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

Date of decision: 09.10.2023

+ RSA 178/2023 & CM APPLs. 48410-11/2023, 48533/2023

NARINDER PADDA @ NINNI Appellant

Through: Mr. Rajpal Singh, Advocate

versus

KIRANJEET KAUR @ BITTOO & ORS. Respondents

Through: Mr. Arvind Chaudhary, Mr. Sachin Chaudhary and Mr. Ankit Chaudhary, Advocates

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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. 48409/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM APPL. 48411/2023

1. This is an application seeking condonation of delay in re-filing the appeal after removing objections.
2. For the reasons stated in the application, the delay in re-filing the appeal after removing objections is condoned.
3. The application stands disposed of.

**CM APPL. 48410/2023**

4. This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the second appeal.
5. Issue notice. Learned counsel for Respondent No. 3 states that he has no objection to the said application being allowed.
6. For the reasons stated in the application, the delay of 22 days is condoned.

RSA 178/2023

7. The present second appeal has been filed impugning the judgement and decree dated 10.04.2023 passed by the Additional District Judge - 03, South-West District, Dwarka Courts, New Delhi in RCA No. 38/2018 ('First Appellate Court') and the judgment and decree dated 26.02.2018 passed by the Civil Judge – 08 (Central District), Tis Hazari Courts, Delhi in civil suit bearing No. 9403/2016 ('Trial Court')

Brief facts

8. The Appellant is original plaintiff and the Respondents are the original defendants in the civil suit.
 - 8.1. The suit was filed for by the Appellant against the Respondents for possession, declaration, cancellation and permanent injunction in respect of property bearing No. G-137, Ground Floor, Vikas Puri, New Delhi. ('subject property').
 - 8.2. For the ease of reference, the parties to the present appeal are referred according to their original status and rank before the Trial Court.
 - 8.3. The Plaintiff filed the suit in his capacity as the owner of the subject property. It was stated that the subject property was purchased by him from Sh. Subhash Chander i.e., Defendant No. 4 on 12.11.1993 after paying the



sale consideration of Rs. 2,50,000/-. It was stated in the suit that the Defendant No. 3 herein is a trespasser, who has forcibly taken possession of the subject property when the Plaintiff was in judicial custody on the complaint made by Defendant no. 1. It was stated that in order to prove his possession, he has in his custody the entire chain of title documents pertaining to earlier sellers and purchasers of the subject property beginning from 1987.

8.4. The Defendant nos. 1 and 2 had set up a defence that the Plaintiff has filed the aforementioned civil suit as a counter blast against the criminal complaint filed by Defendant no. 1.

8.5. Defendant No. 3 further stated that though the Plaintiff was the erstwhile owner of the subject property; it was by virtue of title documents dated 25.01.1994 and not documents dated 12.11.1993 as alleged. Defendant No. 3 contended that Plaintiff had extinguished his rights in the subject property, by transferring the same to Mr. Jasbant Rai through Registered Power of Attorney ('PoA') dated 30.01.2002, a registered Will dated 30.01.2002 and Agreement to Sell and other related documents. It was the stand of the Defendant No. 3 that his wife Mrs. Anita Sharma has purchased the suit property from Mr. Harish Kumar; and the said Mr. Harish Kumar has purchased the property from Mr. Jasbant Rai. It was further stated that presently the possession of the subject property is with Mrs. Anita Sharma i.e., wife of Defendant No. 3.

9. In view of the rival claims of the parties, the Trial Court vide judgment dated 26.02.2018 after perusing the evidence upheld the defence of Defendant No. 3 and rejected the claim of the Plaintiff. Accordingly, the Trial Court dismissed the suit of the Plaintiff as it held that the Plaintiff



cannot be declared as owner of the subject property nor the decree of possession be passed in favour of the Plaintiff. The key facts relied on by the Trial Court to reach to the above said conclusion reads as under:

- (a) The Plaintiff has been unable to prove that the documents executed by him in favour of Mr. Jasbant Rai or further documents executed by Mr. Jasbant Rai and Mr. Harish Kumar are forged and fabricated.
 - (b) The Plaintiff could not place on record the previous chain of title documents though he had asserted that he is in possession of the said documents.
 - (c) As opposed to it Defendant No. 3 had given proper explanation as to in whose possession the previous chain of title documents are lying and the reason why he has only been able to file the photocopy of the said documents.
 - (d) The Plaintiff and its witnesses have admitted the execution of the title documents dated 25.01.1994 by Sh. Subhash Chander, which as per the version of Defendant No. 3 were handed over to Mr. Jasbant Rai and finally to Mrs. Anita Sharma.
 - (e) That the defendant No.3 was able to identify and put forth the name of the neighbours, which the Plaintiff was unable to do. The Trial Court relied on this fact to ascertain that the Plaintiff's claim of possession was not proved.
 - (f) That the suit of the plaintiff was not maintainable for mis-joinder of party, for the reason that except GPA other documents of sale brought on record qua the subject property was executed by Sh. Harish Kumar in the name of Mrs. Anita Sharma who was not made a party by the plaintiff
10. The First Appellate Court vide impugned judgment dated 10.04.2023



observed that it does not find any reason to interfere with the judgment dated 26.02.2018 of the Trial Court with regards to issue of the extinguishment of ownership of the Plaintiff since the Plaintiff has failed to prove any subsisting title in respect of the subject property whereas Defendant No. 3 was able to prove complete original chain of documents whereby, there was a transfer of the suit property in favour of Mrs. Anita Sharma, i.e., wife of Defendant No. 3.

It also held upon a perusal of the record, that it was well within the knowledge of Plaintiff that Mrs. Anita Sharma was the purchaser of the subject property and in possession of the subject property; but still the Plaintiff did not implead her, and therefore, concurred that the Trial Court correctly found that it is a case of non-joinder of a necessary party and therefore found no merit in the appeal.

Arguments of the parties

11. Learned counsel for the Plaintiff states that the Trial Court and the First Appellate Court fell in error by only referring and relying upon a select part of the cross-examination of PW-1 dated 21.07.2023.

11.1. He states that while it is a matter of record, Plaintiff who was examined as PW-1 had admitted the documents exhibited as Ex.PW-1/D1 to Ex.PW-1/D6 dated 25.01.1994 by Subhash Chander i.e., Defendant No. 4 herein, however, in the following deposition recorded on the same day, PW-1 had denied that he had executed any documents in favour of Mr. Jasbant Rai, which are dated 07.08.2001. He states that this denial was not taken into consideration.

11.2. He states that since both the Trial Court and the First Appellate Court erred in holding that the Plaintiff herein had not acquired any right, title or



interest with respect to the subject property on account of the documents dated 12.11.1993 which clearly show that Plaintiff had purchased the property from Subhash Chander i.e., Defendant No. 4 by the documents dated 12.11.1993.

11.3. He also states that the Trial Court failed to appreciate that in the criminal proceedings initiated by the Plaintiff herein against Mr. Jasbant Rai, for which FIR No. 473/2007 was registered and is pending against Mr. Jasbant Rai; the alleged sale documents dated 07.08.2001 relied upon by Mr. Jasbant Rai with regards to his claim for ownership and possession were sent to Forensic Science Laboratory ('FSL') for examination; and the FSL report opines that the said documents dated 07.08.2001 are forged and fabricated.

11.4. He, therefore, states that the question of law No. 1 proposed in the Appeal at 'Para B' arises for consideration.

12. In reply, learned counsel for Defendant No. 3, who appears on advance notice states that it is the case of Defendant No. 3 that the subject property was duly transferred by the Plaintiff in favour of Mr. Jasbant Rai through the PoA which was duly executed and registered on 30.01.2002.

12.1. He further states that Mr. Jasbant Rai further transferred the subject property in favour of Mr. Harish Kumar vide documents executed on 15.02.2002 and finally Mr. Harish Kumar transferred the subject property in favour of Mrs. Anita Sharma, wife of Defendant No. 3 in April, 2002.

12.2. He states that Mrs. Anita Sharma, wife of Defendant No. 3 has in her custody the entire chain of title documents with respect to the subject property starting from 25.01.1994.

12.3. He states that the said documents forming chain of title were duly



produced and proved before the Trial Court and therefore, the finding of the Trial Court is correct in fact and law.

12.4. He further states that pertinently though the title of the subject property was transferred in favour of Mrs. Anita Sharma and she is in possession of the subject property as well, however, the Plaintiff has elected not to implead her in the suit, even though, she is a necessary party and in fact, the suit is bad in law for non-joinder of Mrs. Anita Sharma.

12.5. He states that the concurrent findings of the First Appellate Court and the Trial Court holding that the suit is not maintainable in the absence of the impleadment of Mrs. Anita Sharma has also not been assailed by the Appellant in the present appeal therefore, on this ground alone due to non-joinder the suit has been rightly dismissed by the Courts below and should be dismissed before this Court as well.

