

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 54/2019 & CM No.10906/2019**

Judgment reserved on :19.03.2019

Date of decision : 15.07.2019.

AAS MOHAMMAD Petitioner
Through: Mr.Abhishek K. Goyal, Adv.

versus

SABIHA AKHTAR Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant vide the present Regular Second Appeal No.54/2019 assails the impugned judgment dated 22.01.2019 of the learned ADJ-04, South District, Saket Courts in Regular Civil Appeal No.71/2018 vide which the appeal RCA 71/2018 against the judgment and decree dated 31.07.2018 of the learned trial Court of the ASCJ-JSCC-GJ (South), Saket Courts in CS No.83348/2016,- was dismissed holding it to be not maintainable.

2. Vide judgment dated 31.07.2018 in a suit filed by the plaintiff i.e. the respondent herein against the defendant i.e. the appellant herein contending to the effect that he is the absolute owner of the property i.e. 3rd floor of property bearing no. 59-C, measuring 26 Sq. meters in Khasra No. 288/249/2 in the Abadi of Lal Dora in village

Kalu Sarai, Tehsil Hauz Khas, New Delhi (herein after referred as 'suit property') specifically shown in red colour in the site plan attached to the said plaint and that the suit property was built up with first floor to fourth floor with roof right comprising of one bedroom, one bathroom cum one kitchen on each floor and the plaintiff/ respondent herein was the owner of the 1st, 2nd, 3rd and 4th floor along with terrace right and that the plaintiff/ respondent herein was contended to be already in use and possession of 1st, 2nd, and 4th floor and that the suit property had been let out to the defendant and the plaintiff/ respondent herein had purchased the suit property with roof rights from the defendant/appellant herein on 28.10.2014 for a total sale consideration of Rs.7 lakhs vide a sale deed dated 28.10.2014 duly registered with Sub Registrar-V, New Delhi vide registration no.6285 in Book No. 1, Volume No. 853 and page no. 105 to 110 and ratification deed dated 28.10.2014 vide registration no. 5970 in book no. 1, volume no. 832 and page no. 31 to 33 and after purchase of the property, the peaceful possession of the suit property was handed over to the plaintiff/ respondent herein.

3. The further facts as set forth by the learned trial Court in its judgment dated 31.07.2018 are to the effect:

“2. The defendant requested the plaintiff to give the suit property to him on monthly rent of Rs. 5,000/- as he required the suit property for the purpose of marriage of his daughter. The plaintiff let out the suit premises to the defendant on a monthly rent of Rs. 5,000/- for a period of 11 months and a rent agreement between the parties was executed on 10.08.2015, however the tenancy was already commenced from 28.10.2014. After the expiry of tenancy

period i.e. on 29.09.2015, the plaintiff requested the defendant to vacate and handover the physical, vacant and peaceful possession of the suit property. The defendant assured the plaintiff that he will hand over possession of the suit property on or before 03.10.2015. Thereafter, on 03.10.2015, the plaintiff requested the defendant to vacate and handover the possession of the suit property but the defendant turned dishonest and flatly refused to vacate the suit property. The defendant harassed the plaintiff. The matter was reported to the police and an FIR No. 1879 was registered against the defendant U/s 354 IPC. Thereafter the defendant with dishonest and malafide intention to grab the suit property filed a false and frivolous suit for cancellation of sale deed and permanent injunction which is pending adjudication.

3. At the time of registration of the sale deed, Rs. 13,000/- was found due towards the electricity charges, which were paid by the plaintiff through her bank account. The defendant after induction as a tenant in the suit property has paid Rs. 5,000/- per month towards the rental amount in cash excluding electricity charges up to the month of March 2015 only. The defendant assured to vacate the suit property and clear arrears of rent as well as the electricity charges but of no avail. The plaintiff has been regularly paying the electricity charges from her account for the suit property which the defendant is illegally and unauthorizedly occupying.

