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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA No. 231/2016 & CM No.14418/2016 (for condonation of 34 days delay in re-filing the appeal).
ZUBEDA & ANR Appellants

Through: Mr. Awadhesh Kumar, Adv.

versus

JAMILLA & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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25.04.2016

CM No.14417/2016 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

RFA No. 231/2016 & CM No.14418/2016 (for condonation of 34 days delay in re-filing the appeal).

3. This first appeal under Section 96 of the Code of Civil Procedure (CPC), 1908 impugns the judgment and decree dated 1st December, 2015 of the Court of the Additional District Judge (ADJ)-01 (West), Tis Hazari Courts, Delhi of dismissal of CS No.224/14 filed by the two appellants for the relief of partition of property no.72-A, Gali no.5, Laxmi Vihar, Mohan Garden, Uttam Nagar, New Delhi.

4. Though this being a first appeal, which are ordinarily required to be heard after calling for the trail court record and this appeal has come up today for the first time but in the peculiar facts of the case need to follow the routine procedure and to burden this Court with this appeal is not felt.

5. In this view of the matter, notwithstanding the fact that the appeal is accompanied with an application for condonation of 34 days delay in re-filing thereof, the counsel for the appellants has been heard on merits.

6. Though issues were framed in the suit from which this appeal arises and evidence was also led but the learned ADJ has dismissed the suit merely for the reason that the respondents/defendants had instituted a suit for recovery of possession of the portion of the said property in possession of the appellants and the appellants had defended the said suit also on the ground of being the owners along with the respondents/defendants of the property but which defence of the respondents/defendants did not find favour and a decree for recovery of possession was passed by the Court of the Civil Judge in favour of respondents and against the appellants, the first appeal preferred by the appellants thereagainst was dismissed by the Court of the learned ADJ and the second appeal preferred by the appellants to this Court was also dismissed vide order dated 21st April, 2015.

7. The appellants thereafter filed an application before the learned ADJ for review of the judgment *inter alia* pleading that the decree for possession had been obtained by the respondents/defendants by playing fraud. The said review application was also dismissed by the learned ADJ vide order dated 13th January, 2016.

8. Once a Coordinate Bench of this Court in Regular Second Appeal (RSA) preferred by the appellants against the decree for recovery of possession has not found merit in the plea of the appellants as taken in the present proceeding, of being co-owners along with the respondents, and has dismissed the appeal preferred by the appellants, the question of entertaining

this RFA against the judgment and decree of dismissal of the suit for partition, in my opinion, does not arise.

9. The only argument of the counsel for the appellants is that since the suit for recovery of possession was filed by the respondents/defendants after the institution of the suit for partition from which this appeal arises, the decree in the suit for partition cannot follow the decree in the suit for recovery of possession and Order 2 Rule 2 of the CPC should have been invoked by the appellants in the suit for recovery of possession and which the counsel then appearing for the appellants failed to invoke.

10. There is no merit in the aforesaid contention also. The said ground if has not found favour in RSA earlier preferred by the appellants, cannot find favour now. I may in this regard mention that the counsel for the appellants has not only not filed the copy of the order of dismissal of RSA before this Court but on enquiry states that he himself has not even seen that order. In fact the counsel has not filed or seen even the orders of the Civil Judge and the learned ADJ in the suit for possession.

11. The same shows the lackadaisical manner in which this appeal is being pursued.

12. It was the contention of the appellants before the learned ADJ at the time of final arguments in the suit from which this appeal arises that the appellants shall prefer an Special Leave Petition (SLP) before Supreme Court against the order of this Court of dismissal of the RSA. On enquiry, the counsel for the appellants states that the said SLP has not been listed as yet.

13. It is inconceivable that an SLP which as on 1st December, 2015 was stated to have been already filed would not be listed till now. Obviously the appellants are lacking there as well.

14. Be that as it may, no ground for entertaining this appeal is made out.

Dismissed.

No costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

APRIL 25, 2016

‘pp’..