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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.41/2015

Decided on : 5th February, 2015

MUNNI BEGUM (DECEASED) THR HER LEGAL HEIRS

..... Appellant

Through: Mr. Prabhat Kiran, Advocate.

Versus

JAGBIR SINGH YADAV & ORS

..... Respondents

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 order dated 28.10.2014 passed by the learned Additional District Judge upholding the order dated 31.3.2014 passed by the learned Civil Judge rejecting the suit of the present appellant/plaintiff bearing No.313/2014.

2. I have heard the learned counsel for the appellant and have also gone through the record. Before dealing with the submissions made by the learned counsel for the appellant, it may be pertinent here to give brief background of the case. One Baqar Ali filed a suit for declaration and injunction with consequential reliefs against the respondents, who were

three in number. The case which was setup in the plaint was that he was the owner of the suit premises consisting of property bearing No.60 & 61 on a parcel of land measuring 200 square yards situated at *abadi* of Gora Qabristan near Patel Chest, Maurice Nagar, Delhi. It has been further alleged that the appellant's predecessor-in-interest was in possession of the said parcel of land till 1988 when he was dispossessed by the respondents. It was also stated that after dispossession, the respondents are in possession and the suit was filed in the year 1995 seeking a declaration from the court that the appellant is the owner of the land and the respondents be restrained from creating any third party interest in respect of the suit property. The respondents/defendants filed their written statement and contested the suit. One of the objections which was taken in the written statement was that the suit was liable to be rejected under Order VII Rule 11 CPC as there was no cause of action. The *locus standi* of the appellant was also challenged.

3. Although the objections under Order VII Rule 11 CPC for rejection of the plaint were taken; however, it seems the court went ahead with framing of issues and permitted the parties to adduce evidence. Subsequent thereto, on 7.3.2014, a fresh application under Order VII Rule

11 sub-clause (d) CPC was filed for rejection of the plaint. In the said application, the plea was taken that not only the suit is barred by limitation but even otherwise, the suit, as framed and filed by the present appellant was not maintainable inasmuch as the relief of possession had not been claimed by the present appellant. No formal reply to the application was filed and the matter was argued orally by the learned counsel for the appellant/plaintiff as well as the respondent.

4. The learned trial court came to pass an order on the basis of that application on 31.3.2014. The application was allowed on the ground that the case setup by the appellant himself was that he had been dispossessed in the year 1988 and the appellant had not claimed the possession. The court observed that the suit for possession was barred by limitation as well as possession ought to have been claimed in the suit seeking declaration and injunction. The learned Civil Judge placed reliance on a judgment of the Apex Court in case titled *Anathula Sudhakar vs. P. Buchi Reddy*; AIR 2008 SC 2033 wherein it was observed as under :-

“where a cloud is raised over plaintiff’s title and he does not have possession, a suit for declaration and possession, with or without consequential injunction, is

the remedy, where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter."

5. The present appellant, feeling aggrieved, filed the first appeal before the court of the learned Additional District Judge which upheld the order of the learned single judge. Still not feeling satisfied, the present regular second appeal has been filed.

6. The contention of the learned counsel for the appellant is two-fold. Firstly, it has been stated that the plaint ought not to have been rejected under Order VII Rule 11 CPC after lapse of 15 years when the issues were struck and the evidence was adduced. Secondly, it has been stated that although the appellant had not claimed the possession specifically in the prayer clause; however, the said possession was claimed by him tacitly inasmuch as he had sought an injunction against the respondent that he should not transfer or create third party interest in respect of the suit property in favour of any person other than the present appellant. It has also been stated by the learned counsel for the appellant that he is prepared to pay the court fees and the matter may be permitted to be

decided on merits by the learned trial court. It has also been contended that after filing of the suit, the original plaintiff Baqar Ali has since died and his legal heirs have already been brought on record.

7. The learned counsel has also placed reliance on case titled *Ram Prakash Gupta vs. Rajiv Kumar Gupta & Others*; (2007) 10 SCC 59. I have gone through the said judgment. There is no dispute about the proposition of law which has been laid down in the said judgment. What has been stated in the judgment of the Apex court is that while rejecting a plaint, the court does not have to see and tear off one of the paragraphs from the written statement in isolation and then pass an order. While dealing with the question of rejection of a plaint, the pleadings have to be seen as a whole. In the facts and circumstance of the said case, the court had come to the conclusion that the plaint had been rejected by the courts below after reading one paragraph of the plaint in isolation without giving credence to the previous litigation between the parties to which the respondent was himself a party. Therefore, the proposition of law laid down in the said judgment does not help the appellant in the instant case. The court has also expressed its anguish with the rejection of the plaint at a belated stage, when the written statement had been filed, issues have

been framed and parties have been cross-examined but no principle of law has been laid down that the rejection of the plaint must take place at the threshold though ideally the plea of rejection of plaint should be decided as expeditiously as possible especially in the light of the fact that a plea in this regard has been taken by the respondent in the instant case.

8. Be that as it may, coming to the merits of the case, Section 34 of the Specific Relief Act, 1963, clearly lays down that if a party is entitled to seek any declaration and he is entitled to any consequential relief also and in case he or she omits to leave that consequential relief then the suit for declaration itself is not maintainable. In the instant case, the appellant's own case in the plaint is that he is the owner of a parcel of land measuring 200 square yards situated at *abadi* of Gora Qabristan near Patel Chest, Maurice Nagar, Delhi. He himself has admitted that he has been dispossession in the year 1988. The suit has admittedly been filed in the year 1995. Therefore, it was incumbent on the appellant or his predecessor-in-interest to seek possession of the suit premises at the time when the declaration was applied for. The purpose of seeking all the reliefs in a suit under Order II Rule 2 CPC is to reduce the litigation

between the parties and prevent the multiplicity of litigation unless and until permission of the court is sought.

9. In the instant case, curiously, the appellant or his predecessor-in-interest has not claimed the possession and, therefore, the suit itself ought to have not been maintained and it should not have travelled thus far to frame the issues and record the evidence. Therefore, I feel that the trial court's order on that score rejecting the plaint was justified; however, the observation of the trial court rejecting the plaint on the ground of limitation was totally erroneous. A suit for possession under Section 5 of the Specific Relief Act, 1963, can be filed under the Limitation Act upto period of 12 years from the date when the person is being dispossessed. It seems that the learned trial court has erroneously taken the period of limitation to be three years for filing the suit for possession. To that extent, the judgment/order of the trial court is unsustainable. This order has been upheld by the first appellate court also that the plaint is liable to be rejected.

10. In view of the aforesaid facts and circumstances, the contention of the learned counsel that the appellant should be deemed to have claimed the possession constructively or tacitly or that he should be permitted to

pay the court fees now and seek the relief of possession are totally not permissible in law. The rejection of a plaint by the court does not bar filing of a fresh suit. No doubt it has resulted in wastage of time of the court but that is only on account of the inapt handling of the brief by the learned counsel for the appellant. The court cannot be permitted to set the clock back and permit a party to condone his lapses.

11. For the abovementioned reasons, I feel that the present appeal does not involve any substantial question of law. Accordingly, the same is dismissed; however, the parties are free to file a fresh suit.

V.K. SHALI, J.

FEBRUARY 05, 2015
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