4. The defendant after expiry of tenancy is in illegal and unauthorized possession of the suit property. Although the contractual tenancy with regard to the suit property stood determined by efflux of time and after the expiry of the tenancy period, the plaintiff orally also terminated the tenancy. However, in spite of requests the defendant failed and neglected to deliver the possession of the suit property. The defendant is in arrears of rent of Rs. 35,000/- w.e.f April 2015 to October 2015 @ Rs. 5,000/- per month. The

defendant has also not paid the monthly rent since April 2015 and electricity charges since induction of the tenancy. At the time of execution of sale deed, there was previous backlog of arrears of electricity charges to the tune of Rs 13,000/- which the plaintiff paid from her own account. The defendant is liable to pay damages as he has not vacated the suit property despite termination of tenancy orally. The defendant is also liable to pay the interest @ 18 % per annum from the date of rent fell due till actual payment. The plaintiff has no other efficacious remedy available, hence the present suit.

5. The plaintiff has prayed to pass the following reliefs in her favour and against the defendant :-

- (a) A decree for possession with respect to the suit property i.e property bearing no. 59-C,3rd Floor, measuring 26 square meter in Khasra No. 288/249/2 in the Abadi of Lal Dora and Village Kalu Sarai, Tehsil Hauz Khas, New Delhi specifically shown in red colour in the site plan;*
- (b) A decree for permanent injunction thereby restraining the defendant, her agent, etc., from alienating, selling, creating third party interest in the suit property;*
- (c) A decree for recovery of arrears of rent of Rs. 35,000/- w.e.f April 2015 to October 2015 @ Rs. 5,000/- per month;*
- (d) A decree for recovery of electricity charges of Rs. 15,160/- pending since June 2015;*
- (e) A decree for damages till the handing over of the peaceful, physical and vacant possession of the suit property;*
- (f) A decree for interest @ 18 % per annum;*
- (g) Cost of the suit.*
- (h) Any other order which the court deems fit and proper in the facts and circumstances of the case and in the interest of justice.*

6. The defendant contested the suit by filing the written statement on the following grounds:

(a) The plaintiff has not approached with clean hands and suppressed the material facts; no cause of action ever arose in favour of the plaintiff to file the present suit; the plaintiff has filed the present suit on the basis of false and concocted story with the intention to harass and torture the defendant and to extort money from him.

(b) The plaintiff was owner of the third floor which is the suit property and fourth floor of the property out of which the defendant sold the fourth floor to the plaintiff and the third floor is still in possession of the defendant. The plaintiff with the influence of the deed writer got executed papers of third floor and also got signed the same from the defendant without reading contents of the same.

(c) The defendant is in possession of the suit property and residing there in the capacity of owner. The defendant has filed a suit for cancellation of sale deed in respect of the suit property which is pending adjudication.

(d) The defendant had not given any assurance to the plaintiff to hand over possession of the suit property at any point of time. Therefore, the question of handing over of possession of the plaintiff does not arise at all.

(e) The plaintiff has an evil eye over the property of the defendant. When the defendant is the owner of the suit property the question of payment of rent does not arise.

(f) The suit of plaintiff may be dismissed with heavy cost.

7. The plaintiff filed replication denying all the defences taken by the defendant and re-iterated and re-affirmed the contents of the plaint.

4. Issues were framed vide order dated 31.05.2016 by the learned trial Court to the effect:

“(1) Whether the plaintiff is entitled to a decree of possession in respect of suit property as prayed for? OPP.

(2) Whether the plaintiff is entitled to a decree for recovery of arrears of rent of Rs. 35,000/- as prayed? OPP

(3) Whether the plaintiff is entitled to recovery of arrears of electricity charges of Rs. 15,160/-? OPP

(4) Whether the plaintiff is entitled to damages , if so at what rate? OPP

(5) Whether the plaintiff is entitled to a decree of permanent injunction thereby restraining the defendant from creating third party interest in any manner in the suit property as prayed for? OPP

(6) Relief.”

