



\$~28

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

+ **RSA 30/2021**

V K GUPTA

..... Appellant

Through **Mr. Himanshu Upadhyaya, Advocate.**

versus

KULWINDER PAL MALIK & ANR.

..... Respondents

Through **None.**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

%

22.03.2021

CM Nos. 11234-11235/2021 (Exemptions)

Allowed, subject to all just exceptions.

Applications are disposed of.

RSA 30/2021 & CM No. 11233/2021

Present appeal has been filed assailing the impugned order dated 09.09.2020 passed by the First Appellate Court whereby the judgment and decree in favour of the Appellant has been reversed.

Mr. Upadhyaya draws the attention of the Court to paras 7 & 8 of the impugned order and submits that the suit filed by the Plaintiff for permanent injunction was not maintainable in the absence of a relief for declaration. The Appellant is the owner of the terrace by virtue of a registered Sale Deed executed by the owner of the property, whereas the Respondent has been given a limited right by virtue of Clause 12 of the Sale Deed dated 03.05.2005.



The Respondent had filed a suit for permanent and mandatory injunction against the Appellant restraining the Appellant from dispossessing him from the suit property. On an application filed by the Appellant under Order VII Rule 11 CPC, the Trial Court on the basis of the documents on record, rejected the plaint and passed the decree dated 13.12.2018. However, on an appeal before the First Appellate Court, the judgment and decree has been set aside overlooking the documents on record whereby the Appellant is clearly the owner of the terrace as per the Sale Deed dated 03.08.2000.

After hearing the Appellant, the following substantial question of law arises in the present appeal :-

(a). Whether a suit for injunction simplicitor is maintainable without seeking declaration once the title of the Plaintiff to the property is disputed by the alleged owner?

Issue notice to the Respondent, on the Appellant taking requisite steps, through all permissible modes, returnable on 12.05.2021.

JYOTI SINGH, J

MARCH 22, 2021

yo