

Hari Kumar Vs. Sat Narain Mehra

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Court : Delhi

Decided On : Dec-11-1995

Reported in : 1996(36)DRJ96

Judge : Usha Mehra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 7, Rule 3; [Evidence Act, 1872](#)
- Sections 114

Appeal No. : Regular Second Appeal No. 8 of 1995

Appellant : Hari Kumar

Respondent : Sat Narain Mehra

Advocate for Pet/Ap. : C.L. Dhawan and; Harish Malhotra, Advs

Judgement :

Usha Mehra, J.

(1) Shri Hari Kumar, in this Second appeal has assailed the order of the First Appellant Court on the ground that the First Appellant Court, ignored the evidence adduced by the appellant herein (defendant before the Trial Court). He ignored the established fact that appellant was the tenant of Shri Shiv Kumar and not of the present respondent (plaintiff before the Trial Court). The Trial Court after detailed discussion came to the finding that the appellant herein was in exclusive

possession of the suit property since 1973. And that he had been paying the rent to Shri Shiv Kumar uninterruptedly. This finding has been reversed by the First Appellant Court without assigning any reason. thereforee, the impugned order is liable to be set aside. Moreover, the findings of the First Appellat Court are based on conjectures and surmises. First Appellant Court presumed without proof that property in dispute may be falling under properties bearing No.812 and partly m property No.813 This fact was not even pleaded by the respondent herein. Plaint being vague with regard to the identity and location of the property in question, the suit on this ground alone ought to have been dismissed. The First Appellant Court fell in error in relying site plan Ex.PW-1/1 which in itself was vague as it does not show any demarcation of the properties nor furnish properties number. Conclusion arrived at by the First Appellant Court that the tea stall was being run at 'Chabutra' which is not enclosed, is based on no evidence at all. Respondent had not been able to show his possession even for a single day on the property in question. The appellant being in exclusive possession of the disputed properly hence a tenant and not a licensee. This fact has not been taken note of in the impugned judgment rather ignored the same. The First Appellant Court ought to have considered the pleadings of the parties and dismissed the suit due to insufficient court fee and lack of jurisdiction. Having failed to do so the First Appellant Court fell in error. The decision with regard to identity of the property is based merely on assumption hence the findings of the First Appellant Court are liable to be set aside.

(2) To appreciate the challenge to the impugned order, the relevant facts are that respondent Sh.Sat Narain Mehra filed a suit against the present appellant for mandatory injunction. He sought direction against this appellant not to use the portion in his occupation situated in an open space in Chhatta (Chabutra) between the shop in the tenancy of Shri Om Prakash and the properly known as Lal Mal Sangam Mal shown red in the site plan. He being Karta of M/s Ram Kishan Dass Bal Kishan, Huf, was owner of properties bearing No.813-817, Katra Neel, Chandni Chowk, Delhi. Appellant herein (defendant before the Trial Court) had been given the said open space on license by the plaintiff (respondent herein) to run the tea stall in April, 1973. The defendant was allowed to use the open space keeping in view his poor conditions. It was the term of the license that defendant/appellant herein would use the place for running his tea stall untill such

time it was not required by (he plaintiff (respondent herein). As soon as the same was required the possession of the premises was to be delivered back without any reservation. The license was revocable at the discretion of the plaintiff (respondent herein). Since the premises in question was required by the respondent (plaintiff before the Trial Court) hence notice terminating the license was issued on 26th July,1982. Appellant (defendant before the Trial Court) replied to the same refusing to surrender back the disputed portion.

(3) Basing on these facts suit for mandatory injunction was filed. Appellant (defendant before the Trial Court) took legal pleas besides setting up his defense on merits. He pleaded that he was the tenant of the said premises under one Shri Shiv Kumar Seth for the last more than 14 years. He further pleaded that he never took the premises on license from the respondent (plaintiff before the Trial Court). He was in occupation of the disputed premises since 1969 as tenant of Shri Shiv Kumar and that the property in which he was running the tea stall did not belong to the respondent herein (plaintiff before the Trial Court). That he had been regularly paying rent to the owner Shri Shiv Kumar against the receipt. He took legal plea with regard to lack of jurisdiction because according to him suit for possession should have been filed. Property had not been properly valued for the purpose of court fee. Suit suffers from non-joinder of Shri Shiv Kumar a necessary party.

