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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.202/2011

Decided on : 15th April, 2015

IQRAR AHMED & ORS

..... Appellants

Through: Mr. M.P.S. Gahlaut, Advocate.

Versus

ALLAUDDIN

..... Respondent

Through: Mr. S.H. Nizami with Mr. S.S.
Nizami, Advocates.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellants against the judgment and decree dated 1.3.2011 passed in first appeal bearing R.CA. No.19/2008 titled *Allauddin v. Iqrar Ahmed & Ors.*
2. I have heard the learned counsel for the appellants and also gone through the record. The learned counsel for the appellants has not been able to show any substantial question of law being involved in the matter.
3. I have also gone through the judgment of the first appellate court as well as the trial court. I also do not find that any substantial question of law is involved which may warrant consideration of the appeal despite

the fact that it has remained pending in this Court for the last more than four years.

4. Before closing the case, I may give brief background of the case.

5. The present appellant and others filed a suit for declaration and permanent injunction. It was alleged by the appellants that they have become owners of the property by way of adverse possession and accordingly had prayed for grant of a declaration. Consequential relief of permanent injunction was also prayed that they should not be dispossessed from the suit premises. It was also their case that they were raising construction which should not be interfered with by the respondent/defendant.

6. The matter was contested by the respondent/defendant.

7. On the pleadings of the parties, the court framed the following issues :-

*“(1) Whether the suit is bad for misjoinder of parties?
OPD*

*(2) Whether plaintiff is entitled to relief of declaration
as prayed? OPP*

*(3) Whether plaintiff is entitled to the relief of
permanent injunction as prayed? OPP*

(4) Relief.”

8. Both the parties adduced their respective evidence.

9. So far as the issue of declaration is concerned, the trial court came to a finding that the appellants/plaintiffs were not able to establish that they were in occupation of the suit property in a hostile manner qua the respondent/defendant and, consequently, they were not entitled to a declaration for being declared as owners of the suit property. However, so far as the permanent injunction is concerned, the court observed that since they were in peaceful settled possession of the suit property, they should not be dispossessed by the respondent/defendant. As regards construction also, it was observed that the respondent/defendant shall not interfere with their raising of construction.

10. Feeling aggrieved by the judgment dated 29.02.2008 passed by the trial court, the respondent/defendant preferred an appeal. The first appellate court set aside the decree of permanent injunction holding that the appellants/plaintiffs were rank trespassers and as they were not able to prove their ownership by way of adverse possession, they could be dispossessed by the respondent/defendant. However, it is pertinent to mention that the respondent/defendant had conceded before the trial court

that they would not dispossess the appellants/plaintiffs except in accordance with due process of law. On the basis of these submissions, the court set aside the decree of permanent injunction granted in their favour by the trial court also both with regard to construction and the dispossession.

11. Feeling aggrieved by the judgment of the learned ADJ in appeal, the present second appeal has been preferred. These facts, as have been revealed above, do not raise any question of law much less a substantial question of law which may warrant consideration by this Court. Accordingly, the appeal is totally misconceived and the same is dismissed.

V.K. SHALI, J.

APRIL 15, 2015

‘srb’