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

Date of decision: 25.09.2023

+ RSA 169/2023 & CM APPLs. 45848/2023, 45850-51/2023

PARMOD KUMAR & ANR. Appellants
Through: Mr. C.M. Gopal and Mr. Ram Mehar,
Advocates

versus

PARVEEN KUMAR & ORS. Respondents
Through: Mr. Ishwar Singh, Advocate for R-1
alongwith R-1 in person

+ RSA 170/2023 & CM APPLs. 45852-54/2023

SHRI SURESH KUMAR Appellant
Through: Mr. C.M. Gopal and Mr. Ram Mehar,
Advocates

versus

SHRI PRAVEEN KUMAR & ORS. Respondents
Through: Mr. Ishwar Singh, Advocate for R-1
alongwith R-1 in person

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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):

CM APPL. 45849/2023 in RSA 169/2023 (For Exemption)

CM APPL. 45853/2023 in RSA 170/2023 (For Exemption)

Allowed, subject to all just exceptions.



Accordingly, the present applications stand disposed of.

RSA 169/2023 & RSA 170/2023

1. These regular second appeals filed under Section 100 of the Code of Civil Procedure, 1908 ('CPC') impugn the common judgement dated 28.02.2023 passed by the ADJ-04, North West, Rohini Courts, Delhi ('First Appellate Court') in RCA No. 5213/2016, titled as **Pramod Kumar v. Praveen Kumar & Ors.**, dismissing the appeals and upholding the judgement dated 30.05.2016 passed by the Civil Judge-06, Central, Tis Hazari Court, Delhi ('Trial Court').

1.1 The Trial Court decreed the suit for specific performance filed by Respondent No.1 herein with a direction to the defendants to execute a sale deed in favour of the plaintiff in respect of the property bearing Old No. 15, Khasra No. 198, Village Chowkri Mubarakbad, Onkar Nagar, 'B' Extension, Delhi and New No. 341/2018, Onkar Nagar, 'B' Extension, Tri Nagar, Delhi ('suit property').

2. The learned counsel for the Appellants has addressed common submissions in both the appeals.

2.1. He states that the courts below have failed to appreciate that the agreement to sell ('ATS') dated 02.01.1992, which runs into two (2) pages, has a differently typed font on each page; and therefore, there is a doubt with respect to the validity of the said agreement. He states that the two (2) pages appear to have been typed on separate machines.

2.2. He further states that though the ATS is written/typed in English, it has been signed by late Smt. Rameshwari Devi in Gurmukhi/Punjabi and therefore, there is a serious doubt, if the contents of the ATS were read out to her before she signed the said ATS.



2.3. He fairly admits that the issue with respect to the different font and type-set of pages 1 and 2 of the ATS being different was not raised either before the Trial Court or the First Appellate Court.

2.4. He also refers to the written statement dated 14.10.1992 filed by late Smt. Rameshwari Devi in a separate suit for injunction i.e., CS No. 706/1992, which was filed by the Appellants herein against late Smt. Rameshwari Devi, their father and the Respondent Nos.1 and 6 herein seeking a restraint against late Smt. Rameshwari Devi from disposing of the suit property on the plea that it is an ancestral property.

2.5. He states that the said written statement though filed on 14.10.1992 makes no reference to the execution of the ATS dated 02.01.1992 between late Smt. Rameshwari Devi and Respondent No.1 herein.

2.6. He states that the suit for injunction i.e., CS No. 706/1992 filed by the Appellants herein stands dismissed, however, the copy of the said judgement does not form part of the Trial Court Record and is therefore not a part of this appeal. He also states that he is not aware about the reasons which lead the Court to dismiss the said suit for injunction.

2.7. He further fairly admits that the suit for injunction filed by Appellants herein against late Smt. Rameshwari Devi was on account of the apprehension that late Smt. Rameshwari Devi was in the process of disposing of the said suit property.

2.8. The learned counsel lastly states that there is a dispute with respect to the description and identity of the suit property which forms the subject matter of the ATS. However, he fairly concedes that no such objection with respect to lack of proper description of the suit property has ever been raised before the Trial Court or before the First Appellate Court.



2.9. No other submissions were addressed by the counsel for the Appellants.

3. In reply, learned counsel for Respondent No.1 states that the execution of the ATS dated 02.01.1992 is further corroborated by the receipt dated 02.01.1992 executed between the plaintiff i.e., Respondent No.1 and late Smt. Rameshwari Devi. He states that the execution of the said ATS and the receipt were duly admitted by late Smt. Rameshwari Devi in her written statement filed on 23.04.1993.

