



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
BEFORE
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **RSA 240/2023 and CM APPL. 66264/2023, CM APPL. 2531/2024**

LALLU RAM
S/O LATE MANGO RAM
RIO WZ-454, RAJ NAGAR - I,
MAIN ROAD, P ALAM COLONY,
NEW DELHI-110045Appellant

Through: *Mr. Lal Sing Thakur, Mr. Sudhir, Mr. Anurag and
Mr. Rachit Singh, Advocates.*

Versus

MANJU DEVI
W/O PHOOL CHAND
R/O RZ-431, RAJ NAGAR-I,
PALAM, NEW DELHI-110045Respondent No.1

SMT. PARVATI JAIN
W/O LATE SH. PARMOD JAIN
R/O G-69/4, BANGALI COLONY,
NANDA BLOCK, MAHAVIR ENCLAVE,
NEAR SILABH WALI GALI,
NEW DELHI-110045Respondent No.2

Through: *Mr. Sanjeev Sindhwani, Sr. Advocate with Mr.
Neeraj Yadav, Advocate for R-1.*

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Reserved on: 19.11.2024
Pronounced on: 17.12.2024

J U D G M E N T

This appeal, under Section 100 of the Code of Civil Procedure, 1908 (CPC), is preferred against the judgment and decree dated 21.11.2023 passed in RCA no. 34/2022 by the Court of Additional District Judge -01, South West District, Dwarka Courts, Delhi, dismissing the appeal filed by the appellant/defendant No.2 and affirming the judgment and decree dated 13.04.2022 passed by the Court of Civil Judge in Civil Suit bearing no. CS No. 1669/2016, whereby, the suit filed by respondent No.1/plaintiff for ejectment, recovery of arrears of rents, and *mesne profits* was decreed.

2. Mr. Lal Singh Thakur, learned counsel appearing for the appellant/defendant No.2 avers that the impugned judgment and decree suffer with material illegality, in as much, as the Courts below have gravely erred in not appreciating that there were discrepancies in the description of suit property in the plaint and the site plan placed on record. Moreover, it is averred that the Courts below have miserably failed to consider the mandate of Order VII Rule 3 of the CPC. As per the learned counsel, the aforementioned provision mandates a plaintiff to specifically describe the immovable property as to identify the same by boundaries or numbers in a record of settlement or survey. He further contends that the case of respondent no.1/ plaintiff must be based on the evidence adduced by her rather than on the basis of any lapses on the part of appellant/defendant No.2.

3. Learned counsel for the appellant/defendant No.2 also submits that the provisions under Sections 101 and 102 of the Indian Evidence Act, 1872, require the party who desires to prosecute the violation of a right and wishes any Court to adjudicate on such violation, must exhibit that such a right is dependent upon the existence of facts as

asserted; and if the burden of proof is not sufficiently discharged, the party must fail to lead evidence. According to him, the suit in the instant case was filed without a comprehensive and clear description of the suit property and there are anomalies between the stand taken by respondent no.1/ plaintiff concerning the description of the property itself. He then explains that there are four colonies in the village Palam, i.e. Raj Nagar, Raj Nagar-I, Raj Nagar-II, and Raj Nagar Extn. He, further, states that as per the plaint, respondent No.1/ plaintiff claimed to be the owner of property bearing no. WZ-454, Main Road, Raj Nagar, Palam Colony, New Delhi-110045. He also submits that in the site plan attached along with the plaint, the property in question is shown to have been situated at Raj Nagar-I, Palam Colony, New Delhi-110045, thus indicating discrepancies.

4. Furthermore, learned counsel for the appellant/defendant No.2 draws the attention of this Court to the sale deed exhibited as Ex. PW-1/3 and contends that in the sale deed, the property is shown to be situated at Raj Nagar-II, Palam Colony, New Delhi-110045.

5. Learned counsel for the appellant/defendant No.2 also submits that the documents exhibited as Ex. PW-4/X, ought not to have been considered as evidence as the same were mere photocopies. He, therefore, submits that in the instant appeal, there is a substantial question of law, and therefore, it deserves to be admitted.

6. *Per contra*, Mr. Sanjeev Sindhvani, learned Senior Counsel assisted by Mr. Neeraj Yadav, learned counsel, vehemently opposes the aforesaid submissions and contends that the instant appeal does not raise any question of law, much less any substantial question of law. According to him, the suit has rightly been decreed and the alleged anomalies have been found to be of no significance by the

Courts below. According to him, all questions raised in the instant appeal are related to the identification of suit property and the same cannot be adjudicated at this stage as the findings of facts have already attained finality before the first Appellate Court.

