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

+ RFA No. 674/2010 and CM Appl. Nos. 16886
& 16888/2010

Decided on 15th January, 2013

GHASITA SINGH

..... Appellant

Through :Mr. Anil Panwar, Adv.

versus

RAM PRAG KOIREE

..... Respondent

Through : Mr. Amarjeet Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.(ORAL)

1. By the judgment and decree impugned in this appeal trial court has dismissed the suit for declaration and permanent injunction filed by appellant against the respondent.

2. Appellant had prayed in the plaint that by way of decree of declaration it be held that respondent has no right, title or interest in the property bearing no. D-563, Mahavir Enclave, Part III, New Delhi – 110045 (for short hereinafter referred to as “suit property”)

and it is the plaintiff who is actual owner thereof. It was further prayed that respondent be restrained from dispossessing the appellant and his tenants from the suit property.

3. Case, as set up by the plaintiff, in the plaint is that he had purchased the suit property from one Mr. Triveni for a total sale consideration of ₹60,000/- (Rupees Sixty Thousand Only) vide General Power of Attorney, Agreement to Sell, Will, Receipt, Affidavit etc. on 21st February, 1995. Mr. Triveni handed over possession of the suit property to appellant. Respondent is brother of Mr. Triveni. Brothers were not maintaining cordial relations, thus, appellant allowed Mr. Triveni to continue to stay in the house with him. Appellant looked after Mr. Triveni till he breathed his last on 18th June, 1995. Tenants Mr. Ram Chander and Mr. Joginder were also living in the suit property. Respondent never visited his brother nor took his care. Even after the death of Mr. Triveni appellant continued to remain in possession of the suit property without any objection from the respondent. However, in the 1st week of May, 1996, respondent approached the local police claiming himself to be the owner of suit property. However, he

failed to produce any proof of ownership to the police, thus, no action was taken. Thereafter, respondent started blackmailing the appellant by demanding ₹50,000/- (Rupees Fifty Thousand Only) from him. Subsequently, on 8th June, 1996 respondent lodged a frivolous complaint with the local police against the appellant. Hence, the suit.

4. In the written statement, respondent denied the averments made in the plaint. It was stated that appellant was not the owner of suit property and had no locus standi to file the suit. No cause of action had arisen in favour of plaintiff to file the suit. Suit was filed on the basis of documents on which signatures of Mr. Triveni did not tally. It was denied that appellant had purchased the suit property from Mr. Triveni. It was alleged that Mr. Triveni had purchased the suit property from Mr. Surinder Kumar in the month of December, 1989 with the help of respondent. Mr. Triveni raised construction and started living in the suit property. Respondent's family was a joint family and before shifting to the suit property Mr. Triveni was living with the respondent at Madangir. Respondent was in continuous touch with Mr. Triveni. After the

death of Mr. Triveni, respondent became exclusive owner of the suit property. A vigilance enquiry was going on against the appellant with regard to the fraud and cheating committed by him, on the complaint of respondent. It was denied that Mr. Triveni had handed over possession of the suit property to appellant. It was also denied that General Power of Attorney, Will etc. were executed by Mr. Triveni in favour of plaintiff. Respondent alleged that he performed the last rites of his brother. Mr. Triveni had confided in appellant that the documents were kept by him with his friend, that is, appellant for safety purposes. When respondent demanded the documents from the appellant he refused to hand over the same. After the demise of Mr. Triveni suit property was in the possession of respondent. It was under his lock and key. Respondent continued to visit the suit property. On 12th July, 1996 appellant broke open the lock of the suit property and took forcible possession thereof. He also removed all the households articles of respondent and a police complaint was filed in this regard. Market value of the suit property was about ₹2.5 lacs and could not have been sold for ₹60,000/- (Rupees Sixty Thousand Only). It was

denied that possession of the suit property was handed over by Mr. Triveni to the appellant and he in turn allowed Mr. Triveni to stay with him.

5. In the replication, appellant denied the averments made in the written statement and reiterated and reaffirmed the averments of the plaint.

6. Following issues were framed by the trial court on 22nd March, 1999:-

- “1. Whether the plaintiff has locus standi to file the present suit? OPP
2. Whether the plaintiff has come to the court without clean hands? OPD
3. Whether the suit is without cause of action? OPD.
4. Whether Power of Attorney, agreement to sell, affidavit are forged by the plaintiff? OPD.
5. Whether the signatures of Triveni has also been forged as the attorney? OPD.
6. Whether the plaintiff is entitled for a decree of declaration? OPP.
7. Whether the plaintiff is entitled for decree of permanent injunction as prayed? OPP
8. Relief.”

7. Despite several opportunities granted to plaintiff no evidence

was led by him, consequently, vide order dated 22nd January, 2007, plaintiff's evidence was closed. An application under Order 18 Rule 17 CPC was filed, which was also dismissed. Defendant also did not lead any evidence, accordingly, defendant's evidence was also closed on 12th November, 2007. Thereafter, trial court has dismissed the suit vide impugned judgment and decree dated 28th January, 2010. It was held that the burden to prove the issue nos. 1, 6 and 7 was on the plaintiff which he had failed to discharge. Similarly, onus to prove issue nos. 2 to 5 was on the defendant, which he had also failed to discharge. In view of the fact that plaintiff had failed to prove issue nos. 1, 6 and 7 the suit has been dismissed.

8. I do not find any illegality, impropriety or perversity in the view taken by the trial court. A suit cannot be disposed of merely on the basis of pleadings. Parties have to lead evidence to prove their respective pleadings. Averments made in the plaint have to be proved by the plaintiff by leading evidence in respect of the issues framed onus whereof is on the plaintiff, before he is held entitled to the reliefs claimed in the plaint. Averments made in the

pleadings cannot be accepted without proof unless the same are admitted by the adversary party. Whatever be the pleadings it is necessary that the pleadings have to be substantiated by means of evidence. Mere existence of pleadings does not mean proof of the same. Since plaintiff did not lead any evidence despite several opportunities granted to him, trial court has rightly dismissed the suit.

9. Learned counsel for the appellant has vehemently contended that sufficient opportunities were not granted to the appellant to lead evidence. However, his this contention has no force, which point otherwise cannot be considered in the facts of this case. Issues were framed in the year 1999 and thereafter several opportunities were granted to the appellant to lead evidence. Be that as it may, opportunity of the appellant to lead evidence was closed on 22nd January, 2007. This order has remained unchallenged. An application under Order 18 Rule 17 CPC was filed, which was also dismissed on 11th April, 2007. Even this order was not challenged by filing appropriate petition before the higher forum. It is not the case that after closing the evidence trial

court has disposed of the suit in a hasty manner. Suit has been disposed of after affording due opportunity of hearing to the parties that too after about 2 years of closure of the evidence.

10. Be that as it may, since plaintiff had failed to lead evidence to prove the issues onus whereof was put upon him, trial court has rightly dismissed the suit.

11. For the foregoing reasons, appeal is dismissed. All the miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

JANUARY 15, 2013
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