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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 157/2020**
BISHNU DUTT PANT

..... Appellant
Through : Mr.Surender Kumar Gupta, Mr.Vijay
Joshi, Mr.Himanshu Pathak,
Advocates.

versus

RAJ KUMARI & ORS

..... Respondents
Through : Mr.R.P.S.Sirohi, Ms.Nitisha Goyal,
Advocates.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER
% **02.03.2020**
CAV 190/2020

Counsels as above appears for the respondent/caveator.

The caveat is discharged.

RFA 157/2020 & CM APPL No.8079/2020, 8081/2020

The suit for possession, permanent and mandatory injunction, filed by respondent no.1 has been decreed vide impugned judgment dated 02.12.2019. The dispute pertain to a plot marked as A on premises bearing no.B-9, Keshoram Park, Bindapur, Uttam Nagar, New Delhi-59. It is the case of the appellant he had purchased the subject property from respondent no.2 on 05.09.2011 for a sum of Rs.29,00,000/- by a set of sale documents viz. agreement to sell, GPA, affidavit etc. and as he had started construction on the subject

land, the dispute was raised by respondent no.1 claiming herself to be the owner of the said land.

Respondent no.1 on the other hand had claimed ownership on the basis of title documents executed in her favour by respondent no.2 on 05.02.2010 viz. agreement to sell, GPA, affidavit etc. for a sum of Rs.10,00,000/-.

Written statement was filed by respondent no.2 wherein he admitted that he had sold the subject property to respondent no.1 on 05.02.2010 and denied of any relation with the appellant or that he ever sold the plot to appellant on 05.09.2011.

However the learned counsel for the appellant has referred to a criminal complaint made by him wherein a charge sheet was filed by the police which noted the respondent no.2 has admitted of having sold the subject land (A) only to the appellant herein and not to respondent no.1.

Neither the respondent No.1 has led any cogent evidence qua the set of documents dated 05.02.2010 executed in his favour nor the appellant herein has led any evidence to prove his documents. The court had passed the impugned judgment, despite there being issues framed qua possession, permanent and mandatory injunction, *purely* on the basis of the pleadings only to hold the respondent no.1 to be an owner.

At this stage both the counsels agree to an opportunity being given to each of the parties viz. appellant and respondent no.1 to prove the set of documents dated 05.02.2010 executed by respondent no.2 in favour of respondent No.1 as per law and similarly the defendant

no.1/appellant herein to lead his evidence to show the documents dated 05.09.2011 were validly executed in his favour and are the only genuine and valid documents. This would settle the controversy as to if the statement of respondent no.2 given to the police authorities or given to the learned Trial Court in his written statement, is correct.

In the circumstances, the impugned judgment dated 02.12.2019 passed by the learned Trial Court is set aside and the parties are directed to appear before the learned Trial Court on 23.03.2020 for leading their evidence on this limited aspect in terms of above.

The learned Trial Court is directed to expedite the proceedings and may decide the suit preferably within six months.

The appeal stands disposed of in terms of above. Pending application(s) also stands disposed of.

YOGESH KHANNA, J.

MARCH 02, 2020

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