3.1. He states that in view of the admission of the execution of the ATS the contention that late Smt. Rameshwari Devi did not know the contents of the ATS is misconceived and incorrect.

3.2. He states that the limited defence raised by the late Smt. Rameshwari Devi in her written statement was that she had only received Rs. 1,60,000/- out of the total sale consideration of Rs. 1,80,000/-; and an amount of Rs. 20,000/- remained outstanding. This was the sole reason given in the written statement for not performing the said ATS and executing the sale deed.

3.3. He states that the defence of the alleged non-payment of Rs. 20,000/- has been duly considered by the Trial Court and the First Appellate Court and the findings have been returned in favour of the plaintiff i.e., Respondent No.1 herein.

3.4. He states that the Appellants herein were estranged from late Smt. Rameshwari Devi and her husband Mr. Kasturi Lal.

3.5. He states that the contentions raised by the counsel for the Appellants does not give rise to any substantial question of law.

4. This Court has considered the submissions of the counsel for the Appellants and perused the record.

5. The civil suit for specific performance was initially filed by Respondent



No.1 and Respondent No.6 against late Smt. Rameshwari Devi for specific performance of the agreement to sell ('ATS') dated 02.01.1992. It was stated in the plaint that the entire sale consideration of Rs. 1,80,000/- stands paid as recorded in the ATS, which is further corroborated by the receipt dated 02.01.1992. Subsequently, Respondent No.6 was transposed as a defendant.

5.1. Late Smt. Rameshwari Devi filed her written statement on 23.04.1993 admitting the execution of the ATS as well as the receipt dated 02.01.1992, but she disputed the grant of relief of specific performance on account of non-payment of a sum of Rs. 20,000 out of the sale consideration of Rs. 1, 80,000/. She admitted receipt of Rs. 1,60,000/-. Thus, the due execution of the ATS and the receipt dated 02.01.1992 recording full payment of Rs. 1,80,000/- was admitted; however, a defence was raised by her, which was contrary to the contents of the executed documents.

5.2. After the death of late Smt. Rameshwari Devi, her Class I Legal Heirs were impleaded in the suit as defendant nos. (a) to (f). The suit was contested only by defendant nos. (a) and (b), who are the Appellants in these appeals. The said contesting defendants led oral evidence in support of the defence of non-payment of Rs. 20,000/- .

6. The Trial Court *vide* order dated 07.02.2009 framed following issues:

1. Whether the plaintiff is entitled to a decree for specific performance as prayed for? OPP.
2. Whether the present suit is not maintainable? OPD/OPP.
Check
3. Relief.

6.1. The findings of the Trial Court in the judgment dated 30.05.2016 passed in Suit No. 172/2016 with respect to issue no. 1 read as under:-

“14. Thus, the documentary evidence provided by the plaintiff is much more creditworthy than the oral evidence of the defendant. The receipt cum



agreement is a proof of its own terms. The defendant's oral evidence to the contrary has to be discarded in view of the law discussed above and because the defendant has not denied execution of the receipts or the signatures thereon per se. It is equally noteworthy that the defendant has neither taken any action in civil law to get these receipts declared null and void on account of manipulation or in criminal law against the plaintiff for alleged forgery till date. Thus, there is no reason to disbelieve the payment as mentioned in the receipts and relied upon by the plaintiff.

15. It is also glaringly apparent that the defendant has not even bothered to mention anything about the receiving of Rs. 1,60,000/- in the agreement or anywhere else. Interestingly, no suggestion was put to the plaintiff during cross examination in this regard to the payment of Rs. 1,60,000/-.

16. Thus, the contents of the WS read with the contents of the defendant's cross-examination themselves give credibility to the submissions of the plaintiff that he made the complete payment as mentioned in the receipt.

(Emphasis supplied)

6.2. The above-said issue pertains to the entitlement of the Respondent No. 1/plaintiff for grant of the decree of the specific performance. The entire discussion in the judgement of the Trial Court is only with respect to the admissibility of the defence of late Smt. Rameshwari Devi with respect to the alleged non-payment of Rs. 20,000/-, which defence was rejected by the Trial Court in view of the contents of the admitted documents i.e., the ATS dated 02.01.1992 and the receipt dated 02.01.1992, which clearly and unequivocally recorded the receipt of the entire consideration of Rs. 1,80,000/-.

