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

+ **RSA 2/2021 and CM APPL.768/2021**

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Date of decision: 2nd February, 2021

SHRI.LAXMAN SINGH

..... Appellant

Through: Mr.Dushyant Chaudhary, Advocate.

versus

SHRI.RAM KUMAR SHARMA & ANR.

..... Respondents

Through: Mr.Ashish Aggarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

[PHYSICAL COURT HEARING]

RAJIV SHAKDHER, J. (ORAL):

1. This is a second appeal preferred against the judgment dated 06.10.2020, passed by the District and Sessions Judge, Shahdara District Court, Karkardooma, Delhi (in short 'First Appellate Court'). The First Appellate Court *via* the impugned judgment has dismissed the appeal of the appellant herein and thereby confirmed the judgment of the trial court dated 20.02.2018.

2. The backdrop, in which the instant appeal has been filed, is broadly noticed hereafter.

2.1 The respondents before this court are the original plaintiffs. The respondents are husband and wife. The respondents filed a suit for recovery of possession, damages and permanent injunction against the appellant i.e. the original defendant.

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2.2 The case set up by the respondents was that they are owners of the suit property which is described as A-181, Gali No.6, opposite MCD office, Bank Colony Road, Mandoli Extension, Delhi-93, located in Khasra No.381, admeasuring 100 sq. yds(in short "suit property").

2.3 It was claimed before the trial court that respondent no.1/plaintiff no.1 had purchased a parcel of land admeasuring 50 sq. yds. in 1989 and that respondent no.2/plaintiff no.2 had bought the other parcel of land, which also admeasured 50 sq. yds in 1997. It is these two parcels of land which form the suit property. The respondents have also averred that the appellant/defendant used to work on the agriculture land of one, Mr. Ram Bhushan, who is the brother of respondent no.1/plaintiff no.1.

2.4 According to respondents/plaintiffs, the appellant/defendant approached them with the proposal that he would take the suit property on a lease as he desired to shift to Delhi so that he could get into the business of selling milk.

2.5 The respondents/plaintiffs claim that they agreed to the proposal of the appellant/defendant and, thus, inducted him as a tenant in the suit property in the year 2000, which comprised of, one room, that was located in the south-west corner and a verandah.

2.6 The respondents/plaintiffs aver that at that juncture the rent of the suit property was pegged at Rs.1,000/- per month. According to the respondents/plaintiffs, the appellant/defendant lived in the suit property along with his family members and also carried on the business of selling milk from the said premises. The respondents/plaintiffs claim that

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the appellant/defendant for this purpose kept two buffalos. It is stated that the appellant/ defendant has been in possession of the suit property since then.

2.7 The respondents/plaintiffs have also averred in paragraph 6 of the plaint that after about two years since the time the appellant/defendant was inducted as a tenant in the suit property, he made an offer to the respondents/plaintiffs that he would supply 3 litres of milk per day towards rent and as the rate for a litre of milk was Rs.45, the rent would be an amount equivalent to Rs.4,050/- per month.

3. The respondents/plaintiffs further claim that they terminated the appellant's /defendant's tenancy *via* a notice dated 16.02.2013. The respondents/plaintiffs also aver that they received a response to the said notice from the appellant/defendant. According to them, the response, which was dated 25.02.2013 set up a false claim.

3.1 The appellant/defendant in the reply set up a case that he was the owner of the suit premises.

4. It is in this background that the respondents/plaintiffs instituted a suit for recovery of possession, damages and permanent injunction *qua* the appellant/defendant.

5. After pleadings were completed and admission and denial of documents had taken place, the trial court framed the following issues:

- “(i) Whether the suit is barred by limitation as alleged? OPD*
- (ii) Whether [the] plaintiff has not filed proper court fees as alleged? OPD.*
- (iii) Whether the plaintiff is entitled for[sic: to} the relief of possession as prayed for? OPP*

- (iv) *Whether the plaintiff is entitled for[sic: to] damages, if so at what rate and for which period? QPP*
(v) *Whether the plaintiff is entitled for[sic: to] the relief of permanent injunction as prayed?*
(vi) *Relief"*

6. In short, the trial court *vide* the judgment dated 20.02.2018 decided all issues against the appellant/defendant. Consequently, the trial court passed a decree *qua* the appellant/defendant *qua* possession of the suit property. Furthermore, the trial court also passed a decree against the appellant/defendant and in favour of the respondents/plaintiffs for recovery of damages at the rate of Rs.4,050/- per month for the period commencing from the date of filing of the suit till the recovery of possession.

