

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

+ **FAO No. 427/2017**

% **3rd November, 2017**

MOHD. IRSHAD

..... Appellant

Through: Ms. Deepika Raghav,
Advocate.

versus

SURESH BALA & ORS.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 39419/2017 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 39420/2017 (delay of 230 days in filing the appeal)

For the reasons stated in the application, delay in filing the appeal is condoned subject to just exceptions. CM stands disposed of.

FAO No. 427/2017

1. This first appeal under Order XLIII(1)(r) of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff impugning the

order of the trial court dated 9.1.2017, by which the trial court has dismissed the application under Order XXXIX Rules 1 and 2 CPC filed by the appellant/plaintiff.

2. The facts of the case are that the appellant/plaintiff filed the subject suit for recovery of possession, *mesne* profits and permanent injunction alleging that he was the owner of the property bearing no.1/4055, Khasra No. 413, Ram Nagar Extension, Loni Road, Shahdara Delhi measuring 100 sq. yds. inasmuch as the appellant/plaintiff is the grand-son of Zaffarulla and Zaffarulla had executed a registered Will dated 11.4.1985 in his favour with respect to the suit property. Defendants in the suit are legal heirs of late Sh. Angad Ram and are pleaded as per the plaint to be in illegal possession of the suit property. Hence the suit seeking relief of possession, *mesne* profits, injunction etc.

3. The impugned order shows that the defendants in the suit being the legal heirs of late Sh. Angad Ram pleaded as per their written-statement that Sh. Angad Ram had purchased the suit property way back on 29.9.1968 and since when the family of Sh. Angad Ram has been residing in the suit property. The suit property was

transferred on 18.3.2009 in the name of the respondent no.1/defendant no.1 by virtue of various documents. On 24.1.2009 one Sh. Akshem Chand, brother-in-law of defendant no.1 requested Sh. Angad Ram to allow him to stay in one room on the first floor for the purpose of getting the operation of eye of his wife and which was permitted, however, but later on Sh. Akshem Chand got documents prepared fraudulently like ration card, telephone connection for grabbing of the suit property. When Sh. Akshem Chand did not vacate the room in the suit property a civil suit no. 417/2009 was filed on 30.10.2009 titled as ***Suresh Bala Vs. Akshem Chand and Ors.*** for possession, *mesne* profits etc. In this suit filed by Smt. Suresh Bala against Sh. Akshem Chand after evidence was led by both the parties a decree was passed in favour of the plaintiff in the said suit and who is the defendant no.1 of the present suit on 4.7.2012, and which decree and judgment was confirmed by the first appellate court vide its judgment dated 15.4.2014. This High Court thereafter dismissed RSA No. 147/2014 on 8.7.2014 and a review petition no. 373/2014 was also dismissed by this High Court on 19.8.2014. Thereafter an SLP filed in

the Supreme Court being SLP No. 13636/2015 was also dismissed by the Supreme Court on 10.8.2015.

4. The present appellant filed objections in execution and objections of the present appellant were dismissed by the executing court on 16.12.2015 and which order dated 16.12.2015 has admittedly not been challenged by the present appellant/plaintiff, and which order has therefore become final.

5. It is therefore seen that respondents/defendants after great contest right till the Supreme Court succeeded against Sh. Akshem Chand, in terms of judicial proceedings which commenced in the year 2009 and ended on 10.8.2015, and in which execution proceedings of which decree the appellant/plaintiff had filed objections but was unsuccessful as the objections were dismissed on 16.12.2015. The appellant/plaintiff has thereafter now filed the present suit in which the subject injunction application was filed and has been dismissed by the impugned order.

6. In my opinion, the appeal as also the suit itself is an abuse of the process of law because once the objections of the appellant were dismissed by the executing court vide its judgment dated 16.12.2015,

then this order dated 16.12.2015 operates as *res judicata* inasmuch as all issues as to title of a property which is the subject matter of execution proceedings have to be decided in the execution proceedings and not by filing of a suit. Filing of a suit is in fact barred and this is so stated in Order XXI Rule 101 CPC which reads as under:-

“Order XXI Rule 101. Question to be determined.- All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the court dealing with the application, and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

7. Therefore, clearly, trial court was justified in dismissing the injunction application filed by the appellant/plaintiff and in fact the suit also is liable to be dismissed *in limine* in view of bar contained in Order XXI Rule 101 CPC. It was noted by the trial court that appellant/plaintiff claims to be the owner on account of a Will of late Zaffarulla dated 11.4.1985 but from the Will it is seen that the description of the property is different than the suit property, however in my opinion this issue is irrelevant once the appellant/plaintiff had filed objections claiming title to the suit property during execution

proceedings of the judgment and decree dated 4.7.2012 (which was confirmed till the Supreme Court dismissing the SLP on 10.8.2015), and therefore, the present suit is barred by the general principles of *res judicata* (Section 11 CPC is not exhaustive of the doctrine of *res judicata*) as also Order XXI Rule 101 CPC.

8. The present appeal therefore being a gross abuse of the process of the law is dismissed with costs of Rs.1 lac. Out of the costs of Rs. 1 lac a sum of Rs.50,000/- will be deposited by the appellant/plaintiff with the website www.bharatkeveer.gov.in within a period of four weeks from today and affidavit be filed by the appellant/plaintiff in this Court within a period of four weeks thereafter, failing which appropriate action will be taken against the appellant/plaintiff for non-compliance of the present order. The balance of Rs.50,000/- be paid to the respondents/defendants on account of they being harassed in filing of the present false suit by the appellant/plaintiff.

9. The appeal is accordingly dismissed with the aforesaid observations.

NOVEMBER 03, 2017/ib

VALMIKI J. MEHTA, J