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

% *Judgement delivered on: 03rd April, 2018*

+ RSA 38/2018, CM. Nos. 7844-45/2018

SOMWATI (SINCE DECEASED) THR LRS. Appellant

Through: Mr. Pawan Sharma, Advocate.

Versus

RAMESHWAR YADAV @ R S YADAVRespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

This Second Appeal impugns an order of the First Appellate Court dated 31.05.2017 as well as the order dated 23.01.2018 in Review Petition upholding the order/judgment and the decree of the Trial Court dated 27.07.2016.

A Civil Suit seeking possession and damages from the appellant/defendant was filed by the respondent for an unauthorized occupation of the suit premises. The respondent/plaintiff had claimed absolute ownership of 160 sq. yards land carved out of Khasra No. 485, Tughlakabad, New Delhi. He claimed exclusive use and occupation of the entire building except a small portion of the rear of the ground floor, which was alleged to be in the unauthorized occupation of the defendant. It was the plaintiff's case that he had constructed the said building after purchasing the

same from Smt. Somwati by virtue of an Agreement to Sale dated 17.02.1993, GPA in favour of his wife and a Will dated 23.02.1993 was executed in his favour. He had constructed the building on the said land. A sale consideration of Rs. 8 lacs had been paid to the defendant; the seller had divested herself of all rights in it, thus the respondent became its sole owner. However, at the time of execution of the Agreement to Sell and transfer of the said land, the defendant had requested the plaintiff that she be allowed to continue to stay in the rear portion of the land as a makeshift/ temporary arrangement. The plaintiff had accommodated her due to her ill-health and old age. However, after a few months of the arrangement, when he requested her to vacate the premises, so refused to comply, instead she issued a legal notice to him on 18.10.1993 and tried to resile from the obligation, as well as from the documents executed in his favour. Hence, the suit was filed. The plaintiff had also sought recovery of Rs. 7,000/- per month for unauthorized use and occupation of the premises w.e.f. 01.01.1995.

Interestingly, the appellant/defendant had filed a suit before this Court (bearing suit no. 2496/1994), against the present respondent/plaintiff on the same documents, i.e., Agreement to Sell, GPA, Will and receipt executed in favour of the plaintiff, claiming that they were forged and fabricated and that she had never divested any right, title or interest in the suit property; it was also contended that the plaintiff had forcibly and illegally obtained possession of the entire suit property, except the rear portion of the ground floor of the said property. This suit was dismissed on merits on 25.03.2011. The dismissal was upheld by the Division Bench of this Court; the SLP filed

against it was also dismissed on 29.10.2012. The plaintiff (present respondent) had sought decree of the suit, as the issues involved in the case already stood decided and had obtained finality. The appellant had argued that the decree could not be passed under Order 12 Rule 6 of CPC because the aforesaid adjudication did not make out a case of admission on the part of the defendant (the present appellant). The impugned order, however, considered the plaintiff as the owner of the suit property and held him to be entitled for the possession thereto. It observed that the Trial Court cannot sit as an Appellate Court to the orders which had been passed by the High Court and by the Supreme Court, which had rejected the defendant/present appellant's contentions that the aforementioned transfer of documents were forged or fabricated; the plaintiff was held entitled for possession of the suit property. Accordingly, the suit was decreed. The Appellate Court upheld the order after examining that all the appellants are the successors of Ms. Somwati. The Appellate Court had considered the fact that all the pleas raised by the appellants had already been taken by her in her Written Statement filed before the Trial Court. The issues framed before the High Court, included the determination of appropriate right, title of the defendant (present appellant) and the issue of delivery of documents, which were got executed by Ms. Somwati (the predecessor in interest of the appellants) allegedly fraud and by misrepresentation. After examining the already decided issues, the Appellate Court held *inter alia*:

“13. Hon'ble High Court of Delhi while deciding issues in suit no. 2496/1994 has clearly observed that appellants (predecessor in interest of appellants in suit property) have failed to discharge onus that impugned documents Ex. PW-

1/D1 to Ex. PW-1/D5 (Ex. PW1/D1 -Agreement to sell dated 17.02.1993, Ex. PW-1/D2-Receipt, Ex. PW-1/D3-Possession letter, Ex. PW-1/D4-General Power of Attorney and Ex. PW-1/D5-Will) were forged and fabricated or were vitiated by fraud. Hon'ble High Court of Delhi observed that respondent inter alia has acquired right, title and interest in the suit, property for valid consideration. Suit filed by predecessor in interest of appellants was dismissed by Hon'ble High Court of Delhi. Appeal filed by appellants against the said judgment before D.B of Hon'ble High Court of Delhi was. also dismissed vide judgment dated 05.11.2011 and SLP filed before Hon'ble Supreme Court of India against the judgment of Hon'ble DB was dismissed vide order dated 29.10.2012 as reflected from record and review thereof was also dismissed vide order dated 17.01.2013.

14. Judgment passed by Hon'ble High Court of Delhi confirmed upto Hon'ble Supreme Court of India is binding on all the courts lower in hierarchy. Regarding plea of appellants of original documents being in possession of respondent and that being the reason for not agitating in a proper way for fabrication of the documents relating to suit property is of no consequence as original documents have been proved on record by respondent in CS no. 2496/1994 before Hon'ble High Court of Delhi and plea of fabrication of documents by respondent herein has been rejected by Hon'ble High Court of Delhi. So this plea of appellants is not tenable.

15. Regarding failure of trial court to appreciate facts stated in reply to the legal notice, I am of the view that finding of Hon'ble High Court of Delhi in CS No. 2496/1994 nullifies the same”.

What emanates from the above is that each issue raised in the present appeal has already been considered and no legal error is found in the adjudication of those issues. The Court is not persuaded by the appellant's arguments that the two suits had different issues to be adjudicated upon or that they were otherwise occasioned by different causes of action or that fraud had been discovered in the suit preferred by Smt. Somwati (the appellant's predecessor). The argument, that admission under Order 12 Rule 6 CPC can be considered, only if such admission is in writing or otherwise admitted orally before the Court is misconstrued in the present case, because the challenge by Somwati to the respondent/plaintiff's documents, which are exactly the same as in the present case, had been dismissed all the way to the Supreme Court. Ergo the reverse of it stood proved. In other words the respondent/plaintiff's documents proclaimed him to be the owner of the suit property.

In view of the foregoing, no question of law has arisen in the present appeal. Accordingly, it, alongwith pending applications, is dismissed.

नात्यमेव जयते

NAJMI WAZIRI, J.

APRIL 03, 2018/RW