5. The plaintiff/ respondent herein examined herself as PW-1, Sh. Faiyaz Akhtar as PW-2, Ms. Nishi Sejwal, Asstt. Accounts Officer, BSES Rajdhani Power Ltd. as PW-3, Head Constable Naveen Kumar as PW-4, Shri Jagpal Singh Malik, Sr. Asstt., Office of Sub-Registrar-V, Hauz Khas, Mehrauli as PW-5. The witness PW-1 i.e. the plaintiff/respondent herein as PW-5 Jagpal Singh Malik were the only persons cross-examined on behalf of the defendant/appellant.

6. The defendant/appellant herein is indicated to have led evidence in defence and the evidentiary affidavits of Smt. Hazara and Shri Aas Mohammad (appellant/defendant) were filed and though examination-in-chief of Shri Aas Mohammad, defendant/appellant herein was tendered as Ex.DW-1/A, the cross-examination of this witness was deferred at his request and thereafter neither DW-1 i.e. defendant/appellant herein nor Smt. Hazara stepped into the witness box for their evidence despite the repeated opportunities and the defence evidence was closed vide order dated 02.07.2018 and that DW-1 i.e. defendant/appellant herein did not make himself available for cross-examination and thus it was rightly observed by the learned trial Court to the effect that their examination in chief became

redundant and were not readable in evidence.

7. The learned trial Court vide its impugned judgment dated 31.07.2018 gave its findings on issues as under:

“16. The issue-wise findings of the court are discussed as under :

Issue no. 1: *Whether the plaintiff is entitled to a decree of possession in respect of suit property as prayed for? OPP*

AND

Issue No. 5:- *Whether the plaintiff is entitled to a decree of permanent injunction thereby restraining the defendant from creating third party interest in any manner in the suit property as prayed for? OPP*

17. Issue No. 1 & 5 are being taken up together being interlinked and can be decided through common discussion. The onus to prove these issue was fixed upon the plaintiff.

18. Let us now examine whether the plaintiff is entitled to the decree of possession and permanent injunction in respect of the suit property on the basis of materials placed on record.

19. In order to prove the case of the plaintiff, PW-1 & 2 have deposed in consonance with the contents of the plaint and also exhibited relevant documents as mentioned in the depositions of plaintiff's witnesses. On the other hand, the defendant has not led any evidence in support of the defences taken however, tried to impeach the version of the plaintiff by cross examining the plaintiff/PW-1 & PW-5.

20. Ex. PW-1/A is the Site plan which details out description and identity of the suit property. The defendant has otherwise not disputed the identity and description of the suit property. Ex.PW-1/B is the Election I card of the plaintiff which proves identity and address of the plaintiff. Ex.PW-1/C (Colly) /

Ex.PW-5/A (Colly) & Ex.PW-5/B (Colly) are the registered sale deed and rectification deed. The sale deed proves that the suit property was sold by the defendant to the plaintiff for a consideration of Rs. 7,00,000/- out of which 50% of the amount was paid by cheque and rest amount by cash and the suit property stood transferred and registered in the name of the plaintiff. The rectification deed proves rectification of mistake in mentioning the name of vendee which appears to have accidentally crept into the E-Stamp Certificate used for preparing the sale deed in respect of the suit property. It is specifically mentioned in the deed that rectified and modified E-Stamp Certificate shall remain in full force and effect. These documents also disclose that the same were registered before the office of Sub-Registrar concerned. Ex. PW1/D is the copy of rent agreement dated 10.08.2015 which records that a rent agreement was executed by the plaintiff in favour of the defendant in respect of the suit property for his tenancy for 11 months w.e.f. 28.10.2014 on payment of rent of Rs. 5,000/- per month.

21. Ex.PW-1/E(colly) and Ex.PW-4/A(colly) are the copy of tenant verification report and identity proofs of the parties which record that tenancy of the defendant was verified at local police station. Ex. PW 1/F(colly), Ex.PW-1/H(colly) and Mark (Colly), are the electricity bills of the suit property raised from time to time. Ex. PW-1/K, Mark-A to Mark-D are the copies of cheques and bank statement of the plaintiff which record that the electricity bills of the suit property were paid by the plaintiff from her own pocket. Ex.PW-1/G is the copy of FIR which records that a case under section 354 IPC was registered against the defendant on the complaint of the plaintiff. Ex.PW-3/A (Colly) are the cheque of Rs.13,000/- issued by the plaintiff for the payment of electricity bills of the suit property and both old and new C.A. No. in the name of the plaintiff.

