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

+ RSA 184/2015

PARWATI DEVI

..... Appellant

Through: Mr. Alok Kumar, Mr. Neeraj Gupta
and Mr. Amit Singh, Advocates

versus

HARDEEP SINGH

..... Respondent

Through: Dr. Shambhuji, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
08.01.2016

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1. Admit. The following substantial question of law arises for consideration in the present second appeal:

Whether the courts below were perverse in dismissing the suit of permanent injunction filed by the plaintiff against the dispossession of the suit property in the light of the defence taken by the defendant that the defendant had not issued any threat of dispossession to the plaintiff?

2. I have heard learned counsel for the parties at this stage and proceed to dispose of the appeal.

3. The plaintiff/appellant had filed the suit for permanent injunction on the premise that she had been residing in the suit property since the time of her grandfather. She disclosed that one Sh. Ram Prasad and Dashrath Prasad had filed a suit in the year 1983 which was originally numbered as CS (OS) No.918/1993 in this Court, which stands transferred to the District Court upon the rise of pecuniary jurisdiction.

4. She averred in the plaint that the plaintiff and her son Narender Sharma had received telephonic calls asking the plaintiff and her son to leave the property. These averments are contained in para 10 and 12 of the plaint. On this premise, the plaintiff filed the suit to claim permanent injunction to restrain the defendant from interfering in the peaceful possession and enjoyment of the plaintiff in the suit property. In para 18, the plaintiff disclosed that the cause of action, inter alia, arose when allurements were offered and thereafter threats were issued to the plaintiff to vacate the suit property.

5. The defendant filed his written statement. In reply to para 7 of the plaint (in para 5 of the written statement), the defendant admitted the possession of the plaintiff in respect of the suit property. In para 12 of the written statement, the defendant stated that he had no intention of dispossessing the plaintiff without due process of law.

6. Surprisingly, despite the aforesaid stand of the defendant, the Trial Court omitted to appreciate the pleadings, and instead of decreeing the suit on the basis of the pleadings itself, proceeded to frame issues and recorded evidence of the parties. In fact, at that stage itself, the suit could have been disposed of on the basis of the stand taken by the defendant, wherein the

defendant admitted the possession of the plaintiff and also stated that the defendant that he had no intention of dispossessing the plaintiff without due process of law.

7. The plaintiff led the evidence of her son Narender Sharma, who also holds a special power of attorney dated 26.07.2012 (Ex. PW-1/1). He, inter alia, deposed that he is the son of the plaintiff and is residing in the suit property along with the family of the plaintiff. In para 8 of the affidavit by way of evidence towards examination in chief, he disclosed the threat received by the plaintiff and himself. He was thereafter cross examined by the defendant. In his cross examination, he denied the suggestion that the defendant in the suit never (typed as 'ever' in the recording of evidence) threatened the plaintiff or her son Narender Sharma. I may here itself observe that it is evident that there is a typographical error in the recording of the cross examination of PW-1, as it does not make sense if the word is read as 'ever' and not 'never'. This is so in the light of the averment made in the plaint, the deposition in the examination in chief, and in the very next line recorded in the cross examination, wherein PW-1 denied the suggestion that the contents of para 8 of his affidavit by way of evidence – regarding issuance of threats, is false.

8. The Trial Court, however, dismissed the suit on the premise that the plaintiff had not entered the witness box and had led the evidence through an attorney. In this regard, reliance was placed on *Man Kaur (D) by LRs v. Hartar Singh Sangha*, (2010) 10 SCC 512. Secondly, it was held that the plaintiff had not established the issuance of threat of dispossession of the defendant.

9. The first appeal preferred by the appellant/plaintiff has met the same fate.

10. The submission of counsel for the appellant is that the impugned judgment and decree are as a result of misreading of the evidence and also wrong application of the judgment of the Supreme Court in *Man Kaur* (supra) in the facts of the present case. He submits that the courts below have failed to appreciate that the deponent Narender Sharma, who is the attorney of the plaintiff is none other than the son of the plaintiff and is residing in the suit property. Moreover, it was the averment of the plaintiff that the threat of dispossession had been issued not only to the plaintiff but also to Narender Sharma.

11. On the other hand, learned counsel for the respondent has supported the impugned judgment by submitting that the witness Narender Sharma PW-1 deposed on the basis of his special power of attorney and not in his own personal capacity.

12. Having heard learned counsel for the parties, perused the impugned judgment as well as the judgment of the Trial Court and the evidence led by the parties, I am of the view that the judgment and decree passed by the two courts below suffer from perversity and cannot be sustained. It is a clear case where the two courts below have failed to appreciate that the plaintiff had led the evidence of her son Narender Sharma, who incidentally was also holding a special power of attorney. Even if he did not hold the special power of attorney, he was a competent witness since he had deposed on the basis of his personal knowledge with regard to issuance of threat to the plaintiff and himself by the defendant. He is residing in the suit property

with the plaintiff and the plaintiff had averred in the plaint itself that threats had been issued to her as well as her son Narender Sharma. Since the deposition of the witness was premised on his personal knowledge, the decision in *Man Kaur* (supra) had no application in the facts of the present case.

13. Moreover, in the face of the pleadings of the parties, the examination in chief of PW-1 and the cross examination of PW-1, it could not be said that no cause of action had arisen in favour of the plaintiff as no threat had been issued. Consequently, the impugned judgment and decree is set aside and the suit of the plaintiff is decreed thereby restraining the defendant from in any manner dispossessing the plaintiff from the suit property without due process of law. The parties are left to bear their respective costs.

VIPIN SANGHI, J

JANUARY 08, 2016

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