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

% **Date of decision: 12th July, 2018**

+ **<u>RSA 266/2017</u>**

KRISHNA DEVI ..... **Appellant**

Through: Ms. Seema Singh, Adv.

Versus

KARTAR SINGH BIDHURI ..... **Respondent**

Through: Mr. Shekhar Dasi, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 2nd February, 2017 in RCA No.8718/2016 (Case ID No.DLST010000292012) of the Court of Additional District Judge-05, South District, Saket Courts, New Delhi] of dismissal of First Appeal under Section 96 of the CPC filed by the appellant against the judgment and decree [dated 7th March, 2012 in Suit No.344/2012 of the Court of Civil Judge-06 (West),Tis Hazari Courts, Delhi] of specific performance of an Agreement of Sale of immovable property, in favour of the respondent / plaintiff and against the appellant / defendant.

2. This appeal came up first before this Court on 22nd November, 2017 when, without indicating as to what substantial question of law arises, notice thereof was ordered to be issued and the Trial Court record requisitioned.

3. The counsel for the respondent has been appearing. The counsel for the appellant has been heard and the Trial Court record requisitioned perused.

4. The Second Appeal being against consistent judgments / decrees, of the Suit Court and the First Appellate Court, of specific performance of an Agreement to Sell of immovable property, in favour of the respondent / plaintiff, I have straightway enquired from the counsel for the appellant / defendant the substantial question of law which arises for consideration, for the Second Appeal to be entertained.

5. The counsel for the appellant / defendant has responded stating, (i) that 'mixed questions of law and fact' arise; (ii) that the version of the respondent / plaintiff that he paid the entire sale consideration at the stage of Agreement to Sell itself, is highly unbelievable; (iii) that though the Agreement to Sell in writing records that the appellant / defendant had handed over vacant peaceful physical possession of the property agreed to be sold, but the respondent / plaintiff, in the plaint claimed that possession only of one room was given at the time of Agreement to Sell and not of the remaining property; (iv) that though the Agreement to Sell is in type form but the sale consideration mentioned therein is not in type form and has been filled in hand; (v) that ordinarily, transactions of sale / purchase of immovable property are in two stages i.e. of giving of *bayana*/earnest money and thereafter of execution of Sale Deed and it is unbelievable that the transaction between the parties would be in one stage only; (vi) that though the Agreement to Sell, of which specific performance was claimed is worded like a Sale Deed, but is not on requisite Stamp Paper as per the consideration mentioned therein and is not registered; (vii) that the suit filed by the respondent / plaintiff from which this appeal arises, was first dismissed, but on appeal being preferred by the respondent / plaintiff, was remanded to the Suit Court; that the Suit Court, on such remand, without

any fresh evidence being led before it and which was permitted to be led by the first Appellate Court while so remanding the suit, in the second round, decided in favour of the respondent / plaintiff and against the appellant / defendant; (viii) that there are numerous inconsistencies in the testimonies of the witnesses of the respondent / plaintiff; and, (ix) that no documents of Income Tax, which ought to have existed, were proved.

6. The counsel for the appellant / defendant, on enquiry whether the appellant / defendant admits her signatures on the Agreement to Sell of which specific performance has been decreed, states that though the appellant / defendant admits the signatures but it has been the plea of the appellant / defendant that her signatures were obtained on blank papers.

7. On further pointed query, whether the appellant / defendant admitted the possession of the respondent / plaintiff of one room which the respondent / plaintiff claimed to be in his possession, the counsel for the appellant / defendant states that now, in execution of an impugned decree, the physical possession of the entire property has been delivered to the respondent / plaintiff and the execution for registration of the Conveyance Deed is pending.

8. I have enquired from the counsel for the appellant / defendant as to how the contentions aforesaid constitute substantial question of law lest question of law. The contentions of the appellant / defendant are qua appreciation of evidence and unless it is shown that any illegality of law in appreciation of evidence has been committed by the Courts below, appreciation of evidence otherwise does not fall in the domain of the Second Appeal.

9. On further enquiry as to under which provision of Income Tax Act

the documents were required to exist and which have not been proved, the counsel for the appellant / defendant is unable to inform.

10. I have perused the Trial Court record to see whether the contention of the counsel for the appellant / defendant that, notwithstanding no further evidence having been led pursuant to remand in appeal consequent to dismissal of the suit, a decree for specific performance has been passed.