22. A signed document carries presumption that the document was signed after the same was written and contents

thereof were understood by its signatory. Moreover, where a document has been registered there is the presumption that the document is duly executed(Reference: Prem Singh Vs. Birbal 2006 SCR 692). The Hon'ble Supreme Court in Ranganayakamma Vs. K.S. Prakash(D) by LRs.2008(9) SCR 297 observed that “ Section 16 of the Indian Contract Act provides that any transaction which is an outcome of any undue misrepresentation, coercion or fraud shall be voidable. If , however, a document is prima facie valid, a presumption arises in regard to its genuineness”.

23. Pleadings of the defendant say that the sale deed Ex.PW-1/C (colly)/ Ex.PW-5/A (Colly) was got executed by the plaintiff by influencing the deed writer. However, the said fact has not been proved by way of evidence. In cross examination of the PW-1, neither any question nor necessary suggestion was put to the plaintiff to prove that sale deed was prepared fraudulently. The defendant has not led any evidence to prove that the same was got prepared or registered fraudulently. The defendant has not pleaded that he is an illiterate person and could not understand the contents of sale deed. Therefore, the sale deed and rectification deed Ex.PW-1/C(colly)/ Ex.PW-5/A(colly) and Ex.PW-5/B (Colly) are prima-facie valid in law in view of mandate of Hon'ble Supreme Court of India.

24. The defendant has not adduced any evidence to prove that he had to execute Ex.PW-1/C(colly)/ Ex.PW-5/A(colly) under the undue influence of the plaintiff and not with own free will. There is no explanation as to how Ex.PW-1/C(colly)/ Ex.PW-5/A(colly) was registered. There is not only the presumption that said deeds are valid but in view of Section 114, illustration(e) of the Evidence Act there is presumption that the official acts were regularly performed. The executants had appeared in person before the Registrar and affirmed that the document was signed by them and it was only after completing the necessary formalities that Ex.PW-1/C(colly)/ Ex.PW-5/A(colly) were registered.

25. There are no cross examination of the plaintiff on the material particulars. There are also no necessary suggestion given in support of the defences taken and the given suggestions have not been proved by leading rebuttal evidence. The testimonies of PW-2 to 4 are unrebutted therefore deemed to have been accepted as true and correct by the defendant. The plaintiff has thus successfully discharge the onus to prove her case and she is held entitled to decree of possession and permanent injunction in respect of the suit property as prayed for. Issue no.1 and 5 are accordingly decided in favour of the plaintiff and against the defendant.

Issue No. 2: Whether the plaintiff is entitled to a decree for recovery of arrears of rent of Rs. 35,000/- as prayed ? OPP
AND

Issue No.3: Whether the plaintiff is entitled to recovery of arrears of electricity charges of Rs. 15,160/-? OPP

26. Issue no.2 and 3 are also being taken up together as they can also be decided through common discussion. The onus to prove these issues was also fixed upon the plaintiff. Rent deed Ex. PW1/D records that a rent agreement was executed by the plaintiff in favour of the defendant in respect of the suit property for tenancy for 11 months w.e.f. 28.10.2014 on payment of rent of Rs. 5,000/- per month. It is specifically mentioned in para no.6 of the plaint and deposed by PW-1&2 that though rent agreement Ex.PW-1/D (Colly) was executed on 10.08.2015 but the tenancy had already commenced from 28.10.2014 and continued till 28.09.2015. It is also on record that the rent remained unpaid since April,2015 till the termination of tenancy. Similar is the case for electricity charges. The electricity bills Ex. PW-1/F(colly), Ex.PW-1/H(colly) and Mark E(Colly) are of the suit property raised from time to time. Ex. PW-1/K, Mark- A to Mark-D are the copies of cheques and bank statement of the plaintiff which record that the electricity bills of the suit property were paid by the plaintiff from her own pocket.

