

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.145/2012**

Decided on : 26th February, 2015

DINESH KUMAR Appellant
Through: Mr.Rajiv Dewan, Adv.
Versus

GULSHAN RAI CHADHA & ORS Respondent
Through: Mr.Neeraj Gupta and Mr.Rishabh
Mehta, Advs. for R-1 (a) to (d).

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by one Sh.Dinesh Kumar against the order dated 01.06.2012 by virtue of which his application under Section 5 of the Limitation Act, 1963 seeking to set aside the judgment dated 18.07.2007 on the basis of his application under Order 9 Rule 13 CPC, was dismissed.

2. Before dealing with the submissions of the learned counsel for the appellant, it would be pertinent to give a brief background of the case with reference to the various claims of the parties.

3. R-1/Sh.Gulshan Rai Chadha had filed a suit for possession against R-2 to R-4 namely Sh.Prem Kumar Khurana, Sh.V.K.Sharma and

Sh.Purshottam Dass Patel. The case which was set up by Sh.Gulshan Rai Chadha was that he was the owner of a plot bearing No.49/142 measuring 200 square yards out of Khasra No.897 to 903 situated in Block-A, Gulab Bagh Colony in the revenue estate of Village Nawada, New Delhi which he had purchased on 04.08.1972 by a registered sale deed from Sh.Chuni Lal s/o Sh.Param Ram. It was alleged by him that after noticing the movement of R-2/D-1 around the suit property, he had deputed a chowkidar at the suit property who had gone to his native village in December, 1989 after handing over the keys to the R-1/plaintiff. It is alleged that the R-2/D-1 taking advantage of this situation, broke open the door of the suit property and took possession of the same. Accordingly, R-1/plaintiff initiated proceedings by filing a suit to retrieve the possession.

4. The R-2/D-1 filed his written statement and took the plea that he was the owner of the property in question and he had sold it R-4/D-3 Sh.Purshottam Dass Patel. R-3/D-2 Sh.V.K.Sharma took the stand that he had nothing do with the suit property while as R-4/D-3 took the plea that he had sold the property to Sh.Govind Bhai Patel, who is his real

brother. Sh.Govind Bhai Patel was accordingly impleaded as defendant No.4 in the suit and he became the only contesting party.

5. The trial court framed the issues and one of the issues framed by the trial court was as to whether the plaintiff/Sh.Gulshan Rai Chadha was entitled to possession of the suit property or not. Sh.Gulshan Rai Chadha in support of his plea for retrieval of possession proved his sale deed which was more than thirty years old and accordingly a certified copy of the said document was assumed to be correct as the basis of transaction. So far as the defendant No.4 is concerned, he was not able to prove any document to show that he had validly purchased the property in question though he had admitted that in 1998 he had sold the same to one Sh.Ramneek Patel s/o Sh.Shiv Gun Bhai Patel through a registered sale deed. This Ramneek Patel s/o Sh.Shiv Gun Bhai Patel was never added as party to the suit and accordingly a decree for possession was passed in favour of Sh.Gulshan Rai Chadha.

6. The present appellant/Mr.Dinesh Kumar claims himself to have purchased a part of the aforesaid suit property measuring 100 square yards from Ramneek Patel s/o Sh.Shiv Gun Bhai Patel. He filed an application under Section 146 and Order 22 Rule 10 read with Section

151 CPC for permission to file an appeal against the judgment and decree dated 18.07.2007. Along with the application, he also filed an appeal under Section 96 CPC accompanied by an application under Section 5 of the Limitation Act, 1963. In the application under Section 146 and Order 22 Rule 10 read with Section 151 CPC, the appellant alleged that on 07.01.2008, 15-20 persons had come to the property in question and sought to dispossess him whereupon he learnt that an execution petition with respect to the decree passed in favour of Sh.Gulshan Rai Chadha was sought to be enforced. Accordingly, he learnt about the decree in respect of the suit property having been passed on 18.07.2007 in favour of Sh.Gulshan Rai Chadha.

7. He immediately applied for certified copy and filed his objections to the execution petition on 10.01.2008 under Order 21 read with Section 151 CPC, which are stated to be pending. In the condonation of delay application filed under Section 5 of the Limitation Act, 1963, he sought to give an explanation for the delay in filing the appeal to the effect that he learnt about the decree dated 18.07.2007 only on 07.01.2008 whereafter he applied for certified copy thereof and took steps to file the appeal which has caused a delay of 30 days which was beyond his control.

8. The application seeking condonation of delay was disallowed by the learned ADJ vide order dated 01.06.2012 on the ground that no cogent reason had been given by the appellant/Dinesh Kumar and the averments made by him in the application were vague. It is against this order dated 01.06.2012 that the present second appeal has been filed by the appellant.

