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

Date of Decision: 05.04.2021

+ **RSA 5/2021**

ABHIJEET DAS

..... Appellant

Through: Mr.Vishnu Kant Pandey,
Mr.Sunil Ojha & Mr.Arjun
Sharma, Advs.

versus

SH. R.N. BISWAS

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

CM APPL. 12191/2021 in RSA 5/2021

1. This appeal has been filed by the appellant challenging the judgment and order dated 31.07.2020 passed by the learned Additional District Judge-01, Shahdara District, in appeal, being RCA DJ No. 44/2019, dismissing the appeal of the appellant against the judgment and decree dated 14.02.2019 passed by the learned Senior Civil Judge in Suit being CS No. 7323/2016.

2. The Suit had been filed by the respondent seeking possession, permanent injunction and recovery of damages from the appellant herein with respect to the suit property, that is, 1st Floor of the residential building No. 308, AGCR Enclave, Karkardooma, Delhi-110092, consisting of one room, kitchen, bathroom and balcony. It is the case of the respondent that the appellant was inducted in the suit

property as a licensee on humanitarian grounds as the appellant's wife was working as a house maid of the respondent. The possession was in the nature of gratuitous license which was terminated by the respondent through legal notice dated 27.10.2014 issued to the appellant.

3. On the other hand, the appellant claimed that the appellant was in possession of the suit property as a tenant paying rent of Rs. 2,400/- per month to the respondent.

4. The case of the appellant was, however, disbelieved by both the learned Trial Court as also by the learned Appellate Court with the Suit being decreed in favour of the respondent.

5. The learned counsel for the appellant submits that the learned Trial Court as also the learned Appellate Court failed to appreciate that the daughter of the respondent, who was produced as PW-2, had, in a statement recorded before the police, admitted that the appellant was occupying the tenanted premises as a tenant. The learned counsel for the appellant submits that the said document was discarded by both the learned Trial Court as also the learned Appellate Court only on the ground that the same was not exhibited in the trial and therefore, remained unproved. He submits that there was an error in not appreciating that the PW-2, in her statement recorded on 16.02.2016, during cross examination admitted her signatures on the said document. The statement recorded before the police, being a public document in terms of Section 74 of the Indian Evidence Act, 1872, was admissible under Section 76 and Section 65(e) of the Act. He

submits that once the signatures were admitted by PW-2, PW-2 being admittedly a well-read lady, such admission was relevant to be considered by the learned Trial Court as also by the learned Appellate Court.

6. I have considered the submissions made by the leaned counsel for the appellant, however, find no merit in the same. The learned Trial Court in its judgment and decree dated 14.02.2019 has, in detail, considered the evidence lead by the parties including on the alleged statement made by PW-2. Specifically on this document, the learned Appellate Court in the impugned judgment, has observed as under:-

24. Further, the Appellant in order to prove that he is a tenant in the property in question, relied upon the statement given by the PW-2 to the police, wherein she has purportedly stated that the Appellant was living as tenant in property in question for the last 14-15 years. The said document Mark XX is stated to have been put to the witness during cross examination on 16.02.2016, however, perusal of cross examination of PW2 reveals that she specifically denied the suggestion given to her as to giving any statement to police regarding the fact that Appellant and his wife were residing in the property in question for the last 14-15 years as tenant. In fact, it was voluntarily stated by her that defendant was his father's caretaker and he was never a tenant. It was further stated by her in the cross examination that the statement Mark XX was not in her handwriting and she specifically told the constable that defendant is a caretaker. This statement purportedly given by PW2 could have been proved by the police constable, however, the said document has not been exhibited and proved as per law. Thus, even the said statement is of no help to the Appellant

and the same can't be considered by this court while deciding the present appeal.

7. PW-2 in her statement recorded on 16.02.2016 before the learned Trial Court had, in respect to the above document, stated as under:-

"I can identify my signatures if shown to me. It is correct that I made a call at 100 no. and the police reached the spot. Thereafter my statements were recorded. At this stage, a document which is a certified copy already marked XX shown to the witness which is her statement made to the police bears her signature at the point marked A has been identified by the witness. It is wrong to say that I gave the above said statement to the police claiming that the defendant and his wife are residing in the premises for the last 14-15 years. Vol. The defendant is my father's caretaker and I always referred to him as his caretaker. He was never a tenant. So there is no question of me calling him a tenant.

Q. I put to you that in your statement marked XX made to the police on 14.11.2014, you have mentioned that the defendant is residing at the suit property as a tenant for last 14-15 years whereas today you have stated that the defendant is in possession of the suit property in the capacity of a caretaker inducted by your father. Which of these statements is true and correct?

A. The statement marked XX is not in my handwriting. I do not know how to write Hindi. The constable who had come to my home had written the statement mark XX on his own.

I believe so that the statement mark XX was read over to me. Again said, I do not remember whether the statement mark XX was read over to me. I specifically remember that I had told to the constable that the defendant is a caretaker. In my

statement before SEM Court which is Ex.PW2/D5, I had stated that the defendant is a caretaker in the suit property.

It is wrong to suggest that the defendant is a tenant in the suit property and not a caretaker. It is wrong to suggest that the statement mark XX contains narration of correct facts as disclosed by me to the Constable. It is wrong to suggest that deliberately I had not filed the statement marked XX alongwith my affidavit as I wanted to conceal it so that it may not be read against me in the instant suit. It is wrong to suggest that I have not approached this court with clean hands or that I have suppressed material facts. It is wrong to suggest that I am deposing falsely.”

8. The PW-2 has, therefore, fairly stated that she does not know how to write Hindi and the statement which was relied upon by the appellant was not in her handwriting. She stated that she had not told the police that the appellant was a tenant in the suit premises. The said statement, therefore, could have come to no avail to the appellant, especially when the police officer who recorded the statement of PW2 was not produced as a witness.

9. Even otherwise, the learned Trial Court and the learned Appellate Court have considered the evidence led by the parties as a whole to reach a conclusion that the appellant was unable to prove that he was occupying the suit property as a tenant, while on the other hand, the respondent was able to prove that the petitioner was occupying the suit premises as a licensee. It is not for this Court to

interfere with the such finding of fact in a second appeal, as no substantial question of law arises.

10. I, therefore, find no merit in the present appeal. The same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

APRIL 5, 2021/rv

A.