6.3. The First Appellate Court as well, after perusing the evidence led by parties on the said defence of non-payment of Rs. 20,000/- returned the following findings in its judgment dated 28.02.2023, which read as under: -

"8. Ld. Trial Court has returned the findings on both the issues in favour of plaintiffs. In a suit filed for decree of specific performance of an agreement executed for the sale of immovable property, the court has to see that the agreement was executed by the owner of immovable property, that the plaintiff was/is ready and willing to perform his part of the agreement. In the case in hand, the defendant has not denied the execution of agreement to sell dated 02.01.1992 rather it is her defence that entire sale consideration amount has not been paid to her. In the agreement which is



marked as Ex. PW-1/1 during the trial, the total sale consideration amount settled between the parties is mentioned as Rs. 1,80,000/- and it is written in the agreement that the entire amount has been received in cash in advance by the first party from the second party. **The law excludes the oral evidence qua a document which has been reduced into writing in respect of contract of a property.** The Ld. Trial Court has considered the pleadings of the parties in the suit as well as the provisions of Section 91 and 92 of Indian Evidence Act in detail. After hearing the submissions, perusing the record and the relevant law, **I have come to the conclusion that there is no illegality or perversity in the approach of the Ld. Trial Court. The parties cannot lead oral evidence qua the written agreement to sell executed between the parties. The oral claim of the appellants that the entire sale consideration amount was not given to the defendant by the plaintiff is not tenable as they were not witnessed to the agreement nor there is any pleading of the defendant that the transaction took in their presence.** Moreover, if the LRs of defendant are of the view that the defendant has not filed her written statement with her free will then the best evidence which was to be adduced by them to rebut the contents of the agreement by examining the person who has witnessed the execution of the agreement and the receipt executed by defendant in favour of plaintiff. The said witness has not been examined. The law does not require that the agreement to sell is to be signed by all the purchasers of the property, there may be instances of implied performance of the agreement as the part of purchaser who has not signed the agreement. Moreover, Naresh Chand who has not signed the agreement to sell has been substituted as one of the defendant so the decree claimed by the plaintiff thereby asking execution of sale deed by the defendant in terms of agreement dated 02.01.1992 cannot be denied.”

(Emphasis supplied)

7. Thus, the Courts below rejected the defence of late Smt. Rameshwari Devi with respect to the alleged non-payment of Rs. 20,000/-. Pertinently, no arguments have been addressed by the counsel for the Appellants against the said concurrent findings of the Trial Court and the First Appellate Court with respect to rejection of the defence of alleged non-payment of Rs. 20,000/-. The ground raised on this defence/finding in the memorandum of appeal was not pressed during arguments. Thus, the aforesaid fact finding of the Courts below has become final.

7.1. Even otherwise, the said finding returned by the Courts below are findings of fact, which cannot be assailed in the second appeal. This Court is



of the opinion that the said findings of the Courts below are based on correct appreciation of the evidence placed before it and the law of Section 91 and 92 of the Indian Evidence Act, 1872.

8. On the other hand, in the oral arguments, the plea sought to be raised by the counsel for the Appellants with respect to the signing of the English agreement in Gurmukhi does not give rise to any substantial question of law. The contention of the Appellant that late Smt. Rameshwari Devi did not understand the contents of the documents as it was drawn in English is speculative and not borne out from record.

8.1. Late Smt. Rameshwari Devi had filed her written statement, in the suit, during her lifetime in which she categorically admitted the execution of the ATS and the receipt dated 02.01.1992. In the written statement she did not dispute the terms of the sale transaction recorded in the said agreement and her consent to the sale. The relevant portion of the written statement reads as under:-

“1. Para 1 of the plaint is admitted to the extent that the plaintiffs and defendant entered into an agreement so sell for the purchase of suit Property on 2nd January, 1992 for a total sale consideration of Rs.1,80,000/- while it is wrong and denied that the plaintiffs have paid the full amount of sale consideration to the defendant. The defendant are still liable to pay Rs. 20,000/- which they orally promised to pay within two months from the date of execution of the agreement for sale dated 2.1.1992 but they did not fulfil their promise and as a result the defendant was compelled to cancel or revoke the agreement for sale dated 2.1.1992 which she has revoked orally.

