

Sh Latafat (Painter) Vs. the Mcd and ors.

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Court : Delhi

Decided On : Sep-10-2013

Judge : V.K.Shali

Appellant : Sh Latafat (Painter)

Respondent : The Mcd and ors.

Advocate for Def. : Mr. Amandeep Joshi

Advocate for Pet/Ap. : Mr. Charan Singh, Mr. S.C. Sharma

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + R.S.A. No.207 of 2013 Decided on :

10. h September, 2013 SH LATAFAT (PAINTER) Through: Appellant Mr. Charan Singh & Mr. S.C. Sharma, Advocates. Versus THE MCD & ORS. Through: Respondents Mr. Amandeep Joshi, Advocate for R-1. CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

(ORAL) C.M. No.14158/2013 (for delay) 1. This is an application seeking condonation of 24 days delay in filing the appeal.

2. For the reasons mentioned in the application, the same is allowed and delay of 24 days in filing the appeal is condoned as sufficient cause has been shown.

3. The application stands disposed of. R.S.A. No.207/2013 & C.M. No.14157/2013 (for stay) 1. This is a regular second appeal under Section 100 CPC against the judgment dated 15.4.2013 passed by the Additional District Judge dismissing the appeal being R.C.A. No.9/2012 of the appellant upholding the judgment and decree dated 3.10.2009 passed by the trial court in Civil Suit No.512/2008.

2. Briefly stated, the facts of the case are that the present appellant filed a suit for permanent injunction claiming himself to be the purchaser of a built-up stall (thara) bearing Municipal No.79 in Block No.26, Trilokpuri, Delhi measuring 7 x 6 feet since 9.5.1989. It has been alleged by him that from 1989 onwards, he is in possession of the said stall and he had purchased it on the basis of power of attorney and other documents from one Salim, s/o Babu. Since, he was fearing that he will be dispossessed, therefore, the said suit for permanent injunction was filed.

3. The respondent/MCD contested the suit and took the plea that the appellant was an unauthorized occupant as the said stall was allotted to one Mohd. Qamar under the terms and conditions of the licence. The allottee Mohd. Qamar was not entitled to transfer the same to anybody. Since Mohd. Qamar had transferred the stall to one Salim, s/o Babu in contravention of the terms and conditions of the licence, accordingly, the licence was cancelled and possession was sought to be retrieved.

4. On the pleadings of the parties, the learned trial court framed five issues. So far as issue No.4 is concerned, it was framed with regard to the fact as to whether the appellant was entitled to permanent injunction as prayed for. This issue was decided against the appellant holding the very allotment of the thara to Mohd. Qamar was by a deed of licence under which Mohd. Qamar was not entitled to transfer the same and since the transfer by Mohd. Qamar had been done in violation of the licence to one Salim, who in turn had further allegedly transferred it to the appellant, therefore, the appellant was not entitled to any injunction. The learned trial court, accordingly, dismissed the suit for permanent injunction on the basis of this reasoning. It also referred to Section 17 (1) (b) of the Registration Act by holding that a person in order to claim any right, title or interest in any

immovable property must base the same on some registered document. In the absence of the same, the appellant could not be considered to be the owner of the thara.

5. Feeling aggrieved, the appellant preferred the first appeal being R.C.A. No.9/2012, in which also he was unsuccessful. Still not feeling satisfied, the present regular second appeal has been filed.

6. I have heard the learned counsel for the appellant. The learned counsel has not been able to make out any question of law arising from the appeal much less substantial question of law. Accordingly, the appeal is totally misconceived and the same is dismissed. V.K. SHALI, J.

SEPTEMBER 10 2013 AA

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