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

Date of Decision: 15th December, 2021

+ **RSA 229/2019 & CM APPL. 45290/2021**

M/S MANOJ ENTERPRISES & ORS. Appellants
Through: Mr. Najim Uddin, Advocate (M-
9718156319)
versus

JAI SINGH & ORS. Respondents
Through: None.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

CM Appl. 45290/2021 in RSA-229/2019 (disposed off case)

2. This is an application filed by the Appellants seeking permission to argue in *RSA 229/2019* titled *M/S Manoj Enterprises & Ors. v Jai Singh* before this Court which has already been disposed of as dismissed vide a reasoned order dated 24th November 2021 passed by this Court. No counsel for the Appellants had appeared on the said date.

3. Ld. counsel for the Appellants, Mr. Ahmed, submits that on 24th November 2021 he was trying to join the court proceedings through virtual mode but was unable to do so due to technical issue. In view of this, today, the Court has given him the opportunity to argue in the matter. He submits that another counsel, Mr. Johar, is supposed to argue the matter, who is busy in another Court. Considering that the appeal has already been dismissed by

this Court, Id. Counsel for the Appellants was requested to make submissions he may have, if any, before the Court.

4. Ld. Counsel reiterates the questions of law, which have been agitated by him in the second appeal and submits that Order XIV Rule 7 CPC has not been complied in the case. It is his submission that the Respondents did not file the documents proving ownership over the property located at Block No.B, Plot No.1, Jhandewalan Estate, Behind DTC Depot, Deshbanhu Gupta Road, Karol Bagh, New Delhi (*hereinafter "suit property"*) or the documents detailing description of the suit property. He submits that the Respondents have failed to prove the proper title and identity of the property as the address mentioned on the sale deed, deposited by the Respondents was Faiz Road and D.B. Gupta Road in other documents.

5. A perusal of the Trial Court and the Appellate Court's judgment shows that the following issues were framed in the suit by the Trial Court:

"1. Whether the defendant no. 1 is dead person and suit is not maintainable in view of preliminary objections no. 1 in WS? OPD

2. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPD

3. Whether late Shri Bharat Singh was owner of the suit property as alleged in para 1 of the plaint? OPP If so, to what effect.

4. Whether Shri Bharat Singh executed a valid Will dated 12.08.1965 as alleged in para 3 of the plaint? If so, to what effect? OPP

5. Whether DTC is claiming suit property as alleged in para no. 7 of the WS. If so, to what effect? OPD

6. Whether the plaintiff is entitled to decree of possession of the suit property against which or all the defendant as prayed ? OPP

7. Whether the plaintiff is entitled to decree of

mandatory injunction? OPP

8. To what amount plaintiff is entitled? OPP

9. Relief.”

6. The Trial court struck of issue no. 3 relating to ownership of the suit property of Lala Bharat Singh as wrongly framed because declaration of title was not sought by either party. In deciding issue 4, relating to the execution of a valid will, the Trial Court came to the conclusion that Lala Bharat Singh acquired leasehold rights in the suit property from Gwalior Northern India Transport Co. Ltd. and the same was bequeathed in favour of the Respondent vide Will dated 12th August, 1965. The Trial Court also considered the judgment in Probate Case No.14 of 1975 by which letters of administration were granted in favour of the Respondent on the basis of the said will deed. The findings of the Trial Court and the Appellate Court is to the following effect:

“17. ISSUE NO.4

The onus to prove this issue was on plaintiff. Plaintiff has brought on record copy of Ex. PW1/1R i.e. judgment dated 16.08.1982 passed in Probate case no. 14/75 by Hon'ble High Court of Delhi. By said order the letters of administration in respect of property as stated in the annexure A of the petition was granted in favour of plaintiffs. Parties by their statements given in the court on 07.04.11 have adopted documents Mark A and B which are Probate petition and Will dated 12.08.1965 respectively. Perusal of Will Mark B shows that property known as Jhandewalan Estate situated at Faiz Road, Karol Bagh, New Delhi including property under Delhi Transport Corporation was bequeathed in favour of plaintiffs. Probate petition Ex. PW1/1R has been duly proved on record. It shows that letter of administration has been granted on the basis of said Will dated 12.08.1965. Ex. PW1/8 brought on record

also shows that lease hold rights in suit property (Plot No. 1 as well as in Plot No. 2) were granted in favour of deceased father of the plaintiffs by Gwalior Northern India Transport Co. Ltd. From the documents on record it is clear that Late Lala Bharat Singh acquired lease hold rights in suit property and the same were bequeathed in favour of plaintiff by Will dated 12.08.65. It is proved on record that Lala Bharat Singh has executed Will dated 12.08.1965 alleged in para 3 of the plaint. Accordingly, this issue is decided in favour of plaintiffs and against defendant. ”

7. In respect of issue no. 6, the Trial Court relying upon the Ex.PW1/1R to Ex.PW1/9R as also Ex.PW1/2, PW1/3, PW1/3A and PW1/4 has come to the conclusion that Appellant No.1 was a tenant in the suit property under the Respondent. The findings *qua* issue no.6 are extracted below:

