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

\+ RSA 27/2016 and CM APPL. 2722/2016

\+ RSA 43/2016 and CM APP. 4670/2016

CHANDRAWATI ..... Appellant

Through: Mr. Virendra Singh, Advocate

versus

NARESH KUMAR GUPTA ..... Respondent

Through:

And

\+ RSA 281/2016

\+ RSA 283/2016

NARESH KUMAR GUPTA ..... Appellant

Through:

versus

CHANDRAWATI ..... Respondent

Through: Mr. Virendra Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **31.01.2019**

The appellant is aggrieved by the decree dated 02.02.2011 which has directed that the appellant will pay an amount of Rs.1,30,000/-to respondent no.1.

2. The learned counsel for the appellant submits that the appellant stood guarantee for a loan of Rs.1,30,000/- taken by her nephew viz Rajesh Sharma from R-1. However, the loan document neither

mentions the rate of interest nor the period for which the loan was taken.

3. It is the appellant's case that the suit filed in the Trial Court did not seek a repayment of the loan amount extended by Naresh Kumar Gupta, respondent no.1 to Rajesh Sharma.

4. The aforesaid case arise out of two suits bearing no. 983/07 and 983A/07 (Old suit no. 455A/06) which were disposed off by a common judgment. A suit has been filed by the appellant. The respondent filed suit No. 983/2007 which was treated as the main case and sought recovery of the suit property i.e. the house which he claims to have purchased from the appellant and rights in which were conveyed to him by Chandrawati.

5. The suit filed by Chandrawati i.e. suit No. 983A/07 sought a decree for cancellation of documents being: i) agreement to sell, ii) possession letter, iii) receipt and iv) affidavit, all dated 24/03/2003, and allegedly executed in favour of Sh. Naresh Kumar Gupta and whom she had sought a declaration of being null and void.

6. It is the appellants case that she had agreed to become a guarantor for respondent no. 2- Rajesh Sharma, for a loan of Rs.1,30,000/- which he had taken from respondent No.1-Naresh Kumar Gupta. However, documents of her standing as a guarantor for Rajesh Sharma have been misused and manipulated by respondent no.1-Naresh Kumar Gupta inasmuch as he has sought to convert the loan documents to convey rights in her property to R-1/ Naresh Kumar Gupta.

7. It is further contended that although the learned Trial Court had

concluded that the documents conveying interests/rights to respondent no. 1 were manipulated and would not confer any right or title or interest over the suit property, yet the suit filed by Chandrawati was dismissed.

8. The First Appellate Court, disagreed by the findings of the Trial Court and held that since respondent no.2 had not returned money to respondent no.1, and the appellant, Chandrawati who had stood as guarantor, ought to have paid the monies, i.e., Rs.1,30,000/- to Narendra Kumar Gupta/R-1.

9. In the circumstances, the following question arise for determination:-

> "*1. Whether the judgment and decree passed by First Appellate Court is suffering from perversity and illegality.*
>
> *2. Whether the First Appellate Court have commuted an error in not taking into consideration and appreciating the evidence on record.*
>
> *3. Whether the first Appellate Court ignored the finding of Ld. Trial Court based on evidence illegally and without considering the same as per law.*
>
> *4. Whether the First Appellate can ignore and disturb the settled principle of law that the fact which have been admitted by other side nosed not to be proved.*
>
> *5. Whether the First Appellate Court is not bound to examine the entire relevant evidences or record to arrive at conclusion.*
>
> *6. Whether the First Appellate Court refused to consider the relevant evidence, which have been adduced on the*

disputed issue which gives birth to the substantial question of law.

7. Whether the first Appellate Court have arrived as its finding by ignoring important, relevant evidence.

10. Mr. Virender Singh, the learned counsel for Chandrawati submits that when the documents on which the respondents were relying upon to transfer rights to them were found to be fraudulently modified, the same cannot be taken as any basis for a direction for payment of money, therefore, the impugned order has erred. He further submits that interestingly, no relief for recovery of monies was sought in the proceedings before rather the Trial Court or the Appellate Court.

11. The issues examined by the Trial Court in Suit No. 983A/2007 reads as under:-

> *i. Whether the plaintiff is entitled for the decree of declaration declaring the documents i.e. agreement to sell, possession letter, receipt and affidavit dated 24.3.2003 as null and void?OPP.*
>
> *ii. Relief.*

12. The issues examined by the Appellate Court in Suit No. 983/2007 reads as under:-

> *"i Whether the plaintiff is entitled for possession as prayed for? OPP.*
>
> *iii. Whether plaintiff has obtained signature of the defendant on documents in question fraudulently? OPD.*

iv.. Whether the suit has not been properly valued for the purpose of court fees and jurisdiction? OPD.

iv. Relief."

13. The Court would note that what was determined by both the Courts was not whether monies were repayable by the appellant-Chandrawati to respondent no.1 on the basis of a loan taken by respondent no.2. Since, the matter was not tried on those lines, any direction or decision therein would be superfluous. Furthermore, the suit was filed only for the possession of immovable property and not for recovery of monies from either respondent no.2 or his guarantor Chandrawati – the present appellant. In these circumstances, the direction of the Trial Court to the effect that Rs.1,30,000/- be repaid by the appellant- Chandrawati to respondent no.1 cannot be sustained.

14. Accordingly, the impugned order directing Chandrawati to make the said payment is set aside.

15. The appeals are allowed in the above terms.

NAJMI WAZIRI, J

JANUARY 31, 2019
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