



\$~9

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

+ **RSA 152/2016 and CM APPL. 22261/2016**

RAJNI DEVI

.....Appellant

Through: Mr.Arjun Sanjay, Advocate.

versus

DWARIKA DEVI & ANR

.....Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

**ORDER**

%

**20.11.2024**

1. Having heard learned counsel appearing on behalf of the appellant-plaintiff, the Court takes note of the findings rendered by the Trial Court in its judgment and decree dated 18.10.2005. The Trial Court's findings rested on the fulcrum of the statement of the counsel stating that the appellant-plaintiff was not in the possession of the property. The first Appellate Court also upheld the findings of the Trial Court in its judgment and decree dated 05.02.2016. The findings rendered by the Trial Court reads as under :-

“ ....

*4. Ld. Counsel for the defendants 2 and 3 has contended that the suit of the plaintiff is not maintainable in the present form as the plaintiff is not in possession of the suit property. Ld. Counsel for the defendants has also drawn my attention to the order sheet dated 27.5.2003 wherein Ld. Counsel for the defendant no. 2 has made the statement that the plaintiff is not in possession of any portion of property no. 1356, Hanuman Mandir Gali, Gandhi Nagar, Delhi and that Shri Sunil Sharma is in possession of the entire property. The plaintiff has not rebutted the statement made by the Ld. Counsel for the defendants and has not stated anything regarding her possession in a portion of the suit property. However, on the next date of hearing, the submission had been made by the Ld. Counsel for the plaintiff that he wants to make a statement and the statement of the Ld. counsel for*



*the plaintiff was recorded separately and the Ld. Counsel for the plaintiff had made the statement that the plaintiff is in possession of the suit property as on date and she acquired the possession of the suit property on 16.7.2003 and as on date locks and keys of the plaintiff are there at the suit property. The defendant no.3, Shri Sushil Kumar had also made the statement rebutting the statement made by the Ld. Counsel for the plaintiff and had stated that the statement of the plaintiff was incorrect and that he was in the possession of the entire suit property and the goods lying in the suit property belonged to him and his lock was there on the suit property. However, by the statement of the Ld. Counsel for the plaintiff recorded on 17.7.2003 it is clear that the plaintiff was not in the possession of any portion of the suit property on the date of the filing of the suit as the Ld. Counsel for the plaintiff has admitted by stating that the plaintiff got the possession of the suit property on 16.7.2003 and this fact that the plaintiff was not in the possession of the suit property earlier to 17.7.2003 is further substantiated as there was no statement made on behalf of the plaintiff on 27/05/03 to rebut the statement of the Ld. Counsel for the defendants that the defendant no.3 was in possession of the entire suit property. However, the defendant no.3 has denied the possession of the plaintiff in any portion of the suit property by rebutting the statement of the Ld. Counsel for the plaintiff and making his own statement on 17.7.2003 with regard to having his possession of the entire suit property which is further substantiated by the fact that the plaintiff has alleged in the plaint that the defendants had piled up huge construction material on the premises and had blocked the entrance of the suit property and thus prevented the entry of the plaintiff to her property. By the statement given by the Ld. Counsel for the plaintiff on 17.7.2003, it is clear that the plaintiff was not in the possession of the suit property at the time of filing of the suit and even in the plaint the plaintiff has not averred that she is in the possession of the suit property and it has been averred by the plaintiff in the plaint that after purchasing the said property she kept a constant watch by visiting the property on weekly basis and when she was visiting the suit property with family she cooked there and stayed for weekend and that the plaintiff has also informed her relation living in the neighbourhood to keep a watch for the security and safety of the house, therefore, as per the own averments of the plaintiff in the plaint it is clear that the plaintiff was not in the occupation of the suit property.*

....”

2. However, a bare perusal of the plaint would indicate that the plaintiff has pleaded in plaint regarding his peaceful and continuous possession. In



paragraph no.3 of the plaint, following unequivocal statement has been made:-

*“3. That ever since the plaintiff became the lawful owner of the One Half of the suit property and came into peaceful, physical possession of the same on 21/11/2001, she has been enjoying its possession unobstructedly and free from any problems/difficulty . That plaintiff secured safeguarded the one half portion belonging to her being Marked Red in the site plan annexed as Annexure "B" by locks when not in use.”*

3. In view of aforesaid, the Court thus finds that the finding rendered by the Trial Court and first Appellate Court appears to be perverse and contrary to the material placed on record.

4. Accordingly, the instant appeal deserves to be admitted on the following substantial question of law:-

*(i) As to whether the findings with respect to the possession of the suit property rendered by the Trial Court as upheld by the first Appellate Court are perverse and contrary to the pleadings made in paragraph no.3 of the plaint.*

5. The other side is already represented.

6. List this appeal for hearing on 25.04.2025.

7. In the meantime, both the parties are directed to file written submission [with reference to the correspondence PDF page number of the digital record of the Court], along with the decisions sought to be relied upon [with an index of the relevant paragraphs of the said decisions to the corresponding proposition of law] within a period of four weeks from today.

**PURUSHAINDR KUMAR KAURAV, J**

**NOVEMBER 20, 2024**

*Nc/am*