

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

% *Date of Judgment: 15.03.2011*

+ **RSA No.47/2011 & CM No.5277/2011**

SMT.BIMLA DEVI Appellant
Through: Mr.Dinesh Garg, Advocate.

Versus

SH.KANWAR SINGH & ORS. Respondents.
Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

CM No.5278/2011 (for exemption)

Exemption is allowed subject to just exceptions.

RSA No.47/2011 & CM No.5277/2011

1. This appeal has impugned the judgment and decree dated 10.2.2011 which has endorsed the finding of the trial judge dated 14.7.2008 whereby the two suits filed by the two respective plaintiffs i.e. Bimla Devi (Suit No.429/2007) and Karam Vir (Suit No.430/2007) had suffered their fate. The suit of Bimla Devi had been dismissed. The suit of Karam Vir had been decreed.

2. The suit No.429/2007 had been filed by the plaintiff Bimla Devi. Her contention was that she is the owner and in possession of one bigha and one biswas comprising of one room and a

surrounding boundary wall in Khasra No.1 in the Village Saboli, Shahdara, Delhi. She had purchased this property from Rishal Singh. Rishal Singh is the deceased father of Karam Vir (plaintiff in Suit No.430/2007). It is averred that the defendants in collusion of one another had raised building material near the suit property to raise a construction and to dispossess the plaintiff. Suit for permanent injunction was accordingly filed. Defendants had disputed her claim. It was contended that the plot in question is only 800 sq. yards comprising of only one room and a broken boundary wall. Contention of the defendants (sons of deceased Rishal Singh) is that their father had never sold the plot to Bimla Devi. In 1992 their father Rishal Singh had filed an injunction suit against the father of Bimla Devi namely Man Singh wherein he had made a statement that he has no concern with this plot in question; suit was accordingly withdrawn.

3. Suit No.430/2007 was filed by Karam Vir who has also been threatened with dispossession qua Bimla Devi. He has also sought a relief of permanent injunction. His contention is that he is the owner and in possession of the said plot.

4. Proceedings under Section 145 of the Code of Criminal Procedure (hereinafter referred to as 'the Cr.P.C.') had been initiated on the complaint of Bimla Devi. Order dated 23.4.1999 had been passed by the SDM which was in favour of Bimla Devi. Revision petition impugning the order of the SDM was dismissed; petition under section 482 of the Cr.P.C. was also dismissed as being not maintainable; it was held that the order under Section 145 of the Cr.P.C. is only temporary in nature and is operable till the issue of possession is decided by the parties in separate civil

proceedings which were admittedly pending.

5. Both the suits i.e. Suit No.429/2007 and Suit No.430/2007 had been clubbed together. Two common issues had been framed; they read as follows:

1. Whether the plaintiff is entitled for a decree of permanent as prayed for ?OPP
2. Relief.

6. Evidence was led by the respective parties. PW-1 had relied upon an unregistered power of attorney and agreement to sell dated 20.9.2007 purported to have been executed by Rishal Singh in her favour. A registered receipt of the same date i.e. 20.9.2007 was also relied upon. These documents had been considered by the trial judge coupled with testimony of PW-1 who had in her deposition admitted that she had never lived in the suit property; she is living in her matrimonial home; she had admitted that none of her articles were lying there. The actual constructed area of the plot was also unknown to Bimla Devi; at one time, she had admitted that there is one room in the plot in question whereas at a second point she had deposed that there are two rooms in the plot. This wavering and contradictory stand of the Bimla Devi had also weighed in the mind of the two fact finding courts below. The order dated 23.4.1999 passed by the SDM in proceedings under Section 145 of the Cr.P.C. had been scrutinized. Revision against the said order had been dismissed. Proceedings under Section 482 of the Cr.P.C. had also been brought to a close by an observation made by the High Court wherein it was expressed that the question of possession is yet to be determined by the Civil Court; the order of the SDM not being permanent in nature the issue of possession would have to await the decision of the competent court.

7. It is also not in dispute and in fact it settled a position that a decision by a Criminal Court is not binding on a civil court. The proceedings under Section 145 of the Cr.P.C. are also summary in nature.(AIR 2004 SC 115 Shanti Kumar Panda Vs Shakuntala Devi).

8. Documents relied upon by Bimla Devi of which admittedly the power of attorney and the agreement to sell were unregistered coupled with the receipt which was a registered document could not transfer title to Bimla Devi; moreover PW-1 had admitted that she was never in possession of the suit property. She was not able to prove that along with the contemporaneous execution of the aforementioned documents physical possession of the suit property had been handed over to her by Rishal Singh. These positive fact findings had been returned that Bimla Devi in fact was never in possession of the suit property.

9. The claim of Karam Vir was fortified by the evidence led by him. He was the son of deceased Rishal Singh who was admittedly the owner of the suit property from whom Bimla Devi had purchased this suit land. It was correctly noted that the proceedings under Section 145 of the Cr.P.C. are not binding on a civil court. Karam Vir in support of his claim had produced Ex.DW1/3 i.e. a copy of the Khatoni as also a copy of the order dated 4.5.1992 passed in the erstwhile suit filed by Rishal Singh (deceased father of Karam Vir) against Man Singh (predecessor of Bimla Devi) wherein it had been admitted by Man Singh that he has no connection with this suit property; on this premise Rishal Singh had withdrawn his suit.

10. These are fact findings which has been gone in deep detail by

the two fact finding courts below. These findings of fact in no manner can be said to be perverse.

11. Reliance by learned counsel for the appellant on the judgments reported 2010(3) CCC 001 (SC) Dinesh Kumar Vs. Yusuf Ali as also on 1010(4) RCR(Civil) Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board are misplaced. There is no dispute to the proposition that a second appeal is maintainable where finding of the courts below are perverse. No such perversity has been pointed out. There is no merit in the appeal. Appeal as also pending application is dismissed in limine.

INDERMEET KAUR, J.

MARCH 15, 2011
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