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

+ RSA No. 191/2011 & CM No. 20252/2011

S.K. Chaudhary since Decd.through
Lrs & Anr.

..... appellant.

Through Mr. B.S. Man and Mr.
Rajeshwar Dagar, Advs.

versus

R.M. Bainik

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

ORDER
08.11.2011

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By this appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellant seeks to challenge the judgment and decree dated 31.9.2009 whereby the suit for possession and permanent injunction was decreed in favour of the respondent and the order dated 17.10.2011 whereby the appeal against the order dated 31.9.2009 was dismissed.

Mr. Man, learned counsel appearing for the appellant submits that the preliminary issue of limitation was decided by the learned trial court vide order dated 25.11.2000 and then on

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the application moved by the appellant/defendant seeking clarification of the said order dated 25.11.2000. The learned trial court vide order dated 5.7.2002 directed that the issue of limitation being a mixed question of law and facts will be decided finally in the final order. Counsel submits that ignoring the said order dated 5.7.2002, the court in the final order dated 31.9.2009 which is impugned in the present appeal observed that the finding on the limitation issue became final vide order dated 25.11.2000 'as the said order was not challenged by the defendant. Thus the contention raised by the counsel for the appellant is that the limitation issue became final only after the parties had led the evidence and the final order was passed by the court. Counsel thus states that the order passed by the courts below ignoring the clarificatory order dated 5.7.2002 is illegal and perverse. Counsel further submits that the appellant had challenged the ownership of the respondent as the appellant has also claimed his title over the property in question through a registered sale deed but the said fact was not looked into by both the courts below.

I have heard learned counsel for the appellant at considerable length and gone through the records.

Undoubtedly, vide clarificatory order dated 5.7.2002 the court observed that the limitation issue being a mixed

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question of law and fact, the decision on the same will remain open and the same will be decided at the time of passing the final order, and to that extent the observation of the learned trial court in the final order appears to be incorrect. However, not much weightage can be given to the said observations as no evidence was led by the appellant to establish as to how the suit filed by the respondent was barred by limitation. Indisputably, the appellant claimed his possession over the plot in question in the year 1989 and the suit by the respondent was filed in the year 1992. The said suit for possession was thus clearly within the prescribed period of limitation and the same under no circumstance can be held to be barred by the law of limitation.

Coming to the other plea raised by the counsel for the appellant that the trial court has not gone into the issue of deciding the title of the appellant, for that the appellant has to blame himself as no evidence was led by the appellant to prove his ownership over the plot in question.

No substantial question of law arise in the present appeal to be gone into by this court.

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There is no merit in the present appeal and the same is accordingly dismissed.



KAILASH GAMBHIR,J

NOVEMBER 08, 2011
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