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

+ RSA 21/2016

ANIS UR REHMAN

..... Appellant

Through: None.

versus

MOHD SULTAN (NOW DECEASED)

THR HIS LRS & ANR

..... Respondents

Through: Mr.Satish K.Sansi, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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24.01.2017

RSA 21/2016

1. The appellant has filed the instant Regular Second Appeal under Section 100 of Code of Civil Procedure impugning the concurrent decisions of the two Courts below i.e. order dated 20th January, 2005 passed by learned Trial Court in Suit No.5490/2002 dismissing the suit of the appellant/plaintiff seeking permanent injunction and order dated 20th October, 2015 passed in RCA No.17/2013 whereby the First Appellate Court concurred with the finding of learned Trial Court and dismissed the appeal preferred by the appellant.

2. Vide order dated 26th February, 2016, this Court observed as under:-

'The appellant/plaintiff and respondents are own brothers who are residing in the same premises.'

It is noticed that the suit property falls under the management of Delhi Urban Shelter Board.

The appellant preferred a suit for permanent injunction restraining the respondents from causing any obstruction and hindrance in raising a partition wall in the suit property. It is the case of the appellant that way back in the year 1998, the suit property was divided in three equal portions and the appellant/plaintiff and the respondents came in exclusive possession of their respective portions allotted.

Unfortunately, the building had only one bathroom, which according to the appellant/plaintiff, fell in his share but the other brothers (respondents) were allowed to use the same. After a passage of some time, with the brothers not maintaining cordial relations between them, a dispute arose regarding apportionment of the suit property.

The appellant/plaintiff purchased the share of one of the brothers (respondent/defendant no.2) for a consideration but with an understanding that respondent/defendant no.1 would vacate his part of the suit property and would shift in the portion purchased by the appellant/plaintiff. This arrangement was not respected, necessitating raising of a partition wall so as to end the dispute.

When the boundary wall was about to be erected, an obstruction was raised in a malafide manner.

Hence the suit.

Both the Courts below held that though the appellant/plaintiff could have separated his portion of the suit property but no evidence was led with respect to his entitlement for a decree of permanent injunction as against the defendants.

The First Appellate Court took note of the fact that the CM(M) No.37/2005 preferred by the appellant/plaintiff before this Court against the order dated 28.09.2004 passed by the Trial Court by which the application of the appellant/plaintiff for reconsidering the order dated 02.06.2004 of closing the

prosecution evidence as PW.1 had failed to turn up for completing his evidence despite last and final opportunity given to him had been dismissed way back in the year 2005. Thus, there remained no admissible evidence for the appellant to have his second appeal entertained by this Court.

The issues stands further settled by the report of the Local Commissioner.

However, considering that the appellant/plaintiff and the defendant/respondents are brothers, there could be a possibility of settlement so that proper arrangement for bathroom and kitchen could be made in the respective shares of the suit property.

Even though, no substantial question of law could be discerned by this Court, this Court deems it expedient, for the benefit of the family as a whole, to issue notice to the respondents for the purposes of exploring the possibility of amicable settlement.

Notice will be issued to the respondents on deposit of process fee within a period of two weeks from today, returnable on 19.05.2016.'

3. None has appeared on behalf of the appellant despite repeated passovers.
4. Learned counsel for the respondent No.1 is present and submits that no settlement is possible in this case as the appellant wants the respondents to shift in another portion, which is not acceptable to the respondents.
5. This Court, vide order dated 26th February, 2016, has already observed that though no substantial question of law arises in this case but it being a dispute between two brothers, notice of the appeal was issued to the respondents to explore the possibility of amicable settlement, which has been negated by learned counsel for the respondents today.

6. Since no substantial question of law arises in this case, the appeal is dismissed.

7. No costs.

CM No.2310/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

JANUARY 24, 2017
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