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

+ RFA 543/2022

MAQSOOD ALI

..... Appellant

Through: Mr. Niki Kantawala, Mr. Satyendra
and Mr. Amaya M. Nair, Advocates

versus

PARVEJ AHMED (GUDDU) & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

ORDER

% **09.11.2022**

The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 47533/2022 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

CM APPL. 47534/2022 (Delay of six days in refiling the appeal)

3. Present application has been filed by the appellant seeking condonation of delay of 06 days in refiling the present appeal.
4. For the reasons stated in the present application, the same is allowed. Delay of 06 days in refiling the present appeal is condoned.
5. Application stands disposed of.

RFA 543/2022 & CM APPL. 47532/2022 (Stay)

6. The appellant (original plaintiff) in the present appeal is challenging the impugned judgment and decree dated 01.07.2022 passed by



learned Additional District Judge-07, South East District, in Suit No. 636/2021 titled as Maqsood Ali Vs. Parvej Ahmed & Ors.

7. Vide the impugned judgment, the learned Trial Court was pleased to dismiss the suit filed by the appellant herein against the respondent (original defendant).
8. Learned counsel for the appellant submits that the appellant is the lawful owner of the suit property by virtue of a Will dated 17.03.1984, executed by late Bibi Qamrun Nisha, aunt of the appellant. Smt. Ramo Devi wife of Shri Walter Anthony was a tenant in the suit property. Smt. Ramo Devi executed a Will dated 27.10.1986 in favour of respondent No.3 which was alleged to be forged and fabricated and on the strength of the said Will, the respondent No.3 had trespassed into the suit property.
9. The appellant came to know about this fact and filed a suit No. 477/1987 for possession against the respondent herein as the GPA holder of the late Bibi Qamrun Nisha.
10. The said suit was dismissed as withdrawn with liberty to file a fresh suit. Thereafter, Bibi Qamrun Nisha arrived into an understanding with respondent No.3 whereby the respondent No.3 had agreed to vacate the suit property. However, the respondent No.3 failed to do so. After the death of Bibi Qamrun Nisha, the appellant became the absolute owner of the suit property by virtue of a Will dated 17.03.1984 executed by Bibi Qamrun Nisha. Despite repeated requests, the respondent No.3 did not vacate the suit property and hence the appellant filed a suit for possession. The said second suit bearing Suit No. 272/1999 was dismissed by the learned Trial Court



vide order dated 17.04.2007 on the ground that he did not disclose any cause of action and was also barred by time.

- 11.The appellant preferred first appeal, which was dismissed. The appellant preferred the Regular Second Appeal bearing No. 54/2008 which was finally remanded back for fresh consideration. However, during the pendency of the said RSA, the appellant came to know that respondent No.3 had sold the suit property to respondent Nos. 1 & 2.
- 12.The appellant filed an application in the pending RSA for impleadment of respondent Nos. 1 & 2. However, the said application was dismissed. Hence, left with no other option, the appellant filed the present suit for possession against all the three respondents.
- 13.Learned counsel for the appellant submits that Smt. Ramo Devi was the tenant in the suit property. There was no document on record to prove that she was the owner of the suit property and she had transferable rights qua the suit property.
- 14.Learned Trial Court had failed to appreciate that no title can be transferred to respondent No.3 by virtue of a Will dated 27.10.1986 executed by Smt. Ramo Devi in favour of respondent No.3, however, the appellant became the owner of the suit property by virtue of a Will dated 17.03.1984 executed by Bibi Qamrun Nisha. Late Bibi Qamrun Nisha had become the owner of the suit property by virtue of a Will dated 04.07.1940 executed by Mahbooh Hasan who was the absolute owner of the suit property. The Will dated 17.03.1984 and 04.07.1940 are 30 years old documents and as per section 90 of the Indian Evidence Act, 1872, there is a rebuttal presumption in favour of the correctness of the documents.



15. Learned counsel for the appellant rely on the judgment ***M. Venkatesh and Others Vs. Commissioner, Bangalore Development Authority*** reported as ***(2015) 17 SCC 1*** further argues that adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner.
16. The respondent No.3 had denied the title of late Bibi Qamrun Nisha first time only on 18.11.1987 qua his application seeking dismissal of the first suit. As the learned Trial Court wrongfully held that possession of respondent No.3 had become adverse to Bibi Qamrun Nisha w.e.f.01.05.1987.
17. This matter requires consideration.
18. Notice.
19. On the appellant taking steps, issue notice to the respondents through all permissible modes including electronic mode and dasti returnable on 17.05.2023.
20. In the meanwhile, the parties are directed to maintain status quo with respect to the title and possession of the suit property till the next date of hearing.

GAURANG KANTH, J

NOVEMBER 9, 2022

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