(4) In replication the present respondent (plaintiff before the Trial Court) denied the legal objections as well as the merits. He pleaded that properties bearing No.814, 815 and 816 belonged and owned by Shri Shiv Kumar. But so far as properties bearing No.812, 813, 817 to 820 were owned by the plaintiff i.e. (respondent herein) Shri Shiv Kumar had nothing to do with the disputed property. That the tea stall of the appellant (defendant before the Trial Court) infact was situated on the property belonging to the respondent (plaintiff before the Trial Court). The Trial Court framed three issues namely :-

1. Whether the suit is bad for non-joinder necessary part as alleged in para No.2 of the written statement? 2. Whether the plaintiff is entitled for the relief of injunction as prayed 3. Relief.

(5) Issue No.1 was decided by the Trial Court in favor of the respondent herein (plaintiff before the Trial Court). That finding was never challenged by the present appellant (defendant before the Trial Court). The First Appellant Court has reaffirmed the finding of the Trial Court regarding this issue. In view of the concurrent finding on this issue it cannot be interfered. Both the courts have held that Shri Shiv Kumar was not a necessary party. Finding on issue No.1 in fact has not been assailed in this appeal also. Primarily we are concerned in this appeal on the finding on issue No.2. Trial Court decided issue No.2 in favor of the appellant (defendant before the Trial Court) thereby holding that he was a tenant of Shiv Kumar. That he was running tea stall on property No.816, belonging to Shri Shiv Kumar Seth. The First Appellant Court reversed this finding and came to the conclusion that the appellant herein (defendant before the Trial Court) failed to establish that the tea stall was being run on property No.816 belonging to Shri Shiv Kumar and that the alleged rent receipt Ex.DW-1/1 was doubtful hence could not be relied upon.

(6) It is in this backdrop that we have to appreciate the arguments and the legal submissions made by the learned counsel for the parties. Admittedly, in Second Appeal the scope to reappraise the evidence is very limited. It is only when there is . misapplication of law or material facts have been ignored that this Court in Second Appeal could be called upon to interfere. In the instant case there is clear divergence in the appreciation of evidence by the Trial Court as well as by the First Appellant Court on the question of identity, location and the number of the disputed property in occupation of the appellant herein. It is no doubt true that in the plaint plaintiff (respondent herein) did not mention the property number where the Tea Stall has been functioning but the plaintiff (respondent herein) in the plaint described (he situation of the property in para 2 of the plaint like this 'An open space in Chhatta between shop in tenancy of Om Prakash and the property Lal Mal Sangam Mal shown red in the site plan' (underlining is mine). It has also been mentioned by the plaintiff (respondent herein) that he was the Karta of Huf and thus owner of properties bearing Nos.813-817. However, in replication which was filed with the permission of the Court he clarified that he was also owner of properties bearing No.812. 818, 819 and 820. Now the question for consideration is whether sufficient description and identity of the disputed premises was given in

the plaint or not? Mr.C.L. Dewan appearing for the appellant contended that the description given in para 2 of the plaint is vague. Respondent herein ought to have the property number where Chatta is situated and where the appellant herein is running his tea stall. Moreover, in the site plan attached with the plaint no demarcation was given in the absence of which suit was not maintainable. To support his arguments he placed reliance on the decision of Orissa High Court in the case of Lucy Naron V. Raghunath Jew Dije X 1992 (3) C C C 560, where it has been held that 'in a suit relating to immoveable property plaint shall contain a description of the property sufficient to identify it. If the suit property is the whole of the plot in the settlement map, mere mention of the survey number and the Khata and Mauza to which it appertains would be sufficient for its identification. Where the suit is in respect of a portion of a plot further particulars are necessary for its proper identification.

(7) Relying on these observations Mr.C.L.Dhawan contended that the respondent herein (plaintiff before the Trial Court) ought to have described with certainty the portion where he alleges the tea stall of the appellant had been functioning. On assumption no decision could be enforced on the appellant (defendant before the Trial Court). Definite identification of the property being not possible from the description given in the plaint and the site plan the suit ought to have been rejected. There cannot be any quarrel with the proposition of law laid down in Lucy Naron's case (supra). But each case has to be decided on its own merits. In Lucy Naron's case (Supra) the only averment made in the plaint was that the disputed plot according to the plaintiff was a vast sandy area near the sea and was lying waste. After purchase plaintiff No.2 claimed to have reclaimed the said area by raising caesarian and cashew nut plantation. No description of the plot as such was given in the plaint. This is clearly a vague description of the suit property. It was in this background that Orissa High Court made the above observations. That is not the case in hand. As pointed out above, the respondent (plaintiff before the Trial Court) in para 2 of the plaint specifically mentioned that the portion where the tea stall was being run by the present appellant was an open space belonging to plaintiff situated in Chhatta between the shop under the tenancy of Shri Om Prakash and the property Lal Mal Sangam Mal. The said portion is shown red in the site plan attached. Adjacent shop to the Chhatta marked red in the site plan