“ISSUE NO.6

19a. The onus to prove this issue was on plaintiff. Plaintiff has brought on record Ex. PW1/1R to Ex. PW1/9R. Perusal of Ex.PW1/2, Ex.PW1/3, Ex. PW1/3A and Ex.PW1/4 shows that defendant no. 1 was tenant in respect of the suit property under the plaintiffs. Ex. PW1/8R shows that lease hold rights were acquired by father of plaintiffs Lala Bharat Singh in the suit property. Ex.PW1/1R and Mark B shows that the suit property has been devolved upon the legal heirs/plaintiffs of Lala Bharat Singh by way of Will Dated 12.08.1965 (Mark B).

19b. On the other hand defendant has brought on record documents Ex. DW1/1 to Ex. DW1/6. These exhibits shows the registration of the defendant with various government authorities. Ex. DW1/1 and Ex.DW1/2 are in the name of M/s Manoj Enterprises. Ex. DW1/4, Ex. DW1/5 and Ex. DW1/6 are in name of Sh. Manoj Loharia and Ex. DW1/3 is not addressed to any particular individual. DW1 is neither executant

nor these documents have been addressed to him. No witness who executed these documents or to whom these documents have been addressed have been brought on record to prove these documents. Even otherwise these documents cannot be inferred to confer any title in the suit property in favour of the defendants. At the most these documents can be used to show possession of the defendants in the suit property since particular period.

19c. The tenancy of defendant no. 1 has been terminated by plaintiffs by notice under section 106 Transfer of Property Act dated 17.02.1972 Ex.PW1/5R. Postal receipts are Ex. 1/6A to Ex. 1/6C, Ex.1/7A to Ex. 1/7C. PW2 has also proved affixation of said notice outside the suit premises. By notice dated 17.02.1972 the tenancy of defendant no. 1 was terminated from 31.08.92. From the documents brought on record it is clear that tenancy of defendant no. 1 was clearly terminated as per law.

19d. Defendant no. 2 to 5 on the other hand have failed to show how they have come into possession of the suit property. DW1 in affidavit in chief have stated that his father was doing business in the property since 1944 and he succeeded in the year 1973. Further in his cross-examination he has stated that he do not have any document/title of the ownership of the said plot in the name of this father. He also expressed his ignorance has to fact whether his father has purchased suit property or not. DW2 to DW5 have also failed to show how they have come into possession of the suit property. Defendant no. 2 to 5 have failed to show their title as well as any lease hold interest in the suit property. In the absence of any record brought on record by defendants they cannot be said the authorized occupants in the suit property. Moreover, Ex. PW1/8R i.e. lease deed, Ex. PW1/R and Mark B

clearly shows that plaintiffs have acquired rights and lease hold interest in the suit property from their deceased father. Accordingly, I hold that defendant no. 2 to 5 are unauthorized occupants in the suit property. As the lease has been properly terminated as per law, the plaintiffs are entitled to receive back the possession of the suit property.”

8. On the basis of these findings, the Trial Court came to the conclusion that Appellants are unauthorised occupants of the suit property and hence the decree has been granted for possession in their favour. The Court further directed the Appellants to pay Rs.3,600/-, to the Respondents as use and occupation charge for three years before the suit was filed. The Appellate Court has upheld the Trial Court judgment. Furthermore, the Appellate Court has observed that the identity of the suit property is being challenged for the first time only in the execution proceedings and the said challenge was rejected by the Appellate Court, in view of the order having attained finality. Paragraphs 23 and 24 of the Appellate Court orders reads as under:

“23. For the first time identity of the suit property was sought to be challenged only in the execution proceedings by the suit defendants and the said challenge was rejected by not just the execution court but even by the appellate court. Order of the appellate court having not been challenged has attained finality. Even before the bailiff at the time of execution of the impugned decree, there was no challenge to the identity of the suit property. So, the identity challenge cannot be raised in this regular civil appeal against the decree.

24. In these circumstances, appellants' objection as regards identity of the suit property has to be rejected. In any case, as mentioned above, during pendency of this appeal, the appellants had already filed a civil suit

in which identity of the suit property is also in question.”

9. In the opinion of this court, the order passed by the Appellate Court is clear as to the identity of the suit property. Furthermore, the question of the identity of the suit property would be a factual issue, adjudicating which would be beyond the jurisdiction of this Court in Second Appeal. It is reiterated that there is no substantial question of law which arises in this case.

10. In view of this, the Court is of the opinion that the earlier order dated 24th November, 2021 passed by this court in ***RSA 229/2019*** titled ***M/S Manoj Enterprises & Ors. v Jai Singh*** does not warrant reconsideration.

11. Application is disposed of. The appeal has already been disposed of. The present order shall be read along with the order dated 24th November, 2021, already passed.

DECEMBER 15, 2021
Rahul/SK

PRATHIBA M. SINGH
JUDGE