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

+ RFA(COMM) 146/2023

SUSHIL KUMARI

.....APPELLANT

Through: Mr. Abhishek Singh Chawhan and
Mr. Prateek Bhadana, Adv.

versus

SANJAY SAXENA

.....RESPONDENT

Through:

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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09.12.2024

1. The present First Regular Appeal under Section 96 of the Code of Civil Procedure, 1908 r/w Section 13 of the Commercial Courts Act, 2015 seeks to assail the judgment and decree dated 11.04.2023 passed by the learned District Judge, Commercial Court-05, Central District, Tis Hazari, Delhi in CS (Comm) No. 3983/2021. Vide the impugned judgment, the learned Trial Court has dismissed the suit filed by the appellant/plaintiff seeking possession, mandatory and permanent injunction in respect of property bearing no.2606 7 2607, Gali No.4 & 5, Estate Naiwala, Beadonpura, Main Gurudwara Road, Karol Bagh, New Delhi 110005 along with arrears of rent and interest. We find that the suit has been dismissed solely on the ground that the appellant had failed to file any document maintained by any public authority



regarding the existence of the suit property.

2. Despite being served through publication, none appears for the respondent. In these circumstances, we proceed to take up the appeal for disposal without granting any further opportunity to the respondent.
3. Learned counsel for the appellant submits that the impugned judgment is absolutely perverse as not only the learned Trial Court failed to appreciate that the suit property was duly described in the registered lease deed, which was available with the Sub-Registrar a public authority, but even otherwise the site plan was duly exhibited before the learned Trial Court. He submits that, in any event, once the respondent/defendant was *ex-parte* before the learned Trial Court as well, the learned Trial Court ought not to have dismiss the suit for want of identification of the suit property and that too without giving any opportunity to the appellant to file a better site plan, if required. The appellant, he contends is the owner of the suit property and cannot be deprived of the possession thereof and that too when the respondent, who had entered into the suit property pursuant to a registered lease deed has not been paying any rent for the last many years. He, therefore, prays that the impugned judgment be set aside and the suit be remanded to the learned Trial Court for adjudication on merits.
4. Having considered the submissions of learned counsel for the appellant, we may refer to the relevant extracts of the impugned judgment. We may first note, para 4 of the impugned judgment, which notes the documents, which were exhibited on behalf of the



appellant/plaintiff, before the learned Trial Court, the same reads as under:-

“4.To substantiate the case, Sh. Sushil Kumar Nischal, AR of the plaintiff examined himself as PW-I who has repeated the averments of plaint in his affidavit of evidence and relied upon following documents:-

- 1. Ex. PW-1/A is GPA executed in favour of AR by plaintiff;*
- 2. Ex. PW-1/B is site plan;*
- 3. Ex. PW-1/C is lease deed;*
- 4. Ex. PW1/D to G are legal notice and its postal receipts and*
Mark ‘x’ is cheque dated 05-03-2020.

5. We may now refer to the findings rendered by the learned Trial Court for dismissing the suit, which findings we find are contained in para 11 of the impugned judgment, the same reads as under:-

11. The plaintiff did not place on file any record maintained by the public authority that the suit property existed at any point of time or is existing right now. Though plaintiff has filed certified copy of the lease deed but that deed is evidence of rent agreement only. It does not prove existence of suit property.”

6. From a perusal of the aforesaid, we find that the appellant is correct in urging that the registered lease deed was tendered in evidence by way of Ex.PW1/C. We also find that a copy of the site plan was exhibited as Ex. PW1/B, even though this site plan does not properly set out the description of the suit property as required in law, the fact remains that the lease deed clearly describes and identifies the suit property. Furthermore, the respondent/defendant was ex parte before the learned Trial Court and, therefore, there was no denial of the



appellant's claim by the respondent that the suit property had been leased out to him.

7. In these circumstances, we are of the view that the learned Trial Court ought to have taken into account the description of the suit land as mentioned in the registered lease deed and proceeded to decide the suit on merits. In our opinion, in this factual matrix, there was absolutely no reason for the learned Trial Court to dismiss the suit on the ground that no documents from any public authority had been filed to identify the suit land.
8. For the aforesaid reasons, we have no other option but to set aside the impugned judgment and remand the suit to the learned Trial Court for fresh adjudication on merits after issuing notice to the defendant as per law. However, in order to avoid any ambiguity in the matter, we grant the appellant one opportunity to file a fresh site plan clearly setting out the description of the suit property as per law in respect of colouring, exact floor, portion, dimensions, boundaries, existing constructions thereon, within a period of four weeks.
9. List before the learned Trial Court on 23.01.2025.

REKHA PALLI, J

SAURABH BANERJEE, J

DECEMBER 9, 2024
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