

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

% **Date of decision: 2nd July, 2013**

+ **RFA 289/2013, CM No.9627/2013 (u/O 1 R-10 CPC), CM No.9628/2013 (u/O 6 R-17 CPC), CM No.9629/2013 (u/O 33 R-3 CPC), CM No.9630/2013 (u/O 39 R-1 & 2 CPC), CM No.9631/2013 (for exemption), CM No.9632/2013 (for condonation of 55 days delay in re-filing) & CM No.9633/2013 (for condonation of delay in filing)**

SHIV CHARAN SINGHAL

..... Appellant

Through: Mr. Lalit Gupta and Ms. Payal Gupta,
Advocates.

Versus

RAKESH KUMAR & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

% **02.07.2013**

1. This regular first appeal impugns the order dated 1st December, 2012 of the learned Additional District Judge allowing the application of the two defendants/respondents No.1 & 2 in this appeal under Order 7 R-11 of Civil Procedure Code (CPC), 1908 and rejecting the plaint in the suit filed by the appellant. The plaintiff/appellant had instituted the said suit *inter alia* for recovery of possession of property admeasuring 89.4 sq. yds. bearing Khasra No.12/24 & 25 situated in the area of Village-Burari *abadi* known as Shastri Park Extension, Delhi-84 and for recovery of damages for use and occupation/mesne profits, for permanent injunction restraining the

defendants from parting with possession of the property and for declaration of the plaintiff/appellant as the absolute owner of the property. It was the case of the plaintiff/appellant, that the plaintiff/appellant had purchased the said property from one Mr. Pawan Kumar Tyagi vide General Power of Attorney, Agreement to Sell, Will etc. coupled with delivery of possession on 2nd July, 2010; that on suggestion of said Mr. Pawan Kumar Tyagi, the plaintiff/appellant agreed to let out the property to a person selected by Mr. Pawan Kumar Tyagi; that the said Mr. Pawan Kumar Tyagi expired on 4th October, 2011 and when the plaintiff/appellant visited the property thereafter to collect rent, he found the two defendants/respondents to be in possession thereof and who claimed to be the owners thereof under documents executed by Mr. Pawan Kumar Tyagi on 4th April, 2011 in their favour. It was/is the case of the plaintiff/appellant that he is thus entitled to recovery of possession of the property and to the other reliefs. The occasion for the plaintiff/appellant to seek the relief of declaration of his ownership arose since it was the case of the plaintiff/appellant that owing to a typographical error in the documents executed by Mr. Pawan Kumar Tyagi in favour of the plaintiff/appellant, the property had been described as comprised in Khasra No.12/23 & 25, though it was situated in Khasra No.12/24 & 25 and which is the description of the property in the documents in favour of Mr. Pawan Kumar Tyagi also and rights wherein were conveyed to the plaintiff/appellant.

2. The defendants/respondents No.1 & 2 applied under Order 7 Rule 11 of CPC pleading that since the plaintiff/appellant was claiming possession as owner on the basis of the documents executed by Mr. Pawan Kumar

Tyagi in favour of the plaintiff/appellant and since the said documents did not disclose the property conveyed thereunder to be property No.12/24 & 25, the possession whereof was claimed in the suit, the plaintiff/appellant could not maintain the suit for possession.

3. The learned Additional District Judge has allowed the said application holding that the documents of title in favour of the plaintiff being not with respect to the property of which possession has been sought, the plaintiff/appellant on the basis thereof cannot maintain the suit for possession. Qua the plea of the plaintiff/appellant of typographical error in the said document, the learned Additional District Judge in para 18 of the impugned judgment has held that the remedy of the plaintiff/appellant with respect thereto was not by way of suit against the defendants/respondents No.1 & 2. It was thus held that the plaintiff/appellant on the basis of the said documents had no cause of action for the relief of possession.

4. The plaintiff/appellant while preferring this appeal, to get over the finding of the learned Additional District Judge (mistake/error pleaded in the documents being incapable of correction without impleading the said legal heirs of Mr. Pawan Kumar Tyagi as parties to the suit) has also filed applications for amendment of the plaint and for impleadment of the legal heirs of Mr. Pawan Kumar Tyagi who has since died, as defendants in the suit. The plaintiff/appellant in alternative also wants to claim the relief of recovery from the estate of Mr. Pawan Kumar Tyagi, the sale consideration paid by the plaintiff/appellant to Mr. Pawan Kumar Tyagi, along with interest.