9. Mr.Dewan, in the background of the aforesaid facts, has contended that a substantial question of law arises for consideration of this court namely whether a decree of possession can be executed against a person who is a lawful owner of part of the property and further that the application under Section 5 of the Limitation Act, 1963 ought to have been allowed by the learned ADJ as he has failed to appreciate that the law regarding condonation of delay is very liberal and the reasons because of which there was a delay in filing the appeal seeking assailing of order and judgment dated 18.07.2007, were not duly appreciated by the learned ADJ.

10. It has been contended that the learned ADJ has failed to appreciate that under Order 22 Rule 10 CPC, the present appellant being a purchaser of the interest of the predecessor in interest Mr.Ramneek Patel ought to

have been permitted to assail the judgment and decree passed by the learned court vide order dated 18.07.2007. The learned counsel in support of his contention has relied upon Raj Kumar v. Sardari Lal and Ors; (2004) 2 SCC 601; Haribhai Laxmanbhai Sindhav v. State of Gujarat and Ors; (2010) 12 SCC 570 and Hardevinder Singh v. Paramjit Singh & Ors; 2013 AIAR (Civil) 154 to contend that the appellant ought to have been permitted to challenge the judgment and decree dated 18.07.2007 as it raises a substantial question of law.

11. I have gone through the judgments relied upon by the learned counsel for the appellant and I have also gone through the record. At the outset, it may be stated that there is no question of law involved in the matter much less a substantial question of law. The judgments which have been relied upon by the learned counsel for the appellant are not applicable to the facts of the present case.

12. The learned counsel for the appellant himself has admitted that although a decree of possession has been passed in favour of Gulshan Rai Chadha and against R-2 to R-4 as far back on 18.07.2007 in respect of which execution petition is pending, the present appellant/Dinesh Kumar has already filed objections under Order 21 read with Section 151 CPC in

the said petition. That being the position, Section 47 CPC clearly lays down that if any execution petition is filed for retrieval of possession of the premises in which any application is filed by an aggrieved party who is claiming to have an independent right, then all the questions which he may raise with regard to his right in the said property, will be decided in the said execution petition and not by way of independent suit. Accordingly, the present appellant having already chosen to have filed objections in the execution petition must await the decision in the said execution petition. So far as the objections are concerned, it cannot be permitted that apart from filing objections with regard to the execution of the decree qua him or that the adjudication of rights liabilities in the execution petition itself, the appellant independently raises objections to the judgment and decree by filing an application under Order 9 Rule 13 CPC because the said judgment and decree, though passed in the presence of the contesting parties, cannot be construed to be an *ex parte* decree only on account of the fact that the present appellant was not a party to the original suit. So far as the judgment in the case of **Raj Kumar's case** which has been relied upon by the learned counsel for the appellant is concerned, the same is not applicable to the facts of the present case and

it deals with a situation where during the pendency of a suit itself, the property had been transacted, that the court came to observe that the prospective purchaser will be bound by the doctrine of *lis pendens* and his application under Order 9 Rule 13 CPC along with a prayer under Order 22 Rule 10 CPC can be considered on account of him being the assignee of the interest from the predecessor who had an interest in the suit property.

13. The second judgment which has been relied upon by the learned counsel for the appellant is in Hardevinder Singh's case (*supra*) wherein it has been observed that an aggrieved party can file an appeal seeking to bring himself into the category of an aggrieved party because he is claiming himself to be the purchaser of the suit property in respect of which a decree is sought to be executed by Gulshan Rai Chadha and therefore entitling him to file an application under Order 9 Rule 13 CPC as well as the present regular second appeal. If the judgment is seen, it will make it clear that the aggrieved party in the context of that judgment has been referred to be a party who was already a pre-existing defendant in the suit itself and not a stranger like the present appellant who was not

a party to the original suit and, therefore, the said judgment is also distinguishable from the facts of the present case.

14. The last judgment which has been relied upon by the appellant is with regard to condonation of delay in Haribhai Laxmanbhai Sindhav's case (supra).

15. I have gone through the judgment. There cannot be a dispute with regard to the proposition of law laid down in the judgment with regard to the condonation of delay where the law is now almost well settled by a catena of authorities which is to the effect that while condoning the delay what is material is not the length of delay but the bona fides of a party. While condoning the delay, each day's delay need not be explained but the reason or the ground on which the party was prevented from approaching the court for the purpose of filing an appeal must be genuine, bona fide and convincing. It is also settled that law of condonation of delay has to be liberally construed but even if that is done, I feel that the application of the appellant seeking delay in filing the appeal before the ADJ does not meet the test of sufficient cause for the reasons which have been given by the learned ADJ in its impugned order dated 01.06.2012 where he has observed that the averments made in the application seeking

condonation of delay are vague and bereft of any reason. *De hors* the said rejection, I feel as the appellant has already filed objections under Section 47 r/w Order 21 Rule 97 to 101 establishing or alleging his independent right or title to the suit property, those objections need to be decided rather than entertaining the instant appeal. Moreover, this appeal, in my considered opinion, does not deserve to be entertained.

16. Accordingly, the present regular second appeal is dismissed.

17. No order as to costs.

V.K. SHALI, J.

FEBRUARY 26, 2015
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