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

+ RSA 40/2018, CM APPL. 8223/2018, CM APPL. 6001/2019

CM APPL. 6002/2019

SAVITRI

.....Appellant

Through: Mr. Vikram Sehdev and Mr. Pradeep
K., Advocates.

versus

CHANDER BHAN DASS

.....Respondent

Through: Mr. Paritosh Budhiraja, Ms. Larika
Khandelwala and Mr. Rishi Raj
Deswal, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

19.11.2025

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By way of the present regular second appeal filed under section 100 of the Code of Civil Procedure 1908, the appellant impugns judgment and decree dated 05.12.2017 passed by the learned Additional District Judge-11, Central-District, Tis Hazari Courts, Delhi ('first appellate court') in appeal bearing RCA No.61487/16, whereby the learned first appellate court has allowed the appeal and set-aside judgment and decree dated 30.11.2013 passed by the learned Civil Judge, West-District, Delhi ('trial court') in suit bearing No.87/06.

2. *Vidé* judgment dated 30.11.2013, the learned trial court had dismissed the suit filed by the respondent (plaintiff) for possession, use and occupation charges, and perpetual and mandatory injunctions against the appellant (defendant) in relation to Kothri admeasuring about 8'x7' and vernandah admeasuring about 5'x6' in property bearing No. 5527, Shora Kothi, Pahar Ganj, New Delhi ('suit property').



3. Mr. Vikram Sehdev, learned counsel appearing for the appellant submits, that in the proceedings in the suit, one of the issues framed was as to whether the appellant had become owner of the suit property by way of adverse possession; and onus to prove this issue was cast upon the appellant. This issue was however decided against the appellant and in favour of the respondent by the learned trial court, observing as follows:

“From the cross examination of the defendant dated 16/03/13 itself it becomes clear that even as per the defendant, her father-in-law is the owner of the suit property and further it has been mentioned that her father-in-law is still alive.

As the defendant herself has contended that her father-in-law is the owner of the suit property, therefore, the defendant cannot become the owner of the suit property by way of adverse possession as she is not claiming herself to be the owner of the suit property.

Accordingly this issue is decided against the defendant and in favour of the plaintiff.”

4. Mr. Sehdev submits, that in relation to another issue, as to whether the respondent was entitled to a decree of possession, the learned trial court has held that Will dated 15.12.1971, based on which the respondent was claiming title over the suit property, appeared to be a forged and fabricated document, since the Will dated 15.12.1971 was not produced in original before the learned trial court but only a photocopy of the Will was produced and was exhibited as Ext. PW-1/3. Learned counsel points-out however, that it was the respondent's case that Will dated 15.12.1971 had been probated *vidé* order dated 12.02.1997 passed by a Co-ordinate Bench of this court in Probate Case No.10/1978 titled *Chander Bhan Dass vs. State & Ors.*



5. However, in view of its finding that the Will appeared to be forged, the learned trial court held that the respondent had failed to prove any right, title or interest in the suit property and was not entitled to a decree of possession. Based on this decision, the learned trial court has also rejected the respondent's claim for recovery of use and occupation charges, holding that since the respondent was not entitled to recovery of possession, he was also not entitled to recover any use and occupation charges. The learned trial court has accordingly dismissed the suit.
6. Mr. Sehdev submits however, that *vidé* impugned judgment dated 05.12.2017, the learned first appellate court has reversed the findings of the learned trial court *inter-alia* on the following basis:

“19. Thus the defendant has not been able to establish that she is the owner of the suit premises or has any ownership rights in the suit premises. She has admitted that she derives her rights in the suit premises from her father in law Sh. Asharfi Lal, who was occupying the suit premises since even prior to the birth of her husband. She further stated that Sh. Asharfi Lai was the owner of the suit premises, a plea which she has not been able to prove. However she has failed to prove that her possession of the suit premises was in her own independent right and was open, hostile and adverse qua the plaintiff. Hence, it cannot be said that she became the owner of the suit property by adverse possession. This issue no. 2 was therefore rightly decided by the Ld. Civil judge in favour of the plaintiff.

“20. Further before the Ld. Trial Court the appellant/plaintiff had also examined Shri Rameshwar Singh, the attesting witness to the relinquishment deed dated 19.02.1998 as PW3. He had deposed that Shri Asharfi Lal was a tenant in the suit premises under the plaintiff and he had surrendered the tenancy by executing relinquishment deed dated 19.02.1998 which is Ex. PW2/1, however, the defendant unauthorizedly occupied the suit



premises. PW 3 has also stated during his cross examination that the previous landlord used to issue rent receipts in favour of Shri Asharfi Lal in his presence and even the plaintiff also used to issue rent receipts to Sh. Asharfi Lal.

** * * * **

“22. Plaintiff has also deposed that Sh. Asharfi Lai was a tenant in the suit premises under the previous owner Mahant Manohar Das and thereafter under the present plaintiff and Sh. Asharfi Lai had surrendered his tenancy vide relinquishment deed dated 19.02.1998 which is Ex.PW2/1. There is nothing in the cross examination of PWs which discredits their testimonies. The relinquishment deed dated 19.02.1998, Ex. PW2/1 therefore stands proved.”

On the above basis, the learned first appellate court has decreed the suit for possession, and has also proceeded to award use and occupation charges.

7. It is the contention of learned counsel for the appellant, that the respondent had failed to prove the Relinquishment Deed dated 19.02.1998 that was claimed to have been executed by Sh. Asharfi Lal (father in-law of appellant) relinquishing (surrendering) his tenancy rights in the suit property in favour of Mahant Chander Bhan Dass (respondent). It is contended that Relinquishment Deed dated 19.02.1998 was neither produced nor proved in the course of trial.
8. Mr. Sehdev submits, that though in the course of deposition of one Subedar Singh (PW-4) at the trial, a certain relinquishment deed was exhibited as Exhibit PW-2/1 (the exhibit number or the witness number being inaccurate), that was not the relinquishment deed that was relied upon by the respondent, since the respondent had relied



upon a relinquishment deed, a copy of which is appended as Annexure A-3 to the present regular second appeal.