27. The defendant has disputed the landlord-tenant relationship with the plaintiff, however, there is no evidence produced by him to disprove that he is residing in the suit property in the capacity of owner. The rent agreement Ex.PW-1/D (Colly) and tenant verification report of the defendant which is Ex.PW-1/E (Colly) clearly prove his status in the suit property of a tenant. There is no cross examination and rebuttal evidence to disprove.

The tenancy of the defendant has already stood terminated by efflux of time and also on filing of the present suit October, 2015. Consequently, the plaintiff is held entitled to a decree for recovery of arrears of rent of Rs.35,000/- from w.e.f. April, 2015 to October,2015 @ Rs.5000/- per month which is the date of filing the present suit and also for arrears of electricity charges of Rs. 15,160/- These issues are accordingly also decided in favour of the plaintiff and against the defendant.

Issue No.4: Whether the plaintiff is entitled to damages , if so at what rate? OPP

28. The onus to prove this issue was also fixed upon the plaintiff. The plaintiff has terminated the tenancy of the defendant by filing the present suit. The defendant is in admitted possession of the suit property even after termination of rent agreement and so is liable to pay damages for use and occupation of the suit property. The plaintiff has not quantified the rate of damages and has also not adduced any evidence to prove the same. In the judgments titled as Sh. Sriram Pistons and Rings Ltd. vs. Basant Khatri, 1990 (2002) DLT 769 and M/s M.C Aggarwal (HUF) vs. M/s Sahara India & ors., 2011 (183) DLT 105 it has been held that if a landlord has failed to lead evidence with respect to the prevalent rent, the court can take judicial notice of increase in rent of metropolitan cities, more so, in commercial areas that a 15% increase of rent every year should be payable by a tenant to a landlord.”

8. The learned trial Court thus decreed the suit in favour of the plaintiff/respondent herein and against the defendant/appellant herein as per the following terms:

“(a) The defendant shall vacate and hand over peaceful, vacant and physical possession of the suit property i.e. property bearing no. 59-C, 3rd floor, measuring 26 Sq. meters in Khasra No. 288/249/2 in the Abadi of Lal Dora in village Kalu Sarai, Tehsil Hauz Khas, New Delhi;

(b) The defendant, his assignees, agents, servants and legal heirs etc. shall not create any third party interest in any manner in the suit property;

(c) The defendant shall pay arrears of rent @ Rs.35,000/- per month w.e.f. April,2015 to October,2015;

(d) The defendant shall pay mesne profits commencing from November, 2015 with 15% increase which will be payable from second year, third year, fourth year etc and 15% increase of the mesne profits will be calculated on the total of mesne profits which are payable at the end of the first year, second year, etc respectively till handing over of the possession of the suit property by the defendant;

(e) The defendant shall also pay cost of the suit to the plaintiff.

(f) The plaintiff shall pay deficient court fees.”

9. The first Appellate Court vide its impugned order dated 22.01.2019 observed to the effect:

“3. The appellant/defendant primarily contested the suit on the plea that he never sold the suit property to the respondent/plaintiff and in fact sold the fourth floor of the aforesaid property to the respondent/plaintiff. He also alleged collusion between with the deed writer and the respondent/plaintiff. It is stated that the respondent/plaintiff fraudulently got the Sale Deed executed with respect to third floor of the aforesaid property in collusion with deed writer and the appellant/defendant signed the Sale Deed without going through the

contents of the same. The appellant/defendant has filed suit for Cancellation of Sale Deed in respect of suit property which is pending adjudication.

