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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.21/2005

Decided on : 29th June, 2015

JAI RAM

..... Appellant

Through: Mr.J.C.Mahindroo, Adv.

versus

PREM LATA & ORS.

..... Respondent

Through: Mr.T.S.Upadhyay, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a regular second appeal filed by the appellant against the judgment dated 18.10.2004 passed by the first appellate court in RCA No.12/2004 setting aside the judgment and decree passed by the trial court vide order dated 06.04.2004.

2. Though the present regular second appeal was filed in the year 2005, however, after almost seven years on 03.10.2012, the following substantial question of law was framed by my learned predecessor:

“Whether on the basis of evidence on record the first appellate court was justified in reversing the judgment of the learned Civil Judge.”

3. Thereafter, the matter was admitted and it has been finally heard.
4. Before dealing the substantial question of law which has been formulated by my learned predecessor, it may be pertinent here to give a brief background of the case.
5. The respondent No.1/Smt. Prem Lata had filed a suit claiming that her father in law was the owner of property No.540/9A, Nai Basti, Kishan Ganj, Delhi measuring 24 x 12 feet. After death, her father in law was survived by three sons namely Hari Kishan, Ram Swaroop and Ram Sumer who succeeded as the owners of the suit property being the legal heirs. The respondent No.1/Smt.Prem Lata is the wife of Sh.Ram Swaroop, the second son. She claimed that she was residing in portion of the suit property and more particularly shown in blue in the site plan which consisted of not only the share of her husband, but it also included the 1/3rd share of her brother in law Sh.Ram Sumer who had given his share under a family arrangement to her husband Ram Swaroop. Thus, she claimed herself to be in possession of a portion of the property measuring 16' x 12'. It was alleged by her that the defendants namely

Sh.Jai Ram, the present appellant, Smt.Saroj Bala and Sh.Ram Lal were claiming to be the purchasers of the suit property. The appellant/Mr.Jai Ram had started construction on the portion falling to the share of the 3rd brother Sh.Hari Kishan who was elder to Mr.Ram Swaroop and Mr.Ram Sumer. It was alleged that these three defendants intended to demolish the wall of her house with a view to raise further construction and they wanted to build a pillar in front of gate of respondent No.1/Smt.Prem Lata. Accordingly, the respondent No.1/Smt.Prem Lata filed a suit for permanent injunction and mandatory injunction.

6. The defendants namely the present appellant and respondent Nos.2 & 3 contested the matter. The dimensions of the plot of land were by and large admitted and it was stated that the same were 24'11" x 13'6" instead of what was given by the respondent No.1. On merits, it was contended that Mr. Hari Kishan had sold his share to Smt.Saroj Bala/respondent No.2 for a sum of Rs.8,000/- on the basis of power of attorney, etc. Respondent No.3 was the husband of respondent No.2. It was denied that they had raised any unauthorized construction on the plot of land in question. It was further stated that so far as respondent

No.1/Smt.Prem Lata is concerned, she has no locus standi to file the suit as her husband Sh. Ram Swaroop is the owner of the suit property.

7. On the pleadings of the parties, the following issues were framed,

- i) Whether the plaintiff has locus standi to file the present suit?
- ii) Whether this court has pecuniary jurisdiction to try the suit?
- iii) Whether the suit has been properly valued for the purposes of court fee and jurisdiction?
- iv) Whether the plaintiffs are entitled for the relief claimed in the plaint?
- v) Relief.”

8. The respondent No.1/Smt.Prem Lata in support of her case examined herself as PW-1, her brother in law Sh.Hari Kishan as PW-2, her husband Sh.Ram Swaroop as PW-3 and her youngest brother in law Sh.Ram Sumer as PW-4 while as the appellant/Sh.Jai Ram or Smt.Saroj Bala or Sh.Ram Lal did not examine any witness. The learned trial court dismissed the suit on the ground of locus holding that the respondent No.1/Smt.Prem Lata not being the owner of the suit property was not entitled to file the suit. Only the issue No.2 whether the trial court had the pecuniary jurisdiction to try the suit was decided in favour of the respondent No.1/Smt.Prem Lata. So far as the other issues are concerned, they were decided against her.

9. The respondent No.1/Smt.Prem Lata, feeling aggrieved by the order of the trial court, preferred an appeal before the first appellate court which was allowed.

10. The first appellate court held that for filing a suit for grant of mandatory injunction, it is not necessary that a person must be the owner of the property and even an occupier can file the suit for injunction. In this regard, it was observed by the court that respondent No.1/Smt.Prem Lata, apart from herself entering into the witness box, had also examined her husband as a witness who had supported the case of the respondent No.1. The court has also taken note of the fact that the suit was filed on account of urgency in restraining the appellant/defendant No.1 and the other respondent Nos.2 & 3 from raising further unauthorized construction at a time when her husband was not available and thus no fault could be found with the finding returned by the first appellate court in reversing the finding returned by the trial court that the respondent No.1/Smt.Prem Lata did not have the locus to file the suit. So far as the finding of the first appellate court with respect to other issues is concerned, that is also supported by evidence inasmuch as it is not in dispute that the property was owned by the father in law of the

respondent No.1/Smt.Prem Lata and post his demise, he was survived by three sons namely Sh.Hari Kishan, Sh.Ram Swaroop and Sh.Ram Sumer. The respondent No.1/Smt.Prem Lata is claiming to be in possession of not only the 1/3rd share falling to her husband Sh.Ram Swaroop but also the 1/3rd share falling to the share of her brother in law Sh.Ram Sumer who has re-arranged and given his share to his brother Sh.Ram Swaroop. The first appellate court has rightly observed that re-arrangement by way of family settlement is not necessary to be reduced into writing and duly registered as re-arrangement of the share of the parties between co-sharers or amongst the co-sharers does not per se create any right, title or interest and it is only the re-arrangement of shares in the property and thus she is admittedly the owner of 2/3rd and not 1/3rd share of the property. Curiously, the appellant and respondent Nos.2 & 3 have not assailed this aspect of the matter by way of cross-examining the witnesses in this regard produced by the respondent No.1/Smt.Prem Lata. She has not only examined her brothers-in-law Sh.Ram Sumer and Sh.Hari Kishan, but also her husband Sh.Ram Swaroop. The appellant and the respondent Nos.2 & 3 have not adduced any evidence to the contrary. As a matter of fact, none of the defendants in the suit, one of whom happens

to be the appellant herein, cared to enter into the witness box to even support their case. Thus, there is no fault in the finding returned by the first appellate court.

11. I, therefore, feel that the question of law which has been formulated by my learned predecessor deserves to be answered in negative. The finding returned by the first appellate court is absolutely in tandem with the evidence produced by the respondent No.1 and the same has to be upheld.

12. For the reasons mentioned above, the question formulated by my predecessor is answered in negative and the appeal is totally misconceived and the same is dismissed.

V.K. SHALI, J.

JUNE 29, 2015
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