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

Date of Decision : 24.01.2020

+ RSA 8/2020 & CM Nos.2895-97/2020

VED PRAKASH SHAKKARWAL Appellant
Through: Mr. Sidhu & Mr. Hitender,
Advocates

versus

DEEPAK SHARMA & ANR Respondents
Through: Mr. Arun Birbal & Mr. Ajay
Birbal, Advocates for DDA

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This appeal has been filed challenging the judgement and order dated 25.03.2019 passed by the learned Additional District Judge-10 (Central), Tis Hazari Courts, Delhi (hereinafter referred to as the 'Appellate Court') in RCA no.10/2015 (61431/2016), titled ***Ved Prakash Shakkarwal v. Deepak Sharma & Anr.***, dismissing the appeal filed by the appellant herein, challenging the judgement and order dated 16.02.2015 passed by the learned Civil Judge-06, Central, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court').

2. The predecessors in interest of the appellant (hereinafter referred to as the 'Plaintiffs') had filed a civil suit seeking recovery of the possession and damages with respect to a portion of the shop in property bearing no.4364, Gali No.58, Basti Rai-gar Pura, Rai-gar

Pura, Karol Bagh, New Delhi-110005 against the respondents herein. The said suit was dismissed by the learned Trial Court by its judgement and order dated 06.02.2015 and such dismissal has been affirmed by the learned Appellate Court by the Impugned judgement and order.

3. It was the case of the plaintiffs that they had filed an Eviction Petition being E-18/1999, titled ***Puran Chand & Anr. v. Jai Lal & Anr., inter-alia*** against the respondents herein on the ground of subletting of the abovementioned shop. An order of eviction dated 08.03.2002 was passed in the said petition. In the course of the execution of the said order, a compromise was entered into between the plaintiffs and the respondents herein, whereunder a portion of the shop ad-measuring 15'x10' out of total area of 15'x12'6" was agreed to be sold by the plaintiffs to the respondents. A registered Sale Deed dated 24.07.2002 was executed between the parties for this purpose. For purposes of division of the shop, a wall of 4" thickness was raised. The Execution Petition was accordingly dismissed as satisfied on 26.07.2002.

4. It was further alleged that the respondents, sometime in August, 2002, demolished the partition wall and occupied the remaining portion of the shop admeasuring 15'x2'6", that is the area for which possession was sought in the plaint.

5. Both, the learned Trial Court and also the learned Appellate Court, have disbelieved this case of the plaintiffs and as noted above, have dismissed the suit and the appeal.

6. The learned counsel for the appellant has urged that the Sale Deed clearly gives the dimension of the shop as 10'x15' (150 sq.ft). It further states that on the west side of the shop is the remaining part portion of the aforesaid property, meaning thereby, it clearly reflects that a portion of the shop is on the west side of the shop which was agreed to be sold. She submits that both, the learned Trial Court and also the learned Appellate Court, have therefore mis-interpreted the Sale Deed and the Impugned Judgment is liable to be set aside.

7. The Clause of the Sale Deed relied upon by the learned counsel for the appellant is reproduced hereinbelow:

“AND WHEREAS the Vendors for their bonafide needs and requirements have agreed to sell the Ground floor Shop Size measuring 10 X 15 (150 sq.ft.) two side open, (site plan attached) out of total land area measuring 100 sq.yds., of Property bearing Nos.4363, 4364, 4365 and 4366, in Khasra No.1467/1468, Block-F, Gali No.58, situated at Basti Rai-gar, Rai-gar Pura, Karol Bagh, New Delhi-110005. Which is bounded as under:

East: - Road (Shri Vishnu Mandir Marg)
West: - Remaining Part Portion of aforesaid Property.
North: - Street No.58.
South: - Remaining Part Portion of aforesaid Property.”

8. I am unable to agree with the submission made by the learned counsel for the appellant. The learned Trial Court while rejecting the similar plea, has observed as under:

“17. From the reading of the above noted clauses of the sale deed it comes out that the plaintiffs, being owners, sold ground floor shop measuring 10' X 15' out of the

total land measuring 100 sq. yards of the built up property bearing nos. 4363, 4364, 4365 and 4366 in the said khasra no. 1467/1468. What transpires from the reading of these clauses of the sale deed is that the vendors i.e. plaintiffs sold a shop out of the total land held under the property nos. above mentioned. It is of much importance to note here that the sale deed uses the word **"shop"** and does not use the phrase **"portion of the shop"** which phrase has been used in the plaint. Even in the other clauses of this sale deed also the word **'shop'** has been used to describe what has been sold. Nowhere has it been stipulated in the entire sale deed that there was this **'shop'** initially measuring 15' X 12'-6" which has been partitioned by a wall reducing it to 15' X 10' and separate numbers have been allotted to both portions and the major portion measuring 15' X 10' is being sold to the defendants while the minor portion of 15' X 2'-6" is being retained or taken back by the plaintiffs. Thus, there is apparent conflict between the pleadings of the plaint and the stipulations of the said sale deed in terms that the **'shop'** being sold vide the said sale deed reflects that a shop is sold and not 'portion of shop', while the plaint avers that 'portion of shop' was sold. Also the plaint specifically states sale of portion of shop no. 4364 while the sale deed stipulates no particular shop number which is being sold. Had it been 'portion of shop' sold vide the sale deed, the same would have mentioned the total area of the particular shop out of which the 'portion' is being sold. But instead, the sale deed mentions the total land area to be 100 sq. yds of property bearing numbers 4363, 4364, 4365 and 4366 as a whole in said Khasra no. 1467/1468 out of which ground floor shop measuring 10'X 15' (150 sq. ft.) was sold.

18. Even reading of the description at page 5 of this sale deed regarding adjoining properties is also of no help to the plaintiffs as it mentions 'Remaining Part Portion of aforesaid Property' on West & Southern side. Here the word 'aforesaid property' denotes the entire property bearing nos. 4363, 4364, 4365 and 4366 and cannot be assumed to be only property no. 4364 or any portion of it. Rather this sale deed gives a picture that the vendors/ plaintiffs treat these numbers as one property and therefore the word 'properties' is not used in this sale deed. In this 'property', admittedly there are shops and as per the plaintiffs a shop numbered as 4364 was sold to defendants after partitioning the same & therefore plaintiffs plead that a portion measuring 12' X 10' of shop no. 4364 was sold. Thus, the import of the phrase 'Remaining Part Portion of aforesaid Property' can never be taken to be some remaining portion measuring 12' X 2'-6" of shop no. 4364. It is further noted here with this discussion that in the site plan Ex. DW-1/4 of this sale deed also the entire property is shown as one block without any demarcation of shops and no separate shop numbers are mentioned not even on the shop measuring 10' X 15' shown to be under sale. It is also pertinent to observe in this site plan that in the area not sold it is mentioned "REMAINING PART OF PROPERTY".

9. The learned Appellate Court has also relied upon the cross-examination of the PW-1, that is the plaintiff no.1, to disbelieve the story of any partition wall being constructed and only a portion of the shop being sold to the respondents.

10. Similarly, the learned Appellate Court has also discussed this issue at length and has observed that there was not even an *iota* of

evidence on record to suggest or show that at any point of time a partition wall was raised or demolished.

11. I do not find any ground to interfere with the above findings of the learned Trial Court and the learned Appellate Court.

12. Consequently, the present appeal and all the pending applications are dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

JANUARY 24, 2020/Arya