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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 156/2014**

RAJ KUMAR AGGARWAL Appellant

Through: **Ms. Ashu Arora, Adv.**

versus

ROSHAN JAHAN BEGAM & ANR Respondents

Through: **Mr. Z.A. Khan and Mr. R. Haider Ali,**
Advs. for R1

Mr. Santosh Kumar Tripathi, ASC for
GNCTD with Mr. G.S. Meena and
Mr. Subodh Kumar with records.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **30.07.2015**

1. This is an appeal preferred against the judgment and order dated 3.10.2013 and 23.4.2014.
2. By virtue of the first order, i.e. order dated 3.10.2013, the trial court disposed of the application filed by respondent No.1/plaintiff filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (in short the CPC). The operative directions issued by the trial court in the order dated 3.10.2013 were to the effect that the defendants in the suit, which included the appellant/defendant No.1, were restrained from alienating, parting with possession and/or creating third party interest in the suit property. This order of injunction also operates qua the legal heirs, agents, assignees and representatives of the defendants including the appellant/defendant No.1. Order dated 3.10.2013 was predicated on the fact

that the suit property was earlier owned by Late Tamoor Jahan Begum who had bequeathed the suit property to respondents/plaintiffs vide Will dated 30.8.1984.

3. A perusal of the order also shows that the trial court observed in paragraph 6 of its order that the suit property fell in Khasra No.1665, which after lapse of time, was changed to Khasra No.1151/3.

4. The appellant, i.e. defendant No.1 being aggrieved by the order filed a review petition.

5. By virtue of the review it was sought to be demonstrated that in the revenue records the name of Late Tamur Jahan Begum was reflected in Khatauni No.113 and that she was shown to be the owner of the land located in Khasra No.1663/1147 and not land located in Khasra No.1665/1151/3. For this purpose, the appellant/defendant No.1 sought to rely upon the documents filed by respondent No.1/plaintiff along with the suit.

6. The trial court, however, rejected the review petition vide its order dated 23.4.2014 taking the view that there was no error apparent on the face of the record. The trial court based on certain judgments of the Supreme Court cited in its order sought to draw a distinction between an erroneous decision as against an error apparent on the face of the record.

7. It is in these circumstances, that the appellant/defendant No.1 has preferred the present appeal.

8. Mr. Z.A. Khan, who appears on behalf of respondent No.1/plaintiff, has opposed the appeal on the ground that since the review petition was rejected, no appeal would lie. For this purpose, he refers me Order XLVII Rule 7 of the CPC.

9. On merits, the counsel for respondent No.1/plaintiff submits that the

issue as to whether or not Late Tamur Jahan Begum was the owner of the suit property was a matter for trial and, therefore, no inference was called for.

10. Counsel for the appellant/defendant No.1 argues to the contrary. Arguments made were principally in line with the arguments advanced in the appeal.

11. Having heard the counsels for the parties, I am of the view that the trial court has committed an error, which is apparent on the face of the record. The error is self-evident and egregious in nature which does not require detection by process of any detailed reasoning contrary to what trial court has held.

12. As noted above, the documents filed by respondent No.1/plaintiff, which are the extracts from the record of rights, would show that Late Tamur Jahan Begum name has been shown against Khatoni No.113. Furthermore, the record of rights is also reflective of the fact that she was in possession of land which was located in Khasra No.1663/min. 1147 Banja Qadim; admeasuring 4 bighas.

13. This court vide order dated 20.1.2015, followed by 27.5.2015, directed the production of revenue record. Learned counsel appearing for the Government of NCT of Delhi has produced the record. He has affirmed the position as recorded by me hereinabove.

14. Insofar as the land located against Khatauni No.114 is concerned, the annotation against it is “in possession of *Abadi Deh*”, and that, the land is shown to be located in Khasra Nos.1663 Min., 1146, 1145, 1665/1151; admeasuring 3 kilas (578 bighas and 7 biswas). Quite clearly Khasra no.1665/1151 was not owned by late Tamur Jahan Begum, and therefore, no

rights could flow in favour of respondent no.1/plaintiff.

15. It is, therefore, quite obvious that there was an error apparent on the face of the record, which the learned Judge ought to have corrected while hearing the review petition which was moved before him.