Findings

13. This Court has considered the submissions of the counsel for the parties and perused the paper-book.

14. The relevant portion of the testimony of PW-1 as recorded on 21.07.2023 reads as under: -

"It is correct that Ex.PW-1/D-1 to Ex.PW-1/D6 were executed on 25.1.94 by Sh. Subhash Chand. It is wrong to suggest that on the basis of Ex.PW-1/D1 to Ex.PW-1/D6, I executed the documents in favour of Sh. Jaswant Rai."

(Emphasis supplied)

15. It is a matter of record that Ex. PW-1/D1 to Ex. PW-1/D6 are the chain of documents executed by Mr. Subhash Chander in favour of the Plaintiff on 25.01.1994 with respect to the subject property. The Trial Court after perusing the testimony of the Plaintiff as well as the attesting witnesses PW-2, Mr. Kishan Gopal concluded that the execution of the documents



Ex.PW-1/D1 to Ex.PW-1/D6 by Mr. Subhash Chander in favour of the Plaintiff stands duly proved. The said documents are the Agreement to Sell, Will, Receipt, Possession Letter, Affidavit all dated 25.01.1994, Rent Agreement dated 09.02.1999 and a General Power of Attorney.

16. The said documents Ex. PW-1/D1 to Ex.PW-1/D6 are in the custody of Mrs. Anita Sharma and Defendant No.3.

17. The deliberation of the First Appellate Court while upholding the findings of the Trial Court on Ex.PW-1/D1 to Ex.PW-1/D6 reads as under: -

“(i) The foundation of the case of the appellant was that he purchased the suit property from Subhash Chander i.e., respondent no. 4 for the sum of Rs. 2,50,000/-. For proving the same, appellant examined himself as PW-1 and proved the documents Ex. PW1/1 to Ex. PW1/3. A perusal of the aforesaid documents would show that Ex. PW1/1 is the site plan whereas PW1/2 is the agreement to sell executed between Subhash Chander and the Appellant herein. The same is notarised document dated 12.11.1993 and there are purportedly two witnesses to the said document namely K.G. Arora and Sohan Lai. It also records that the possession of the suit property has been handed over to the Appellant. Ex. PW1/3 is the possession slip as per which the possession has been handed over to the Appellant and the same is notarised by a notary and dated as 12.11.1993. It is the case of the appellant that after the execution of the aforesaid documents Ex. PW1/2 and Ex. PW1/3, the appellant came into possession of the suit property and in fact, remained in possession and never executed any title documents in favour of any other party. It is further his case that he came to be unlawfully dispossessed by the respondents herein when he was sent to judicial custody in some other cases from 22.08.2001 to 17.11.2001 and from 20.02.2002 to 13.04.2002. Therefore, it is his case that he was in possession from the month of November 1993 to roughly around the month of April 2002 though, it must be said that the appellant has not clearly mentioned the date on which he came to know that he had been dispossessed by respondent no. 3. However, the foundation of this case came to be shaken during the cross-examination of PW-1 i.e., the appellant herein. It was the case of the respondent no. 3 that his wife Anita Sharma had purchased the property from Harish Kumar who had handed over the possession of the property along with the previous chain of documents. Among this previous chain of documents, were the documents Ex. PW1/D1 to Ex. PW1/D6. On being confronted with these documents during the cross-examination, PW-1 admitted that “it is correct that Ex. PW1/D1 to Ex. PW1/D6 were executed on 25.01.1994 by Sh. Subhash Chand.” A perusal of the documents