7. Besides this, the appellant/defendant, its agents, servants, attorney, representative etcetera were also restrained *via* a decree of permanent injunction to sell, transfer, alienate or part with the possession or create third party rights in the suit property.

7.1 Also, costs were also accorded to the respondents/plaintiffs.

8. As noticed above, being aggrieved by the judgment of the trial court, an appeal was preferred by the appellant/defendant to the first appellate court.

9. The appeal, as alluded to above, was dismissed *vide* judgment dated 06.10.2020.

10. Mr.Dushyant Chaudhary, who appears on behalf of the appellant has submitted that the judgments of the courts below are erroneous as no cognizance has been taken of the following two aspects:

- (i) The appellant/defendant's plea of adverse possession,

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(ii) That the civil court had no pecuniary jurisdiction, as according to the appellant/defendant, the value of the suit property was nearly Rs. 80 lacs and therefore, the suit could not have been entertained by the civil judge.

11. I may note here that Mr.Chaudhary had attempted to argue in this Court that the trial court did not have subject matter jurisdiction as well, as the rent of the property, was only Rs.1,000/- per month, this plea was, however, given up when I had asked him whether such an assertion had been made in the written statement.

12. The reasons why this plea was, perhaps, given up was because the appellant/defendant while attempting to establish his case that he was the owner of the suit property had claimed that part of the sale consideration was given in the form of 3 litres of milk that was supplied to the respondents/plaintiffs each day.

12.1 In other words, the question which the courts below had to consider was as to whether 3 litres of milk per day which was supplied by the appellant/defendant was supplied towards rent or sale consideration.

13. There was, thus, no dispute raised as to the monetary value put on the 3 litres of milk which was supplied to the respondents/ plaintiffs which was pegged at Rs.4,050/- p.m.

14. Insofar as the first aspect is concerned which concerns the defence of adverse possession, apart from being contradictory to the specific stand taken by the appellant/defendant that he was the owner of the suit property, there is no such plea taken in the written statement. Therefore, this submission cannot be accepted.

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15. What the appellant/defendant has, in fact, averred in the written statement is that the suit was barred by limitation as it had been filed in 2013 where he has been inducted as a tenant in the year 2000. *Qua* this issue the trial the court has returned a finding of fact that the cause of action arose only when the notice dated 16.02.2013 (Ex.PW-1/19) was served on the appellant/defendant qua which the reply dated 25.02.2013 (Ex.PW-1/24) was received by the respondents/ plaintiffs. Therefore, the suit which was filed on 20.03.2013 was not barred by limitation.

15.1. I find that no error in the view taken by the trial court which was sustained by the first appellate court.

16. Insofar as the other aspect is concerned, which is, that the trial court did not have pecuniary jurisdiction, it is rightly pointed out by counsel for the respondents/plaintiffs that even according to the appellant/defendant the property was worth Rs.5 lacs and therefore, pegging its worth at Rs. 80 lakhs was completely erroneous.

16.1. In any case, the stand of the respondents/plaintiffs was that the appellant/defendant was a tenant and therefore the court fee had been paid based on annual rent calculated at Rs. 4,050/- per month.

16.2 To my mind, once again no error can be found vis-a-vis this conclusion.

17. However, before I conclude I must indicate that I have examined the trial court judgment and the judgment of the first appellate court and I am satisfied that there is no error in both these judgments which would necessitate interference having regard to the fact this is a second appeal.

18. The following observations made by the first appellate court concerning

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the arrangement arrived at between the parties, being relevant, are extracted hereafter:

“13. The Ld. Trial Court further observed and gave its findings while referring Section 54 of Transfer of Property Act, 1882, which provides that immovable property can only be transferred by a registered document and the sale of immovable property of value less than Rs. 100/- may be made either by registered instrument or delivery of possession but in the present case, the defendant has himself stated the value of property to be 5.00 lacs, therefore, the transfer is to be made only by registered instrument but no document even unregistered has been produced by the defendant regarding the transfer of ownership by the plaintiffs in favour of defendant and the plaintiffs as per the documents are the owner of the suit property in question. Moreover, the defendant has also failed to show any receipt of installment of Rs.5,000/- per month till January. 2012. The plaintiff inducted the defendant as a tenant and the rent was paid in the form of delivery of 3 kg of milk to the plaintiff by the defendant but the cause of action arose on 16.02.2013 when the plaintiff terminated the tenancy of defendant by sending legal notice dated 16.02.2013 (Ex.PW1/19) and the reply of the same was given by the defendant (Ex.PW1/24). hence, the suit was filed on 20.03.2013, therefore, the suit is within the limitation period. After considering the evidence and discussion above, the Ld. Trial court held that the defendant has failed to show any ownership document, therefore, he was tenant in the suit property and the plaintiff has paid the court fees for the purpose of jurisdiction on Rs.48,600/- i.e. equal to 12 months rent @ Rs.4,050/- per month as per Section 7 (X1) of Court Fees Act, 1870 and valued the permanent injunction relief @ Rs.150/-. Therefore, the plaintiff has paid the proper court fees. Accordingly, the plaintiff has discharged the onus to prove issue nos. 3, 4 and 5 but the defendant has failed to discharge the onus of issue nos.1

and 2, as such granted the decree for possession in favour of the plaintiffs-therein and against the defendants as per the impugned judgment dt20.02.2018.

