

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

+ **RSA No.189/2017**

% **26th July, 2017**

NASEEMA BEGUM Appellant

Through: Mr. Brahm S.Nagar, Advocate.

versus

MOHD. JAVED & ORS. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.26086/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RSA No.189/2017

2. This Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant no. 2 in the suit challenging the judgment of the first appellate court dated 27.2.2017 by which the first appellate court dismissed the first appeal

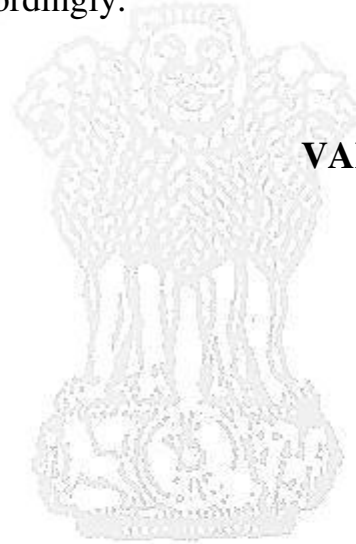
filed by the appellant/defendant no.2 against the judgment of the Trial Court dated 26.10.2012. Trial court by its judgment dated 26.10.2012 had dismissed the suit for declaration and mandatory injunction filed by the respondent nos.1 to 5/plaintiffs and one Smt. Zubeda Begum (since deceased). The appellant/defendant no.2 filed the appeal against certain findings of the trial court in its judgment dated 26.10.2012, although the suit was dismissed.

3. It has been held by the Supreme Court in the case of ***Deva Ram and Another Vs. Ishwar Chand and Another (1995) 6 SCC 733*** that if a suit is dismissed, then, against findings on certain issues against a defendant, the defendant cannot file a first appeal. The relevant observations of the Supreme Court in the case of ***Deva Ram (supra)*** are contained in para 27 and which holds that an appeal does not lie against a mere finding recorded by a court unless the finding amounts to a decree or an order. It is held in para 27 of the judgment in the case of ***Deva Ram (supra)*** that where a suit is dismissed, the defendant against whom adverse findings have been recorded on some issues, has no right of appeal against mere findings and he cannot question such findings before the appellate court.

4. Clearly therefore the first appeal filed by the appellant/defendant no.2 against some findings on some issues against the appellant/defendant no.2 was not maintainable inasmuch as the suit of the respondent nos.1 to 5/plaintiffs was dismissed. Since the first appeal was not maintainable in view of the judgment in the case of *Deva Ram (supra)* even this second appeal does not lie and is therefore dismissed accordingly.

JULY 26, 2017
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VALMIKI J. MEHTA, J



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