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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 8th October, 2021

+ **RSA 28/2021**

LALA RAM Appellant

Through: Mr. Akshar Bhardwaj, Advocate

versus

RAJENDER KUMAR Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 9979/2021 (for exemption)

2. Allowed subject to all just exceptions. Application is disposed of.

CM APPL. 9980/2021 (for delay)

3. This is an application for condonation of delay. Delay is allowed.

4. Application is disposed of.

RSA 28/2021 and CM APPL. 9978/2021 (stay)

5. Notice is yet to be issued in this matter. None appears for the Respondent.

6. This is a regular second appeal challenging the judgment dated 22nd October, 2020 passed by Ld. ADJ, Tis Hazari Courts, Delhi (*hereinafter* “Appellate Court”) in *RCA No.32/2020* titled *Lala Ram v. Rajender Kumar*. By the impugned judgement, the Appellate Court has upheld the judgement and decree dated 6th August, 2019 passed by Ld. Civil Judge, Central District, Tis Hazari Courts, Delhi (*hereinafter* “Trial Court”) in *Civil Suit No.1546/2018* titled *Rajender Kumar v. Lala Ram*.

7. On 20th November, 2004, the Appellant herein had instituted *CS SCJ*

No. 457/2004 titled ***Lala Ram v. Rajender Kumar*** seeking a declaration and permanent injunction against his brother, Respondent herein, in respect of the property bearing No. 16/78 Bapa Nagar, Hardhiyan Singh Road, Karol Bagh, New Delhi-110005 admeasuring 65 sq. yds. (*hereinafter “suit property”*). The said suit was dismissed by the Trial Court vide judgment and decree dated 12th November, 2009 and it was held that the Appellant herein was guilty of suppressing material facts and was not entitled to the decree for declaration as sought. The said judgment dated 12th November, 2009 has attained finality as the same has not been challenged.

8. On the strength of the said judgment dated 12th November, 2009, the Respondent herein, Mr. Rajender Kumar filed the suit for possession, recovery of damages and mesne profits against the Appellant. The prayers in the said suit were as under:-

In view of the above facts and circumstances, it is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased:-

a). To pass a decree in favor of the plaintiff and against the defendant for possession of his portion as shown red colour of the site plan of the suit property and the defendant may kindly be directed immediately to handover the vacate & peaceful possession of possession of Second Floor of suit property bearing no. H.No.16/78-1, Bapa Nagar, Hardhiyan Singh Road, Karol Bagh, New Delhi-110005 specifically as shown in the red colour of the site plan attached to the plaintiff;

b). To pass a decree for a sum of Rs.2,88,000/- (Two Lacs eighty eight thousand) in favor of the plaintiff and against the defendant on account of damages/mesne profit w.e.f. June 2015 to May 2018 for illegal use, occupation and possession of the second floor of the suit property along with pendentlite and future damages/rent @ Rs.8,000/- per month till the date of vacating handing

over the actual, vacant, peaceful and physical possession of the suit/tenanted property by the defendant to the plaintiff. The plaintiff undertake to pay the requisite and prescribed court fee on the amount of pendentelite and future damages/mesne profit as and when so directed by the Hon'ble Court.

Costs of the suit/proceedings may kindly also be awarded in favor of the plaintiff and against the defendant.

Any other or further order(s)/relief(s), which this Hon'ble Court may deem fit and proper be kindly passed in favor of the Plaintiff and against the defendant;

9. Vide judgment and decree dated 6th August, 2019, the Trial Court has held that the suit filed by the Respondent would be liable to be decreed in view of the earlier findings in **CS SCJ No. 457/2004**. The plea which was raised by the Appellant claiming that the suit property was ancestral property was also rejected by the Trial Court as being not maintainable and barred by *res judicata*. The findings of the Trial Court in judgement and decree dated 6th August, 2019 are extracted below:-

No replication was filed by the plaintiff. But present application U/o 12 Rule 6 CPC was moved on 17.11.2018. Thereafter reply was filed on 22.03.2019.

I have heard the arguments and perused the record.

The plaintiff has claimed himself to be the owner of the suit property by virtue of sale deed dated 13.01.2000. The said sale deed was challenged by the defendant in the previous litigation in CS SCJ No. 457/2004. The said suit of the defendant herein was dismissed. Hence the sale deed dated 13.01.2000 is a valid document and a finding to that effect has also been given. The said decree dated 12.11.2009 has not been challenged till date by the defendant and therefore, the same has attained finality. His plea that the suit is an ancestral property is not maintainable and barred by resjudicata as in the previous suit filed by defendant herein he had claimed

that the property was an ancestral property in the hands of the father of the parties and therefore, he was also entitled as a coowner to the extent of 1/4 share in the suit property. The said plea was dismissed and it was categorically observed in the judgment dated 12.11.2009 that Rajender Kumar (plaintiff herein) has been categorically able to prove his ownership by virtue of sale dated 13.01.2000. A clear finding was given that the Lala Ram (defendant herein) has not been able to prove that the sale deed dated 13.01.2000 as bad in law. Further it was observed that the Lala Ram (Defendant herein) has miserably failed to prove his legal right in the suit property. The prior suit was between the same parties with respect to the same property and a clear finding was given as to the validity of the sale deed dated 13.01.2000. Hence the finding of the previous suit would be binding as res judicata between the parties.