exhibited as Ex. PW1/D1 to Ex. PW1/D6 would show that these are the agreement to sell, GPA, receipt, Will, possession, letter and affidavit executed by Subhash Chand in favour of the appellant herein, all dated 25.01.1994. With regard to the aforesaid testimony which was relied upon by the Ld. Trial Court, to find that the Appellant has not been able to prove his case, and also to find that the said testimony referred to above also supported the case of the Respondent no. 3, the Ld. Counsel for the appellant submitted that the evidence has to be read as a whole and that the appellant did not make any such admission and moreover, the said testimony has been taken and read out of context. I find that I am unable to agree. It is clearly recorded in the cross-examination that the witness PW-1 had admitted the suggestion given to him that the said documents which were also exhibited as Ex. PW1/D1 to Ex. PW1/D6 were executed by Sh. Subhash Chand. While there is no quarrel with the proposition which is settled in law that the evidence must be read as a whole and not taken out of context, however, when the statement has been clearly recorded and there is no ambiguity in the same then the said statement cannot be wilfully ignored. Moreover, it is not the situation that the said documents were brought to the knowledge of the appellant for the first time in the cross-examination. The respondent no. 3 herein had maintained a consistent case in the pleadings i.e. in the written statement, that the appellant had purchased the property on 25.01.1994 through the usual documents i.e. GPA, Agreement to sell etc., from one Subhash Chand and disputed the claim of the appellant that he had purchased the property from Subhash Chand in November, 1993 through the documents exhibited as Ex. PW1/2 and Ex. PW1/3. The appellant had also filed replication to the said written statement filed by respondent no.3. In para no.2 of the written statement filed by respondent no.3, a specific averment had been made that the appellant had bought the property from respondent no. 4 on 25.01.1994 and not in the month of November 1993 as claimed. In the replication, the said averments have been denied but it has also been averred by the appellants that "the date of purchasing the property is a matter of record and needs no answer". Therefore, the denial qua the date of purchasing the said property is evasive, rather than specific. The purpose of the aforesaid being to show that when the appellant stepped into the witness box, he had or was deemed to be having full knowledge of the case put forward by the respondent no.3. No explanation with regard to the documents Ex. PW1/D1 to Ex. PW1/D6 was forthcoming in the replication. When the appellant who examined himself as PW-1, was confronted with the said documents, the appellant admitted the execution of the same by respondent no. 4. Therefore, the said statement cannot be seen in isolation and when seen in the context of the pleadings of the parties, it cannot be said that the appellant made any inadvertent error in giving the statement. Moreover, it is significant to note that the plaintiff brought forward and got examined two other plaintiff witnesses as PW-2 and PW-3. PW-2 is K.G. Arora, who was attesting



witness to the sale documents produced by the plaintiff and exhibited as Ex. PW1/2. The said attesting witness identified his signatures on the documents executed in the month of November, 1993. However, during the cross-examination, curiously enough, when the said witness was confronted with the documents Ex. PW1/D1 to Ex. PW1/D6, which are the documents of sale dated 25.01.1994 between respondent no. 4 and appellant herein, the said witness also identified his signatures on the agreement to sell, GPA etc and clarified that his full name is Kishan Gopal. He admitted that Ex. PW1/D1, Ex. PW1/D2, Ex. PW1/D3, Ex. PW1/D4 are all bearing his signatures at various points. He also admitted the suggestion that the deal was materialized on 25.01.1994. The plaintiff did not re-examine or cross-examine the witness after seeking permission from the court inspite of the fact that the said testimony was completely going against his case. Therefore, when the testimony of PW-2 is read together with the admission made by the appellant in his cross examination dated 21.07.2003, then it appears that the case of the appellant that he bought the property vide documents Ex. PW1/2 and PW1/3 seems to have been shaken and rendered untrustworthy. During the whole trial, no explanation has been forthcoming from die appellant as to how and in what circumstances, the documents Ex. PW1/D1 to PW1/D6 came to be executed and how come there are two sets of documents which show the sale of the property from respondent no. 4 to the appellant. His own witness PW-2 has also confirmed that the documents Ex. PW.1/D1 to Ex. PW1/D4 are bearing his signatures. However, no explanation was given by the said witness for the same nor was the said witness re-examined by the appellant. Moreover, despite specific averment being made in the written statement, the appellant chose to remain silent and gave no explanation for the documents Ex. PW1/D1 to Ex. PW1/D6. In such situation, the Ld. Trial Court correctly found that the PW-1 had admitted the execution of the documents Ex. PW1/D1 to Ex. PW1/D6 and that the same went against the case of the appellant. The case of the appellant had to stand on its own legs. Once such a contradiction has appeared, then it is difficult to believe the story put forward in the plaint by the appellant."

(Emphasis supplied)

18. In the opinion of this Court, the finding of the First Appellate Court with respect to the proof of documents, i.e., Ex.PW-1/D1 to Ex.PW-1/D6 are not based solely on the unequivocal admission made by PW-1 in his cross examination.

18.1. The First Appellate Court has also duly appreciated the testimony of attesting witnesses to the said documents i.e., PW-2, Mr. K. G. Arora, who



as well, duly admitted his own signatures on the documents i.e., Ex.PW-1/D1 to Ex.PW-1/D4.

18.2. The First Appellate Court also duly perused the respective stand of the parties in their pleadings and on a holistic appreciation of the pleadings and the evidence returned the finding with respect to proof of Ex. PW-1/D1 to Ex. PW-1/D6.

18.3. In these circumstances, the finding of the First Appellate Court that the said documents have been duly proved is correct in law and fact.

