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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No.92/2011

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July 28th, 2011

SH. GOPAL VERMA

..... Appellant

Through: Mr. S.P.Jha, Mr. B.K.Jha and Mr.
Y.K.Prasad, Advocates.

VERSUS

SH. DINDAYAL & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this regular second appeal is to the two concurrent judgments of the courts below, the first dated 27.10.2006 of the original court, and the second dated 24.3.2011 of the second/appellate court, and by which orders, the suit of the appellant/plaintiff for mandatory injunction was dismissed.

2. The facts of the case stated by the appellant/plaintiff are that he was entitled to mandatory injunction against the respondents for recovering back possession of the property comprising of one room, kitchen, latrine, bathroom and stair case with terrace in the property bearing no. 207/1, Gali No.9, Than Singh Nagar, Anand Parwat, New Delhi on the ground that the appellant had ownership rights to the suit property. The appellant claimed ownership rights, however, no title documents were pleaded or proved. Another reason for claiming ownership rights was on the basis of adverse possession of the premises. The respondents/defendants appeared and contested the suit and laid out a defence that originally one Smt. Sheela Devi was the owner of the suit property and who sold the property to Smt. Sat Naraini Devi. It was thereafter alleged that after the death of Smt. Sat Naraini Devi her husband Sh. Sita Ram Aggarwal became owner of the suit property and which was let out to the defendant no.2 in the suit by Sh. Sita Ram Aggarwal. It was further the stand of the defendants in the suit that the plaintiff was the erstwhile tenant of the property and he vacated the same in 1992 and shifted elsewhere and whereafter Sh. Sita Ram Aggarwal, husband of Smt. Sat Naraini had let out the property to the defendant no.2 and for which rent was regularly paid by the defendant no.2 since December, 1992.

3. The following issues were framed by the trial court:-

“1. Whether the plaintiff has not approached the court with clean hands and if so, its effect? OPD

2. Whether the plaintiff is entitled for the relief of the mandatory injunction? OPP

3. Relief.”

4. The relevant point in issue was therefore whether the appellant/plaintiff had proved his title to the property as per his case. The relevant observations of the court of first instance are contained in paras 15 and 16 of the impugned judgment which reads as under;-

“15. As per the averments made in the plaint, the plaintiff has claimed to be the owner of the suit property. However, it has not been made clear as to on what basis he is claiming the ownership of the suit property. But perusal of the first four paragraphs of the plaint gives a clue to the effect that he has claimed the ownership of the suit property on the basis of the adverse possession. It is pertinent to mention herein that as per the plaintiff's own averments the alleged owners of the suit property namely Smt. Naraini and Smt. Sushila Devi had filed a suit against him for the recovery of rent and that very suit was against the present plaintiff namely Sh. Gopal Verma, vide judgment in suit No.1192/80 despite the fact that in that very suit also the present plaintiff (the defendant in that suit) had taken the plea of adverse possession, meaning thereby that the plea of the present plaintiff namely Sh. Gopal Verma to the effect of the adverse possession was not found worth consideration in that very suit and the status of the present plaintiff was duly adjudicated upon to be that of a tenant in respect of the suit property. Hence, in such an eventuality making a claim of ownership without seeking any declaratory relief to that effect i.e. to the effect of 'title' etc, makes no sense at all. In the given facts, the relief of injunction

becomes a consequential relief solely dependent upon the fate of the main relief of declaration which has not been claimed at all in the present suit. Hence, the suit of the plaintiff on the very face of it is maintainable for the purpose of the present relief i.e. relief under consideration.

16. Moreover the averments of the plaint when adjudged in the light of the deposition of the plaintiff/PW-2 himself, create/show a lot of inconsistencies and contradictions which affect the suit of the plaintiff at its very roots. As per the averments in para '4' of the plaint, the plaintiff has claimed the ownership of the suit property as the earlier owners i.e. Smt. Naraini (who died earlier/prior to the filing of the present suit) and Smt. Sushila Devi had never ever come forward to claim the ownership or any other interest in the suit property, but in the very starting line of the cross-examination of PW-2 (conducted on 08/11/04), the plaintiff/PW-2 has deposed on an altogether different line. He has deposed therein to the effect that the suit property was purchased by him from one Sh. Nihalu Jat for a consideration of Rs.4000/-. The deposition of this effect is totally strange to the facts of the case and is beyond pleadings. Moreover, even if this deposition is considered, the plaintiff has failed to place on record any document showing thereby that he had purchased the suit property from the afore named person i.e Sh. Nihalu Jat. This way it is very much clear that the plaintiff himself is not sure as to on what basis he is claiming to be the owner of the suit property. This issue under consideration entirely tilts away/against the plaintiff. The same is decided and disposed of accordingly."