Therefore, pleas of the suit property being ancestral property and that of sale deed being invalid would be barred by res judicata. Once the aforesaid pleas are removed from the written statement of defendant, there is nothing on record to contravene the case of the plaintiff. Averments of plaintiff are therefore, admitted. Decree dated 12.11.2009 has not been challenged or denied.

Accordingly, in view of the aforesaid observations, the suit of the plaintiff stands partly decreed. Defendant is directed to hand over the vacant and peaceful possession of the suit property to the plaintiff within two months from today.

Now to come up on 26.11.2019 for determining the mesne profits/damages, if any, which are due from defendant. Plaintiff is directed to lead evidence on the aforesaid issue.

Decree sheet be prepared accordingly.

10. This judgment and decree dated 6th August, 2019 passed by the Trial Court has been upheld by the Appellate Court, and appeal preferred by the Appellant has been dismissed on the ground that the Trial Court has rightly

exercised the powers under Order XII Rule 6 of CPC in decreeing the suit and the judgement dated 12th November, 2009 in **CS SCJ No.457/2004** has attained finality for all intents and purposes.

11. Ld. Counsel for the Appellant submits that there is no unequivocal and unambiguous admission by the Appellant herein and thus, the suit could not have been decreed under Order XII Rule 6 of CPC. He further submits that on the strength of the judgment, the possession of the suit property has been taken over by the Respondent in the execution proceedings and the Appellant has vacated the suit property. He further submits that the judgment in the previous case, being **CS SCJ No.457/2004** would not operate in favour of the Respondent in the present second appeal.

12. The Court has perused the earlier judgment and decree dated 12th November, 2009 in **CS SCJ No.457/2004**, so also the present judgment and decree dated 6th August, 2019 in **Civil Suit No.1546/2018**. In the judgment in the first suit dated 12th November 2009, there are various findings given by the Trial Court as to the conduct of the Appellant herein. The same are set out below:

“17. Through, DW-1, Shri V.P. Nanda, the Manager of Jawala Co-operative Urban Thrift & Credit Society Ltd., Jhandewala, the defendant has proved the factum of loan he had taken from the said society after the submission of documents of title. On the contrary, the plaintiff has not been able to make any dent in the evidence of the defendant. In cross-examination of the plaintiff, he has admitted that after the demise of the grand father of the parties, all his children were entitled for equal shares, meaning thereby, that he has gone contrary to his stand taken by him in the plaint that only his father succeeded the ownership of the suit property. In his evidence, he has pleaded ignorance about execution of Ex.DW1/1 by

his father in favour of the defendant. He has further admitted that as per his legal right, he is entitled only to 1/24th share in the suit property. This fact has also been admitted by the defendant. Therefore, the plaintiff at the most can be held to be entitled to 2.7 sq. yards out of the suit property (being 1/24th share of 65 sq. yards), that too in an appropriate proceedings, if he choses to file one.

18. The declaration is an equitable relief. One who seeks equity from the court, must do equity himself. The plaintiff has deliberately concealed the details of his uncles, "bua" and sisters in the suit. He has not made his other brothers and sisters as parties in this suit, whereas the defendant has been able to categorically prove his ownership of the suit property by virtue of Ex.DW1/1 and Ex.DW1/2. As regards the 3/4th share of the defendant in the suit property which he got from his other relatives, who had legal right therein, there is no doubt that he has the absolute right. As regards the 1/4th share of the father of the parties, each sibling of the defendant should have had 1/24th share therein. The entire suit property being admeasuring 65sq.yards, the plaintiff has share of 2.7 sq.yards therein. This is the only legal entitlement of the plaintiff, even if it is presumed that the father of the parties could not have executed Ex.DW1/1 without considering the right of the plaintiff. The stand taken by the defendant in the matter is that the father of the parties had sold his share in the suit property to the defendant for the family needs, as he had to arrange money for performing the marriages of his two daughters and had to repay to his creditors. A suggestion to this effect was also given to the plaintiff in cross-examination, which he has denied. The fact remains that the plaintiff has not been able to prove that Ex.DW1/1 to be bad in law. On the contrary, by concealing material facts from this court, he has attempted to obtain a decree in his favour, which is not permissible in law.

The issue is accordingly decided against the plaintiff and in favour of the defendant. "

Apart from the above findings, the prayer of the Appellant in the said suit for declaration challenging the Sale Deed dated 13th January, 2000, which was executed in favour of his brother, Respondent herein, has been rejected by the Trial Court. The said judgement and decree, having not been challenged is not disputed by the Appellant herein in his written statement before the Trial Court. The only plea in the written statement is that the suit property is ancestral property. The Appellant has not been able to prove this in the suit earlier instituted by him and there is a specific finding to the contrary. In any event, the earlier judgment and decree dated 12th November, 2009 would operate as *res judicata*, as, even today the stand of the Appellant's counsel is that the earlier judgment was not challenged.

13. Under the facts and circumstances of the present case, considering the written statement and the first judgement/decree, in totality, since the challenge to the sale deed in favour of the Respondent, failed in the first suit, the Appellant cannot continue to retain possession of the property on the ground that the property is ancestral property. Thus, there is no plea which requires to be tried in the suit from which the present appeal arises. The Trial Court has correctly decreed the suit in favour of the Respondent under Order XII Rule 6 of CPC. The Appellate Court has also confirmed the same. Thus, in the opinion of this Court, no substantial questions of law would arise in the present second appeal.

14. Accordingly, the present second appeal is dismissed in the above terms.

15. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated

as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

**PRAITHIBA M. SINGH
JUDGE**

**OCTOBER 8, 2021
MR/AD**

