

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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DATE OF RESERVE: December 08, 2009

DATE OF DECISION: December 09, 2009

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RFA No. 295 ²⁰¹⁰ / ~~2009~~
(CMI No.1/2009)

SMT. MUDDI

..... Appellant

Through: Mr. Hanu Bhaskar, Advocate

versus

JAMILA BEGUM & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed ☒ to see the judgment?
2. To be referred to the Reporter or not? ☒
3. Whether judgment should be reported in Digest? ☒

: **REVA KHETRAPAL, J.**

1. This appeal is directed against the order dated 24th September, 2008 passed by the learned Additional District Judge. The appellant has also impugned the orders dated 09.10.2006 in Suit No.345/2006 and order dated 08.05.2008 passed in review petition passed by the learned trial court.

2. The brief facts leading to the filing of the present appeal are that the appellant had filed a suit for declaration and joint possession against the respondents claiming her right in the suit property, i.e., property bearing No.7 (New M.C.D. No.763), Gali No.B-6, measuring 512 sq. ft. and property bearing No.1 (New M.C.D. No.788, 789 and 790), Gali No.8-13, measuring 475 sq. yds., both situated at Mohalla Chaudharian, Near Bari Masjid, Village Mandoli, Shahdara, Delhi. Along with the suit, the appellant had filed an

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3. In response to the application under Order XXXIII CPC, the respondents filed a reply opposing the said application. The respondent No.1 also filed an application under Order VII Rule 11 CPC for dismissal of the plaint to which the appellant filed reply.

4. On 04.10.2005, the Sub-Divisional Magistrate, Seema Puri on the directions of the learned trial court filed a report with regard to the assets of the appellant, which reads as under:-

"In response to your court's notice dated 18/8/2005, I am to submit before the Hon'ble court that the plaintiff Smt. Muddi was contacted at H.No.-B-6, Mandoli, Delhi by the field staff of this office for verification of her properties under reference. Her statement was recorded in which she has stated that she has no property any where in India in her name and any Jewelry etc. She is fully dependant on her son Daoud Ali, and the same has also been verified by her son Daoud Ali, two witnesses Sh. Wasim Khan S/o Mohd. Saleem and Sh. Bhoore S/o Mohd. Saleem and field staff in their written statements. The statements of the field staff and persons contacted at the time of survey are enclosed herewith for kind perusal."

5. On 09.10.2006, after considering the report of the Sub-Divisional Magistrate, Seema Puri and hearing both the parties, the learned Additional District Judge held that it was evident that the appellant had sufficient means to pay the court fees. The application moved under Order XXXIII CPC was accordingly dismissed and the appellant was directed to pay the Court fees before the next date of hearing.

6. Aggrieved by the order dated 09.10.2006, the appellant filed an application for review under Order XLVII Rule 1 CPC against the said order. The review application was dismissed by the learned trial court on 08.05.2008 on the ground that a perusal of the said application revealed that in the garb of review of the order the intention of the appellant was to have the matter reheard, which was beyond the scope of review. By the aforesaid order, the

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appellant was directed to pay the Court fees within four weeks from the date of the passing of the order and the matter was listed before the learned trial court on 22nd July, 2008. On the said date, none appeared for the appellant nor Court fees was filed by the appellant. The Court, however, granted one more opportunity to the appellant to file the deficient Court fees within 15 days of the date of the passing of the order and the matter was adjourned to 24th September, 2008.

7. The appellant having failed to pay the Court fees within the aforesaid period, the learned District Judge on 24th September, 2008 passed the following order:-

*"Suit No.345/06
24.09.08 at 2.00 p.m.*

Pr. As before.

None has appeared for plaintiff since morning despite repeated calls.

