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

+ RSA 124/2016

Date of Decision: 06.05.2016

ACHLA SHOKEEN & ANR. Appellants
Through: Mr.R.Vasudevan, Advocate.

versus

OM PRAKASH SHOKEEN & ORS. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

CM Appln.16623/2016

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

RSA 124/2016

1. The appellants have challenged the judgment and decree dated 02.06.2014 passed by the Trial Court in Suit No.107/2014 whereby the relief sought by the appellants/plaintiffs was rejected as also against the judgment dated 04.02.2016 passed by the First Appellate Court in RCA No.23/2014 whereby the judgment of the Trial Court was upheld and affirmed.
2. The appellants/plaintiffs sought injunction against the respondents/defendants from obstructing in the peaceful enjoyment of the property bearing No.36/72, Punjabi West, New Delhi as also from

dispossessing them without the process of law. Mandatory injunction was also sought seeking direction to the respondents/defendants for restoring electric supply in the suit premises which comprised one room set in the main house. The appellants and the respondents are related to each other and respondent/defendant No.1 is the father-in-law of appellant No.1 and respondent/defendant Nos.2 & 3 are her brother-in-law and sister-in-law respectively.

3. The grievance of the appellants is that while she was away to her matrimonial home and her husband, appellant No.2 was off to Germany, the electric line in the part of the house occupied by them was disconnected. The appellant No.1 claimed the suit property to be her matrimonial home where she had been staying with appellant No.2 ever since her marriage, in one room set.

4. The suit was contested on the plea that after the marriage, the appellants had permanently settled in Germany. The allegation of the appellants regarding the electric connection being disconnected was stated to be false. The wiring in the house had become old and, therefore, new wiring was mandatorily required. For the entire house, wiring was replaced but such replacement could not be made in the portion occupied by the appellants as the appellants had left the suit premises after locking the same. Considering the fact that electric connection in the portion of house in occupation of the appellants/plaintiffs would be hazardous, no electric connection was given in the room in occupation of the appellants/plaintiffs.

5. The Trial Court, on the basis of the pleadings of the parties framed the following issues:-

- i Whether the defendants have unjustifiably disconnected the electricity supply to the portion under occupation of the plaintiff? OPP.*
- ii Whether the defendants are liable to restore the electricity supply to the portion under occupation of the plaintiff? OPP.*
- iii Whether the plaintiff is entitled to a decree of permanent injunction as prayed? OPP.*
- iv Whether the plaintiff is entitled to a decree of mandatory injunction as prayed? OPP.*
- v Relief.*

6. With respect to issue whether the respondents/defendants had unjustifiably disconnected the electric line and were, therefore, under an obligation to restore the same, the Trial Court relied upon the fact that the electric connection in the suit property stood in the name of the late mother-in-law of appellant No.1 and the appellant No.1 (PW-1) admitted before the Trial Court that she had not paid any electricity bills after August, 2006. The Trial Court, therefore, was of the opinion that the appellants had stayed in the suit property till 21.12.2006 and had never even applied for grant of electric connection in their name. Similar statement was made by appellant No.2 (PW-2) as well.

7. There is no averment in the plaint as to who would bear the expenses of the electricity in case the electric line is restored in the portion of the house which is in occupation of the appellants/plaintiffs. Thus the claim of the appellants/plaintiffs was rightly found to be lacking in bonafides. The Trial Court was justified in returning the finding that the appellants/plaintiffs wanted to settle other scores with the defendants. The relief of mandatory injunction was thus refused.

8. Since the appellants/plaintiffs were found to be in possession of

the suit premises, the Trial Court decreed the suit with respect to the permanent injunction as prayed by the appellants/plaintiffs. The respondents/defendants were directed not to dispossess the appellants/plaintiffs without following the due process of law.

9. The First Appellate Court while agreeing with the findings of the Trial Court, held that the appellants/plaintiffs are the co-owners of the property and, therefore, they would be entitled to have electricity in their portion of which they are in occupation of. But the same cannot be claimed as a matter of right unless there is any legal or contractual obligation for the respondents/defendants to provide electric connection in the occupied suit premises. The First Appellate Court also took note of the fact that the respondents/defendants had offered to give a no objection certificate (NOC) to the appellants/plaintiffs for obtaining separate electric connection in their name. In the absence of any such legal or contractual obligation for providing electric connection in the occupied portion, the First Appellate Court upheld the judgment of the Trial Court.

10. Learned counsel appearing for the appellants submitted that the First Appellate Court did not at all deal with the evidence adduced on their behalf. It was further submitted that the first appeal is a valuable right of a party and he ought to be heard on questions of law as well as of facts. The First Appellate Court, therefore, is always enjoined to decide the issues relating to facts and law by giving reasons in support or against the findings of the Court of first instance.

11. A bare perusal of the judgment delivered by the First Appellate Court falsifies the aforesaid contention of the appellants. There is no

prescribed format for rendering judgment. The evidence adduced on behalf of the parties have been very succinctly dealt with by the First Appellate Court.

12. No question of law, much less any substantial question of law, arises in the present second appeal.

13. The present second appeal is, therefore, dismissed, but without costs.

ASHUTOSH KUMAR, J

MAY 06, 2016

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