7. According to Mr. Sindhvani, learned Senior Counsel, the appellant/defendant No.2 himself has claimed to have purchased the suit property in the name of his son and later claims that he became a tenant under his son. Learned counsel also submits that this issue has been elaborately dealt with by the Trial Court holding that respondent No.1/ plaintiff is the owner of the suit property and the appellant/defendant No.2 is the tenant whose tenancy was terminated, rendering him an unauthorized occupant.

8. It is also contended by the learned counsel appearing for respondent No.1 that an application under Order 1 Rule 10 of CPC was filed by the appellant/defendant No.2 to be arrayed as a party in the suit filed by respondent No.1/plaintiff, and if at all as per his averments, there were discrepancies in the property which the respondent no.1/plaintiff was claiming possession of, there was no legal basis for the appellant/defendant No.2 to file such an application.

9. I have considered the rival submissions made by the learned counsel for the parties and have perused the record.

10. The facts as presented by respondent no.1/plaintiff before the Trial Court are that she claims to be the owner of property no. WZ-454, Main Road, Raj Nagar, Palam Colony, New Delhi-110045 as by way of the sale deed dated 01.02.2005 (Ex. PW1/3). The aforementioned property was transferred from Mr. Jeet Raj and other co-owners to her.

11. Respondent no.2/ defendant no.1 was inducted as a tenant in the said property by Mr. Jeet Raj, earlier co-owner of the property. Despite various notices being served on respondent no.2/ defendant no.1 by respondent no.1/ plaintiff, the rent of the said property was not paid and, therefore, the tenancy of respondent no.2/ defendant no.1 was terminated *vide* a notice dated 30.05.2005. As per the plaint, respondent no.2/defendant no.1 became an unauthorized occupant in the suit property after the expiry of 15 days from the date of receiving the said notice.

12. It appears that *vide* order dated 05.11.2011, the application under Order I Rule 10 of the CPC read with Section 151 of the CPC filed by the appellant/defendant No.2 herein came to be allowed by the Trial Court and the appellant/defendant no.2 was impleaded as a party.

13. The appellant/defendant No.2 in the aforesaid application contended that on 27.10.2010, Mr. Phool Chand, special power of attorney-holder of respondent no.1/ plaintiff had arrived at his shop/suit property and asked for handing over the possession of the said property. The appellant/defendant No.2 in that application has also claimed that he is in possession of the suit property with the first floor consisting of two rooms and the suit has wrongly been filed against respondent no.2/defendant no.1. Therefore, he, being the necessary party to the dispute at hand, must be impleaded as a defendant in the suit. Given the aforesaid fact, the Court allowed the aforementioned application, and the appellant/defendant No.2 was directed to be impleaded as defendant no.2 in the suit.

14. The Trial Court after the completion of pleadings framed the following issues:

- " 1. Whether this suit has not been duly filed and verified? OPP
2. Whether the plaintiff is owner of the premises in suit and has no locus standi to maintain it? OPP
3. If issue no. 2 is decided in negative then whether the defendant has become the owner of the suit property by law of prescription. If so, it effect? OPD.
4. If the defendant is not owner of the premises by prescription then whether there exists relationship of landlord and tenant between the parties to the suit? OPD
5. If yes, then whether the tenancy of defendant was terminated as per law? OPP.
6. Whether the plaintiff is entitled for the relief of possession as prayed? OPP
7. Whether the plaintiff would be entitled to damages as claimed? OPP.
8. Relief.
9. Whether the suit of the plaintiff is not maintainable in terms of the preliminary objections no. 1 to 17 of the amended WS filed on behalf of defendant no. 2? OPP
10. Whether the suit of the plaintiff is not maintainable in terms of preliminary objection no. 18 and 19 of the amended WS filed on behalf of the defendant no. 2? OPP"

15. The Trial Court, after completion of evidence and giving due consideration to the contentions of all the parties, decreed the suit in favour of respondent No.1/plaintiff. A decree of possession was passed in favour of respondent No.1/plaintiff and the defendants were directed to hand over the vacant possession of the suit property bearing no. WZ-454, Main Road, Raj Nagar, Palam Colony, New Delhi-110045, as shown in red color in the site plan exhibited as Ex.PW-1/2.

16. On an appeal preferred by the appellant/defendant No. 2, the first Appellate Court *vide* the impugned judgment and decree, affirmed the findings rendered by the Trial Court. The appellant/defendant No.2, therefore, is before this Court challenging the concurrent findings rendered by the Courts below by the way of the instant appeal.