19. The documents therefore proved that the Plaintiff purchased the subject property from Mr. Subhash Chander through documents dated 25.01.1994. The Plaintiff has failed to explain the circumstances in which the custody of the said title documents all dated 25.01.1994 (Ex.PW-1/D1 to Ex.PW-1/D6) moved out of his custody coupled with the fact that the Courts have also held that he is not in physical possession of the subject property. The Plaintiff therefore, failed to prove his own claim set up in the plaint.

20. With respect to the documents executed by the Plaintiff in favour of Mr. Jasbant Rai, the Plaintiff has contended that the said documents are forged and fabricated as per the report of FSL. However, the First Appellate Court has held that the said FSL report was neither exhibited nor proved during the Trial. The relevant finding of the First Appellate Court pertaining to the FSL report reads as under: -

“Once the doubt has been created qua the foundation of the appellant case that he bought the property on 11.11.1993 from respondent no. 4, then the version of the respondents becomes more probable that the appellant had purchased the property by the documents Ex. PW1/D1 to Ex. PW1/D6 especially in light of the findings above in as much as there is no explanation coming forth from the appellant regarding the same. The appellant had sought to cast doubt on the story of the respondents on the ground that the documents exhibited as Ex. DW3/1, DW3/2, DW3/5, DW3/8,



DW3/9 in the favour of Jasbant Rai by the appellant which forms part of the chain produced by respondent no.3 have been found to be forged and fabricated by the police investigation. For the said purpose, the appellant had heavily relied upon the FSL report which remained unexhibited and unproved and the appellant neither summoned the handwriting expert nor did he get exhibited the FSL report. It may be noted in this regard that the appellant had moved an application before the Ld. Trial Court for the said purpose which application came to be dismissed vide order of Ld. Trial Court dated 10.03.2017 and thereafter, the challenge against this order was dismissed by the Hon'ble High Court of Delhi vide order dated 14.07.2017. The Ld. Trial Court was justified in not relying upon the said FSL report since the same remained unproved. However, the alleged FSL report loses its significance in light of the conduct of the appellant. It is apparent that the appellant did not approach the court with clean hands. He did not disclose about the documents Ex. PW1/D1 to PW1/D6 and when confronted offered no explanation as to how the said documents came to be executed. No explanation was given during the pleadings even though it has been the case of the respondents since the initial stage itself that the chain of documents in favour of the appellant was starting from 25.01.1994. It has never been the case of the appellant that the documents Ex. PW1/D1 to Ex. PW1/D6 are also forged. In such situation, the entire foundation of the appellant's case loses credibility.

(Emphasis Supplied)

20.1. This Court is of the opinion that at this stage of second appeal, no reliance can be placed by the Plaintiff on the FSL report dated 25.08.2009 since the said report has not been admitted in evidence and not proved in accordance with law.

21. Plaintiff has not rebutted the submission of the counsel for the Defendant No. 3 with respect to the non-joinder of Mrs. Anita Sharma or the fact that she was a necessary party to the civil suit. The finding of the First Appellate Court on the issue of non-joinder of Mrs. Anita Sharma reads as under: -

“(v) The appellant for reasons best known to him never impleaded Smt. Anita Sharma who is the actual purchaser of the property as per the documents produced and proved by respondent no. 3. Despite not being impleaded in the present case as a party, Smt. Anita Sharma stepped into the witness box as DW-12 and was cross-examined by the appellant. The



appellant was well aware about Smt. Anita Sharma being the purchaser of the property but still the appellant did not implead Smt. Anita Sharma. Therefore, the Id. Trial Court has correctly found that by not impleading Smt. Anita Sharma, it is a case of non-joinder of a necessary party. It is axiomatic that the relief of declaration/cancellation of documents executed in favour of Anita Sharma would not have been granted in absence of Anita Sharma. The appellant should have impleaded Anita Sharma in the present suit. Not having done so, he has to suffer the consequences.

(Emphasis supplied)

21.1. Mrs. Anita Sharma is the party in possession of the suit property and also has the custody of the chain of title documents going right back to atleast 25.01.1994 in her possession. A decree for declaration and cancellation of documents which stand in her favour cannot be granted in her absence.

21.2. Thus, this Court finds no infirmity in the findings of the First Appellate Court that the suit which seeks a relief of possession, declaration and cancellation of documents standing in the name of Mrs. Anita Sharma cannot be maintained without impleading Mrs. Anita Sharma.

22. In the facts of this case, 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.

23. 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)

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

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

MANMEET PRITAM SINGH ARORA, J

OCTOBER 09, 2023/rhc/ms

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