4. After recording of the evidence, Ld. Trial Court adjudicated the case in favour of the respondent/plaintiff. Before the Trial Court, the appellant/defendant filed evidentiary affidavit of himself and one Smt. Hazara. The appellant/defendant was examined-in-chief and thereafter, he failed to step into the witness box for his cross-examination. Even Smt. Hazara has not stepped into the witness box despite sufficient opportunities. The appellant/ defendant thus failed to lead any evidence to prove his case. It is settled law that testimony of a witness can be relied on only unless it is tested on anvil of cross-examination. The testimony of DW1 in absence of his cross-examination was rightly not read by Ld. Trial Court. The court also observed that the appellant/defendant failed to disprove the version of the respondent/plaintiff. Further, it was held that the sale consideration of suit property was paid by cheque as well as cash. Therefore, there is no question of forgery or fabrication of Sale Deed Ex.PW1/C (colly). The Sale Deed was duly registered and appellant failed to prove element of fraud and misrepresentation. Further, the suit of the appellant/defendant seeking Cancellation of Sale Deed has already been dismissed in default and has not been challenged. The court also held that the respondent/plaintiff also succeeded in proving the case of the respondent/plaintiff that the appellant/defendant was inducted as a tenant in the suit property as the respondent/plaintiff duly proved Rent Agreement Ex.PW1/D (colly) and Tenant Verification Report Ex.PW1/E (colly). The respondent/plaintiff also proved that the electricity bill of suit property were also paid by the respondent.”

and held to the effect:

“In the appeal, the appellant/defendant has primarily taken the ground that the Civil Court did not take into consideration that the appellant has already filed suit for declaring the Sale Deed in question as null and void and without awaiting the decision of the said suit, the impugned judgment has been passed in favour of the respondent/plaintiff. Further, the Trial Court has not appreciated and analyzed the evidence properly and the finding of the Ld. Trial Court are perverse and not sustainable.”

10. The First Appellate Court further concluded to the effect:

“7. The clarification was sought from the Ld. Counsel for the appellant during the hearing and appellant made statement on oath that the suit filed by the appellant herein challenging the Sale Deed in question was dismissed in default. Thereafter, the application filed by the appellant under Order IX Rule 9 was also dismissed in October, 2017. The appellant has not challenged the said order passed in October, 2017 till date. So, the order by which the application filed by the respondent/plaintiff seeking restoration of the said suit was dismissed has attained finality. In the circumstances, there is no question of the Ld. Trial Court to defer the decision of the present suit as the said suit filed by the appellant for Cancellation of Sale Deed was already dismissed in default on the date of pronouncement of impugned judgment on 31.07.2018. The Ld. Trial Judge has passed detailed judgment appreciating the evidence and facts on record as per law and I find no infirmity in the reasoning given by the Ld. Trial Court. No ground made out for issuing notice of the present appeal to the respondent/plaintiff. The present appeal is not maintainable and same is ordered to be dismissed accordingly. Copy of this order be sent to the Ld. Trial Court. File be consigned to record room after due compliance.”

11. Significantly, the registered sale deed dated 28.10.2014 executed by the plaintiff/respondent herein in favour of the defendant/appellant herein states as under:

*“That the above said property has not been notified u/s 4 & 6 of Land Acquisition Act, 1894, and has not been acquired by the Government for any public purpose. And whereas the Vendor have agreed to sell, transfer and convey his rights interests, lines and cities in the **Entire Third Floor (with roof rights), measuring approx.26 sq. mtr**, consisting of one bedroom, one bathroom-cum-toilet, one kitchen, along with undivided proportionate, indivisible impartible ownership rights in the land underneath with all fir tings fixtures, connection, structure standing thereon and all common facilities, like staircase, common passage, (hereinafter called the demised portion) of the said Property No.59-C, in Khasra No.288/249/2, situated in abadi of Lai Dora in Village Kalu Sarai, Tehsil Hauz Khas (Mehrauli), New Delhi, by virtue of 'Sale Deed, which is registered in the office of the Sub-Registrar-V, Mehrauli, New Delhi, unto the Vendee, for a total consideration of Rs.7,0,0000/- (Rupees Seven Lac only) and the Vendee has agreed to purchase the said demised portion from the Vendor for the said consideration amount of Rs.7,00,000/- (Rupees Seven Lac only).”* ,

thus, making it clear that the plaintiff/respondent herein agreed to purchase the rights and interest of the appellant herein rights and title in the entire third Floor (**with roof rights**).

