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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.189/2014 & C.M. No.12220/2014

Decided on : 27th May, 2015

MANJEET SINGH

..... Appellant

Through: Mr. Gagan Mathur & Mr. Varun Kumar,
Advocates.

Versus

JEET SINGH & ANR

..... Respondent

Through: Mr. Anil Sharma & Mr. Amit, Advocates
for R-1.
Mr. Ruchir Mishra & Mr. Mukesh Kr.
Tiwari, Advocates for UOI.

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 3.4.2014 in RCA No.1/2013 titled *Manjeet Singh vs. Jeet Singh & Another* passed by the learned Additional District Judge by virtue of which the judgment and the decree dated 19.11.2012 dismissing the suit of the appellant for permanent/mandatory injunction was upheld.

2. The contention of the learned counsel for the appellant is that his suit was only a simplicitor suit for injunction that could not have been dismissed despite the fact the appellant had pleaded and made a statement

before the court where they are in uninterrupted possession of the suit property for the last more than 46 years.

3. The learned counsel for the appellant in support of his contention has relied upon the case titled *Nanak Chand & Others vs. Raja Rakesh & Others*; 191 (2012) DLT 454, *Anathula Sudhakar vs. P. Buchi Reddy (Dead) by L.Rs. & Others*; AIR 2008 SC 2033, *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Another*; 183 (2011) DLT 1 (SC) and *Prataprai N. Kothari vs. John Braganza*; AIR 1999 SC 1666.

4. I have gone through all these judgments. None of these judgments are applicable to the facts of the present case. But before commenting upon the judgments relied upon by the learned counsel for the appellant and their non-applicability, it may be pertinent here to mention that the appellant had filed a suit for permanent and mandatory injunction against the respondent claiming himself to be in possession of the portion of the suit property for the last 46 years. The case which was setup in the plaint was that his father, Kartar Singh, had paid a part of the amount to Parvati Devi, who was allottee of the suit property by the Ministry of Rehabilitation. Parvati Devi is alleged to have executed documents like agreement to sell, general power of attorney, will, etc. in favour of Kartar

Singh, father of the appellant. It is stated that it is on the basis of these documents, Kartar Singh, had become the owner of the portion which is under occupation of the appellant though ownership was not claimed. Curiously, Kartar Singh had not even filed a suit for specific performance against Parvati Devi nor the appellant has sought specific performance or a declaration to the effect that he is the owner of the portion which is under their occupation. The learned trial court as well as the first appellate court have dismissed the suit of the appellant for the reason that the appellant claiming himself to be in occupation of the suit premises for the last 46 years in the capacity of an owner was required to seek a declaration from the court. This is laid down under proviso to Section 34 of the Specific Relief Act. The essence of this section is that if a plaintiff is claiming only injunction and is entitled to some other relief also by way of declaration, the absence of relief with regard to declaration would make his suit for permanent injunction also unsustainable. The converse is also true under Section 34 proviso that if a party is entitled to a declaration as well as consequential relief, be that by way of an injunction or by way of possession, if he does not claim that

then the suit itself is not maintainable. Moreover, both these reliefs are discretionary in nature.

5. In the instant case, the two courts have concurrently held that the plaintiff, namely, the appellant herein ought to have claimed a declaration which he has failed to do and, therefore, the suit was dismissed by the trial judge and the said decision of the trial judge was upheld by the first appellant judge. This concurrent finding returned by the two courts below against the appellant does not, in my view, raise any substantial question of law and hence deserves to be dismissed.

6. The learned counsel for the appellant has relied upon the four judgments. I have gone through these judgments but none of them is helpful to the appellant in any manner whatsoever. *Suraj Lamp's* case (*supra*) clearly lays down that ownership of immoveable property cannot be claimed on the basis of documents like agreement to sell, power of attorney, will, etc. Such a person can only seek specific performance of these agreements. So far as Section 53A of the Transfer of Property Act is concerned, it has been observed that possession can be used as a shield and not as a sword, that principle has been accepted. Except this proposition, no other proposition has been laid down and I find it curious

as to who this judgment is helpful to the appellant as it has neither sought any specific performance nor any declaration with regard to the ownership of the suit property.

7. *Nanak Chand's case (supra)* is a case where originally the suit was filed for declaration and injunction. The declaration was sought with regard to *bhoomidari* rights but that relief was given up by the plaintiff in the said case on account of the fact that a declaration with regard to *bhoomidari* rights can be given only by a revenue court and the jurisdiction of the civil court was barred under Section 185 of the Land Reforms Act. The plaintiff in the said case was able to show that he was in possession and therefore, injunction was granted. The facts of that case are totally different than the present case.

8. The learned counsel for the appellant has not been able to formulate that any substantial question of law is involved in the matter. In the light of the concurrent finding returned by the two courts below, the present regular second appeal is dismissed.

V.K. SHALI, J.

MAY 27, 2015
‘AA’