

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

+ **RFA No. 959/2017 & RFA No. 800/2017**

% **20th November, 2017**

RFA No. 959/2017 & CM Nos. 41211-14/2017

GOPAL DEVI Appellant
Through: Mr. Naveen Kumar Raheja,
Adv.

versus

TEK RAM & ORS. Respondents
Through: Ms. Arti Anupriya, Adv. for R-
1.
Ms. Sapna Chaudhari, Adv. for
DDA.

RFA No. 800/2017

TEK RAMAppellant
Through: Ms. Arti Anupriya, Adv.

versus

GOPAL DEVI & ORS. Respondents
Through: Mr. Naveen Kumar Raheja,
Adv. for R-1.
Ms. Sapna Chaudhari, Adv. for
DDA.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RFA No. 959/2017

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit

impugning the judgment of the trial court dated 27.2.2017 whereby the trial court has dismissed the suit filed by the appellant/plaintiff seeking possession, partition, injunction, declaration etc.

2. Learned counsel for the appellant/plaintiff rightly argues that the suit was listed on 3.8.2015 when issues were framed and evidence of the appellant/plaintiff was to be recorded on 11.3.2016 which was the first date fixed for evidence, but the trial court however on this very first date fixed for evidence closed the evidence of the appellant/plaintiff, and has thereafter dismissed the suit. It is also argued that this aspect is mentioned in para 7 of the impugned judgment and which states that appellant/plaintiff has not led any evidence.

3.(i) In my opinion, the impugned judgment dated 27.2.2017 has to be set aside because it is an extremely harsh action of the trial court to close the evidence of the appellant/plaintiff in a suit on the very first date of hearing fixed for recording of evidence. As already stated above, issues were framed on 3.8.2015 and the suit was listed for evidence of the appellant/plaintiff for the first time on 11.3.2016, and on this first date itself, on account of the appellant/plaintiff not

leading evidence, the evidence of the appellant/plaintiff was closed. Resultantly, the suit has been dismissed.

(ii) As per Section 105 CPC, an order such as the impugned order dated 11.3.2016 closing right of the appellant/plaintiff to lead evidence, can be challenged in an appeal against a final judgment and in ground (F) of this appeal the appellant/plaintiff has questioned the closing of her evidence on the very first date of hearing fixed for evidence.

4. In view of the aforesaid discussion, this appeal is allowed. The impugned judgment dated 27.2.2017 is set aside and the appellant/plaintiff is given liberty to lead evidence. Appellant/plaintiff will however ensure that her evidence in affirmative is closed by taking not more than three opportunities.

5. Parties to appear before the District and Sessions Judge, Central, Tis Hazari Courts, Delhi on 18.12.2017 and the District and Sessions Judge will now mark the suit for disposal to a competent court in accordance with law.

RFA No. 800/2017

6. This appeal was filed by the defendant no.1 in the suit. The suit was dismissed by the self-same impugned judgment dated 27.2.2017 and the appellant/defendant no.1 had challenged certain findings against him in the impugned judgment.

7. I have already set aside the impugned judgment dated 27.2.2017 in terms of the aforesaid judgment in RFA No. 959/2017, and therefore once the self-same impugned judgment dated 27.2.2017 is set aside, this appeal would become infructuous, because there does not survive any impugned judgment which can be challenged by the appellant/defendant no.1. This appeal is also accordingly disposed of.

NOVEMBER 20, 2017/ib

VALMIKI J. MEHTA, J