12. The appellant thus contended that the judgment of the First Appellate Court affirming the judgment of the learned trial Court was erroneous and had been passed mechanically without appreciating the facts and documents on the record and that the judgment of the First

Appellate Court in view of the facts that the sale deed dated 28.10.2014 of the suit property and the tenancy of the appellant was stated to be on the same date, which meant that the vacant physical possession of the suit property had been handed over by the appellant malafidely which according to the plaintiff/respondent only showed that the appellant/defendant had only sold the 4th and 5th floor and not the 3rd floor as well as the appellant had never parted with the suit property.

13. The appellant thus seeks to submit the following questions of law, which the appellant submits arise out of the impugned orders, which read to the effect:

“(a) Whether the appellant / defendant has sold the fourth floor with terrace or the third floor to the respondent / plaintiff?”

(b). Whether the physical possession of the suit property was ever handed over to the respondent / plaintiff by the appellant I defendant when the respondent / plaintiff herself has stated that the alleged tenancy has started on 28.10.2014?

(c) Whether the disputed facts in the two sets of documents filed by the respondent / plaintiff i.e. with the plaint and documents filed on 10.05.2016 wherein in both the sets of documents states that the terrace has been sold to the respondent / plaintiff are self contradictory and therefore it can safely presumed that the appellant/ plaintiff has only sold the fourth floor with terrace vide Sale Deed dated 28.10.2014 and not the third floor?”

14. The appellant thus contended that the two learned Courts failed to take into account that the defendant/appellant had denied the existence of execution of any tenancy. The appellant also submits that

the plaintiff/respondent had failed to prove its ownership qua the property in question and to bring forth any independent witness to the alleged sale transaction. The appellant also submitted that the First Appellate Court had also erred in ignoring the fact that the payment of rent of the alleged tenancy was always paid in cash which means there was no way to prove the tenancy without leading any evidence, when the appellant / defendant has denied the execution of the rent agreement and has stated it to be a forged and fabricated document.

15. On a consideration of the rival submissions that have been made on behalf of either side, it is apparent on a bare perusal of the registered sale deed dated 28.10.2014 executed by the appellant herein in favour of the plaintiff/respondent herein that the appellant/defendant had agreed to sell/convey his rights with interest, lines and titled in the 3rd floor (with roof rights) measuring approx.. 26 sq. mtr. consisting of one bedroom, one bathroom-cum-toilet, one kitchen, along with the undivided proportionate, indivisible impartible ownership rights in the land underneath with all fittings fixtures, connection, structure standing thereon and all common facilities, like staircase, common passage of the said Property No.59-C, in Khasra No.288/249/2, situated in the abadi of Lal Dora in Village Kalu Sarai, Tehsil Hauz Khas (Mehrauli), New Delhi, which was thus sold for a sale consideration of Rs.7 lakhs of which Rs.3,50,000/- were paid by a cheque no.145786 dated 07.11.2014 drawn on the OBC Bank, Kalu Sarai, New Delhi and Rs.3,50,000/- was stated to be paid in cash which had already been received by the appellant/defendant from the plaintiff/respondent herein. The sale deed itself indicates that the

entire 3rd floor with roof rights of the premises in question of the property bearing no.59-C, in Khasra No.288/249/2, situated in the abadi of the Lal Dora in Village Kalu Sarai, Tehsil Hauz Khas (Mehrauli), New Delhi had been sold by the appellant to the respondent, to thus contend as sought to be contended by the appellant that an issue to the effect that **‘(a) Whether the appellant / defendant has sold the fourth floor with terrace or the third floor to the respondent / plaintiff?’** arose is apparently inappropriate in as much as it was the 3rd floor with roof rights which had been sold to the respondent by the appellant herein vide the registered sale deed dated 28.10.2014 with the plaintiff/ respondent herein being already in possession of the 4th floor as per the impugned order of the learned trial Court dated 31.07.2018 with the prayer clauses in the suit only seeking to the effect:

“(a) A decree for possession with respect to the suit property i.e. property bearing no. 59-C, 3rd Floor, measuring 26 square meter in Khasra No. 288/249/2 in the Abadi of Lal Dora and Village Kalu Sarai, Tehsil Hauz Khas, New Delhi specifically shown in red colour in the site plan;

(b) A decree for permanent injunction thereby restraining the defendant, her agent, etc., from alienating, selling, creating third party interest in the suit property;