16. As this error goes to the root of the matter, it forms part of the original order, i.e. order dated 3.10.2013.

17. Pertinently, in the appeal the appellant/defendant No.1 has challenged not only the order dated 23.4.2014 but also the order dated 3.10.2013. In view of the fact that I have come to the conclusion that there is an error in the order dated 03.10.2013, on account of what I have noted above, it is quite clear that there was no *prima facie* case in favour of respondent No.1/plaintiff. Having regard to the same, no injunction as could have been ordered. Therefore, order dated 3.10.2013, is set aside. The consequent effect of this would be that order dated 23.4.2014 would also fall by the way side.

18. Before I conclude, I must deal with one legal submission that had been raised by the counsel for respondent no.1/ plaintiff, to which I have made a reference hereinabove. The plea made was that no appeal was maintainable against order dated 23.04.2014, whereby the appellant/defendant no.1's application for review was rejected.

18.1 In this behalf, it may be pertinent to note that after the trial court had passed the order dated 03.10.2013, whereby respondent no.1/ plaintiff's application for injunction was allowed, the appellant/ defendant no.1 filed a review application on 06.11.2013. As noted above, the review application came to be dismissed on 23.04.2014. The instant appeal was filed only thereafter i.e. on 22.05.2014. In the appeal, challenge is laid both to order

dated 03.10.2013 as well as order dated 23.04.2014.

18.2 Therefore, on the date when the application for review was filed, it was maintainable under Order 47 Rule 1 clause (a) of the CPC as, while the right to file an appeal was available to the appellant/ defendant no.1 under Order 43 of the CPC, no appeal had been preferred on that date i.e. the date when the review application was filed. [See *Thungabhadra Industries Ltd. vs The Government of Andhra Pradesh AIR 1964 SC 1372 paragraph 8; and Rekha Mukherjee vs Ashish Kumar Das AIR 2005 SC 1944* paragraph 31].

18.3 Consequent thereto, as noticed above, the review application came to be dismissed on 23.04.2014. This resulted in the appellant/ defendant no.1 being aggrieved both by order dated 03.10.2013 and order dated 23.04.2014. Concededly, against the order dated 03.10.2013 an appeal is maintainable under Order 43 Rule 1 clause (r) read with Section 104 of the CPC.

18.4 However, in so far as order dated 23.04.2014 is concerned, whereby the review application was dismissed, an appeal is barred by virtue of Order 47 Rule 7 sub-rule (1). In so far as order dated 23.04.2014 is concerned, a revision would lie under Section 115 of the CPC, to this court. [See *Arya Insurance Co. Ltd. Vs. Lala Channoolal, AIR 1957 Allahabad 400*]

18.5 However, no revision would lie to this court vis-a-vis order dated 03.10.2013, as a remedy by way of appeal is available, as noticed above, against the said order.

18.6 Therefore, the instant appeal being otherwise competent would have to be dealt with by this court.

18.7 It is in these circumstances that I have proceeded to decide the appeal and, accordingly, rendered my judgement vis-a-vis tenability of the order

dated 03.10.2013. As noted above, since I have come to the conclusion that the order dated 03.10.2013 is not tenable, the order passed on the review application would consequently stand dissolved as the main order stands set aside. If, however, the review had been allowed, a circumstance which has not arisen in the present case, then the appeal may not have been maintainable as the contours of order dated 03.10.2013 would have changed.

18.8 I must confess though that ideally a separate revision petition ought to have been filed against the order dated 23.04.2014. Thereafter, the two could have been taken up together. Since, the power of revision vests in this court much of this in the instant case has been reduced to a technicality and technicality in my view cannot trump substantive justice.

18.9 Having regard to this circumstance, I am of the view that the objection raised on behalf of respondent no.1/ plaintiff is not tenable and hence is rejected.

19. Accordingly, the appeal is allowed. As indicated above, the injunction order passed by the trial court, vide order dated 3.10.2013, stands vacated.

20. At this stage, I am informed by the learned counsel for the appellant that an application under Order VII Rule 11 of the CPC is pending with the trial court for consideration.

21. It is made clear that the appellant will be free to press the aforementioned application before the trial court. If a request is made, the trial court would deal with the request in accordance with law and attempt to dispose of the said application with expedition.

RAJIV SHAKDHER, J

JULY 30, 2015/s.pal