stated that having regard to the peculiarities of the suit, the Court was justified in reversing the burden in the present case.

This Court notices that so far as the original documents are concerned, the written statement was filed by the appellant/defendant on 08.01.2016. At that time, it is clear that the documents were in the possession of the appellant/defendant and yet she chose not to file the same and sought liberty of the Court to file the copies. The suit was filed subsequently by her in June, 2016. In these circumstances, the ground made out by her is insubstantial and is rejected.

So far as the issue of title is concerned, the Court notices that the respondent/plaintiff sought for a decree of possession; the defendant/appellant filed the written statement alleging that she is entitled to continue with the possession and that the agreement to sell had been entered into some time in the year 1998 with the predecessor of the respondent/plaintiff, i.e. his father.

It is the appellant/defendant's argument that in the absence of a clear title on the part of the respondent/plaintiff, the suit is not maintainable.

The Court is of the opinion that the issue of title is not central to the issue as to whether the decree for possession can be granted to the respondent/plaintiff.

So far as the appellant/defendant's claim to be entitled to a decree for specific performance is concerned, the independent suit was filed subsequently after the filing of the present suit and after the filing of the written statement. In these circumstances, raising that issue was not warranted.

So far as the third submission with regard to the reversal of burden is concerned, we discern no admission of the kind that warranted such a reversal, which is permissible only in the contingency spelt out in Order XVIII Rule 3 CPC, is made. In the circumstances, that portion of the impugned order of the learned single Judge that requires the appellant/defendant to lead evidence is hereby set aside.

The appeal is partly allowed in the above terms.

The parties are directed to file a list of witnesses within a period of four weeks.

The matter shall be listed before the Joint Registrar on 11th May, 2017 for further proceedings with regard to filing of the affidavit of evidence and taking steps for trial.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 11, 2017/sd