5. I completely agree with the aforesaid observations of the trial court inasmuch as the plaint has given no basis as to how appellant is claiming ownership of the suit property. If ownership of property is claimed by means of title documents however admittedly the plaint contains no basis of purchase of the property by means of title documents. In fact,

first four paragraphs of the plaint laid out a case of ownership of property on the basis of adverse possession. I fail to understand as to how a tenant can claim an adverse possession because existence of tenancy would have to mean admission of ownership of the owner/landlord. In any case, adverse possession is an issue which has to be very strictly proved, and on which aspect, the appellant miserably failed. The trial court has rightly observed that the owners of the property Smt. Sat Naraini and Smt. Susheela Devi had filed a suit against the plaintiff for recovery of rent and which suit was decreed in favour of the plaintiff no.2 therein namely Smt. Susheela Devi and against the present appellant/plaintiff. The surprising aspect is that the appellant went to the extent of claiming that the suit property was purchased by him from one Sh. Nihalu Jat for a consideration of Rs.4000/- and which was a case, brought for the first time only in the cross examination of appellant/plaintiff as PW-2. Obviously, this aspect was also not proved as to how the plaintiff/appellant had purchased the property from Sh. Nihalu Jat as no documents were filed on record.

6. Learned counsel for the appellant argued that the impugned orders are liable to be set aside on the following grounds:-

(i) No issues were framed in the case initially and that the issues were framed in the case only during the course of final arguments and which is a clear cut violation of the mandatory procedure as prescribed in CPC.

(ii) It was contended that the appellant was wrongfully dispossessed from the property and therefore the appellant was entitled to mandatory injunction.

(iii) It was then finally argued that the issue with regard to title of the appellant was left open in the Civil Revision No. 1253/1981 by this court in its order dated 26.2.2001, and to which proceedings, the appellant herein was the petitioner and Sh. Sita Ram Aggarwal was the respondent no.1.

7. I am afraid I am unable to agree with any of the arguments as put forth by the counsel for the appellant. In the present case, no doubt, there was a technical violation as the issues were not framed initially but no prejudice can be said to have been caused to the appellant/plaintiff inasmuch as the appellant/plaintiff not only led his evidence but also thereafter got his witnesses cross-examined. The respondent/defendant thereafter led his evidence and got his witnesses cross-examined and the case was thereafter fixed for final arguments when it was noticed that the issues were not framed. At no point of time, till the final arguments,

was there any objection or any application by the appellant/plaintiff that proceedings must stop i.e., evidence should not be recorded or cross examination must not be done inasmuch as issues have not been framed. This I believe happened because both the parties knew the relevant issues in the case though the same were not formally framed. Accordingly, I do not feel that this technical issue in any manner helps the appellant. This argument is therefore rejected.

8. So far as the second issue that the courts below have fallen into an error in declining the relief of mandatory injunction because the appellant was in fact dispossessed, is again an argument without merit because the appellant took inconsistent stands repeatedly. Firstly, there was a claim of title but no title documents were filed. Alternatively, a case was laid out of ownership by adverse possession which was not proved. Surprisingly during the course of cross examination, the appellant/plaintiff took up a totally new case that in fact he had purchased the property from Sh. Nihalu Jat for Rs.4000/- but no title documents to prove this fact were filed. Considering the inconsistencies in the stand of the appellant/plaintiff as also the failure to prove the title documents, the trial court rightly disbelieved the entitlement of mandatory injunction on the basis of title.

9. So far as the final argument on behalf of the appellant that the issue with regard to ownership was left open in Civil Revision 1253/1981, the said argument does not advance the case of the appellant any further inasmuch as because the issue of title of the plaintiff i.e. ownership of the plaintiff/appellant was left open, in the earlier civil revision, therefore, this issue had been duly adjudicated by the courts below and held against the appellant/plaintiff.

10. A second appeal under Section 100 CPC is only entertained when a substantial question of law arises. Second appeal is not a matter of right once two courts have exhaustively appreciated the evidence and the contentions of the parties and thereafter by concurrent decisions declined any relief of the appellant/plaintiff. The facts of the present case do not show that any question of law much less any substantial question of law arises.

11. Dismissed.

12. All pending applications stand disposed of. Trial court record be sent back.

JULY 28, 2011
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VALMIKI J. MEHTA, J.