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IN THE HIGH COURT OF DELHI AT NEW DELHI

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EX.F.A. 21/2019 & CM APPL No.22842/2019

ASLAM PARVEZ URF BILLA

..... Appellant

Through : Mr.Achal Gupta, Adv. with appellant
in person

versus

AFSHA BANO & ANR

..... Respondent

Through : None

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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27.05.2019

This appeal is against the order dated 30.04.2019 whereby the objections filed by the appellant against the judgment/decreed dated 06.05.2016 were dismissed.

The objector alleged that he used to work with Mr.AsgharAli, the erstwhile owner of the property, having purchased by Mr.Asghar Ali vide registered sale deed dated 28.05.1984. There was a dispute between Mr.AsgharAli and his brother Mr.Wajid Ali but it was resolved and later the property came to the kitty of Mr.AsgharAli. The objector being a reliable employee of Mr.AsgharAli and working with him on the ground floor of the said property, was given a shed on the first floor of the property as a licensee by Mr. Asghar Ali. Appellant continued to be in possession of part of the first floor and thereafter constructed a permanent structure on the second floor and third floor and shifted his entire family from first to the second floor.

It is alleged by the appellant he was in continuous and uninterrupted possession of the second floor and roof thereon even at the time of late Mr.AsgharAli and all the sons of Mr.Asghar Ali knew about his closeness with Mr.Asghar Ali and never objected to the construction being raised. Later on death of Mr.Asghar Ali his son Mr.Arif Ali became owner and he gifted the subject property to his wife respondent no.1 vide a gift deed dated 19.02.2010. It is alleged in and around the year 2012 the decree holder in collusion with judgment debtor got a decree of eviction in favour of the decree holder.

However the case of the respondent no.1 is entire property was gifted to respondent no.1 by her husband and that no document is ever produced by the objector in objections or in appeal herein to claim any independent title/right in the second floor or the upper floors of the property. It is further the case of the decree holder that mother in law of the objector was a tenant on the first floor of the subject property and since the respondent no.1 had shifted to Bhopal in 1994, the judgment debtor had constructed unauthorised portion on the second floor and kept her daughter and son in law viz. the objector herein to reside with her without the permission of the owners/respondent no.1.

Considering the facts and circumstances it appears the appellant has taken the benefit of the respondent no.1 and her husband having shifted to Bhopal in the year 1994 and that in collusion with the judgment debtor, his mother in law the objector had constructed an unauthorised portion on the second floor and

started residing there. Admittedly no document is filed ever to reveal his independent right to the said second floor of the subject property. Moreso his contentions regarding the ground and first floor being only gifted to respondent no.1 vide a gift deed dated 19.02.2010 is also of no avail since the gift deed itself reveal it is qua the entire property and was not limited to the ground or the first floor. Even otherwise, the allegations of collusion seems to be baseless since the judgment debtor is the mother in law of the objector and hence I see no infirmity in the impugned order dated 30.04.2019 passed by the learned ARC.

In the circumstances the appeal stands dismissed. Pending application if any, also stands disposed of.

YOGESH KHANNA, J.

MAY 27, 2019

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