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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 89/2022 & CM APPL. 33977/2022, CM APPL.
33978/2022, CM APPL. 33979/2022

DEVENDRA VERMA SINCE DECEASED THROUGH LR
..... Appellant
Through: Mr. Siddhartha Verma, Adv.

versus

ASHISH GOYAL Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)
03.08.2022

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1. This appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC), assails order dated 30th January 2019, passed by the learned District & Sessions Judge (hereinafter, “the learned First Appellate Court”), dismissing RCA 171/2018 (*Devender Verma v. Ashish Goyal*), filed by the appellant, assailing the judgment dated 27th September 2018, passed by the learned Civil Judge in CS SCJ 96021/2016 (*Ashish Goyal v. Devendra Verma*).

2. CS SCJ 96021/2016 was instituted by the respondent against the appellant seeking recovery of an amount of ₹ 42,000/- along with interest @ 18% per annum and costs.

3. The respondent-plaintiff averred that, *vide* registered sale deed



dated 14th May 2015, Shop No. 2620, Chatta Pratap Singh, Kinari Bazar, Delhi-110006 (hereinafter “the suit property”) was sold by the petitioner to the respondent, whereafter the respondent let out the suit property to the petitioner for a period of eleven months at a monthly rent of ₹ 6,000/- excluding electricity and other charges.

4. The plaint averred that the petitioner was in default of rent from 1st September 2015, resulting in termination, by the respondent, of the tenancy of the petitioner, by notice dated 29th February 2016, issued in terms of Section 106 of the Transfer of Property Act, 1882. The notice also called upon the petitioner to pay up the arrears of rent of which the petitioner was in default.

5. As the petitioner did not respond to the said notice, the respondent instituted CS 96021/2016 against the petitioner, seeking recovery from the petitioner of the aforesaid amount of ₹ 42,000/- along with interest.

6. In his written statement filed by way of response to the suit, the petitioner claimed to be the owner of the suit property. The petitioner claimed that he had advanced a loan of ₹ 6,00,000/- to the respondent, in lieu whereof the respondent had executed the sale deed dated 14th May 2015, on the basis of which the respondent was claiming ownership. The rent note, whereunder the respondent had let out the suit property to the petitioner, was also alleged to have been by way of a security against the loan advanced by the respondent to the petitioner. The written statement further averred that, by agreement



between the parties, the suit property was to be reconveyed to the petitioner, consequent on the petitioner liquidating the loan taken from the respondent.

7. Of the amount of loan that the petitioner had allegedly taken from the respondent, the written statement averred that an amount of ₹ 50,000/- had been paid to the respondent on 18th May 2015, and that ₹ 5,50,000/- remained to be paid.

8. The learned Civil Judge framed the following issues as arising for consideration, on 20th December 2016:

“1) Whether there exists relationship of landlord and tenant between the plaintiff and defendant? If yes, what is the rate of rent? OPP

2) Whether the plaintiff got executed sale deed and rent note instead of executing the documents of loan of Rs. 6 Lakhs? OPD

3) Whether the plaintiff is entitled for recovery of claimed sum? OPP

4) Relief, if any.”

9. The petitioner and respondent tendered their evidence as PW-1 and DW-1 respectively. No other witness was cited.

10. The learned Civil Judge held, with respect to the issues framed by him, as under:

(i) Re. Issue 2



(a) Regarding Issue 2, dealing with the claim of the petitioner that the sale deed dated 14th May 2015 and the rent note had been executed in lieu of the loan advanced by the respondent to the petitioner, the learned Civil Judge noted that the burden to prove this issue was on the petitioner. This burden had been sought to be discharged by the petitioner only by reiteration, in the affidavit tendered by the petitioner in evidence (Ex. DW-1/A) of the contents of the petitioner's written statement filed in response to the suit of the respondent. Apart from this, the petitioner only sought to rely on a statement of account of the petitioner's passbook marked Mark 'X', which indicated a payment of ₹ 50,000/- to the respondent having been made on 20th May 2015.

(b) As against this, the respondent contended that the payment of ₹ 50,000/- was against purchase of jewellery by the respondent from the petitioner, a suggestion to this effect having been put to the petitioner as (DW-1) during cross examination.