Ex.PW-1/1 is the shop of Shri Om Prakash. The shop of Shri Om Parkash has been shown as Mark-B on Ex.PW.1/1. This fact has been admitted by no less a person than Shri Hari Kumar appellant herein. Appearing as DW-5 he admitted that there was a common wall between the property Mark-B and ins tea stall, It is an admitted fact on record that property Mark-B is In occupation of Shri Om Prakash i.e. the same Om Parkash whose name has been mentioned in para 2 of the plaint. Shri Rajiv Seth, DW-3 also admitted that the portion where tea stall was being run is adjoining a shop marked 'B'. He also admitted the fact that shop marked 'C' in Public Witness -1/1 was opposite to the tea stall of the appellant (defendant before the Trial Court). Both the shops marked 'B' and 'C' in Public Witness -1/1 admittedly belong to respondent herein (plaintiff before the Trial Court). Factum of shops marked 'B' and 'C' belonging to plaintiff (respondent herein) has not been denied rather in no uncertain words admitted by the appellant and his witnesses. Shri Shiv Kumar appearing as DW-6 admitted in no uncertain words that there is a common wall between the shop of the appellant herein and Shri Om Prakash occupier of Shop Mark-B in the site plan Public Witness -1/1. In view of the admission by the appellant and his witnesses it cannot be said that the respondent (plaintiff before the Trial Court) had not given sufficient description an identity about the portion in occupation of the appellant (defendant before the Trial Court) in the plaint or that the plaint suffered vagueness. The respondent herein in the plaint as well as in the replication specifically pleaded that properties bearing No.812, 813, 817 to 820 belonged to him and the Chhatta (Chabutra) where the tea stall is being run fell in his property. In these circumstances, it was immaterial to give the exact number of the properly where Chatta was situated. The description given of the Chatta i.e, open space in between the shop of Om Prakash and Lal Mal Sangam Mal as shown red in the site plan, to my mind, cannot be called vague. No description of the property could be given more aptly and properly than this. Nothing would have turned even if exact number of the property had been given. Shri Om Prakash's shop marked 'B' on Ex.PW-1/1 is not in dispute. Lal Mal Sangam Mal properly is also shown in the plan Ex.PW-1/1 has also not been in dispule. The site plan Ex.PW-1/1 has been admitted to be correct. thereforee, to my mind, it cannot be said that the description of the property had not been given properly. This admitted site plan Ex.PW-1/1 formed part of the

plaint. The description of Chatta slu)wn red in Ex.PW-1/1 sufficiently identify the property in occupation of the appellant herein (defendant before the Trial Court). DW.6 Shri Shiv Kumar admitted that Chatta (open space) in occupation the appellant herein fall outside the gate shown at 'A' in Ex.PW-1/1 and also beyond the straight line. In fact straight line Ex.A-1 to A-2 divide the properties of the respondent (plaintiff before the Trial Court) and Shri Shiv Kumar. In view of these admissions the First Appellant Court was justified in coming to the conclusion that property in question had been property described. Hence, the observations in Lucy Naron's case (supra) are in no way of any help to the appellant. One should not loose sight of the fact that the description of the properly given in the plaint was not denied by the appellant herein in his written statement. This shows that the appellant was aware as to which properly the respondent (plaintiff before the Trial Court) was talking about. That is the reason he alleged that the said property belonged to Shri Shiv Kumar Seth. Had the identity of the property and the description of the property being vague or nol clear, nothing prevented the appellant (defendant before the Trial Court) to take this as the first objection in the written statement. Rather from the reading of preliminary objection No. 1 of the written statement one can infer that the discription of the properly as given in the plaint and Ex.PW-1/1 was clearly understood by the appellant (defendant before the Trial Court). This is further fortified from the averments made by the appellant in the written statement wherein he stated that the 'premises under the tenancy and in occupation of the defendant does not form part of the properly belonging to the plaintiff. This shows appellant (defendant before the Trial Court) clearly understood the description arid identity of the property because Ex.PW-1/1 formed part of the pleadings. Moreover, it was for the appellant (defendant before the Trial Court) to prove that the properly which was in his occupation belonged to Shri Shiv Kumar. The fad that respondent (plaintiff before the Trial Court) was owner of properties hearing No.812, 813, 187 to 820 had not been in dispute. This fact was admitted by the appellant herein as well as by almost all his witnesses. For the reasons stated above, I find no merit in the contention of the appellant that the suit did nol disclose the identity of the properly in question or that suit should have been dismissed

