

counsel for the appellant thus submits that the delay in filing the appeal is unintentional.

2. The second appeal arises out of a decree for injunction passed in favour of the respondent on 10th February 2017. The suit was filed by the respondent for injunction protecting his possession on the ground that the plaintiff is absolute owner of the suit property and he is in lawful possession of the same. The trial court had dismissed the suit by holding that the plaintiff failed to prove his possession over the suit property. In an appeal preferred by the plaintiff, the trial court's decree is reversed and an injunction is granted protecting plaintiff's possession.

3. I called upon the learned counsel for the appellant to point out whether the second appeal raises any substantial question of law. Learned counsel for the appellant submits that the plaintiff and the defendant are real brothers. He submits that in Regular Civil Court No. 12 of 2003 a compromise was entered into and pursuant to the compromise the defendant was put in possession of the suit property. He submits that pursuant to the compromise the defendant was in lawful possession of the suit property and thus the plaintiff was not entitled for a decree of injunction.

4. Learned counsel for the appellant pointed out the observation

in paragraph 12 of the impugned judgment. He submits that the learned District Judge who decided the first appeal was presiding over the trial court in Regular Civil Suit No. 12 of 2003 in which compromise was recorded. Learned counsel for the appellant therefore submits that the learned District Judge should have recused from deciding the first appeal.

5. Learned counsel for the appellant further submits that the first appellate court has granted decree of injunction without recording any findings on the plaintiff being in exclusive possession. He thus submits that the second appeal would require consideration as the aforesaid grounds raise substantial questions of law.

6. I have perused the papers of the second appeal. The plaintiff filed a suit for injunction based on his exclusive title. The plaintiff relied upon the sale deed dated 19th July 2007. The compromise relied upon by the defendant is dated 7th December 2008. Admittedly, the plaintiff is not a signatory to the said compromise. The compromise in the earlier suit was signed only by the defendant and father of the parties. Though plaintiff was a party to the suit, the compromise was not signed by the plaintiff. Hence, the first appellate court has rightly held that the compromise would not be binding upon the plaintiff.

7. I do not find any substance in the argument raised on behalf of the appellant that since the learned District Judge was presiding over the earlier suit, in which the compromise was recorded, the learned District Judge should have recused from deciding the appeal. The appeal was not arising out of any challenge to the compromise recorded in earlier Regular Civil Suit No. 12 of 2003. The present suit is filed by the plaintiff for simplicitor injunction passed on his title. Hence, there was no reason for the learned Judge to recuse from deciding the appeal.

8. So far as the second ground on the plaintiffs' possession is concerned, the learned District Judge has recorded a positive finding on the plaintiff being in possession of the suit property. The attesting witness to the sale deed is examined and the contents of the sale deed are also proved. The corresponding 7/12 extract indicating possession of the plaintiff is taken into consideration by the learned District Judge for recording that the plaintiff is in lawful possession of the suit property. Neither the sale deed nor the revenue entries in favour of the plaintiff are challenged by the defendant. Except for the compromise pursis defendant has not pleaded and proved his right to be in possession of the suit property. The compromise would not bind the plaintiff, as admittedly

he never signed it. Nothing is produced on record by the defendant to indicate that the defendant was in possession of the suit property. It is not the defendant's case that the plaintiff at anytime parted with possession of the suit property either in favour of their father or the defendant.

9. Hence the reasons recorded by the first appellate court on the plaintiff's title and exclusive possession cannot be faulted. The ground argued on behalf of the appellant does not raise any substantial question of law.

10. In these facts and circumstances, I do not find it appropriate to issue notice in the application for condonation of delay. In the facts and circumstances of the case, delay is condoned and the interim application is allowed.

11. For the reasons recorded above, second appeal is dismissed.

[GAURI GODSE, J.]