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

Date of decision: 12.12.2023

+ RSA 89/2023 & CM APPLs. 23478-81/2023

BIMLESH KUMAR

..... Appellant

Through: Mr. Himanshu Jain and Mr.
Siddhant Jain, Advocates

versus

**ROSHAN LAL SINCE DECEASED THROUGH LEGAL HEIR MS.
PINKI @ URMILA**

..... Respondent

Through: None

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This regular second appeal filed under Section 100 of Code of Civil Procedure, 1908 ('CPC') impugns the judgment dated 08.11.2021 passed by the ADJ-03, South East District, Saket Courts, New Delhi ('First Appellate Court') in RCA No. 26/2019, titled as '**Bimlesh Kumar v. Roshan Lal (Since deceased)**', whereby the First Appellate Court has dismissed the appeal filed by the Appellant herein against the judgment dated 31.10.2018 passed by the Civil Judge – III, West District, Tis Hazari Courts, Delhi ('Trial Court') in civil suit bearing Suit No. 612610/2016.

1.1. The Trial Court vide judgment dated 31.10.2018, decreed the suit in favour of the Respondent herein i.e., the plaintiff, and consequently, granted



the relief of possession as well as awarded mesne profits at the rate of Rs. 5,000/- per month with respect to 'second floor' portion of suit property bearing No. C-8, Housing Society, N.D.S.E-I, New Delhi ('suit property').

2. The Appellant is the defendant no.1 and the Respondent (through his legal heirs) was the plaintiff in the civil suit filed seeking possession and recovery of mesne profits with respect suit property. The wife of the Appellant, who was originally arrayed as defendant no. 2 in the civil suit, has not been impleaded as a party in these proceedings as she has expired on 24.09.2021.

3. Brief facts leading to filing of this petition are as under:

3.1. At the outset, it needs to be noted that Appellant is the adopted son of late Sh. Tola Ram and Smt. Prem Lata (wife of Sh. Tola Ram) ('collectively referred to as 'adoptive parents').

3.2. In the plaint, it is stated that the suit property was originally owned by late Sh. Tola Ram and since, the Appellant herein and his wife used to harass the adoptive parents, Sh. Tola Ram executed a declaration – cum – Will dated 16.05.1988 (Ex. PW-1/4) debarring the Appellant from inheriting any property including the suit property and bequeathing the suit property in favour of Smt. Prem Lata (wife of Sh. Tola Ram).

3.3. It is stated that since the Appellant was harassing Smt. Prem Lata as well, she also executed a Will dated 18.07.1996 (Ex. PW-1/5) in favour of Respondent, inter alia, bequeathing the suit property in his favour.

3.4. It is stated that in the meanwhile in a separate suit proceeding initiated by Smt. Prem Lata during her lifetime relying upon the Will dated 16.05.1988 (Ex. PW-1/4); the suit was decreed and the Appellant was permanently restrained from selling, transferring, parting with the



possession and also raising any construction or demolition in suit property.

3.5. It is stated that the Appellant was allowed to occupy one shop, one godown on the ground floor, first floor except one room and second floor as licensee of Sh. Tola Ram. It is stated that upon the death of Smt. Prem Lata, the Respondent became the owner of suit property by virtue of Wills dated 18.07.1996 (Ex. PW-1/5) and 16.05.1988 (Ex. PW-1/4), and the Appellant's license was terminated vide notice dated 13.12.1997.

3.6. In these circumstances, the Respondent instituted the suit (i.e., Suit No. 12610/2016) for possession and recovery of mesne profits.

3.7. The Appellant herein filed his written statement in the said suit, inter alia, raising preliminary objection that the Respondent has no locus to file the suit as he is neither the owner nor the landlord qua the suit property.

3.8. The Respondent to prove his ownership over the suit property relied upon Will dated 18.07.1996 (Ex. PW-1/5), executed in his favour by Smt. Prem Lata, who in turn became the owner of suit property by virtue of declaration – cum – Will dated 16.05.1988 (Ex. PW-1/4), executed by Sh. Tola Ram.

3.9. The Trial Court after concluding evidence, passed its judgment dated 31.10.2018, which has been upheld by the First Appellate Court vide impugned judgment dated 08.11.2021.

4. The Appellant has contended that the registered declaration – cum – Will dated 16.05.1988 (Ex. PW-1/4) has been wrongly relied upon by the Trial Court. He has contended that the registration of the said document is doubtful in view of the reply dated 04.04.2018 received under Right to Information Act, 2005 ('RTI Act').

4.1. He contended that the said document has been registered by the Sub-



Registrar in Book No. 4, which in terms of Section 51 of the Registration Act 1908, is intended as miscellaneous register; whereas, Wills have to be registered in Book No.3. He states that therefore, the findings based upon the Will dated 16.05.1988 (Ex. PW-1/4) deserve to be set aside.