14. Let us further discuss and examine the evidence led by the parties before the Ld. Trial Court. Plaintiff / Sh. Ram Kumar Sharma examined himself as PW1 in his evidence before the Ld. Trial Court and stated specifically during his cross examination before the Ld. Trial Court that he has purchased half part of the suit property measuring 50 square yards in the year 1989 in his name for a sum of Rs.30,000/-, which was arranged by him out of his savings and he borrowed Rs.10,000/- from his Behonoi. He informed his department regarding purchase of the property. PW1 further denied in his cross-examination that in the year 1997, he induced the defendant-therein to invest some money on the pretext of arranging of plot for defendant in Delhi for that the defendant paid Rs.50,000/- in cash and he paid the balance amount of Rs.5000/- through monthly installment of Rs.5000/- per month paid till January 2012. PW1 further denied that it was also agreed that the defendant shall supply 3 kg milk free every day. PW1 further deposed in his cross-examination that no rent agreement was executed. No rent receipt was ever issued. PW1 also deposed that other part of the property measuring about 50 square yards was purchased in the name of his wife in the year 1997 for consideration of Rs. 1.5 lakhs and he gave information to his Department in this regard. Defendant came in possession in the year 2000. PW1 relied upon the documents and proved the documents i.e. Ex.PW1/1 to Ex.PW1/25 regarding the ownership of the suit property, which have been discussed in the impugned judgment dt. 20.02.2018 by the Ld. Trial Court.

15. DW1 / Sh. Laxman Singh in his cross-examination before Ld. Trial Court stated that he cannot furnish any documentary proof to show his possession from 1997 till 2000. DW1 admitted that electricity meter was in the name of plaintiff No. 2. DW1

further admitted in his cross-examination that he has not served any notice upon the plaintiff asking him to execute any sale document in his favour. He further admitted in his cross-examination that he never deposited the l-louse Tax with MCD. DW1 also admitted that he never gave any cheque or demand draft to the plaintiff for the instalment of Rs.5.000/- as alleged by him. DW1 further admitted in his cross-examination that he does not have possession of any document regarding the ownership of the suit property. DW1 did not tell the date, month and year as when his first ration card (food card) was prepared by the concerned authority showing address of the suit property. DW1 also admitted that he has no title document in his favour or in favour of his family members in respect of suit property. He is not aware who is paying the MCD house tax of the suit property. DW1 further admitted in his cross-examination that he has not filed any agreement and receipt in respect of payment of Rs.5000/- pm towards the instalments to the plaintiff. Legal notice dt.16.02.2013 received by him and reply to the said notice was admitted by DW1 in his cross-examination before the Ld. Trial Court. DW2 Sh. Omvir Singh. in his cross-examination stated that he is not summoned witness and further stated that he does not know when his affidavit Ex.DW2/A was prepared by the counsel for the defendant. DW2 further deposed in his cross-examination that he cannot tell the date, month and year when the defendant has tendered monthly instalments to the plaintiff No.1. DW2 could not tell when the electricity connection was installed in the suit property. DW2 stated that he is a labourer. He does not know the consideration amount, which was agreed between the plaintiff and defendant. DW3 Sh. Naresh Kumar stated in his cross-examination that he has come to the court on his own on the request of the defendant. DW3 stated that he know the defendant as he is his neighbour. DW3 stated that he is residing at his address since last 10-12 years. DW3 further stated that he has been seeing the defendant in possession of the suit property since he shifted in the neighbourhood and he cannot tell about his possession prior to that. ”

19. Thus, having regard to the aforesaid, I am of the view that no substantial question of law arises for consideration and therefore the instant appeal can be dismissed at this stage itself. [See *Kirpa Ram v. Surendra Deo Gaur*, 2020 SCC OnLine SC 935].

20. The appeal is accordingly dismissed. The pending application shall also stand closed.

RAJIV SHAKDHER, J.

FEBRUARY 2, 2021

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[Click here to check corrigendum, if any](#)

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