

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

+ **RSA No. 385/2015**

% **20th October, 2016**

RAM AVTAR TYAGI Appellant

Through: Mr. B.S. Chaudhary and Mr. Chirag
Goswami, Advocates.

versus

NARENDER SINGH Respondent

Through: Mr. Nawab Singh Jaglan, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

**RSA No.385/2015 and C.M. Appl. No. 24274/2015 (for stay under Order
XLI Rule 5 read with Section 151 CPC)**

1. Counsel for the parties have been heard at length.
2. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the Judgments of the courts below; of the Trial Court dated 3.9.2013 and the First Appellate Court dated 6.6.2015; by which the plaint was rejected under Order VII Rule 11 CPC.

3. It is seen that the disputes between the parties pertain to half area of 2 bighas of land situated in khasra no. 228 of Village Kadipur, Delhi, and which land is part of the land which was agreed to be sold under an Agreement to Sell dated 14.8.1996 for 40 bighas and 19 biswas of land located in khasra nos. 206, 212, 213, 218, 219, 227 and 228. The dispute between the parties, as already stated above, is with respect to half area of 2 bighas situated in khasra no. 228.

4. There is no dispute between the parties that for the subject 2 bighas of land situated in khasra no. 228, the respondent/defendant had executed a General Power of Attorney dated 8.1.1997, i.e for 2 bighas of land in khasra no. 228, appellant/plaintiff had a right. The respondent/defendant as per his written statement however states that the appellant/plaintiff has already sold much more than 2 bighas of land in khasra no. 228 and therefore whatever rights the appellant/plaintiff had in 2 bighas of khasra no. 228 have already been utilized by transferring the land ahead. This is stated in paragraphs 8.8 and 8.9 of the preliminary objections of the written statement. In the replication the appellant/plaintiff has in a totally vague manner denied paragraphs 8.8 and 8.9 of the preliminary objections in one line without giving any details as to how the appellant/plaintiff has or has not sold, or if has sold then what area out of the subject matter of the suit comprised in 2 bighas of land in khasra no. 228.

5. In view of the state of pleadings in the suit and lack of details being given by the appellant/plaintiff as to how much of the 2 bighas of land in Khasra no. 228 the appellant/plaintiff has already transferred, and how much of the 2 bighas of land in khasra no. 228 appellant/plaintiff still has as the appellant/plaintiff has not transferred the same, the plaint would lack necessary ingredients of a cause of action for a suit seeking rights in half area of the 2 bighas of land in khasra no. 228. It was incumbent upon the appellant/plaintiff to give details in the plaint as to how much area of khasra no. 228 remains with him out of the 2 bighas purchased, i.e how much is already sold, and which facts are missing in the plaint.

6. A rejection of a plaint under Order VII Rule 11 CPC does not prevent the plaintiff from filing a fresh suit on the same cause of action and this is so stated in Order VII Rule 13 CPC.

7. In view of the above, counsel for the appellant/plaintiff states that this appeal is not pressed, however, he seeks liberty of the Court to file a fresh suit and in which suit plaint the appellant/plaintiff will give complete particulars as to the land on which title rights are claimed in khasra no. 228 of Village Kadipur and further if the appellant/plaintiff has sold any part of the land of 2 bighas in khasra no. 228 then how much part is sold and how much part still remains, etc etc. The suit plaint, therefore, will have to be crystal clear as to

what are the rights remaining and as claimed in 2 bighas or part thereof of khasra no. 228 in which appellant/plaintiff has rights under the documents dated 8.1.1997. Further the cause of action would be only if appellant/plaintiff has not already sold 2 bighas of land of khasra no. 228 purchased under the documentation dated 8.1.1997 and only would then any right remains of the appellant/plaintiff in the land of 2 bighas in khasra no. 228 purchased under the documentation dated 8.1.1997.

8. In view of the above, the second appeal is disposed of as not pressed, but the appellant/plaintiff is granted liberty to file a suit plaint which will give detailed facts of the complete cause of action with respect to 2 bighas of land situated in khasra no. 228 which is the subject matter of the documentation dated 8.1.1997.

9. The Regular Second Appeal is accordingly disposed of, leaving the parties to bear their own costs.

OCTOBER 20, 2016

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VALMIKI J. MEHTA, J