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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 4th December, 2017

+ CM(M) 1230/2016 and CM Nos.44294-44295/2016

KADAM SINGH

..... Petitioner

Through: Mr. R.N. Dubey, Advocate

versus

TULSI & ORS

..... Respondents

Through: Mr. Anuroop P.S., Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petitioner had instituted a civil suit (CS No.118/11/1999) on 16.06.1999 against the respondents herein seeking relief of permanent injunction. The suit was contested and the parties went to trial on the basis of issues framed, that were settled on 18.08.2000. The respondents (defendants) had set up a Will purportedly executed by Mam Raj, the predecessor-in-interest of the parties, the validity and legality whereof was the subject matter of the second issue. The Civil Judge, by judgment dated 23.09.2013, disposed of the said suit observing that the issue regarding validity of the Will could not be “re-agitated” in such proceedings. It has been, however, clarified by the counsel representing both sides that the validity of the said Will

was not subject matter of any previous litigation in civil court, except some proceedings before the Sub Divisional Magistrate.

2. Be that as it may, the trial court partly decreed the suit granting permanent injunction in favour of the petitioner (plaintiff) restraining the defendants from selling, alienating, parting with possession, creating third party interest or encumbrances or causing interference in the peaceful enjoyment of the suit premises by the plaintiff in a part of the suit property “*without the due process of law*”.

3. The plaintiff, (i.e. petitioner) took out first appeal (RCA No.03/2014) against the said judgment and decree, his basic grievance being against non-inclusion of some part of the suit property in the relief that was granted. During the course of hearing on the said first appeal, the question of need for decision on the second issue came up. The first appellate court was of the view that a decision on the said issue was necessary. It is on such ground that that it allowed the appeal by judgment dated 07.04.2014 and remanded the case to the trial court with direction that the second issue concerning the validity of Will also be decided.

4. Upon remand, the Civil Judge, by his order dated 24.12.2014 rendered a decision on the said issue deciding it in favour of the defendants and against the plaintiff. The order dated 24.12.2014 of the civil Judge was sought to be challenged by the petitioner by appeal (RCA No.03/2015) belatedly and, therefore, with an application seeking condonation of delay under Section 5 of the Limitation Act.

5. The first appellate court, by its order dated 14.05.2016, however, was not satisfied with the reasons set out for the delay in filing of the appeal and dismissed the application seeking condonation and consequently threw the appeal out. It is the said order which is challenged by the petition at hand.

6. The question of delay in filing the appeal before the court of Senior Civil Judge against the order dated 24.12.2014 apart, a fundamental defect in the approach of the civil Judge in rendering the order dated 24.12.2014, has come to notice of the court. After the remand by the Senior Civil Judge by order dated 07.04.2014, the civil suit required to be decided afresh. The task of the civil Judge was not complete only by taking a decision on the second issue. He was expected to pass a fresh judgment deciding the suit. This not having been done, the matter will have to be remanded back to the trial court for appropriate further proceedings in accordance with law. Ordered accordingly.

7. In the result, the civil suit would stand revived on the file of the Civil Judge who will pass a judgment as per law. The evidence having already been led by both sides, as fairly conceded, the Trial Judge is now required only to hear the parties and render its decision. The Civil Judge is, requested to pass the fresh judgment as expeditiously as possible preferably within three months of the date next hereby fixed. The parties are directed to appear before the Civil Judge on 08.02.2018.

8. The petition along with pending applications stand disposed of in above terms.

9. *Dasti.*

R.K.GAUBA, J.

DECEMBER 04, 2017

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HIGH COURT OF DELHI



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