

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

+ RSA No. 84/2014

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28th March, 2014

SH. SUKHBIR SINGH

..... Appellant

Through: Mr. M.K.Singh, Advocate.

VERSUS

MR. SH. ROOP CHAND & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This second appeal is filed by the appellant-plaintiff against the judgment of the first appellate court dated 19.12.2013 by which the first appellate court dismissed the appeal filed by the appellant against the judgment of the trial court dated 17.9.2012. By the impugned judgments of the courts below, two suits of the appellant-plaintiff being suit nos. 18/09/06 and 312/2008 were dismissed. Dispute between the parties, appellant/plaintiff & respondent nos.2 & 3 herein (defendants in suit no.18/2009/2006), pertain to an area of 5 biswas i.e about 250 sq. yds forming part of K.No. 49/41, Village Rani Khera, Delhi.

2(i) The case as put forth by the appellant-plaintiff was that he is the owner of a total of 8 biswas of land situated in K.No. 49/41, Village Rani Khera, Delhi. It was pleaded that appellant-plaintiff was the owner in possession of H.No. 68 falling in K.No. 49/41 having a total area of 8 biswas and which land in the extended abadi originally having an area of 18 biswas was allotted to him in lieu of his agricultural land during consolidation proceedings in the year 1952-53. In the year 1962, appellant-plaintiff claimed that he had exchanged 10 biswas of his land falling in the extended Lal Dora with 10 biswas of land of the defendant nos.2 and 3/respondent nos.2 and 3 falling in the old Lal Dora in terms of a verbal agreement. It was further pleaded that after the exchange appellant-plaintiff, after giving 10 biswas out of 18 biswas, was left with only 8 biswas of land in the extended abadi. Out of 8 biswas of land, on 3 biswas of land, appellant/plaintiff constructed a house and the remaining 5 biswas of land was kept vacant by him for tying cattle etc. Appellant claimed that defendants/respondents have tried to caste a cloud upon this 5 biswas of his land and are trying to encroach upon the same although the appellant-plaintiff is the owner of the same since the year 1952-53. Appellant-plaintiff claimed to be in possession of the suit land shown in red colour in the site

plan filed with the plaint and claimed injunction against the defendants from illegally encroaching upon the land of 5 biswas falling in K.No. 49/41.

(ii) Defendants in the suit no.18/2009/2006 and respondent nos.2 & 3 herein filed their written statements and stated that plaintiff had no locus standi to file the suit because there was a written exchange deed registered with the sub-Registrar vide document no. 3164, register no.I/215 page 83-88 dated 29.8.1962 as per which the respondent nos.1 & 2 are the owners of 15 biswas of land out of 18 biswas which originally belonged to plaintiff and his ancestors. This exchange deed was executed by the grandfather of the appellant-plaintiff and whereby the property has been exchanged with the property of the defendants. Exchange took place of 15 biswas of land in extended abadi with 10 biswas of land of respondent nos.1 & 2 in old Lal Dora, and these lands having different areas were taken of equal value, as found in old Lal Dora was more valuable than the land in extended abadi. Respondent nos.2 & 3 pleaded that plaintiff was not the owner of the 8 biswas of land falling in K.No. 49/41, but, he was the owner of only 3 biswas of land out of total area of the land of 18 biswas, after exchange of 15 biswas by Sh. Roop Chand (respondent no.1 herein & sole defendant in suit no.312/2008), grandfather of the plaintiff, with land of other persons including defendants. Respondent nos.1 and 2 also denied that plaintiff

allegedly exchanged 10 biswas of his land in the extended Lal Dora with 10 biswas of the respondent nos. 2 and 3 falling in Lal Dora as per an alleged verbal agreement/settlement.

3. The main issue between the parties was as to whether or not there was an exchange deed dated 29.8.1962 which was relied upon by the defendants/respondents no.2 and 3.

4. Respondent nos. 2 and 3 filed and proved before the trial court, the exchange deed Ex.DW1/1, to show that, after the exchange the forefathers of the plaintiff and also the plaintiff had lost any rights in the suit land, being 5 biswas out of the total of 15 biswas, because, respondent nos. 2 and 3 had got the total land of 15 biswas in exchange for an area of 10 biswas in the old Lal Dora of the village. The courts below have also disbelieved the case of the appellant-plaintiff on the ground that the verbal settlement as claimed by the appellant-plaintiff could not be proved by him.

5. A second appeal lies under Section 100 CPC only if there is a substantial question of law and no such question arises once the respondent nos. 2 and 3 proved the exchange deed as Ex DW1/1, and which is a registered document and hence consequently and obviously the plaintiff is proved not to have any right in the suit land of 5 biswas forming part of 15

biswas of land, and which 15 biswas of land belongs to respondents no.2 and 3 under the exchange deed Ex.DW1/1.

6. Learned counsel for the appellant argued that the exchange deed Ex. DW1/1 cannot be said to be validly proved before the trial court as the document was not properly exhibited in accordance with law. However, when the counsel for the appellant was put a query as to whether any objection was raised at the time of exhibition of the exchange deed Ex.DW1/1, it is conceded that at such time, during the course of leading of evidence, no objection was raised. If that be so, appellant-plaintiff is deemed to have waived his objection to the exhibition and proof of the document, and as held by the Supreme Court in the case of ***R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P.Temple and Anr. AIR 2003 SC 4548***. This argument urged on behalf of the appellant-plaintiff is therefore rejected.

7. Counsel for the appellant also contended that it was the respondent nos. 2 and 3 who had to prove registration of the exchange deed, but that cannot be said to have been done as no one was called from the office of the sub-Registrar to prove the exchange deed. Even this argument urged on behalf of the appellant-plaintiff is misconceived because as per Section 57 of the Evidence Act, 1872 courts have to take judicial notice of official seals.

Once the exchange deed is shown on its face to have been registered, the onus shifted upon the appellant to show that the exchange deed was not registered, and which in my opinion was not at all difficult for the appellant-plaintiff to do because either a certificate could have been obtained from the sub-Registrar that no such exchange deed dated 29.8.1962 existed in the record of the sub-Registrar or the record itself could have been summoned to show that no exchange deed was registered at document no.3164 register no. 215 page 83 to 88, but admittedly the appellant-plaintiff did not do so. Therefore, this argument urged on behalf of the appellant is also therefore rejected.

8. In view of the above, I do not find any merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

MARCH 28, 2014
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VALMIKI J. MEHTA, J.