(c) The learned Civil Judge held that, except his own evidence, the petitioner had failed to lead any evidence to prove the existence of fraud or an oral agreement between the petitioner and the respondent, whereunder the suit property was to be reconveyed to the petitioner,



consequent to liquidation, by the petitioner, of the loan allegedly extended by the respondent. Equally, the petitioner had also failed to lead any evidence to indicate that the payment of ₹ 50,000/-, reflected in his statement of account, was by way of part payment towards the loan extended by the respondent to the petitioner.

(d) In this view of the matter, Issue 2 was decided by the learned Civil Judge against the petitioner and in favour of the respondent.

(ii) Issues 1 and 3

(a) The learned Civil Judge thereafter proceeded to take up Issues 1 and 3 together. It was observed, by the learned Civil Judge, that the petitioner had clearly admitted execution of the sale deed and the rent note, which stood duly exhibited as Ex. PW-1/4 and Ex. PW-1/6 respectively.

(b) On a perusal of the sale deed (Ex. PW-1/4), the learned Civil Judge noted that there was no recital to be found, therein, that the sale deed was in lieu of any loan extended by the respondent to the petitioner. Rather, the learned Civil Judge notes that the sale deed categorically recorded that the consideration envisaged therein was against delivery, by the petitioner, of actual physical and



vacant possession of the suit property to the respondent.

(c) The rent deed having been executed subsequent to the sale deed, on 15th May 2005, there was no reason to presume that the rent deed was anything other than a document whereunder the petitioner was inducted as a tenant in the suit property. Possession, it was noted, was given to the petitioner by virtue of the said rent deed. The learned Civil Judge noted that the petitioner had failed to establish any other capacity in which he was continuing in possession of the suit property.

(d) In these circumstances, the learned Civil Judge held that the respondent had successfully proved that the petitioner was the tenant in the suit property under the respondent.

(e) The rent deed also reflected the rent payable in respect of the suit property to be ₹ 6,000/- per month.

(f) As the tenancy stood terminated by issuance of legal notice under Section 106 of the Transfer of Property Act (Ex. PW-1/1) dated 29th February 2016, the learned Civil Judge held the respondent to be entitled to collect rent for the period of 1st September 2015 till 29th February 2016, i.e. for a period of six months.



(g) Following on the aforesaid findings, the learned Civil Judge decreed the suit filed by the respondent for an amount of ₹ 36,000/- along with simple interest @ 9% per annum, from the date of institution of the suit till realisation of the amount and costs.

11. In first appeal, the learned First Appellate Court has noted that:

- (i) the sale deed dated 14th May 2015 (Ex. PW-1/4) stood proved by the respondent,
- (ii) under the sale deed, the suit property had been sold, by the petitioner, to the respondent for ₹ 3,60,000/-,
- (iii) the recital in the sale deed did not support the case of the petitioner that the sale was in lieu of any loan advanced by the respondent to the petitioner or that, on liquidation of the said loan by the petitioner, the property was to be reconveyed by the respondent to the petitioner,
- (iv) the sale deed dated 14th May 2015 also stood proved as Ex. PW-1/6,
- (v) the rent deed established that the respondent had let out the suit property to the petitioner at a monthly rent of ₹ 6,000/- for eleven months from 18th May 2015 to 17th April 2016,



(vi) the petitioner had not disputed the execution either of the sale deed or of the rent deed, though the onus of proof in that regard was on the petitioner,

(vii) the respondent had, *per contra*, proved the registered sale deed executed as PW-1/4 and the rent deed executed as PW-1/6, and

(viii) there was nothing to indicate that the petitioner had paid rent to the respondent after 1st September 2015.

12. In view thereof, the learned First Appellate Court upheld the judgment and decree of the learned Trial Court, whereby the suit filed by the respondent against the petitioner was decreed for ₹ 36,000/- along with simple interest @ 9% p.a. with costs.

13. There are concurrent findings of fact by the learned Trial Court and the learned First Appellate Court. There is no perversity, whatsoever, in the findings of either of the courts below. It has been correctly found, by both courts below, that the respondent had clearly proved its case that he had purchased the suit property from the petitioner and thereafter let out the suit property to the petitioner at a monthly rent of ₹ 6,000/- per month, in respect of which the petitioner was in default after 1st September 2015.

14. The orders of the learned Trial Court and of the learned First Appellate Court do not indicate that any question of law, much less



any substantial question of law, arises, as would justify entertaining this appeal under Section 100 of the CPC.

15. The appeal is accordingly dismissed in *limine*, with no order as to costs.

16. Miscellaneous applications also stand disposed of accordingly.

AUGUST 3, 2022

dsn

C. HARI SHANKAR, J.

