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

+ RSA 39/2023, CM APPLs. 8593/2023 & 8594/2023

AMAR CHAND AND ORS

.....Appellants

Through: Mr.Udayan Jain, Mr.Amit Sherawat
and Mr.Raj Surana, Advs.

versus

ANITA AND ANR

.....Respondents

Through: Mr.Imran Ali and Mr.M.Z.Khan,
Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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13.11.2024

1. The instant appeal has been preferred by the appellants/ defendants under Section 100 of the Code of Civil Procedure, 1908 against the Judgment of the Ld. Principal and Sessions Judge, Saket (South) Courts, New Delhi, dated 13.12.2022 *vide* which the judgment and decree of the trial Court dated 28.05.2016 has been upheld. The instant appeal has also impugned the order dated 03.02.2017 passed by the Ld. ADJ-04, Saket (South) Courts, Sh. Pritam Singh.

2. The facts germane in the instant case are that the respondents/plaintiffs filed a suit for possession and injunction in relation to the first and second floors of a building constructed over a plot admeasuring 25 sq. yards bearing no. C-1203, JJ Colony, Tigri, New Delhi-110062 (suit property) and the same was decreed in favour of the respondents/plaintiffs on 28.05.2016.

3. The appellants/defendants challenged the aforesaid judgment of the trial



Court in an appeal which came to be dismissed. Aggrieved by the aforesaid impugned judgment of the first Appellate Court; the appellants/defendants have preferred this instant appeal.

4. It is the case of the appellants/defendants that the respondents/plaintiffs have falsely claimed that the suit property was allotted in the name of their mother, *Smt. Krishna Devi* in the year 1996 and that the appellants/defendants trespassed on the first and second floor of the suit property subsequent to the death of their mother on 03.11.2008.

5. Learned counsel appearing on behalf of the appellants/defendants while pointing out alleged errors in the judgments by the Courts below, proposes the following questions of law to be framed:-

- " 1. On whom does the burden of proof lie in a suit for possession and injunction when title is disputed?*
- 2. Whether in a suit for Possession and Injunction, suit ought to be decreed in favour of the Plaintiff due to weakness of defense even if the Plaintiff fails to prove title in its favour?*
- 3. Whether once a Trial Court and First Appellate Court have acknowledged that Plaintiff produced no title documents on record, the suit was liable to be dismissed?*
- 4. Whether the Court ought to consider the relevance of documents and take additional documents on record under Order 41 Rule 27 of CPC to enable it to come to a just, fair and equitable adjudication?*
- 5. Whether at the stage of Regular Second Appeal perverse appreciation of facts can also be a consideration to set-aside judgment and decree passed by Trial Court and First Appellate Court*
- 6. Whether the suit could have been decreed in favour of the Plaintiff despite material contradictions having come out in Cross Examination?"*

6. The Court has considered the aforesaid proposed questions of law and has examined them in the context of the material available on record.

7. The pertinent findings rendered by the Trial Court in paragraph no.12 indicate that the official witness , namely *Sh. Anmol Kumar*, UDC, Delhi



Urban Shelter Improvement Board office of the Assistant Director, H Block, community hall, Dakshin Purl, New Delhi was called and was examined as PW-2. His evidence which has been placed on record as Annexure A-5 reads as under:-

"On SA.

Today I have brought the official record of property no. C-1203, Tigri JJ Colony, New Delhi. The suit property was allotted to Smt. Krishana Devi, from the DDA under Jhuggi Jhopri Removal Scheme as per G8 Book no. 3341 and receipt no. 334096 measuring 25 square yards on 22.08.1996 on licence fee basis. The photocopy of the original record of G8 Book of receipt no. 334096 is Ex.PW2/1 (objected as to mode of proof). I have brought the original book no. 3341 containing carbon copy of receipt dated 22.08.1996. Copy Ex.PW2/1 has been prepared from said carbon copy x

XXXXXXXX by Sh. Bharat Ahuja, Ld. Counsel for the defendant.

I cannot tell when municipal no. C-1203 was given to the suit property. I cannot tell whether municipal no. was given prior to 22.08.1996. I cannot tell specific date of allotment. I cannot tell when suit property came into RSA-39/2023 252 (2) existence. Witness is confronted with document that is survey report dated 19.12.1988 along with show cause notice dated 13.02.1989 copy of the same is Marked as Ex.PW2/D1. It is correct that said show cause has been addressed Smt. Krishna Devi wherein it is mentioned that Smt. Krishna Devi is occupying the suit property without any right and she has been asked to show cause as to her status in the suit property. No reply has been received to said show cause notice. Suit property was not allotted to anyone prior to this allotment. I cannot say as to what procedure is adopted to allot the property. Photocopy of a ration card and a copy of affidavit submitted by Smt. Krishna Devi in the file same does not form part of record of DDA file as the same has been filed by Smt. Krishna Devi along with an application for summoning of witnesses. In the official file there is not even a single document bearing any request or any application for allotment of the suit property in the name of Krishna Devi. I cannot say since when Krishna Devi was occupying the suit property. Witness is confronted with receipt Ex. PW2/1 and he is asked to read contents thereof. He is clearly able to read the contents Apart from the receipt there is a demolition slip and possession slip in the file to indicate allotment, is correct that no such document is existing in the file brought by me. It is wrong to suggest that receipt



Ex.PW2/1 is not proof of ownership. It is wrong to suggest that Ex.PW2/1 has been manipulated. It is wrong to suggest that the suit property never allotted in the name of Smt.Krishna Devi."