4.2. No other oral arguments were addressed by the Appellant.

5. The Court has considered the submission of the counsel for the Appellant and perused the record.

6. The Trial Court while admitting declaration – cum – Will dated 16.05.1988 (Ex.PW-1/4) in evidence considered the fact that the existence and execution of the said document was unequivocally admitted by the Appellant in the previous civil suit no.141/1994, which was decreed on 16.08.1995. The said suit was filed by Smt. Prem Lata against the Appellant and his wife. As per declaration-cum-Will dated 16.05.1988, the suit property vest exclusively in favour of Smt. Prem Lata and the Appellant herein appeared before the Civil Court in suit no. 141/1994 on 16.08.1995 and admitted the claims of Smt. Prem Lata.

7. The Trial Court after examining the record of the civil suit no. 141/1994 and more specifically, statement of the Appellant recorded on 16.08.1995, returned a finding that the declaration-cum-Will dated 16.05.1988 (Ex.PW-1/4) stood proved and by operation of the said document the suit property had vested in favour of late Smt. Prem Lata.

8. In the considered opinion of this Court, the finding of the Trial Court that the Appellant has admitted the existence of Ex.PW-1/4 is based upon judicial record of civil suit no. 141/1994, which includes the unequivocal statement of the Appellant dated 16.08.1995. As noted above, Smt. Prem Lata was wife of Sh. Tola Ram and was therefore, his natural Class-I legal



heir. She inherited the suit property exclusively under the said Will dated 16.05.1988 (Ex. PW-1/4).

9. The reliance placed by the Appellant on the reply dated 04.04.2018 received under RTI Act is inadmissible. The judgment of the Trial Court is dated 31.10.2018; however, the said reply, despite being of an earlier date, was not placed before the Trial Court. The said document has therefore, been relied upon for the first time in the appellate proceedings.

10. Further, the Ex. PW-1/4 i.e., the declaration – cum – Will dated 16.05.1988 was admittedly within the knowledge of the Appellant since the year 1994 as is evident from the proceedings in suit no. 141/1994, however, doubts as to its registration have been raised for the first time in the appellate proceedings.

11. The Trial Court has thus, rightly held that the binding nature of Ex-PW1/4 has been judicially held against the Appellant in suit no. 141/1994, FAO No.135/2010 and in the proceedings pertaining to letter of administration. Thus, the challenge raised to the existence said document i.e., Ex.PW1/4, is merely an afterthought.

12. Even otherwise, the contents of the reply dated 04.04.2018 received under the RTI Act are inapplicable as it contains a reply with respect to a document registered in 'Book No. 1'; however, as per the endorsement visible on the document, it is admitted on record that Ex. PW-1/4 i.e., declaration – cum – Will dated 16.05.1988, is registered in 'Book No. 4' and not in 'Book No.1'. Thus, the said reply does not pertain to Ex. PW-1/4 and therefore, has no relevance in the facts of this case.

13. During the course of oral arguments, the counsel for the Appellant contended that even if arguendo it is accepted that the Declaration – cum –



Will dated 16.05.1988 is registered in Book No.4, the said document cannot be considered as a Will as Book No. 4 is for miscellaneous documents. The Appellant did not lead evidence by calling a witness from the office of the concerned Sub-Registrar to seek an explanation as regards the effect of the document being noted in Book No. 4. Further, no such question was also put to the plaintiff witness in its cross examination. Thus, the Appellant cannot be permitted to speculate in the appellate proceedings.

14. This Court is unable to accept this submission as the existence of the said document i.e. Ex. PW-1/4 and its testamentary disposition has been upheld by the civil courts in three (3) separate proceedings to which the Appellant was a party.

15. This Court is of the opinion that no substantial question of law has arisen for consideration in the present appeal. The arguments raised by the Appellant do not raise any question of law much less a substantial question of law and the grounds merely challenge the finding of facts.

16. In this regard, it would be appropriate to refer to the case of ***Nazir Mohamed v. J. Kamal and others (2020) 19 SCC 57***, wherein the Supreme Court observed that second appeal only lies on a substantial question of law and the party cannot agitate facts or call upon the High Court to re-appreciate the evidence in a second appeal. The operative portion to this aspect reads as under:

*“22. A second appeal, or for that matter, any appeal is not a matter of right. the right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the court cannot expand the scope of the appeal. **It was not open to the respondent-plaintiff to reagitate facts or to call upon the High Court to reanalyse or reappreciate evidence in a second appeal.**”*



23. Section 100 CPC, as amended, restricts the right of second appeal, to Only those cases, where a substantial question of law is involved. The existence of a "substantial question of law" is the sine qua non for the exercise of jurisdiction under Section 100 Cr.

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28. To be "substantial", a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

29. To be a question of law "involved in the case, there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case."

(Emphasis supplied)

17. This second appeal is accordingly dismissed and the order of the First Appellate Court is upheld.

18. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 12, 2023/aa/msh

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