(8) Now turning to the question whether there exist demarcation in the site plan EX.PW- 1/1. in fact from the evidence which has come on record it is apparant that the correctness of the site plan Ex.PW-1/1 was admitted by all the witnesses including the appellant herein. Appearing as DW-5 he admitted that he understood the plan Ex.PW-1/1. If Ex.PW-1/1 was vague and demarcation nol understood then the appellant herein should have said so when he appeared as DW-5. He admitted that there was a straight wall in X-1 and X-2 in the site plan Ex.PW-1/1 and further admitted that this wall divides the properly No.816 with others. There is a gale of property No.816 marked 'A' and that this tea stall falls outside the said gate. Perusal of Ex.PW-1/1 shows that X-I and X-2 divide the other properly of Lal Mal Sangam Mal i.e. properly of Shri Shiv Kumar and the property owned by the respondent herein. From gate 'A' admittedly entrance is made to the property of Lal Mal Sangam Mal ancestral of Shri Shiv Kumar and outside this gate is the property in dispute which fell to the properties owned by respondent herein. It further find support from the fact that shops marked 'B' &'C' are owned by the respondent herein (plaintiff before the Trial Court). These shops are also outside the gale marked 'A'. These shops are admittedly owned by the present respondent. Like shops 'B' and 'C' the portion shown red on Ex.PW-1/1 also fall outside the gate. It has a common wall with shop 'B' in occupation of Shri Om Prakash. It was neither the case of the appellant nor of Shri Shiv Kumar that shop 'B' was owned by Shiv Kumar rather they admitted that shop marked 'B' was owned by the respondent herein . If the suit portion fell in property No.816 then Shri Shiv Kumar should have produced the record which the Court directed him to do. Shri Shiv Kumar appearing as DW-6 categorically stated that he had been maintaining books of accounts and in such books of accounts he had entered the rent received from various tenants of his property No.816, Katra Neel, Ghandni Chowk, Delhi. He further stated that he had been mentioning the names of the tenants in his balance sheets while submitting the same to the Income Tax Department. On his saying so the Trial Court adjourned the case with direction to produce the said books of accounts, counter foils of the rent receipts and the balance sheet for the year 1972 and onwards. He was directed on 12th August,1987 to appear again on 14th August,1987 Along with the record. On 14th August,1987 when he appeared he did not bring the books of accounts as well as

the counter foils and balance sheet with him on the ground that these were in possession of his Chartered Accountant. DW-6, Shri Shiv Kumar never produced that books of accounts at any time. Not even on 27th August, 1987 when he appeared again. therefore, the First Appellant Court was justified in drawing inference that this was a material evidence which clinched the issue. Shri Shiv Kumar inspire of directions by the Court when did not produce the record the Trial Court should have drawn adverse inference. Instead of doing so Trial Court simply ignored this aspect. Hence the First Appellant Court after analysing this part of Shiv Kumar's evidence rightly came to the conclusion that purported rent receipt Ex.PW-I/1 could not be relied. Adverse inference was rightly drawn. Had the books of accounts and statement showing the names of tenants been produced it would have proved that the appellant herein (defendant before the Trial Court) was not the tenant on property No.816. The best evidence having been withheld by the alleged owner namely Shiv Kumar, the First Appellant Court rightly concluded that the appellant herein was not the tenant of Shri Shiv Kumar nor Shri Shiv Kumar was the owner of this open space i.e.Chatta.

