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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 18th January, 2018

+ C.R.P. 109/2015

SUKHDEV

..... Petitioner

Through: Mr. S. Khan, Advocate.

versus

YASHWANT KUMAR BHARDWAJ & ORS..... Respondents

Through: Mr. Tarun Chandiok, Advocate
for R-4 to 8.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondents herein had instituted a civil suit against the petitioner seeking the relief of permanent injunction describing the subject property as plot bearing *khasra* No. 649 situate in *abadi deh* indicating it to be falling within the *lal dora* of village Dabri, Delhi. They claimed to be the owner of the subject land and alleged threats of dispossession by the petitioner herein (defendant in the suit), the prayer being restricted to relief of permanent injunction against interference in the peaceful enjoyment of the said property. The copy of the written statement submitted by the petitioner, as defendant in the suit, reveals that he denied that the respondents (the plaintiffs) were owner of the land comprised in *khasra* No. 649, stating that it fell outside the *lal dora* of the village, reference also being made

vaguely to *khasra* No. 26/24/(1-2), wherein he (the defendant) claimed to be the owner in possession.

2. The suit was put to trial on the basis of issues settled on 14.02.2002, primarily with reference to the prayer clauses and the preliminary objections. On 03.01.2007 the trial court framed two additional issues, the import whereof essentially was that the plaintiffs were also called upon to prove that the subject land is situate within *khasra* No.649 and that they were owners in possession thereof.

3. It appears from copy of the judgment dated 09.11.2011 of the Civil Judge that during the course of evidence, it was revealed that *khasra* No.649 had been re-numbered as *khasra* No.38. The trial Judge declined to act upon the evidence led by the plaintiffs vis-à-vis *khasra* No.38 observing that it was beyond the pleadings. Yet, by later observations in the said judgment it was recorded that no recent document had been placed on record by the plaintiffs to show their ownership either of *khasra* No.649 or of *khasra* No.38 and on such basis, she went on to hold that the plaintiffs had failed to prove their ownership or possession either over *khasra* No. 649 or over *khasra* No.38.

4. The suit having been dismissed by the Civil Judge, as aforesaid, the plaintiffs took out appeal before the Court of Senior Civil Judge, it coming up as RCA No.03/11. It appears from the copy of the judgment dated 05.01.2015 of the first appellate court that during the course of hearing, the plaintiffs/appellants moved an application invoking the provision contained in Order XLI Rule 27 of Code of

Civil Procedure, 1908 (CPC) seeking permission to adduce additional evidence. This application was resisted by the petitioner/defendant.

5. Eventually, the plaintiff of the suit moved an application under Section 107(2) read with Section 151 and Order XXIII Rule 1(3) of CPC seeking permission to withdraw the suit and instead file a fresh suit on the same cause of action, intending to describe the subject property properly in such pleadings. The first appellate court granted the said request by judgment dated 05.01.2015 disposing of the appeal dismissing the suit as having been withdrawn and treating the appeal having become infructuous, liberty having been granted to institute fresh civil suit vis-à-vis the subject property.

6. The petition at hand questions the said decision of the first appellate court, the contention being that the suit having been dismissed by the trial court, it was beyond the domain of the first appellate court and improper in the facts and circumstances to re-open the issue by permitting withdrawal of the suit and facilitating filing of a fresh suit.

7. In the considered view of this Court, the pleadings of the petitioner as defendant also having been vague, in as much as there was no reference to the re-numbering of the *khasra* in question in the written statement, the plaintiffs in the first suit having faced difficulty in proving facts on account of incorrect, improper and deficient pleadings, the liberty granted to withdraw the said proceedings and to institute fresh suit on the same cause of action vis-à-vis the subject land, now properly described in the new suit, can neither be grudged

nor denied. The appeal was in continuation of the proceedings before the trial Court. The provisions contained in Section 107 read with Order XXIII rule 1 (3) CPC confer such jurisdiction on the appellate Court. The said jurisdiction has been properly exercised, it being supported by the view taken in *V. Rajendran and Anr. v. Annasamy Pandian (D) Thr. Lrs. Karthyayani Natchiar (Civil Appeal No. 861 of 2017, decided on 24.01.2017)*.

8. The Court is informed that there being no inhibition, the respondents have already instituted a fresh suit on the same cause of action, which suit is now almost ripe for commencement of trial, the pleadings having been completed. In these circumstances, it would be causing undue harassment to the parties to revive the first suit or to call upon the plaintiffs of the first suit to amend the plaint without which such proceedings would lead nowhere.

9. In above view, the petition is devoid of substance and is dismissed.

R.K.GAUBA, J.

JANUARY 18, 2018

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