

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

+ **RSA No. 125/2009**

Date of Decision: 12th October, 2009

PREM SAGAR AND ORS. Appellants

Through: Mr. R.K. Sharma and
Mr. Sanjeev K. Baliyan,
Advocates

Versus

MOHD. IRFAN Respondent

Through: None.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether the Reporters of local papers 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)

RSA No.125/2009 and CM Nos.14521,14522& 14523/09

1. Appellants filed Suit No. 341 of 1983 and another Suit No. 614 of 1983, one under Section 6 of the Specific

RSA No.125/2009

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Relief Act seeking possession of the suit property, being plot No.B-1 measuring 600 sq. yards and another for permanent injunction for restraining the respondent from taking forcible possession of the said plot, beyond the portion shown red in the plan attached to the plaint (showing the portion which has already been taken possession unauthorizedly by the respondent.)

2. Both the suits were dismissed by the Civil Judge vide common judgment dated 31.05.2002. Challenging the Trial Court's judgment and decree, appellants filed two appeals before the Appellate Court being RCA No. 56 of 2008 and 57 of 2008 (old No. 35 of 2002 and 07 of 2002). Both these appeals were dismissed by the Appellate Court upholding the judgment and decree of the Trial Court vide its common judgment and decree dated 12.03.2009. Aggrieved by the said judgment and decree of the Courts below, the second appeal has been filed by the appellants.
3. Appellants claim themselves to be the owner of the suit property which, according to them, was trespassed by

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the respondent, and therefore, to get the possession of the trespassed property, under Section 6 of the Specific Relief Act, the suit was filed. One of the defences raised by the respondent was that he was in possession of the suit property since 10.04.1988 and the suit under Section 6 of the Specific Relief Act was barred by period of limitation. The Trial Court dismissed the suit observing that appellants had failed to prove that they were dispossessed from the property on 12.07.1983 and also that they were the owners of the property in dispute, as they failed to prove the agreement to sell of the property in suit in their favour.

4. The Appellate Court while dismissing the appeals observed:

13. "The Appellants have claimed that they were dispossessed from the suit property on 12.07.1983 and came to know about the fact of dispossession on 16.07.1983. The Appellants, however, have failed to bring on record anything to show how they came to know about the fact of dispossession. The Appellants have claimed that they requested the Defendant to vacate the portion of



plot occupied by him and since he failed to vacate, they filed the suit against him. Normally in such circumstances, the first reaction of the Appellants/Plaintiffs would have been to lodge a report against the Defendant with the police. Though in the replication, the Appellants claimed that they had lodged a complaint with the police but have failed to prove on record even a copy of the said alleged complaint. The conduct of the Appellants, thereafter, is more surprising and does not inspire confidence in the mind of the Court. Assuming that the Appellants came to know about their dispossession 16.07.1983 and further assuming that they approached the Defendant for vacating the portion of plot occupied by him in their absence and also that they did lodge a report with the police, there is just no explanation as to where was the necessity of filing suit, that also not one but two suits against the Defendant.

14. The record reveals that the suit for permanent injunction was drafted by their counsel on 26.07.1983. An application under Order 39 Rules 1 & 2 read with Section 151 CPC was also drafted on 26.07.1983. In this application, the Plaintiffs have stated that they have filed a suit for possession under Section 6 of the Specific Relief Act against the Respondent/Defendant. The record

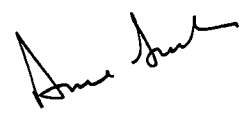
further reveals that the suit for possession was drafted by the counsel only on 28.07.1983. The suit was also accompanied by an application under Order 39 Rules 1 & 2 read with Section 151 CPC also drafted on 28.07.1983. Both these suits, though drafted on different dates were filed in the court on the same day, i.e., 02.08.1983. The suits were marked to different courts. This fact (of two suits), apparently, was not disclosed by the Appellants/Plaintiffs or their counsel to the then Senior Sub-Judge Delhi who marked the two suits to two different Sub-Judges Delhi. The objective of the Appellants/Plaintiffs is clear. They pressed the application for interim order before two courts since they wanted an ex parte order in their favour. They failed before one court but succeeded before the other court, in obtaining an ex parte order. This shows the unfair conduct of the Appellants/Plaintiffs. In fact, the application under Order 39 Rules 1 & 2 CPC was finally disposed of by Sh. A.K. Garg, the then Sub-Judge. First Class on 01.09.1983 whereby the ex parte injunction granted on 03.08.1983 was vacated. It was observed by Sh. A.K. Garg, the then Sub-Judge First Class in the order that the story of forcible dispossession did not appeal to the mind of court. A local commissioner had been appointed to report about the construction existing on the disputed land. The report of the local

commissioner revealed that the portion in possession of the Defendant was much larger than the possession of the Plaintiffs. The Plaintiff, however, in their site plan had shown that the possession of the Defendant was much smaller. Sh. A.K. Garg therefore came to the conclusion that the Plaintiff had not approached the court with clean hands."

5. Thus, it is clear that both the suits of the appellants were dismissed by a common judgment on appreciation of facts. The fact finding of the Courts below is concurrent which need no interference in the second appeal. It is established law that the Appellate Court in the second appeal has no right or power to interfere in the fact finding of the Courts below unless such findings are perverse. I do not find any perversity in the findings of the Courts below and none has been pointed out by the counsel for the appellant.
6. Since relief of injunction claimed in one suit and relief for possession claimed in the other suit were interlinked having similar question of law and fact involved, the Trial Court as well as the Appellate Court rightly

proceeded to decide both the suits and appeals respectively by way of a common judgment.

7. In these circumstances, I do not find any illegality and infirmity in the impugned judgment and decree of the Appellate Court which warrant any interference, especially when no question of law can be formulated. In the facts and circumstances of the case, the appeal being without any merit is hereby dismissed.



(ARUNA SURESH)
JUDGE

OCTOBER 12, 2009
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