(9) Having come to the conclusion that best evidence had been withheld by Shri Shiv Kumar who alleged himself to be the land-lord of the appellant, we are now left with only Ex.DW-1/1. The rent receipt Ex.DW-1/1 was not produced at the initial stages. This was adduced with the permission of the Court granted on 4th July, 1986 i.e. after the plaintiff (respondent herein) had already closed his evidence. Shri Shiv Kumar did say that he issued DW-1/1. It bears his signatures. To rebut that this was not genuine receipt the respondent herein (plaintiff before the Trial Court) in the cross examination of Shri Rajiv Seth proved that Shri Shiv Kumar used to issue printed rent receipts with his name printed on the same. That he being tenant of Shri Shiv Kumar was getting only rent receipts with the name of Shri Shiv Kumar printed on the same. He never got any rent receipt issued by Shiv Kumar without his name being printed on the same. Shri Shiv Kumar appearing as DW-6 admitted that the rent receipts issued by him were having Serial number. But DW-1/1 is neither having name of Shri Shiv Kumar printed on it nor bears any Serial number. Mr.Dewan, however, contented that Ex.DW-I/1 could not be discarded on presumption that the same was forged because once a document had been exhibited without objection the court cannot now reject the same. To

support his arguments, he placed reliance on the decision of Allahabad High Court in the case of .4/1 Hasan V. Matiullah & Ors. : AIR1988 All57 . I am afraid this judgment is of no help to him. In that case the age of the document which got exhibited was about 73 years. The objection was with regard to the mode of proof. It was also stated that in the absence of proof of execution and attestation the presumption that its execution and genuineness by virtue of Section 90, 90A could not be raised. Rejecting this argument the Court opined that it was not open to the Court to raise presumption. It was incumbent on the Court placed in such a situation to afford such an opportunity to the parties to establish their case on the basis of the document. Presumption could be drawn of genuineness of Ex.DW-1/1 particularly in view of the testimony of DW-3 Rajiv Seth, DW-6 Shiv Kumar. It has been established on record that Shri Shiv Kumar used to issue rent receipts only on the printed form where his name was printed. Shiv Kumar also admitted that he had been issuing rent receipts with Seriall numbers and that he had got the counter foils of the same. He did not produce the counter foils. The rent receipt DW-1/1 as observed above neither got his name printed nor bears Seriall number. thereforee, in this view of the matter the First Appellant Court drew the adverse presumption which is what is permitted under law and so held even by the Allahabad High Court in the above case. I see no reason to differ from the observations of the first Appellant court in this regard.

(10) So far as Shri Lok Nath Sharma, DW-4 is concerned, he was sub-tenant of another tenant of Shri Shiv Kumar Seth. He also admitted in the cross examination that Shri Hari Kumar appellant herein (defendant before the Trial Court) had talk of tenancy with the plaintiff (respondent herein). It shows admission on his part that the property where the appellant (defendant before the Trial Court) was running tea stall belonged to the plaintiff (respondent herein). Shiv Kumar tried to explain the issuance of Ex.DW-I/1 but when subjected 'to further cross .examination had to admit that all receipts issued by him bore Seriall number. If the appellant herein had been his tenant then by producing counter foils of the receipts issued to appellant he could have proved that appellant was his tenant. But without any cogent reason or giving any cogent Explanationn he withheld the best evidence. Appellant has failed to produce any other rent receipt with the printed name of Shri Shiv Kumar and having Seriall number. In this view of the matter, the First

Appellant Court's observation and inference that no much reliance could be placed on this single receipt DW-I/I cannot be interfered. The suit was filed in September, 1982 whereas the appellant produced only one rent receipt. He could have produced other receipts also with Serial number and the printed name of Shiv Kumar. But no steps were taken to produce the same hence the First Appellant Court did not commit any error by ignoring this piece of evidence on which erroneously Trial Court placed reliance. No reliance could be placed on such a document particularly when the alleged executor of the same and who professed himself to be owner of the property in occupation of the appellant herein withheld the best evidence i.e. the list of the names of the tenants as furnished to the Income Tax Department and the counter foils of the receipts inspire of direction to produce by the Trial Court. Explanationn for non-production of these documents on the ground that these were in possession of his Chartered Accountant is neither appreciable nor understandable. What prevented him to obtain the same from his Chartered Account- and produce the same in Court. It cannot be left for guessing because the answer is obvious.

