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

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Date of Decision: January 31, 2017

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RSA 39/2017

SH. BHAGAT RAM AND ANR.

..... Appellants

Through: Ms.Sapna Malik & Ms.Manjunatha
H T, Advocates

versus

SH.GULFAM GAZI

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

CM No.3854/2017

1. For the reasons stated in the application, the delay of 16 days in filing of the appeal is condoned.
2. The application stands disposed of.

CM No.3852-53/2017

1. Exemption allowed, subject to all just exceptions.
2. The applications stand disposed of.

RSA 39/2017

1. This Regular Second appeal under Section 100 of CPC has been filed impugning the judgment of the First Appellate Court dated 9th September, 2016.
2. The order dated 9th September, 2016 by the learned Appellate Court

has been passed after recording the statement of the counsel for the appellant herein (respondent in RCA No.67/2016) and of the appellant in the first appeal, and reads as under:-

7“Vakalatnama on behalf of respondents filed.

Arguments heard for about 1.45 hours before and after lunch. This is an appeal against the judgment and decree passed in a suit for permanent injunction filed by the appellant/plaintiff in which the counterclaim of the defendants/respondents was rejected.

The defendants/respondents have not filed any separate appeal or any cross objections against the dismissal of their counter claim. After going through the evidence of the defendant no.1 recorded in the Trial Court, it is now confirmed that he is in possession of only one shop in property No. B-74, New Seelampur Market, Delhi and rest of the portion of this property is with the plaintiff. The shop in possession of the defendants is shown at point B in the site plan Ex.P20 lying on the Trial Court record. The Khoka which is marked at Point A now does not exists.

It is a simple suit of injunction in which no relief of declaration of ownership was claimed by the plaintiff nor it could have been granted. A query was put to the counsel for the defendants whether his clients can give the statements not to dispossess the plaintiff from the portion in his possession without due process of law and without prejudice to their rights and contentions, then it is stated that they can do so. Counsel took instructions from his clients and then gave statement accordingly. In view of the statement given by counsel for the defendants/respondents, the appellant/plaintiff has also given statement for withdrawl of the appeal and for disposal of the suit. The statements have been given by the parties without prejudice to their rights, contentions and claims. The respondent no. 1 has countersigned the statement given by his counsel.

In view of the statement given by both the parties, the present appeal is dismissed as withdrawn. The judgment and decree dated 01.06.2016 is set aside. The suit filed in the Ld. Trial Court is ordered to be disposed off in terms of the statements given and respondents/ defendants are directed to

abide by the undertaking given on their behalf by their counsels. The original documents of the parties be returned to them as per rules. Parties are directed to bear their own costs in respect of Trial Court suit and this appeal. Trial Court record alongwith copy of the order be sent back. Decree be prepared accordingly and file be consigned to record room.

*Addl.Distt Judge(NE)-01
09.09.2016”*

3. In the instant case on the basis of joint statement made by counsel for the appellant and by the respondent himself the appeal bearing RCA No.67/16 has been dismissed as withdrawn with direction to the parties to appear before the learned Trial Court so that the Civil Suit No. 579/02 for a decree of permanent injunction could be disposed of in terms of the joint statement made by the parties.
4. Once the appeal has been disposed of as withdrawn, the impugned order does not give rise to any substantial question of law so as to entertain this appeal. Even otherwise in the suit seeking permanent injunction the statement made by the counsel for the appellants (respondents in RCA No.67) was to the effect that respondent/plaintiff would not be dispossessed without due process of law.
5. The appellants cannot claim that they have a right to take law in their own hands and forcibly dispossess Gulfam Gazi, who is respondent in this second appeal.
6. Section 100 of Code of Civil Procedure, 1908 prescribes for a second appeal only on the substantial question of law. Today when this Regular Second Appeal is listed, at admission stage, enough time has been given to the learned counsel for the appellant to satisfy the Court as to how in a case wherein on the basis of joint statement made by the parties the first appeal

has been disposed of as withdrawn and learned Trial Court was directed to dispose of the suit in terms of the joint statement made before the Appellate Court, a substantial question of law is involved. No satisfactory answer could be given by learned counsel for the appellants except submitting that previous counsel has played fraud. The statement made before the First Appellate Court does not indicate any fraud and substantial rights of the parties are not affected if a matter is being disposed of by directing that the respondent herein should not be dispossessed except with due process of law.

7. Since no substantial question of law is involved in this case, the appeal is dismissed.

CM No.3851/2017

Dismissed as infructuous.

PRATIBHA RANI
(JUDGE)

JANUARY 31, 2017

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