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

+ RSA 10/2020

MOHERWATI YADAV & ANR Appellants
Through Mr.Saroj Kr. Jha, Adv.

versus

MAHIPAL ADHANA & ORS Respondents
Through Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **29.01.2020**

CM Nos.3571/2020, 3574-75/2020 (Exemption)

Allowed, subject to all just exceptions.

RSA 10/2020 & CM No.3570/2020 (Delay)

1. There is a delay of 1011 days in re-filing of this appeal. Though, normally lenient view is taken while considering the delay in re-filing of the appeal, for the period in question, I do not find sufficient reason for the delay having been made in the application for condoning such delay.
2. Even otherwise, on the merits of the case, I do not find any reason to interfere with the Impugned Judgement and Order.
3. Mr.Sunil Yadav, son of the appellant no.1 and husband of the appellant no.2, had filed the suit seeking recovery of the possession and permanent injunction against the respondent no.1 and his father who was arrayed as defendant no.2 therein, with respect to 12 sq. yds of land in

Revenue Khasra No.773, Village Mandawali Fazalpur, Ilaka Shahdara, Delhi. During the course of the suit, the plaintiff expired and was substituted by the appellants herein. The defendant no.2 also expired and was substituted by the respondent nos.2 to 5.

4. It was the case of the plaintiff that the defendant no.2 had purchased 100 sq. yds out of total 157 sq. yds of the land in the abovementioned Khasra number from one Mr.Om Prakash. The plaintiff had purchased the remaining 57 sq.yds of land from the said Mr.Om Prakash by a separate transaction. Out of 57 sq. yds., the plaintiff sold 45 sq.yds to someone, leaving a balance of 12 sq.yds. The suit was filed claiming that the respondent no.1 is trying to encroach upon the said land by installing iron grill and lock.

5. On the other hand, the respondent no.1 in his Written Statement stated that he had purchased 113 sq. yds of land from one Mr.Madan Lal Aggarwal, who was examined as DW-4. He further submitted that Mr.Aggarwal had purchased the said land from one Smt.Vidya Devi, who in turn had purchased the same from the defendant no.2, that is father of the plaintiff. Interestingly, the father of the plaintiff, that is defendant no.2, did not enter appearance in the suit and was proceeded *ex-parte*. Later he died.

6. On expiry of the plaintiff, the appellants examined themselves as witnesses in support of the plaint. Both the learned Trial Court and the learned Appellate Court have found that the appellants failed to prove the case set up by them. In fact, both the Courts below have found the case of the respondent no.1 to be credible.

7. I do not find any reason to interfere with the said findings. Even otherwise, in the present appeal, no substantial question of law arises for

consideration of this Court.

8. The appeal is therefore dismissed, with no order as to costs.

NAVIN CHAWLA, J

JANUARY 29, 2020/Arya