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HIGH COURT OF DELHI AT NEW DELHI

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RSA 99/2009

Date of decision : 30th July, 2009

DEENA NATH TIWARI

..... Appellant

Through : Mr. Rajat Aneja, Advocate

Versus

MAZAHIR HUSSAIN & ANR.

..... Respondents

Through : Nemo.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM APPL.10366/2009 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of

RSA 99/2009 and CM APPL.10365/2009

RSA 99/2009

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the digital data is as per the physical
file and no page is missing.

1. Appellant (hereinafter referred to as 'Plaintiff') filed a suit for declaration and cancellation of documents, permanent and mandatory injunction against the respondents (hereinafter referred to as 'Defendants') claiming himself to be the owner of property bearing khasra No.421/306 in Village Chilla Saroda Banger, New Ashok Nagar, Delhi which he allegedly purchased from Shri Dharamvir through GPA, Agreement to Sell, receipt for a total consideration of Rs.6,500/- dated 4.12.1981. Plaintiff claims himself to be in exclusive possession of the suit property since after its purchase. Plaintiff came to know through one Smt. Rajeshwari Pandey that a case titled as '*Smt. Rajeshwari Pandey vs. Fazal Ahmed & Ors.*' was pending before the SDM, Preet Vihar wherein, defendant No.1 Muzahir Hussain had filed certain forged and bogus documents like Agreement to Sell, Will, Receipt and GPA dated 7.9.1989 showing his ownership in respect of the suit property which he alleged to have purchased from defendant No.2 Arvind Bhandari.

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2. On receipt of this information, plaintiff filed a suit seeking declaration for cancellation of the said documents dated 7.9.1989 being false and fabricated documents and also declaration to the effect that no sale ever took place between plaintiff and defendant No.2 and that he never sold part of the property in favour of defendant No.2. Further, he sought relief of permanent injunction for restraining the defendants from claiming any right in part of the property of the plaintiff with further relief of mandatory injunction seeking directions to the defendants to produce the documents on record and further, the said documents be returned to the plaintiff with the direction to destroy the same.
 3. The said suit was not contested by any of the defendants despite service. The trial court dismissed the suit of the plaintiff observing that in the absence of any document for which cancellation is sought, plaintiff had failed to prove the documents as false and fabricated and under the circumstances, the sole testimony of the plaintiff could not be relied upon in the absence of any

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documentary evidence and also the opinion of the handwriting expert.

4. Plaintiff filed Regular Civil Appeal (RCA) in the court of Additional District Judge, Delhi. The said appeal was also dismissed by the Appellate Court vide impugned order dated 1.4.2009.
5. The Appellate Court observed that though the photocopies of the certified copies of the challenged documents were placed on record, that by itself was not sufficient to set aside the trial court judgment for the reason that plaintiff did not summon the case file wherein the alleged documents had been filed and thus failed to prove that the documents under challenge were false and fabricated documents.
6. Aggrieved by the said judgment of the Appellate Court, the Second Appeal under Section 100 CPC has been preferred by the plaintiff.
7. In this appeal, the plaintiff has tried to raise certain substantial question of law which are as under:-

“a) Can the sole, unrebutted and unchallenged testimony given by the appellant/plaintiff in a ex-parte trial be ignored and not considered and an

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order be passed which is contrary and against the evidence placed on record by the appellant/plaintiff, by the Ld. Trial Court and upheld by the Ld. ADJ?

b) Could the trial court have gone behind the sole unrebutted testimony/evidence adduced by the appellant and pass a judgment which is totally contrary to the evidence placed on record.

c) Was the appellant required at all to prove the documents sought to be cancelled by him as the appellant was not relying upon them or asking for any relief based on them, he was merely seeking their cancellation as he had not executed the same.

d) Was the first appellate Court in grave error in not rectifying the Trial Court order wherein it had said the appellant has not then place the documents sought to be cancelled whereas he had already done so, as is clear vide order dated 04.02.2005 and which fact is also accepted by the first appellate court."

8. Mr. Rajat Aneja, learned counsel for the appellant has argued that the suit of the plaintiff which was ex-parte could not have been dismissed by the trial court and by the Appellate Court by ignoring the unrebutted statement of the plaintiff. There is no substantial question of law involved in this plea for the simple reason that the court even in ex-parte

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case has to appreciate the evidence adduced on the record while deciding the case on merits.

9. Since cancellation of documents was sought by the plaintiff, in the absence of the document, the trial court rightly observed that though testimony of the plaintiff was unchallenged but, the disputed documents were not on record. Since the disputed documents were not produced and proved in evidence as forged and fabricated or false documents created by defendant No.1 in his favour, the relief of declaration was rightly rejected by the trial court. There is no law that in an ex-parte case, testimony of the plaintiff has to be accepted and a suit has to be decreed. If testimony of the plaintiff does not inspire confidence in the mind of the court and also court finds that documents which are the basis of the suit have not been produced on the record, court is within its right to ignore the testimony of the plaintiff and dismiss the suit.
10. It was for the plaintiff to prove in evidence, documents which were allegedly filed by defendant no.1 before the SDM. Documents were very much

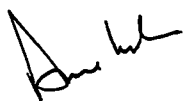
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available in the file of the SDM where proceedings were going on and the plaintiff had to summon the file to prove original documents placed in the said file as forged and fabricated.

11. Much is said by the counsel for the plaintiff that he was not required to prove the documents sought to be cancelled as he was not relying upon them nor was asking for any relief based on the said documents. The fact remains, the alleged documents were the basis of the suit itself and the entire claim of the plaintiff and the prayer made was based on the disputed documents only.
12. The appellate court rightly concurred that the trial court's finding that in the absence of the original documents or proof thereof as forged and fabricated, the plaintiff had failed to prove its case and the suit was rightly dismissed.
13. Under these circumstances, no substantial question of law can be formulated as suggested by the plaintiff in this appeal. All the questions as formulated in the appeal are questions of fact and do not raise any substantial question of law.

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14. Hence, I find no merits in the appeal; the same is accordingly dismissed in limine.


(ARUNA SURESH)
JUDGE

JULY, 30 2009
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