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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 77/2019 & CMs 17431/2019, 25342/2019**
SURESH KIRAR

..... Appellant
Through: Mr.Peeyosh Kalra, Mr.Jamal Akhtar
& Mr.P.K. Sharma, Advs.

versus

PREM SAGAR & ANR

..... Respondents
Through: Mr.Deepak Gupta, Mr.Gaurav
Shankar & Mr.Sumeer Nath, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **14.01.2020**

1. This appeal has been filed challenging the judgment dated 24.01.2019 passed by the learned Additional District Judge-05 (South District), Saket Courts in RCA No. 44/2017, titled *Shri Suresh Kirar vs. Prem Sagar and Anr.*, confirming the judgment and decree dated 25.04.2016 passed by the learned Civil Judge, West District, Delhi in Suit No. 417/1995, and thereby ordering eviction of the appellant from the flat bearing no 71 D, Pocket L, First and Second Floor , Janta Flats, Malviya Nagar, New Delhi.
2. The respondent no. 1 had filed the above Suit against the respondent no. 2 and the appellant herein claiming ownership in the above property on the basis of a Conveyance Deed dated 02.08.1994 executed by the DDA in favour of the respondent no. 1. It was alleged that the respondent no. 1 had allowed the respondent no. 2 to use the said flat for a period of five days as

the marriage of the respondent no. 2's younger brother was fixed for 26.01.1992. It was further alleged that thereafter the respondent no. 2 and the appellant occupied the said flat without any permission from the respondent no. 1.

3. The appellant in his written statement, however, contended that the said flat was sold by the original allottee, Shri Ram Chander, to one Smt. Kalawati, who further sold it to Shri Niranjana Gajjar, from whom the appellant purchased the said flat vide Agreement to Sell dated 19.06.1992. It was further alleged that respondent no. 2 was a tenant of the appellant in respect of the first floor of the said flat.

4. The learned Trial Court by its judgment and order dated 25.04.2016, relying upon the registered Conveyance Deed dated 02.08.1994 executed by the DDA in favour of the respondent no. 1 has held the respondent no. 1 to be the owner of the said flat, while holding that the appellant herein has failed to discharge the onus put upon him to prove his title qua the suit property. The learned Trial Court further disbelieved the case of the appellant that the respondent no. 2 had been allowed to continue to reside in the suit property by the appellant in his capacity as a tenant. Based on the above findings, the suit was decreed in favour of the respondent no. 1.

5. The appellant thereafter filed an appeal, which was dismissed by the learned Appellate Court by way of the Impugned Judgment and order dated 24.01.2019, confirming the findings of the learned Trial Court. The review application filed by the appellant against the above judgment was also dismissed by the learned Appellate Court by an order dated 22.03.2019.

6. The learned counsel for the appellant submits that in spite of the appellant having claimed the title of the suit property under the Agreement

to Sell, the respondent no. 1 did not amend the suit so as to challenge such title. He submits that in absence of any challenge to the documents executed in favour of the appellant, the title of the appellant could not have been doubted. He further submits that the Conveyance Deed executed by the DDA in favour of the respondent no. 1 is itself in doubt inasmuch as the DDA has initiated an enquiry in form of a notice to the respondent no. 1.

7. In my view, both the submissions of the learned counsel for the appellant cannot be accepted. The respondent no. 1 had filed the above suit claiming title over the suit property under the Conveyance Deed executed by the DDA, which is duly registered in the office of the Sub Registrar. Both, the learned Trial Court as well the learned Appellate Court, have already accepted the said document having been duly proved by the respondent no. 1. As the appellant was claiming title to the suit property, it was for the appellant to have proved the same. Again, both the learned Trial Court as well as the learned Appellate Court, have held that the appellant failed to discharge his onus and to prove his title. I find that the appeal involves no substantial question of law to be adjudicated.

8. In view of the above, I find no merit in the present appeal. The same is dismissed.

NAVIN CHAWLA, J

JANUARY 14, 2020/rv