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

+ **RSA 19/2021 & CM APPL. Nos.6149-51/2021**

% Date of decision: 17th February, 2021

RAJPAL SINGHAppellant

Through : Mr. Arush Khanna, Adv.

versus

ASHOK KUMARRespondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

[Court hearing convened *via* video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J. (ORAL):

1. This is an appeal filed against the judgement and the order dated 26.10.2020, passed by the learned Additional District Judge, in Regular Civil Appeal No.76/2019 (13/2019).

1.1. The appellant herein is the original defendant.

1.2. *Via* the impugned judgement, passed by the first appellate court, the decree passed by the trial court in the respondent's suit for ejectment, possession, recovery of arrears of rent, damages, *mesne profit* and permanent injunction has been sustained.

2. Mr. Arush Khanna, who appears for the appellant/defendant, says that the respondent/plaintiff had claimed ownership based on unregistered documents such as Agreement to Sale, General Power of Attorney, Affidavit Receipt, Possession Letter, and Will Deed; all of which are dated 19.05.2016 and attested on 20.05.2016 - therefore the impugned judgement is erroneous.

2.1 It is, however, not disputed by Mr. Khanna that the appellant/defendant executed a Rent Agreement with the respondent/plaintiff on 20.05.2016.

2.2. It is in this background the respondent/plaintiff filed a suit for ejectment, possession, recovery of arrears of rent, damages and *mesne profits*, on 25.04.2017, after a notice dated 08.03.2017 had been served, on the appellant/defendant for vacating the suit property.

2.3. Mr. Khanna, thus, says that the respondent/plaintiff could not establish his claim concerning ownership of the suit property and therefore, the judgements of the courts below are flawed.

2.4. According to Mr. Khanna, the first appellate court should have framed an issue concerning ownership as the suit was based on the averment that the respondent/plaintiff was the owner of the suit property which was denied by the appellant/defendant.

3. I have examined the plaint filed by the respondent/plaintiff.

3.1. No doubt, there is an assertion made therein that the respondent/plaintiff is the owner of the suit property. The said assertion which is made in paragraph 1 of the plaint is followed by an averment in paragraph 2 of the plaint that a rent agreement was executed between the respondent/plaintiff and the appellant/defendant.

3.2. Therefore, what emerges from the record and from the testimony of the appellant/defendant is of prime importance in the case. For the sake of convenience, the relevant portion of the appellant/defendant's testimony is extracted hereafter:

“I hereby tender my evidence by way of affidavit Ex. DW-1/1 which bears my signatures at point A and B.

XXX by Sh.Arvind Chauhan ld counsel for plaintiff.

I am X pass. I am not conversant with English language. I can only sign in English language. I know plaintiff since 20.05.2016. I know the contents of my affidavit Ex. DW1/1. It is incorrect to suggest that I have taken Rs.2 lakh from the plaintiff. It is correct that Sh. Jai Singh handed over the whole original property containing 17 pages to the plaintiff which was already in possession of the said Sh. Jai Singh. I had taken a loan of Rs.2,75,000/- from Sh. Jai Singh. I know Sh. Jai Singh through Sh. Chhatar Singh, who was working with me. I do not know the address of Sh. Chhatar Singh.

It is wrong to suggest that I have sold the property in question to Sh. Jain Singh. It is correct that plaintiff given the loan of Rs.2 lakh to Sh. Jai Singh in my presence. It is correct that no documents were executed between Jai Singh and plaintiff with respect to the above said loan transaction. It is correct that I have executed GPA dated 19.05.2016 Ex. PW1/1, Agreement to Sale purchase dated 19.05.2016 Ex. PW1/2, affidavit dated 19.05.2016 Ex. PW 1/3, Receipt dated 19.05.2016 Ex. PW 1/4, possession Letter dated 19.05.2016 Ex. PW 1/5 and Will dated 19.05.2016 Ex. PW 1/6 in favour of the plaintiff after receiving the sale consideration of Rs.3 lakh. It is correct that Rent Agreement dated 20.05.2016 was executed between me and plaintiff. It is wrong to suggest that I paying any rent of Rs.6000/- per month to the plaintiff. Vol. I was paying Rs.6,000/- per month as a rent.

It is correct that I am not in possession of any title documents with respect to the suit property. It is wrong to suggest that I have sold the suit property to the plaintiff and I am residing as a tenant in the suit property. I do not have any receipt with respect of payment of interest to the plaintiff. It is correct that on the instruction of Sh. Jai Singh I have not executed certain documents in favour of the plaintiff. It is wrong to suggest that I am deposing falsely. ”

3.3. As it would be evident from the perusal of the testimony of the appellant/defendant, that he does not dispute the following:

- (i) The execution of General Power of Attorney [Ex.PW1/1], Agreement to Sale [Ex. PW1/2], affidavit [Ex. PW 1/3], receipt [Ex. PW 1/4], possession letter [Ex. PW 1/5], and Will [Ex. PW 1/6], dated 19.05.2016 concerning the suit property. As indicated hereinabove, these documents were executed on the same date i.e. 19.05.2016. That these documents were executed for a consideration of Rs. 3 lakhs.
- (ii) The execution of the Rent Agreement dated 20.05.2016.
- (iii) The fact that he has been paying rent @ Rs. 6,000/- per month.
- (iv) That he did not have any title documents.
- (v) That the respondent/plaintiff had given Rs. 2 lakhs to one Jai Singh as loan from whom he had taken a loan of Rs. 2.75 lakhs.
- (vi) That he had no receipts for interest paid on the loan.
- (vii) Lastly, he had not executed any documents in favour of the respondent/plaintiff on the instructions of Jai Singh.

4. Given the aforesaid, it is clear that the appellant/defendant, apart from anything else, is in possession of the suit property in his capacity as a tenant and he is paying rent at the rate of Rs. 6000/- per month. Since the rent agreement was executed with the respondent/plaintiff, the preponderance of probability test, if applied, as has been done by the Courts below, would lead to the conclusion that the appellant/defendant was the tenant of the respondent/plaintiff and was paying rent to him at the rate of Rs. 6,000 per month. The case set up that by the appellant/defendant that he had taken a loan of Rs. 2.75 lakhs from Jai Singh and that towards this loan Rs. 2 lakhs

was paid, by the respondent/plaintiff, could have been established by examining Jai Singh. Curiously, Jai Singh was not summoned as a witness. Besides this, as noticed above, the appellant/defendant, apart from making bald averments, was not able to support the assertions made in the written statement with concrete evidence. To illustrate this point, what comes to mind is that the appellant's/defendant's inability to produce any evidence of having paid interest. As noticed above, the appellant/defendant in his testimony said that he did not possess any receipts for supposed payments made towards interest.

4.1. Given this circumstance, to my mind, the appellant/defendant is estopped¹ in law from disputing and/or denying the title of the respondent/plaintiff *qua* the suit property.

4.2. The trial court as well as the first appellant court, have dealt with this aspect of the matter.

4.3. In these circumstances, according to me, no substantial question of law arises in the matter as the two courts below have returned concurrent findings of fact.

5. I find no merit in the appeal. The appeal is, accordingly, dismissed.

6. Consequently, all the pending applications shall stand closed.

RAJIV SHAKDHER, J.

FEBRUARY 17, 2021/pmc

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

¹ See: Section 116, The Indian Evidence Act, 1872.