17. The entire fulcrum of the facts and the averments made by learned counsel for the appellant/defendant No.2 revolves around only the alleged discrepancies and anomalies concerning the description of the suit property.

18. A bare perusal of the Trial Court judgment indicates that the Trial Court in paragraph no. 42 has made pertinent observations to the effect that the sale deed relied upon by the appellant/defendant No.2 i.e. Ex. DW-5/5, itself, contained the description of the property to be situated in Raj Nagar-II. Following pertinent observations have been made with respect to the aforesaid aspect, which reads as under :-

" 42. The Court is of the opinion that the sale deed Ex. PW-1/3 cannot be disregarded only because the property transacted under this document is stated to be in Raj Nagar-II. It is significant note that even in the sale deed relied upon by the defendant no. 2 i.e. sale deed Ex.DW-5/5, Raj Nagar-II was mentioned. However, later, a rectification deed was executed in which it was affirmed that Raj Nagar-II was erroneously mentioned and it be read as Raj Nagar-I. No such rectification deed was executed by the plaintiff and the vendors of sale deed Ex.PW-1/3. Rectification deed is nothing but an agreement between the executants of a document to bring on record that certain mistakes were there in the deed sought to be rectified. In the present case, the executants of the sale deed Ex.PW-1/3 have now stated before the Court that the property transacted by sale deed Ex.PW-1/3 was of Raj Nagar-I. Reference is made to paragraph numbers 3 and 4 of the evidence by way of affidavit of PW-1 proved as Ex.PW-1/A. In paragraph no. 3, it is stated that the defendant no. 1 was inducted as tenant in the shop in property bearing no. WZ-454, Main Road, Raj Nagar-I, Palam Colony, New Delhi. In paragraph no. 4, it is stated that the co-owners of "the said property" transferred it to the plaintiff. Even the vendor Mr. Mohan Lal examined as PW-1 stated during his cross-examination that the property bearing no. WZ-454 sold by him to the plaintiff is in Raj Nagar-I. Merely because no rectification deed was executed for correcting the errors in sale deed Ex.PW-1/3, does not mean that the Court shall disregard this sale deed while ascertaining as to who really is the owner of the suit property. The Khasra number mentioned in sale deed Ex.PW-1/3 and in sale deed Ex.DW-5/5, is the same. It is not the case of defendant no. 2 that there is more than one property bearing no. WZ-454 in Khasra No. 65/10/2, Palam Village, Delhi. The defendant no. 2 and the vendor of sale deed Ex.DW-5/5 executed the rectification deed only recently and in the year 2019. They were cautious enough to have executed it

rectification deed since the present case has been pending and the defendant no. 2 has been agitating that the property transacted by sale deed Ex.PW-1/3 is of Raj Nagar-II. However, the plaintiff had no such reason to bother executing a rectification deed in the year 2005 or soon after that since at that time, there was no contesting claim of title over the property."

19. Therefore, it is noted that the Trial Court held that the sale deed Ex.PW-1/3, could not be disregarded simply because it stated the property to be in Raj Nagar-II. Despite the lack of a rectification deed by respondent no.1/plaintiff, testimonies confirmed that the property was actually in Raj Nagar-I. The Khasra number was consistent between the documents exhibited as Ex.PW-1/3 and Ex. DW-5/5, with no claim of another property with the same number. The rectification deed for the sale deed exhibited as Ex. DW-5/5, was executed in 2019 *pendente lite*. The evidence of PW-1 who proved Ex. PW-1/3 i.e. the sale deed was also considered, and it found that the executant of the sale deed reiterated that the property transacted by the sale deed was of Raj Nagar-I.

20. The PW-4 Mr. Mohan Lal who was one of the vendors of the sale deed, also deposed that he had sold the back portion of property no. WZ-454, Raj Nagar-I, Palam Colony, New Delhi-110045 to the appellant/defendant No.2, and the front portion of the property was sold to the respondent no.1/ plaintiff. The said witness also filed documents which were exhibited as Ex.PW-4/X and in view of the fact that there was no reason to disbelieve the evidence of the PW-4, the case set up by respondent no.1/ plaintiff was accepted and the objections raised by the appellant/defendant No.2 were rejected. In paragraphs No. 43 to 44 of the judgment dated 13.04.2022, the Trial Court has rendered the following findings, which read as under:-

