

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

Dated of Decision: 22nd December, 2014

+ RSA 228/2014 & C.M.APPLs.14444/2014 & 14446/2014

SHRI RAMA NAND Appellant

Through: Mr. Neeraj Yadav, Advocate

versus

SHRI ROOP RAM Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

%

Appellant is the plaintiff, who had filed the suit for declaration and permanent injunction in the year 1992. The declaration was sought on the basis of Settlement of 2nd April, 1978 (Ex.PW1/4). The concurrent finding returned by both the courts below is that the aforesaid family settlement has not been acted upon.

During the course of hearing, it was brought to the notice of this Court by learned counsel for appellant that during the pendency of this suit as well as the subsequent suit for declaration and injunction to restrain respondent-herein from alienating the suit property filed in the year 1994 respondent had admitted the aforesaid family settlement and upon dispossession of appellant, the present suit has not been converted into the suit for possession.

Learned counsel for appellant had candidly maintained that on the basis of the aforesaid family settlement, *bhumidari* rights were claimed from the revenue authorities, which were declined and the said order of refusal has attained finality. Reliance was placed upon decisions in *Singheshwar Jha v. Ajab Lal Mandar and Others* A.I.R. 1941 Patna 142 and *Gopal v. Raghuveer* AIR 2007 (NOC) 771 (Raj.) to submit that even if during the pendency of the suit for declaration and injunction, a party is dispossessed, still the relief of possession can be granted by the court.

Learned counsel for appellant has drawn the attention of this Court to paragraph No.5 of the impugned judgment to point out that the approach adopted by the First Appellate Court in dealing with appellant's appeal is erroneous.

No doubt, a relief can be moulded by the courts in view of the evidence on record, but in the instant case, I find that the refusal of *Bhumidari* rights on the basis of the aforesaid family settlement has attained finality and in view thereof, appellant-plaintiff is not entitled to the declaration and injunction prayed for. The concurrent findings returned by both the courts below do not suffer from any perversity.

No substantial question of law arises in this second appeal.

Consequently, this appeal and the applications are dismissed with no order as to costs.

(SUNIL GAUR)
JUDGE

DECEMBER 22, 2014

S