

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.43/2013**

Date of Decision : 06.05.2015

NETRA PAL(DECEASED) THR. LR'S Appellant

Through: Mr.Atul Kumar, Adv.

Versus

BHOLE SHANKAR AND ORS Respondent

Through: Mr.Praveen Mahajan, Adv.for R-1.
Mr.D.K.Sharma, Adv.
for R-2/SDMC.
Mr.Parvinder Chauhan, Adv.
for R-3.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment dated 05.11.2012 passed by learned first appellate court in RCA No.30/2012 titled Netra Pal v. Bhole Shanker & Ors.

2. Before dealing with the contention raised by the learned counsel for the appellant, it may be pertinent here to give a brief background of the case.

3. The present appellant/plaintiff Mr.Netra Pal (since deceased) had filed a suit for possession and permanent injunction against the respondent. He claims to be lawful owner/allottee of plot No.B-77, J.J.Colony, Khanpur, New Delhi measuring 25 yards by virtue of an allotment letter/possession slip dated 02.09.1975 issued by DDA. It is alleged that the aforesaid plot of land was allotted to the appellant in lieu of demolition of his jhuggi which he was occupying. It is alleged that the appellant/plaintiff raised construction in the said plot of land and built up one room and boundary wall after taking loan from State Bank of India. It is alleged that one Mr.Raju, real brother of the respondent No.1/defendant No.1, was a very good friend of the appellant/plaintiff and therefore the appellant/plaintiff had permitted him to use the suit property without payment of any charges. Mr.Raju expired in the year 1998 and the suit property was lying locked whereafter the respondent No.1/defendant No.1 is alleged to have illegally and unlawfully trespassed in the suit property and since he failed to vacate the same, consequently, the present suit was filed after lodging of a complaint with the police. The respondent No.1/defendant No.1 contested the case of the appellant/plaintiff. It was contended by the respondent No.1/defendant

No.1 that the appellant/plaintiff is not the owner/allottee of the plot in question. It was contended by him that he has been living in the suit property after having purchased the same from one Sh.Daya Chand.

4. On the pleadings of the parties, the following issues were framed:

“Whether the plaintiff has no locus standi to file the present suit? OPD.

Whether the plaintiff is entitled for the relief of possession, as prayed for? OPP.

Whether the plaintiff is entitled for the relief of permanent injunction, as prayed for? OPP.

Relief.”

5. The learned trial court after analyzing the evidence produced by the parties returned a finding that the appellant/plaintiff was not able to prove the ownership of the suit property and consequently was not entitled to possession. He was also not able to establish that he was in possession and, therefore, the prayer for permanent injunction was also dismissed.

6. Feeling aggrieved, he preferred an appeal bearing RCA No.30/2012 which was also dismissed on 05.11.2012. Still not feeling satisfied, the appellant has filed the present regular second appeal.

7. The contention of the learned counsel for the appellant/plaintiff is that the learned trial court has not taken note of the fact that the respondent No.1/defendant No.1 has not been able to establish his ownership qua the plot of land in question which he had set up in his written statement. Therefore, the suit of the appellant could not have been dismissed.

8. The basic dictum of law is that one who asserts must prove. In the instant case, the respondent No.1/defendant No.1 had not come to the court setting up a case that he is the owner and allottee of the premises in question. The plaintiff/appellant had come to the court claiming himself to be the owner of the suit property and derived possession which was alleged to have been wrongfully occupied by the respondent/defendant. Therefore, it was for him to prove his ownership which he failed miserably.

9. The court has taken note of the fact that the register of possession which was produced during the course of the recording of evidence before the court showed the name of Mr.Daya Chand as the person who had been given the possession. The property in question is purported to have been purchased from Sh.Daya Chand by the respondent. The

contention of the learned counsel for the appellant/plaintiff is that as a matter of fact after passing of the judgment and decree by the trial court as well as the first appellate court, he has been able to lay his hands on two more registers of possession although it has come in evidence on record that there was only one register of possession and therefore the appellant should be permitted to adduce these two registers in order to prove that there was not one register with regard to the handing over of the possession.

9. It has also been contended by the learned counsel that the Supreme Court in *Jaladi Suguna (Deceased) Through LRs v. Satya Sai Central Trust and Ors.*; (2008) 8 SCC 521 has observed that there is a difference between legal representatives and legal heirs. This point was urged by the learned counsel on account of the fact that it has been alleged by the appellant that Sh.Netra Pal who was the original plaintiff had died during the pendency of the appeal and there was an application which was filed on behalf of the appellant which was not considered and the matter was decided without the orders on the said application having been passed.

10. I have considered all these submissions. The question as to the factum of death of Sh.Netra Pal is not in dispute. The factum as to

whether that application was allowed or not would not have made any difference because the question sought to be raised is difference between legal heirs and legal representatives. This is more on semantics of the term. The learned counsel has failed to show what is the substantial question of law involved.

11. The entire effort of the appellant seems to be to get the matter reopened on some technical grounds with a view to ensure that the matter is heard afresh on merits. This cannot be permitted to be done. As per Section 100 CPC, a regular second appeal is permissible only if there is a substantial question of law involved in the matter. In the instant case, I do not feel that any substantial question of law has been shown to be involved by the learned counsel for the appellant. I, therefore, feel that the present appeal is without any merit and the same is accordingly dismissed.

V.K. SHALI, J

MAY 06, 2015/dm