3. Para 3 of the plaint is admitted to the extent that the sale price/consideration was fixed for a sum of Rs. 1,80,000/- while rest of the para is wrong and denied. However, it is admitted that a receipt was also executed aq (illegible) of sale consideration and in that re (illegible) acknowledged to had receipt the entire amount of Rs. 1,80,000/- but actually the entire amount was not paid and the plaintiff paid only Rs. 1,60,000/- and promised to pay the balance amount of Rs. 20,000/- within two months from the date of execution of agreement of sale but they have not paid the said amount so far. Defendant believed on the plaintiffs only because the



plaintiffs happened to be her real sons.”

(Emphasis supplied)

8.2. In view of the admission of the due execution of the ATS and the receipt dated 02.01.1992 by late Smt. Rameshwari Devi, the argument sought to be raised that late Smt. Rameshwari Devi did not understand the contents of the ATS is untenable and contrary to the pleadings. Therefore, this contention of the Appellants is without any merits and does not give rise to any question of law.

9. As regards, the second contention of the learned counsel the Appellants that the written statement filed on 14.10.1992 by late Smt. Rameshwari Devi, in the other suit for permanent injunction, there is no mention/disclosure of the agreement dated 02.01.1992 and, therefore, its execution is doubtful and is without any merit.

9.1. The issue raised in the said other suit for permanent injunction (filed by the Appellants herein) was that the suit property is an ancestral property and not the personal property of late Smt. Rameshwari Devi. In that context, late Smt. Rameshwari Devi while disputing the claims of the Appellants had filed the written statement asserting herself to be an exclusive owner of the suit property. In this suit, the Appellants sought a permanent injunction against late Smt. Rameshwari Devi from selling the suit property. In the written statement, late Smt. Rameshwari Devi pleaded that the Appellants herein were seeking to usurp her personal property and forcibly dispossess her; she sought dismissal of the said suit.

9.2. The fact that the Appellants herein had filed the other civil suit seeking an injunction against late Smt. Rameshwari Devi from executing ATS, further proves the fact that the Appellants were aware that late Smt. Rameshwari Devi was seeking to dispose of/sell the suit property. The Respondent No.



1/plaintiff and Respondent No. 6 were also arrayed as defendants in this other suit. The filing of the said suit evidences that the Appellants were aware that late Smt. Rameshwari Devi was seeking to dispose of the suit property at the contemporaneous time.

9.3. In the opinion of this Court, the said submission of the Appellants is without any merit. As held hereinbefore the execution of the agreement dated 02.01.1992 has been admitted by late Smt. Rameshwari Devi and the Appellants as well have not disputed the signatures of late Smt. Rameshwari Devi on the agreement and receipt. The non-mention of the agreement dated 02.01.1992 in the written statement filed in another suit therefore does not cast any doubt on the existence of the agreement dated 02.01.1992.

9.4. In fact, the present suit for specific performance itself stood filed by Respondent No. 1 and 6 on 02.11.1992, evidencing its existence in 1992 itself.

9.5. Further, the Appellants admit that the said other suit for injunction stands dismissed against the Appellants and in favour of late Smt. Rameshwari Devi.

10. Lastly, the Appellants have contended that there is ambiguity with respect to the identity of the subject matter of the suit property. However, no such objections have been raised before the courts below and therefore, the same is an afterthought and does not give rise to question of law. The identity of the suit property is clearly mentioned in the first recital of the ATS dated 02.01.1992 and therefore, is duly identified.

10.1. The suit property is further duly identified in the plaint as well as the prayer clause of the plaint, therefore, this submission of the Appellants that there is any ambiguity is without any merit.

11. With respect to the contention of the type-set of the page no. 1 and page



no. 2 being distinct; it is evident that the material terms of the ATS are set out at page 1 of the agreement itself. The payment and receipt of the entire sale consideration is evidenced from the receipt dated 02.01.1992. Thus, for the said reasons as well the contention of different font and type-set of pages 1 and 2 as well does not cast any doubt on the existence and execution of the ATS. This is in addition to the fact that no such argument was raised before the Courts below at all and is therefore clearly an afterthought.

12. The arguments raised by the Appellants do not raise any question of law much less a substantial question of law and the grounds merely challenge the concurrent finding of facts.

13. 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 reappraise 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 re-agitate facts or to call upon the High Court to re-analyse or reappraise 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 CPC..

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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)

14. These second appeals are accordingly dismissed and the judgments of the First Appellate Court and the Trial Court are upheld. No order as to costs.

15. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 25, 2023/rhc/sk

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