"43. Mr. Mohan Lal examined as PW-4 who was one of the vendors of the sale deed Ex.PW-1/3 deposed that he had sold the back

portion of property no. WZ-454, Raj Nagar-I, Palam Colony, New Delhi to the defendant no. 2 and the front portion of this property to the plaintiff herein. During cross-examination by the Counsel for defendant no. 2, he was asked for documents to establish that he had sold the back portion of the property to the defendant no. 2 herein. The witness then filed documents identified as PW-4/X in support of his claim. These documents include agreement to sell, affidavit, possession letter and receipt and are for transferring built up house no. WZ-454 area measuring 63 sq. yards, in Khasra No.65/10/2, Palam Village, Raj Nagar, New Delhi. The defendant no. 2 has denied that this property was sold by Mr. Mohan Lal to him. However, this denial of the defendant no. 2 does not inspire confidence in the mind of the Court because of the inconsistent answers given by defendant no. 2 during his cross-examination on how he accesses the suit property which is a shop. He admitted that there is no stair case in the suit property which leads to the roof. He stated that the stair case is from the back of the property which he uses to access the roof. When further cross-examined, the defendant no. 2 admitted that the staircase is inside the door of the back portion of the suit property. On one hand, the defendant no. 2 denies being owner and in possession of the back portion of the suit property and on the other hand, he admitted that the stair case which he uses to go to the roof is in the back portion. In view of this inconsistency in the testimony of defendant no. 2 and since nothing has been brought on record which disproves the claim of PW-4 that he sold the back portion to the defendant no. 2, the Court finds no reason to disbelieve that PW-4 had indeed sold the back portion of the suit property to the defendant no. 2. Defendant no. 2 has not led any evidence to show that someone else owns or possesses the back portion. If the back portion which was sold by documents identified as mark PW- 4/X (colly.) was for a property in Raj Nagar, then the front portion cannot be in Raj Nagar-II. For this reason also, the Court is inclined to believe the contention that Raj Nagar-II was inadvertently mentioned in the sale deed Ex.PW-1/3 and that the property sold by this document was indeed the tenanted premises in the present case.

44. Soon after the execution of the sale deed Ex.PW-1/3, legal notices proved as Ex. PW-1/4 and Ex. PW-1/8 were sent to the defendant no. 1 in the year 2005 itself. In these notices, reference was made to the sale deed and it was stated that it is the shop bearing no. WZ-454, Main Road, Raj Nagar, Palam Colony, New Delhi, which was sold by the sale deed Ex. PW-1/3. The genuineness of these legal notices has not been questioned. Moreover, these were sent through Department of Posts of which acknowledgements have been proved as Ex.PW-1/5, Ex.PW-1/6, Ex.PW-1/7, Ex.PW-1/9, Ex.PW-1/10 and Ex.PW-1/10A. Since these subsequent documents which were issued in the ordinary course and at the time when there was no issue with regard to another person claiming ownership over

the property on the basis of another sale deed and in view of the aforementioned facts and circumstances, the Court accepts the contention made on behalf of the plaintiff that the sale deed Ex.PW-1/3 was qua the suit property herein."

21. On an appeal preferred by the appellant/defendant No.2, the first Appellate Court affirmed the decree passed by the Trial Court and held that respondent no.1/plaintiff bore the onus of proving ownership of the premises and was successful in doing so by way of the registered sale deed dated 01.02.2005 exhibited as Ex. PW1/3. The following relevant findings have been rendered by the first Appellate Court in paragraph no. 10, which reads as under:-

"10. The defendant No. 2 is claiming that his son is the owner of the suit property by virtue of the sale deed executed in his favour i.e. Ex.DW5/5. The vendor of two respective sale deed are different. Attention of the Court has been drawn to the fact that the address of the property transacted by sale deed is WZ-454, Part of Khasra No 65/10/2, Palam Village, Raj Nagar-II, Palam Colony, New Delhi-110045 whereas the suit property is stated to be WZ-454, Main Road, Raj Nagar, Palam Colony, New Delhi-110045. It is not disputed that the suit property is located in Raj Nagar-I. Therefore the sale deed Ex.PW1/3 is for the premises in Raj Nagar-II. It is contended by Ld counsel for plaintiff that there was a mistake in the sale deed Ex.PW1/3. The said fact has been verified by PW4- Mohan Lal regarding the description of the property in the sale deed Ex.PW1/3. Hence, this Court is of the opinion that the sale deed Ex.PW1/3 cannot be disregarded only because the property transacted under this document is stated to be Raj Nagar-II. It is significant to note that the sale deed relied upon by defendant No. 2 i.e. Ex.DWS/5 where Raj Nagar-II was mentioned. However, a rectification deed was executed in which it was affirmed that Raj Nagar-II was erroneously mentioned and it be read as Raj Nagar-I. NO such rectification deed was executed by the plaintiff and vendors of sale deed Ex.PW1/3. The executants of the sale deed Ex.PW1/3 have stated before the Court that the property transacted by sale deed Ex.PW1/3 was Raj Nagar-I. Reference is made to the paragraph number 3 and 4 of the evidence of PW1. It is stated that defendant No. 1 was inducted as tenant in the shop bearing No. WZ-454, Main Road, Raj Nagar-I, Palam Colony, New Delhi. It is further stated that the co-owners of the said property transferred it to the plaintiff. In the cross examination PW1 stated that the property No WZ-454 front portion to the plaintiff. The witness also produced the document PW4/X in support of his claim and these document included agreement to sell, affidavit, possession letter and

