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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RSA 70/2021 and CM APPL. 33662/2021

SHYAMO DEVI

.....Appellant

Through: Mr. Rajeev Gupta, Mr. Pijush Kanti
Biswan and Mr. Sandeep Yadav,
Advs.

versus

ANISA BEGUM & ORS.

.....Respondents

Through: Mr. Rajat Aneja and Mr. Jatin Tyagi,
Advts.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

18.12.2024

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1. Heard learned counsel for both the parties.
2. The impugned judgment and decree dated 16.04.2021, passed in RCA No.1172 of 2016 by the Additional Senior Civil Judge, Central District, Tis Hazari Court, reversed the judgment and decree dated 28.02.2014 passed by the Trial Court in Civil Suit No.5/13 of 1992. By the said decree, the suit filed by the appellant-plaintiff was allowed, restraining the respondent-defendant through a decree of permanent injunction from selling the portion marked as Mark-A in the site plan Ex.PW1/5, specifically referring to jhuggi No.D-2, Aruna Nagar, Majnu Ka Tilla, Delhi. The said reversal is under challenge in the present appeal.
3. Learned counsel for the appellant-plaintiff submits that the First Appellate Court has illegally and improperly reversed the well-reasoned judgment and decree passed by the Trial Court. He argues that in the written



statement filed by the respondent-defendant, there is no specific denial of the appellant-plaintiff's possession of jhuggi No.D-2. Counsel emphasizes that the appellant-plaintiff's entire case pertains to jhuggi No.D-2, whereas the respondent-defendant's written statement refers to jhuggi No.D-20.

4. Learned counsel further contends that, in the absence of any denial regarding the appellant-plaintiff's entitlement to possess jhuggi No.D-2, there was no obligation upon the appellant-plaintiff to adduce oral or documentary evidence to prove possession. He submits that under settled legal principles, such an absence of specific denial amounts to an admission. Therefore, the First Appellate Court erred fundamentally by focusing on perceived discrepancies in the evidence presented by the appellant-plaintiff, despite the absence of any substantive challenge to his claim by the respondent-defendant.

5. Learned counsel for the respondent-defendant, on the other hand, contends that irrespective of the reasons assigned by the First Appellate Court in the impugned judgment and decree, the civil suit filed by the appellant-plaintiff is not maintainable in the first instance. He argues that there is an unequivocal admission in paragraph 4 of the plaint, coupled with the absence of any corresponding prayer for a decree of possession. Learned counsel draws the attention of the Court to paragraphs 4 and 5 of the plaint (Annexure A-2) and submits that the First Appellate Court has not only correctly appreciated the material on record but has also duly considered the fundamental flaws in the submissions advanced by the appellant-plaintiff.

6. I have considered the submissions made by learned counsel appearing for the parties and perused the record.

7. Upon perusal of the material on record, the Court notes that in



paragraphs 4 and 5 of the plaint, the appellant-plaintiff has stated that the respondent-defendant has illegally occupied a portion of the appellant-plaintiff's jhuggi. According to the appellant-plaintiff's own case, the said jhuggi, claimed to be jhuggi No.D-2, was in their possession. The appellant-plaintiff further alleged that the respondent-defendant had threatened to forcibly dispossess them if they continued to gather people or create any commotion. In addition to the averments made in paragraphs 4 and 5 of the plaint, it has been further stated that the appellant-plaintiff raised a hue and cry, which resulted in some local residents gathering at the spot. These individuals attempted to reason with the respondent-defendant, pointing out that they had illegally occupied a portion of jhuggi No.D-2 and urging the respondent-defendant to vacate it immediately. However, despite such intervention, the respondent-defendant refused to vacate the premises and allegedly disregarded the authority of the police or any other official intervention, further threatening to sell the occupied portion of jhuggi No.D-2. It is evident from the plaint that the appellant-plaintiff asserted that a portion of jhuggi No.D-2 was illegally occupied by the respondent-defendant. However, when the prayer clause in the civil suit is examined, it is clear that the appellant-plaintiff sought only a decree of permanent injunction and did not seek any other relief, including possession of the suit property.

8. It is a settled legal principle, as reiterated by the Supreme Court in ***Ramji Rai v. Jagdish Mallah***¹, that prayer for permanent injunction cannot be maintained in the absence of possession of the suit property.

¹ (2007) 14 SCC 200



Consequently, the relief sought by the appellant-plaintiff suffers from a fundamental legal defect.

9. Besides the aforesaid fundamental error in the civil suit itself, the Court has also perused the findings rendered by the first Appellate Court in paras No.17 and 18, which reads as under:-

“17. Learned Trial Court has put its reliance on Ex.PW1/2 i.e. photocopy of electoral card. During cross-examination dated 03.02.2005, the specific objections were raised by ld. counsel for defendant that none of the document mentioned in the affidavit of the plaintiff is lying on record except the site plan and in cross-examination of PW1 on further date, the Court has made clear to the parties that putting exhibit on the document is merely for the purpose of identification, admissibility and proof of document shall be decided at the time of final arguments only. The plaintiff has not brought the original electoral card on record and just brought the photocopy of the same on record as Ex.PW1/2, the affidavit Ex.P-1 and document Ex.PW1/2 do not find mention that original documents have been placed on record or has been seen and returned by the Court at the time of evidence. The Court also mentioned Mark A i.e. photocopy of one ration card purported to be in the name of plaintiff and copy of birth certificate of daughter of plaintiff as Ex.PW1/8 at the time of appreciation of evidence while deciding the issue no.2. It is settled principle of law that the parties have to bring the best available evidence in order to prove its case. The plaintiff has not called any official/record from department of Food and Civil Supplies to prove the Ex.PW1/2 or Mark A which could have been taken into consideration for ascertaining the possession of the plaintiff over suit property as at the time of issuing the documents like electoral card and ration card, the Government officials visit at the spot to ascertain the residence of person so that proper facilities may be provided to the actual residents of locality and also to make the proper future arrangements for conducting elections or to fulfill the need of civil supplies to the citizens. The plaintiff neither produced the original documents of Ex.PW1/2 or Mark A nor called any evidence from any Government office in order to prove both these documents. Hence, learned Trial Court not appreciated the evidence in terms of settled law and accepted the averment of plaintiff, qua possession of suit property, on the basis of the photocopy of documents which has no evidenciary value unless originals are proved on record.

18. At the time of framing of issues vide order dated 23.12.2002, the specific onus was casted upon the plaintiff to prove the issue no.2. The



plaintiff cannot be allowed to take benefit of any shortcoming on the part of defendant for the purpose of getting the relief whereas it was solemn duty of the plaintiff to discharge her onus to prove the issue no.2 and in failure of discharging the onus, the plaintiff cannot be entitled for getting the relief prayed for. It is the duty of party to bring the best available evidence to discharge its onus and there was no embargo for the plaintiff to produce the original documents at the time of evidence or to call/summon the relevant record from the Government office. Therefore, the plaintiff has miserably failed to discharge her onus to prove the issue no.2 and the view taken by learned Trial Court is based on the documents which has no evidenciary value.”

10. In view of the aforesaid, the Court finds that no substantial question of law arises for consideration in the present appeal. Accordingly, the appeal fails and is hereby dismissed.

PURUSHAINDRA KUMAR KAURAV, J
DECEMBER 18, 2024/DPA