11. The aforesaid perusal shows the contention of the counsel for the appellant / defendant to be factually incorrect. The judgment and decree dated 7th March, 2012 of the Suit Court, in paras 15 to 17 and in para 19 records (i) that after remand of the suit, the respondent / plaintiff re-examined himself as PW1 and deposed that the documents Ex.PW1/2 and Ex.PW1/4 were attested by Notary Public Shri I.D. Sharma, Nehru Place, where the employee of the then Deed Writer took them and that all the parties appeared before the Notary Public and the documents were attested by Shri I. D. Sharma, Notary Public, after making enquiries from the parties and that the said Notary Public was no longer working at Nehru Place and his whereabouts were not known to the respondent / plaintiff; (ii) that the respondent / plaintiff also examined Shri Surender Kumar Goyal as PW4, who deposed that though he did not know the parties but documents Ex.PW1/2, Ex.PW1/3 and Ex.PW1/4 were typed by him in his office and that the said documents were signed in his office, in his presence and that the handwriting on Ex.PW1/2 and Ex.PW1/3 was in the hand of his employee who had since left the employment; (iii) that the respondent / plaintiff also examined Shri Ashok Kumar, Senior Tax Assistant, Ward No.22(1), Income Tax Office, New Delhi as PW5, who deposed that the record pertaining to financial year 1999-2000 was very old and was not

traceable and proved Ex.PW1/5 in this regard; he also proved Form 2D, Saral Form, being the statement of income, statement of affairs for financial years 2002, 2003 to 2006 bearing mention of the property no.G-91, Gali No.8/1, Sangam Vihar, New Delhi – 110 062 and proved copies of the same as Ex.PW5/2 to Ex.PW5/5; and, (iv) the appellant / defendant also examined herself and deposed that in February, 1999 her husband was in need of money and had borrowed Rs.50,000/- from one Ram Kishan Gupta and she signed 4 or 5 blank papers at the instance of her husband who told her that the blank signed papers were required to be given to Ram Kishan Gupta as security of loan; that her husband also took original documents of title of property and that she had never sold the property to the respondent / plaintiff and that the Agreement to Sell of which specific performance was being claimed was prepared by the respondent / plaintiff in connivance with the said Ram Kishan Gupta.

12. It is thus not as if the Suit Court, in the first instance dismissed the suit for specific performance and thereafter on remand, decreed the same in favour of the respondent / plaintiff, without there being anything fresh / new evidence before it. Rather the judgment of the Suit Court records elaborate evidence having been recorded in the suit post remand and the counsel for the appellant / defendant has not argued that the Suit Court has incorrectly recorded in the aforesaid paragraphs of the judgment of the additional evidence led.

13. Else, the other 'mixed questions of law and fact' argued by the counsel for the appellant / defendant, as listed hereinabove, do not entitle the appellant / defendant to have this Second Appeal entertained. The counsel for the appellant / defendant also agrees that 'mixed questions of

law and fact' cannot be the same as 'substantial question of law'.

14. I have otherwise gone through the Trial Court record and find the Courts below to have, on a correct appreciation of evidence led in the suit, concluded that the suit of the respondent / plaintiff for specific performance of Agreement to Sell is entitled to be allowed. If this Court in Second Appeal were to start appreciating evidence afresh and draw inferences from the evidence and arrive at another possible conclusion, the same would eliminate the difference between a First Appeal and a Second Appeal, when the Legislature itself has chosen to carve out a difference between the two. Though a substantial question of law can arise if the conclusions drawn from the evidence recorded are perverse or contrary to law, but the conclusions drawn by the Suit Court and affirmed by the First Appellate Court from the evidence led in the suit are not found to be raising any question of law.

15. Supreme Court, in ***Veerayee Ammal Vs. Seeni Ammal*** (2002) 1 SCC 134 held that merely because on appreciation of evidence another view is also possible would not clothe the High Court to assume jurisdiction on issue of fact framed by the Trial Court by terming the question as substantial question of law. As far back as in ***Sir Chunilal V. Mehta Vs. Century Spinning and Manufacturing Co. Ltd.*** AIR 1962 SC 1314 reiterated in ***Kashmir Singh Vs. Harnam Singh*** (2008) 12 SCC 796, it was held that the proper test for determining whether a question of law raised in a case is substantial, is whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is an open question in the sense it is not finally settled or is not far from difficulty or calls for discussion of alternative views; if the

question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles, it would not be a substantial question of law. It was further held that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact being the first Appellate Court. Mere appreciation of facts, documentary evidence was held to be not raising a question of law.

16. No case for entertaining the Second Appeal is thus made out.

17. Dismissed.

18. However, in the facts, no costs.

Trial Court record be sent back.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JULY 12, 2018
'pp'..