File perused. Present proceedings arise as a suit for declaration and joint possession was filed on behalf of plaintiff against defendants no.1 to 4. Alongwith the suit an application u/s 33 CPC was filed on behalf of plaintiff who sought to sue as indigent person. Vide order dated 9.10.06, plaintiff's application u/o 33 CPC was dismissed. The plaintiff was held to be having sufficient means to pay court fees and was directed to pay court fees before the next date of hearing i.e. 1.11.06. The plaintiff failed to pay the court fees as had been directed by the Court and filed an application u/o 47 R.1 CPC for review of order dated 9.10.06. The said application of plaintiff was dismissed vide order dated 8.5.08. While passing the order dated 08.05.08, the court observed that in the garb of the review application a rehearing had been sought in the matter to obtain fresh orders which was beyond the scope of review. No error apparent on the face of record could be pointed out and hence plaintiff's application for review of order dated 9.10.06 was dismissed vide order dated 8.5.08. The plaintiff was directed to pay court fees within four weeks of order dated 8.5.08.

The matter was listed for 22.7.08, however, none appeared for plaintiff nor court fee was filed. One more

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opportunity was granted to the plaintiff to file deficient court fees within 15 days of the order dated 22.7.08 and matter was adjourned for 24.9.08, i.e. today. Even today none has appeared for plaintiff since morning despite repeated calls. The plaintiff has failed to pay the court fees despite directions issued by the court and to comply with order passed as far back as on 9.10.06. Repeated extension of time has been granted to plaintiff despite which order has not been complied with. The court thus has no option but reject the plaint under the provision of Order 7 Rule 11 (c) CPC. No order as to cost. Decree sheet be prepared accordingly. File be consigned to Record Room."

8. The present appeal has been filed for setting aside of the aforesaid order rejecting the plaint under Order VII Rule 11(c) CPC. Notice of the filing of the appeal was issued to the respondents, who have not chosen to appear before this Court despite service of notice upon them. Mr. Hanu Bhaskar, the learned counsel for the appellant, who has been nominated by the Delhi High Court Legal Services Committee to represent the appellant, states that he has already moved an application before the said Committee on behalf of the appellant for providing her the requisite Court fees from the State funds for which there is a provision in "The Legal Services Authorities Act, 1987", but no decision on that request has so far been taken.

9. On merits, the counsel for the appellant Mr. Bhaskar states that the learned trial court in the order dated 09.10.2006 did not appreciate the facts in their correct perspective. The appellant in her statement recorded on 01.05.2006 specifically stated that she does not possess any movable or immovable property nor she has any bank account and that she has no source of income. In her cross-examination, she stated that her husband owned some land in the village and her sons, who are labourers, give her money for her meals. The said statement cannot by any stretch of imagination be construed to mean that the appellant is having sufficient means to pay the Court fees, more so, as the husband of the appellant does not stay with her for the last

more than 14 years and the appellant is entirely dependant upon one of her sons, who is a daily wage earner.

10. Apart from the above, the learned counsel for the appellant has pointed out that in the connected matter, being RFA No.140/2008, by order dated October 03, 2008, the Division Bench of this Court has permitted the appellant to file the appeal as an indigent person.

11. On perusal of the report of the Sub-Divisional Magistrate with regard to the verification of the properties of the appellant and the affidavit of the appellant that she owns no movable or immovable properties and is living with one of her sons, who is working on daily wages, I am of the view that the prayer of the appellant for suing as an indigent person ought to have been allowed by the learned trial court. I am fortified in coming to this conclusion from the orders passed by the Division Bench of this Court dated 3rd October, 2008 in the connected appeal being RFA No.140/2008. The petition is accordingly converted into a Regular First Appeal and be registered and numbered as such.

12. In the above view of the matter, the orders dated 9th October, 2006 and 8th May, 2008 are set aside. Resultantly, the order dated 24th September, 2008 rejecting the plaint under the provision of Order VII Rule 11(c) CPC is also set aside. The suit is remanded to the learned trial court for trial on merits after permitting the appellant to sue as an indigent person. The appellant shall appear before the learned trial court on 18th January, 2010 for further proceedings. The trial court shall however direct summons of the suit to be served afresh on the defendants and their counsel.

The appeal stands disposed of with the aforesaid observations and directions.

Reva Khetrapal
REVA KHETRAPAL, J

DECEMBER 09, 2009

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