(11) In view of the above discussion, two facts clearly emerges from the testimony of DW-6 Shiv Kumar, DW-5 Hari Kumar, appellant herein and his other witnesses that the properly i.e. Chalta where the tea stall is being run is outside the gate 'A' of Shri Shiv Kumar. thereforee, once it is admitted that the property in question is outside the gate and the straight wall dividing the properly, it cannot be said or presumed that the Challa belongs to Shri Shiv Kumar or falls in property bearing No.816. Secondly, the correctness of Public Witness -1/1 has not been denied by Shiv Kumar as well as by appellant herein. Perusal of the same shows that the portion marked red is outside the gate 'A'. It is having common wall with shop marked 'B' on Ex.PW-1/1 which property belongs to the respondent herein. Admittedly, the respondent (plaintiff before the Trial Court) did not mention specifically whether Challa fall in properly No.812, 813 and 817 or so on, but the fact remains that challa having common wall with shop marked 'B' and Shri Shiv Kumar not claiming any right over that shop whereas the respondent herein claims ownership over the same, thereforee, it can be safely said that Challa does not form part of property No.816. The wall at point 'A' to X-2 demarcates the property of Shiv Kumar from that of the plaintiff (respondent herein). Shiv Kumar also

admitted that tea stall falls outside the gate marked 'A'. If he closes the gate the entrance to other properties stand closed. If this Challa had been part of property No.816 then it could not have been outside this gate marked 'A'. Moreover, Shri Shiv Kumar withheld the best evidence as observed by the First Appellant Court. thereforee, adverse inference was drawn. Whereas the Trial Court completely ignored this important aspect of Shri Shiv Kumar's testimony. Trial Court instead of drawing adverse presumption took the view that since Shri Shiv Kumar had admitted the execution of DW-1/1 hence it was a genuine document. By arriving at this conclusion he did not discuss the non-production of documents ordered to be produced and the effect of the same. For these reasons, to my mind, the First Appellant Court rightly came to the conclusion that the decision of the Trial Court could not be sustained. Whereas respondent herein (plaintiff before the Trial Court) proved that Shri Hari Kumar appellant (defendant before the Trial Court) was occupying his property.

(12) Next question raised is whether the plaintiff (respondent herein) proved his ownership of properties bearing No.812, 813,817 to 820. To my mind, it was not necessary because once the fact of Shiv Kumar being owner of properties No. 814, 815 & 816 and respondent (plaintiff before Trial Court) owner of properties i.e.812,813 & 817 to 820 was admitted it was not necessary to prove the title deed in view of the admitted facts.

(13) So far as the objection that the suit for mandatory injunction was not maintainable, there is concurrent finding of both the Courts below. The appellant herein never challenged this finding of the Trial Court. Even otherwise the finding of both the Courts is based on the decision of the Supreme Court and I see no reason to interfere with the same. With regard to the question whether the appellant herein was a tenant or licensee. It was for the appellant to have an issue framed by the Trial Court. Instead he took the defense that he was a tenant of Shri Shiv Kumar which finding having gone against him he cannot now be allowed to agitate this point for the first time in the second appeal. The respondent (plaintiff before the Trial Court) by his testimony proved that the premises was given to the appellant (defendant before the Trial Court) on sympathetic consideration taking his poverty in view for running tea stall on license basis which part of his evidence

has not been subjected to cross examination. In view of this position the observation of the First Appellant Court cannot be Interfered with.

(14) MR.DEWAN contended that in Second Appeal finding of fact arrived at by the Trial Court cannot be reversed either by the First Appellant Court by this Court in the second appeal unless there is erroneous appreciation of the same. In this regard he placed reliance on the following decisions in the cases of Ashok Kumur V. Basantilal and Ors. : AIR 1985 MP179 and Umakanta Dass V. Pradip Kumur Ray : AIR1986 Ori196 . There is no quarrel with the law laid down in these judgments. But in the facts and circumstances of this case and as discussed above it cannot be said either on law or on facts that any interference is required in the decision of the First Appellant Court. In fact the entire approach of the Trial Court in appreciating the evidence on record was not proper. He ignored the material aspects of the case particularly with regard to the non- production of the best evidence by Shri Shiv Kumar and that sufficient description of the property in question had been given in the plaint. All other grounds now taken appears to have been given up before the Trial Court that is why the Trial court framed only two issues. Those grounds now cannot be allowed to be agitated in the second appeal.

(15) For the reasons stated above, I find no merits in the appeal nor any ground to differ from the finding arrived at by the First Appellant Court. Accordingly, the appeal is dismissed with no order as to costs.

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