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

+ **RSA 25/2024**

KIRAN PAL SINGH TYAGI

.....Appellant

Through: Mr. Anjani Kumar Mishra, Mr. Praveen Mishra, Mr. Hardeep Kaur, Mr. Arun Kumar and Mr. Khalak Singh, Advs.

versus

SHYAM MISHRA THROUGH LRS.

.....Respondent

Through: Mr. Rajat Aneja and Mr. Jatin Tyagi, Advs. for R-1 to 5.
Mr. Raghav Awasthi, Mr. Mukesh Sharma & Mr. Dinesh Sharma, Advs. for Respondent No.7B.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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07.11.2024

1. Heard learned counsel appearing for the parties on the question of admission.
2. The instant appeal has been preferred by the appellant/defendant against the impugned judgment and decree dated 06.05.2023 passed by the Ld. ADJ-02, Karkardooma Courts (East) Delhi in RCA No. DJ/48/2016. *Vide* the impugned judgment and decree, the first Appellate Court has allowed the appeal preferred by the respondent/plaintiff against the judgment and decree dated 23.08.2014 in Civil Suit No. 343/07 (old Suit No. 805/1990) passed by the ASCJ/JSCC/GJ (East) Karkardooma Courts,



Delhi and remanded back the matter to the Court below for trial in accordance with law and within the confines of observations made in the impugned judgment. The first Appellate Court also allowed the application for producing additional evidence by the respondent/plaintiff.

3. Learned counsel appearing for the appellant/defendant avers that the impugned judgment and decree of remand suffers with material illegality inasmuch as the Court below has gravely erred in taking on record the additional evidence adduced by the respondent/plaintiff by way of an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 [‘CPC’]. Learned counsel submits that the documents sought to be relied upon by the respondent/plaintiff ought not to have been considered on the grounds of inordinate delay and lack of due diligence. Learned counsel points out that the Sale Deed dated 01.09.2016 was produced on 05.12.2020, indicating an inordinate delay in bringing the said document on record. Learned counsel further contends that the decision of the Trial Court is on proper appreciation of the material available on record and, therefore, ought not to have been interfered with by the first Appellate Court.

4. *Per contra*, learned counsel appearing for the respondent/plaintiff has vehemently opposed the aforesaid contentions and he contends that the application of the respondent/plaintiff was very much within the scope of Clause (aa) of Order XLI Rule 27 of the CPC. According to him, it is after the evidence was closed before the Trial Court, that these additional documents came to be in possession of the respondent/plaintiff and therefore, the same could not have been produced during the course of the trial.

5. I have considered the aforesaid rival submissions and have also



perused the record.

6. A perusal of the impugned judgment would indicate that the first Appellate Court has considered the aforesaid aspect and has concluded that the Sale Deed in question if found reliable and trustworthy, is the direct and most vital evidence to put an effective lid on the controversies amongst the contesting parties.

7. The first Appellate Court has made pertinent observations in paragraph No. 24 of the impugned judgment. The relevant extract of the aforementioned paragraph reads as under:-

“..It is also, to be noted that wherever additional evidence is to be allowed to be produced by Appellate Court, the Court has to record the reason for its admission. The clear reason, in this regard, is for meeting the ends of justice, which is always a substance cause, it is also, notable that the different clauses of the order are in alternative but they are not mutually exclusive. The clause (a), can be invoked as a matter of right, when the Ld. Trial Court appears to have refused to admit evidence, which ought to have had been admitted; Clause (aa), stipulates other contingency and is circumscribed by the conditions, specified therein, whereas, Clause (b), bestows a discretion on the Appellate Court, when it requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause then, it may allow such evidence or document to be produced, or witness to be examined and notably, in all the three cases the Appellate Court, concerned shall record the reason for its admission. The Sale Deed, in question is stated to have been executed, only on 01.09.2016, therefore, this was not available with the then plaintiff/ present appellants, when the decree appeal against was passed and as such, it is altogether a new evidence, might falling within the purview of the expression, 'additional evidence', as contemplated under Rule 27, of order XLI, CPC. It is also, to be noted that the Sale Deed, in question, if duly tendered, examined, relied and if, in its appreciation, is found to be a cogent and trustworthy material /evidence, then it can put an end to the present litigation conclusively, subject to the provisions of legal rights to appeal etc. and this, is, obviously, a substantial cause and as such, I have to allow the additional evidence of the Sale Deed, dt. 01.09.2016, executed by (1) Smt. Kailashwati, W/o. Lt. Sh. Durga Prasad, (2) Sh. Manoj Kumar, S/o. Lt. Sh. Durga Prasad, and (3) Sh. Mohan Singh, S/o. Lt. Sh. Durga



Prasad, all R/o.H. No. A189Aruna Park, Shakarpur, Delhi110092(as Legal Heirs of LateSh. Durga Prasad) and between Sh. Shyam Mishra, S/o. Late Sh. Ram Swaroop Mishra, R/o. H. No. S3Aand B, School Block, Shakarpur, Delhi110092,in respect of built up property no. S3B,situated at School Block, Shakarpur,Delhi110092,area measuring 251 Sq. mtrs. i.e area measuring 300 sq.yards, out of Khasra no. 183 Min, situated in the Abadi of School Block, Shakarpur, village Shakarpur Khas, Delhi110092,bounded in East, with Main Mother Dairy Road, West, other's property, North, Property No. S3AofVendee and South, other's property and duly registered, as document no.4623, Book No. I, Vol. No. 864, at pages 32 to 40, with the Office of the Sub Registrar ,VIII-A, Preet Vihar, New Delhi/Delhi, on 03.09.2016.”

8. It can be seen from the aforesaid that the first Appellate Court has duly recorded that the Sale Deed in question was executed on 01.09.2016 and, therefore, was not available with the respondent/plaintiff when the judgment and decree were passed by the Trial Court. Admittedly, the aforesaid position cannot be disputed even during the course of the hearing of the instant appeal.

9. A glance at the relevant provisions of Order XLI Rule 27 clause (aa) evidently indicates that the condition precedent for allowing an application for adducing additional evidence is that it must be demonstrated by the applicant that the evidence was not within the knowledge of the party at the time of the trial, thereby justifying its introduction of such evidence at a delayed stage. In *Sanjay Kumar Singh v. State of Jharkhand*,¹ the Supreme Court has noted that though the general rule is to not admit evidence at an appellate stage, however, in cases where the additional evidence sought to be introduced is integral to the adjudication of questions involved, it may be admitted. It was also noted that the evidence which serves to eliminate any doubt surrounding the case and where the interest of

¹ (2022) 7 SCC 247



justice clearly demands its inclusion, then it may be allowed to be admitted.

10. Therefore, the first Appellate Court has correctly allowed the respondent/plaintiff to rely on the additional evidence while reserving all the rights in favour of the appellant/defendant to lead additional evidence before the Trial Court to controvert the additional evidence, produced by the respondent/plaintiff. The first Appellate Court has also restricted the hearing of the civil suit within the confines of observations made thereunder.

11. The Court, therefore, does not find any substantial question of law to have arisen for adjudication in the instant appeal.

12. Accordingly, reiterating the direction of remand and liberty granted by the first Appellate Court, the instant appeal stands disposed of.

PURUSHAINdra KUMAR KAURAV, J

NOVEMBER 7, 2024/p