9. Upon considering the rival contentions raised by the parties, it would appear that the main bone of contention is whether the relinquishment deed appended as Annexure A-3 to the present regular second appeal, *is the same* relinquishment deed that was adduced before the learned trial court by way of affidavit evidence dated 17.12.2002 filed by PW-4 (Sh. Subedar Singh) and exhibited in the course of his deposition as exhibit PW2/1.
10. Since at this late stage of the present regular second appeal, it is neither possible, nor within the remit of a second appeal, to decide as to whether the relinquishment deed appended as A-3 to the present appeal is the same as the relinquishment deed referred to as Exhibit PW-2/1 in the affidavit evidence of PW-4, this court is of the view that it cannot enter upon that controversy. Clearly, whether or not two documents (produced in original or in photocopy) before the learned trial court are the same, is squarely a question of fact, which cannot be examined in a second appeal.
11. When that is done, it is found that the proposed questions of law set-out at paraS 1.A (i), 1.A (ii) and 1.A (v) of the appeal all relate to Relinquishment Deed dated 19.02.1998, which deed has now been dropped from consideration; and therefore these proposed questions of law do not require to be considered.
12. However, *even having dropped* the relinquishment deed in question from consideration, the remaining purported questions of law set-out in the memo of appeal require to be examined.



13. The proposed questions of law set-out at paras 1.A (iii), 1.A (iv) and 1.A (vi) need to be addressed next. These questions of law read as follows :

“iii) Whether the Present Respondent is having better (sic) title documents of ownership of suit property to evict the Appellant claiming to be owner on the basis of Probated Will dt. 15-12-1971 executed by Mahant Manohar Dass who was not having any documentary proof of ownership. As such the Appellant is also owner in adverse possession, as the respondent.

iv) Whether Grant of Probate is a Declaration to the Ownership of suit Property, especially the order for grant for probate dt.12-02-1997 was to administered the estate of the deceased. The right of ownership was not decided therein.

vi) Whether Ashrafial was the tenant in the suit property are not or in adverse possession since 1947 and the status of the Appellant since from her marriage would only reveals, when the present respondent comply the directions passed the Hon'ble Delhi High Court in grant of Probate dt.12-02-1997 to comply the directions which are reproduced as under “Sh. Chander Bhan Dass the Chela of the deceased and the executor named in the said Will, he having undertaken to administered the same and to make a Full and true inventory of the said property and credits and Exhibits the same in this court within six months from the date of this grant or within such further time as the court may from time to time appoint, and also to render to this court, a true account of the said property and credits within one year from the same date or within such further time as the court may from time to time appoint.” The said true inventory in respect of the Credit, assets of the properties was to be prove before the trial court from where it would reveals that the Asharifi Lal was the tenant.”

14. However, upon a consideration of the aforesaid questions of law, it is found that it is not in dispute that Will dated 15.12.1971 was probated *vidé* order dated 12.02.1997 made by the Co-ordinate Bench of this



court in Probate Case No.10/1978, which probate has never been challenged by the appellant.

15. While it is true that grant of probate does not confer ‘title’ over the property that is subject matter of the probate; and a probate order relates only to the proof of a Will, once the Will had been proved, it would lead to the inevitable inference that under the Will the respondent had the right to *administer* the suit property, which itself would amount to a *better* title than that of the appellant. As a matter of fact, this would answer the questions of law set-out at para 1.A (iii) and 1.A (iv) as set-out above.
16. Insofar as the proposed questions of law set-out at para 1.A (vi) is concerned, it relates back to the appellant’s contention that she had become entitled to the suit property by way of adverse possession.
17. This issue was dealt-with by the learned trial court in its judgment dated 30.11.2013, where the learned trial court had decided the issue of adverse possession raised by the appellant in the following way:

“8. ISSUE NO.2- Whether defendant has become the owner of the suit property by way of adverse possession? OPD

The onus to prove this issue was upon the defendant.

From the cross examination of the defendant dated 16/03/13 itself it becomes clear that even as per the defendant, her father-in-law is the owner of the suit property and further it has been mentioned that her father-in-law is still alive.

As the defendant herself has contended that her father-in-law is the owner of the suit property, therefore, the defendant cannot become the owner of the suit property by way of adverse possession as she is not claiming herself to be the owner of the suit property.

Accordingly, this issue is decided against the defendant and in favour of the plaintiff.”

(bold and underscoring in original)



18. This issue has also been duly addressed by the learned first appellate court in para 19 of the impugned judgment dated 05.12.2017, which reads as follows:

“19. Thus the defendant has not been able to establish that she is the owner of the suit premises or has any ownership rights in the suit premises. She has admitted that she derives her rights in the suit premises from her father in law Sh. Asharfi Lal, who was occupying the suit premises since even prior to the birth of her husband. She further stated that Sh. Asharfi Lal was the owner of the suit premises, a plea which she has not been able to prove. However she has failed to prove that her possession of the suit premises was in her own independent right and was open, hostile and adverse qua the plaintiff. Hence, it cannot be said that she became the owner of the suit property by adverse possession. This issue no. 2 was therefore rightly decided by the Ld. Civil judge in favour of the plaintiff.”

19. As a sequitur to the above discussion, this court is of the view that there is no question of law, muchless any substantial question of law, that arises for consideration in the present regular second appeal.
20. The present regular second appeal is accordingly dismissed.
21. All pending applications stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 19, 2025/ak