5. Since the plaintiff/appellant is seeking to carry out substantial amendments to the plaint, it has at the outset been enquired from the counsel for the plaintiff/appellant as to why this appeal is the appropriate remedy and as to why it would not be more appropriate and expedient for the plaintiff/appellant to file a fresh suit on the lines on which amendment to the plaint in this appeal is sought. Order 7 Rule 13 of CPC provides that the rejection of the plaint on any of the grounds mentioned in Order 7 Rule 11 CPC shall not of its own force preclude the plaintiff/appellant from presenting a fresh plaint in respect of the same cause of action.

6. Though the counsel for the appellant also agrees that the remedy of filing a fresh suit not only against the defendants/respondents No.1 & 2 but also against the legal heirs of Mr. Pawan Kumar Tyagi, on the same cause of action on which the suit, plaint wherein has been rejected, was filed, is available to the plaintiff/appellant but states that the remedy of appeal is also nevertheless available to the plaintiff/appellant.

7. Though it may be so, but I am of the opinion that merely because a litigant has approached this Court and in law is entitled to do so, does not mandate this Court to mindlessly put the proceeding on the rail. It cannot be lost sight of that the Courts are overburdened and disposal of appeal as the present one takes a considerable time. Moreover, adjudicating one appeal is always at the cost of other matters. If it is to be found that the interest of the litigant is better served by some other mode, it is rather the duty of the Court to direct the litigant to search appropriate remedy rather than as aforesaid

merely for technicalities keep a proceeding alive. The ultimate relief which the plaintiff/appellant would be entitled to in this proceeding would also be of amendment of the plaint and remand of the suit for trial in accordance with law. However, to reach that state, it may take a year or more. When the plaintiff/appellant can immediately avail of the said remedy under Order 7 Rule 13 of CPC, I am unable to fathom as to why merely because an appeal may be maintainable, the appellant should pursue such remedy. The Courts are meant to impart justice and not for academic exercise. If justice is better served by directing the litigant to avail of another appropriate remedy, the Courts would certainly resort thereto. The Supreme Court in *Arnit Das Vs. State of Bihar* (2001) 7 SCC 657 has held that it is settled practise that the Court does not decide matters which are only of academic interest on the facts of a particular case. The House of Lords in, *Attorney-General Vs. Guardian Newspapers Ltd.* [1987] 1 W.L.R. 1248 observed that public interest requires that we have a legal system and Courts which command public respect. If this Court were to entertain this appeal the only relief which can be granted wherein can be availed by the appellant under Order 7 Rule 13 CPC immediately, instead of the appellant waiting for the decision of this appeal, the appellant would certainly be entitled to ask as to why he was not immediately relegated thereto and would lose respect for the Courts.

8. Though the counsel for the plaintiff/appellant has been unable to show any prejudice which may be suffered by the plaintiff/appellant in filing a fresh suit on the same cause of action though the counsel at one stage stated that this Court while so disposing of the appeal may grant

liberty to the plaintiff/appellant to file fresh suit but it is felt that in view of the express provision of Order 7 Rule 13 of CPC, no case for granting any such liberty is made out.

9. Accordingly, this appeal is disposed of directing the plaintiff/appellant to avail of the remedy of a fresh suit under Order 7 Rule 13 of CPC.

10. The counsel for the plaintiff/appellant seeks refund of court fees, it is stated that the plaintiff/appellant suffers from disability of 100% blindness and is unable to afford the expenses.

11. Following the dicta of the Division Bench of this Court in *Aya Singh Tirlok Singh Vs. Munshi Ram atma Ram* AIR 1968 Delhi 249 and in the facts and circumstances of the case and since the appeal has not been entertained for the reason of the alternate remedy available to the plaintiff/appellant, the request is acceded to.

12. The Registry is directed to issue a certificate enabling the plaintiff/appellant to obtain refund from the Collector, Delhi of the amount of court fees paid on the appeal.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 02, 2013

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