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

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Date of Decision: January 25, 2017

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RSA 31/2017

SURENDER MOHAN & ANR.

..... Appellants

Through: Ms.Sagari Dhanda & Mr.Prashant
Sharma, Advocates

versus

MADAN LAL & ANR.

..... Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

CM No.3177/2017

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

RSA 31/2017

1. By way of this Regular Second appeal filed under Section 100 CPC, the appellants call in question legality of the judgments rendered by the First Appellate Court dated 26th September, 2016 and of the learned Trial Court dated 23rd November, 2015 whereby the Civil Suit No.183/2012 stands dismissed for not disclosing cause of action.

2. This being second appeal, existence of substantial question of law is a condition precedent for entertaining the second appeal. Learned counsel for the appellants has submitted that in respect of the relief of injunction sought

in the civil appeal, learned Trial Court has held that this is subject matter of penal law and if it is so, no suit for injunction would be maintainable.

3. Before adverting to the contention raised by the learned counsel for the appellants, it is necessary to understand the exact nature of the suit filed by the appellants/plaintiffs. The Civil Suit No.183/2012 was filed by Sh.Surender Mohan and Sh.Bansi Lal, appellants/plaintiffs herein impleading Sh.Madan Lal and Sh.Pramod Yadav as defendants, respondents herein for granting decree of declaration and permanent injunction pleading as under:-

- (i) Sh.Matru Mal, forefather of the parties owned property bearing No.22-23, West Laxmi Market, Khureji Khas, Delhi.
- (ii) After his death the suit property was partitioned by his successors and construction was also raised and they are in possession of their respective shares.
- (iii) The plaintiffs are in possession of two rooms at the ground floor of property No.23, West Laxmi Nagar Market, Khureji Khas, Delhi and two rooms are occupied by their tenants.
- (iv) Defendant No.1 is in occupation of one room at the ground floor and defendant No.2 is son of defendant No.1.
- (v) One room is also in possession of Malti Devi.
- (vi) The possession of the plaintiffs in the suit property is settled possession.
- (vii) Respondents/defendants with a view to grab the share of other legal heirs have prepared some forged documents and they intend to sell the said property in which the plaintiffs, defendants and other legal heirs of late Sh.Matru Mal had equal share.
- (viii) After oral partition all the successor of Sh.Matru Mal are residing in

their respective portion.

(ix) Respondents/Defendants are negotiating with the property dealer to sell out the share of the appellants/plaintiffs as well that of Malti Devi.

(x) On 14th July, 2012 some person visited the suit property and from them the appellants/plaintiffs came to know that the defendants intend to sell the suit property.

(xi) The appellants/plaintiffs contacted the defendants and they were threatened that the property would be sold to the gunda elements and they will be dispossessed.

4. The relief sought in the civil suit was to pass a decree of declaration declaring the property to be joint Hindu property and restraining the respondents/defendants from dispossessing the appellants/plaintiffs without due process of law or creating any third party interest.

5. The learned Trial Court dismissed the suit observing that the relief of declaration is contrary to the plea of the property being partitioned hence having inherent ambiguity. So far as advancing threat is concerned, the defendants had never visited the plaintiffs at their place and if any threat was extended for using criminal force the same is subject matter of penal law.

6. The First Appellate Court concurred with the findings of the learned Trial Court that no cause of action is available to file the suit.

7. The concurrent findings of the facts by the two Courts below are about non-existence of cause of action, which can be discerned from the pleadings referred to above. There is hardly any scope for interference by this Court in exercise of power under Section 100 CPC when there is no cause of action. It may be noted that while taking the plea of oral partition which stands implemented and all the legal heirs of Sh.Matru Mal are in settled possession of their respective portion, the averment being to the effect that

the respondents/defendants are intending to sell the share of other legal heirs of Sh.Matru Mal and not that of appellants/plaintiffs, no threat being extended by the respondents/defendants to forcibly dispossess the appellants/plaintiffs, the impugned orders do not suffer from any illegality or infirmity.

8. The contention raised on behalf of the appellants that if every threat is subject matter of penal law then no suit for injunction is maintainable deserves to be noted and rejected for the reason that the Court has observed about the threat of using criminal force, to be subject matter of penal law.

9. In view of above, no substantial question of law arises in this appeal. Hence the appeal is dismissed.

10. The parties to bear their own costs.

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Dismissed as infructuous.

PRATIBHA RANI
(JUDGE)

JANUARY 25, 2017

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