8. It is, thus, seen that the official witness on the basis of the records of the property bearing no. C-1203, Tigri JJ Colony, New Delhi, stated that the suit property was allotted to *Smt. Krishna Devi* from the DDA under Jhuggi Jhopri Removal Scheme as per G8 Book No.3341 and receipt no.334096 measuring 25 square yards on 22.08.1996 on license fee basis. The official witness also deposed that the photocopy of the original record of G8 Book No.3341 and receipt no.334096 is Ex.PW2/1. It is also evident that even the original records were shown to the Court, containing carbon receipt of receipt dated 22.08.1996.

9. Taking into consideration the aforesaid, the Trial Court rendered following pertinent findings in paragraph no.12 which reads as under:-

"12. Admittedly, defendants have not filed on record any documentary proof to show their ownership over the suit property. Nothing on record suggest the capacity in which defendants are occupying the suit property. Defendants have claimed the suit property to be an ancestral property and also claimed to have been residing in the same since 1983 whereas not even a single document has been filed on record by the defendants to even show their legal possession in the suit property. The plea of partition taken by defendants could also not been substantiated on record. Importantly it has come on record in the cross examination of DW-1 that the house no.C-1203 i.e. suit property is in the name of late Smt. Krishna Devi as given in writing before the police on 12.03.2009, meaning thereby defendants admits the title of plaintiffs. PW-2 has brought the official record exhibited as PW-2/1 which reflects that the suit property was allotted to late Smt. Krishna Devi from DDA 1 under Jhuggi Jhonppari Removal Scheme. There have been discrepancies in the statement of PW-2 but it does not wash away its veracity and the fact that the property was allotted to the mother of the plaintiffs could not be rebutted during his cross examination. No doubt the plaintiffs have not filed on record any ownership document qua the suit property such as sale deed etc. but they have definitely proved on record that the suit property was allotted to their mother and after her death the plaintiffs succeeded and



inherited the suit property. On the other hand, defendants have drastically failed to prove on record their capacity of occupying the suit property. In the civil suits preponderance of probabilities have to be seen and in the instant case, plaintiffs have been able to prove better title against the defendants. Service of legal notice has not been disputed by the defendants.

In view of the observations given above, the plaintiffs are entitled to the reliefs prayed herein. Accordingly, both these issues stands decided against the defendants and in favour of the plaintiffs."

10. On an appeal preferred by the appellant/defendants, the first Appellate Court took note of the various averments made by the appellants/defendants and found that the relevant record as available before the Courts below, unequivocally records that the suit property was allotted on license basis to *Smt. Krishna Devi*. The first Appellate Court has rendered the following pertinent findings in paragraph no.14.1, which reads as under:-

" 14.1 The defence propogated by present appellants of suit property having been purchased by their father Jiwat Ram, is not even remotely tried to be proved. It may be seen that not even an issue was sought to be framed on this aspect. In support of these pleadings, there is absolutely no title document, pleaded or proved by appellant/defendants. No document evidencing allotment or ownership of Kaku Ram or sale by Kaku Ram to Jiwat Ram or deposit of licence fee by Jiwat Ram etc., has been proved by defendants. Therefore, plea of defendants they inherited the suit property from their father, who had purchased the same from Kaku Ram, is not even remotely established. On the other hand, plaintiffs have claimed that their mother Krishna Devi was allottee of the suit property. The licence document is certainly not on record or in possession of plaintiffs. Nonetheless, the official witness from DUSIB (PW-2) has deposed that as per records, Krishna Devi was the allottee of plot no. C-1203. From the records, he proved the show cause notice Ex.PW211. He also deposed that in the records the receipt dated 22.08.1996 (Ex.PW111) was also contained. Therefore, whatever documents exist in the records of DUSIB, mentions Krishna Devi to be the licensee."

11. Learned counsel appearing on behalf of the appellant also tried to indicate that the documents placed on record along with an application under



Order XLI Rule 27 of the CPC, 1908 would depict the situation otherwise than what has been noted by the Courts below. However, the Court is not inclined to accept the aforesaid submission for the reason that the responses under Right to Information Act, 2005 cannot be the reason to dispel the evidence duly recorded by the Trial Court, in accordance with law.

12. In view of the aforesaid unequivocal findings, the Court does not find any substantial question of law warranting admission of the instant appeal and the same accordingly dismissed.

PURUSHAINDR KUMAR KAURAV, J

NOVEMBER 13, 2024/MJ