(c) A decree for recovery of arrears of rent of Rs. 35,000/- w.e.f

April 2015 to October 2015 @ Rs. 5,000/- per month;

(d) A decree for recovery of electricity charges of Rs. 15,160/- pending since June 2015;

(e) A decree for damages till the handing over of the peaceful, physical and vacant possession of the suit property;

*(f) A decree for interest @ 18 % per annum;
(g) Cost of the suit.
(h) Any other order which the court deems fit and proper
in the
facts and circumstances of the case and in the interest of
justice.”*

Apparently, the appellant/defendant is thus only trying to confuse the issue and to raise a purported question of law which in fact does not arise.

16. As regards the issue no.(b), which reads to the effect:

(b). Whether the physical possession of the suit property was ever handed over to the respondent / plaintiff by the appellant I defendant when the respondent / plaintiff herself has stated that the alleged tenancy has started on 28.10.2014?

sought to be raised on behalf of the appellant/defendant, the defendant/appellant herein chose not to put in appearance for cross-examination during the trial of the suit and the evidence led by the plaintiff/respondent herein stands established that the plaintiff/respondent was in possession of the suit premises and that even if it be presumed that *de jure* possession of the suit property had been handed over to the respondent by the appellant by virtue of the registered sale deed in view of the commencement of the tenancy between the plaintiff/respondent and the defendant/appellant herein on 28.10.2014, the same in any manner does not call for any consideration for in any event, the plaintiff/respondent herein was in *de jure* possession of the suit property w.e.f. 28.10.2014 in view of the registered sale deed executed by the appellant/defendant and the respondent/plaintiff.

17. As regards the issue no.(c), which reads to the effect:

“(c) Whether the disputed facts in the two sets of documents filed by the respondent / plaintiff i.e. with the plaint and documents filed on 10.05.2016 wherein in both the sets of documents states that the terrace has been sold to the respondent / plaintiff are self contradictory and therefore it can safely presumed that the appellant/ plaintiff has only sold the fourth floor with terrace vide Sale Deed dated 28.10.2014 and not the third floor?”

Taking into account the factum that the suit filed by the appellant/defendant seeking cancellation of the registered sale deed on the premise that the sale deed had been executed erroneously in connivance with the deed writer, the said suit having already been dismissed in default, which aspect had not been challenged, the First Appellate Court has rightly held that the plaintiff/respondent herein has succeeded in proving his case that the appellant/defendant was inducted as a tenant in the suit property as the respondent/plaintiff duly proved the Rent Agreement Ex.PW1/D (colly) and Tenant Verification Report Ex.PW1/E (colly) and that the appellant failed to establish that the sale deed had been registered pursuant to any element of fraud and any misrepresentation and that there had been any forgery and fabrication thereof.

18. Reliance was placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in ***Prem Singh and Ors. Vs. Birbal and Ors. (2006) 5 SCC 353*** to contend that in view of the fraudulent misrepresentation at the time of execution of the sale deed between the appellant and the respondent, the rights of the appellant to seek redressal in relation thereto were not extinguished. It is essential to observe that the suit filed by the appellant/defendant seeking

cancellation of the registered sale deed and a permanent injunction in relation thereto has already been dismissed, whether dismissed in default or otherwise and the same has not been set aside and thus cannot now be sought to be challenged and the execution of the said registered sale deed can thus now not be assailed through the filing of the present regular second appeal in as much as no substantial question of law in terms of Section 100 of the CPC arises in the facts and circumstances of the instant case and thus the reliance placed by the appellant in *Prem Singh and Ors. (supra)* is wholly misplaced.

19. In the circumstances in as much as there is no substantial question of law that arises in as much as there is no infirmity in the impugned judgment of the First Appellate Court dated 22.10.2019 and as there is no infirmity in the judgment and decree dated 31.07.2018 of the trial Court in Suit No.83348/2016, the present Regular Second Appeal no.54/2019 and the accompanying application are thus dismissed.

JULY 15TH, 2019/vm

ANU MALHOTRA, J.