receipt and for transferring the built-up property No. WZ-454 area measuring 63 Sq Yards in Khasra No. 65/10/2, Palam Village Raj Nagar New Delhi. Defendant No. 2 had denied that this property was sold by Mohan Lal to him. This denial by defendant No. 2 does not inspire confidence because of the inconsistent answers given by defendant No. 2 during his cross examination on how he has access to the suit property which is a shop. He admitted that there is no staircase in the suit property which leads to the roof. He stated that the staircase is from the backside of the property which he uses to access the roof. In further cross examination, defendant No. 2 stated the staircase is inside the door of the back portion of the suit property. On one hand defendant Nob denies being the owner and in possession of the back portion of the suit property and on the other hand he admitted that the staircase which he uses to go to the roof is in the back portion. In view of this inconsistency, the testimony of defendant No. 2 and since nothing has been brought on record which disproves the claim of PW4 that he sold the back portion to defendant No. 2, the Court finds no reason to disbelieve that PW4 had indeed sold the back portion of suit property to defendant No. 2. Further, if the back portion which was sold by document PW4/X(colly) was for property in Raj Nagar then the front portion cannot be Raj Nagar-II, for this reason, the contention that Raj Nagar-II was inadvertently mentioned in the sale deed Ex.PW1/3 is to be believed to be true and also that the property sold was a tenanted premises.."

22. It is, thus, seen that there was no significant discrepancy that would disentitle respondent no.1/ plaintiff for the relief claimed in the civil suit and both the Courts have rendered the concurrent finding of fact, holding respondent no.1 /plaintiff entitled to the relief claimed in the suit.

23. It is also seen from the record that while appellant/defendant No. 2 denied ownership or possession of the back portion of the suit property, he admitted to the use of the staircase located there to access the roof, creating inconsistency in his own statements. Furthermore, the categorical finding given by the Trial Court that discrepancies in documents of ownership were likely a clerical error is unassailable as it was illogical for the back and front portions of the same property to belong to entirely different localities. By focusing on a mere

technicality instead of addressing the substantive issue of ownership, appellant/defendant No.2 attempted to exploit minor discrepancies and mislead the proceedings. It appears that by pointing out alleged discrepancies, appellant/defendant No.2 deliberately tried to divert and confuse the proceedings before the Trial Court.

24. With respect to the veracity of Ex.PW-4/X is concerned, firstly, the same is an additional aspect that has been considered by the Trial Court to appreciate the contentions raised by the parties, however, those documents alone are not the only reasons for decreeing the suit in favour of the respondent no.1/plaintiff. Moreover, it is evident that the aforesaid documents were already exhibited before the Trial Court and no objection appears to have been raised by the appellant/defendant No.2 at the time of evidence. Therefore, at this stage, the appellant/defendant No.2 cannot question the veracity of an exhibited document relied upon by the Trial Court.

25. Before concluding whether the instant appeal has raised any substantial questions of law, the Court takes note of the ratio laid by the Supreme Court in the case of *Hemavathi & Ors v. V. Hombegowda & Anr*¹. The Supreme Court held that the jurisdiction of the High Court to entertain a second appeal is limited and only allows the High Court to entertain a regular second appeal purely on a "substantial" question of law, rather than on a mere question of law or fact. It was also held that it is a settled legal principle that the first Appellate Court serves as the final arbiter on questions of fact.

26. It is trite law that the second Appellate Court is burdened with duty of exercising the powers of entertaining second appeals within the scope of Section 100 of CPC. The categorical usage of the word

“substantial questions of law” further explicates the legislative intent to restrict the exercise of such power by the High Court and refrain it from adjudicating on questions of fact, while exercising the powers of a second Appellate Court.

27. In light of the aforesaid, this Court, while exercising the powers under Section 100 of CPC, does not find any substantial question of law meriting consideration in the instant appeal.

28. The instant appeal, therefore, fails and is hereby dismissed along with pending applications.

(PURUSHAINDR KUMAR KAURAV)
JUDGE

DECEMBER 17, 2024
aks/mjo