

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

% **Date of decision: 28th September, 2018.**

+ **RSA 90/2018**

RAJ KUMAR YADAV Appellant
Through: Mr. Atul Kumar Sharma & Mr. Sachin
Sangwan, Advs.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.24457/2018 & 24460/2018 (both for exemptions)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

RSA No.90/2018 & CMs No.24458/2018 & 24459/2018 (both for condonation of delay of 31 days in filing & 57 days in re-filing the appeal)

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 30th October, 2017 in RCA No.31/2016 of the Court of Senior Civil Judge, New Delhi] of dismissal of First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 7th October, 2016 in Suit No.448/2014 of the Court of Civil Judge, West District, Delhi] of dismissal of suit filed by the appellant / plaintiff for mandatory injunction directing the respondent /

defendant Delhi Development Authority (DDA) to allot a shop to the appellant / plaintiff against the demolition slip bearing No.4018 dated 30th April, 1981 issued by the respondent / defendant DDA on the date when the shop of the appellant / plaintiff was demolished by the respondent / defendant DDA, “promising to allot the alternative accommodation thereon to the plaintiff”.

4. This appeal is accompanied with application for condonation of delay of 31 days in filing thereof and 57 days in re-filing thereof.

5. The appeal along with the applications came up first before this Court on 1st June, 2018 when the counsel for the appellant / plaintiff, instead of addressing arguments, sought adjournment to bring certain documents on record. Accordingly, the hearing was adjourned to 26th September, 2018. On 26th September, 2018, no additional documents were found to have been filed and again adjournment was sought. Observing, that if the counsel for the appellant is not ready to address arguments on admissibility of the appeal, the appeal should not have been got listed, the appeal was posted to today for hearing.

6. I may record that a second appeal under Section 100 of the CPC is not to be admitted as a matter of course and Supreme Court in *Surat Singh Vs. Siri Bhagwan* (2018) 4 SCC 562 and *Vijay Arjun Bhagat Vs. Nana Laxman Tapkire* 2018 SCC OnLine Del 518 has reiterated that before issuing notice of a Second Appeal, the High Court has to satisfy itself that the same entails a substantial question of law and frame the said substantial question of law.

7. The counsel for the appellant / plaintiff today, draws attention to page 122 of the paper book, being the photocopy of receipt purportedly issued by the respondent / defendant DDA and recording that ‘one jhuggi in occupation of the appellant / plaintiff at Jail Road, Nangal Raya, Delhi was demolished on 30th November, 2011’. The counsel for the appellant / plaintiff argues, (i) that the shop of the appellant / plaintiff was ‘acquired’ for construction of Janak Setu flyover; and, (ii) that the appellant / plaintiff was promised alternate plot but the same has not been given to him and for which the suit was filed.

8. I have enquired from the counsel for the appellant / plaintiff, where is the promise which is claimed to have been made to the appellant / plaintiff.

9. The receipt, to which attention has been drawn, does not contain any such promise.

10. The counsel for the appellant / plaintiff states, “that whenever there is a demolition, alternate plot is allotted”. However, on being asked to show from where he gathered so, he again seeks adjournment.

11. The counsel for the appellant / plaintiff has not argued, that under any law or statutory or beneficial scheme there is any right of the appellant / plaintiff to any alternate plot, seeking which the suit, from which this Second Appeal arises, was filed. What is being referred to by the counsel for the appellant / plaintiff as a shop, in the receipt relied upon, is described as a ‘jhuggi’. No right of the appellant / plaintiff to the land underneath the jhuggi has been disclosed. In fact, in the receipt, the name of the appellant is mentioned against the column “name of the squatter / occupant”. Therefrom, it is clear that the appellant / plaintiff as per his own document, was merely a

squatter over public land, for the purpose of a shop, as distinct from residence. It is thus clear that the appellant / plaintiff had no entitlement asserting which the suit was filed.

12. No other argument has been urged.

13. Though in the light of above, there is no need for me to deal with the findings of the Suit Court affirmed by the First Appellate Court but for the sake of record, it may be stated that the respondent / defendant DDA disputed the receipt aforesaid based on which the suit was filed and stated that the receipt bearing serial No.4018, as was the number of the receipt relied upon by the appellant / plaintiff, was issued in the name of one Jagan Nath in respect of his jhuggi demolished at Kingsway Camp; it was pleaded that the appellant / plaintiff had forged the receipt, relying whereon the suit was filed.

14. The Suit Court held that the appellant / plaintiff has failed to prove that he was in possession of the jhuggi which he claimed to have been demolished and had concealed material facts and resultantly dismissed the suit.

15. The First Appellate Court, in addition held that the suit for mandatory injunction filed in the year 1993, when the cause of action had accrued in 1981, was also barred by time and that the appellant / plaintiff had also admitted that he had been allotted an alternate plot in lieu of his demolished shop at another location.

16. There is no merit in the appeal.

17. The same does not raise any substantial question of law.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 28, 2018

‘gsr’

