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

% *Judgement delivered on: 23rd February, 2018*

+ **RSA 31/2018 & C.M.Nos.6661-62/2018**

ARUNA SHARMA @ ARUNA RAKESH Appellant

Through: Mr. Dinesh Rohilla, Advocate.

Versus

KRISHNA DEVI & ANR. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This second appeal impugns an order dated 21.04.2017 passed by the learned Additional District Judge-03 (West), Tis Hazari Court, Delhi, which dismissed the appellant's appeal against an order of the Trial Court dated 14.09.2016, which had held that the suit of the plaintiff-appellant was barred under provisions of section 11 of the Code of Civil Procedure, 1908 (CPC).
2. For the sake of convenience, the parties are referred to as the 'plaintiff' and the 'defendant' in the same sequence in which they were arrayed in the original suit.
3. The brief facts of the case are that a Civil Suit bearing no.218/06 was filed by the plaintiff-appellant in the year 2002 seeking a relief of declaration and permanent injunction against the defendant-respondent. She had claimed ownership of a plot of land bearing No. 77, measuring 100 sq. yds. in Khasra No. 22/17, situated in the area of Village Mubarikpur, Dabas

Colony, also known as Bhagya Vihar, Delhi- 110081 (hereinafter referred to as the suit property). However, the suit was dismissed by the learned Civil Judge, Tis Hazari Court, Delhi. An appeal under section 96 read with Order 41 Rule 1 CPC against the said order too was dismissed by the learned Additional District Judge, Tis Hazari Court, Delhi. The impugned order records that the plaintiff has not been able to prove her ownership in respect of the suit property.

4. A decade later, the plaintiff filed another Civil Suit bearing no. 94645/16 seeking declaration, permanent injunction and consequential relief of possession and damages against the defendant apropos the same suit property. This suit too was dismissed by the learned Civil Judge and the appeal against the dismissal of the second suit was also dismissed by the learned Additional District Judge, Tis Hazari Court, Delhi.

5. In effect, this is the fifth round of litigation for the same relief by the plaintiff. It is the plaintiff's contention that i) the reliefs sought in her first and second suits were different, the former sought declaration while the latter was for possession, the subsequent suit cannot be treated as being barred by the doctrine of *res judicata* i.e. on account of a decision in previously instituted suit for the same relief; and ii) the cause of action changed due to the subsequent change of circumstances in favor of the plaintiff. In support of his contentions, he relies upon the judgment of Madhya Pradesh High Court in ***Smt. Rehana Parveen vs. Naimuddin, AIR 2000 MP 1***, whereby it was held that:

“the technical principle of res judicata would not be operative more so. If substantial change in circumstance is averred and found prima facie justified.”

6. Refuting the said contentions, the learned counsel for the defendant states that the principle of *res judicata* would be applicable, the appeals too were dismissed as being without merit, hence this second appeal too should be dismissed.

7. The Court is of the view that the prayers sought in both the suits are nearly identical. Suit no. 218/06, had sought for permanent injunction and declaration against the defendants from the suit property. The subsequent suit being Suit No. 94645/16 has sought declaration, permanent injunction and consequential relief of possession and damages against the defendant.

8. The impugned order specifically notes:

"In these circumstances, the observations of the learned Trial Court that the suit filed by the plaintiff is barred by res judicata do not call for any interference in as much as a finding has already been returned with regard to her claim of ownership in respect of the suit property and it has also been upheld that she has not been able to prove her ownership in respect of the suit property. Accordingly, the mere fact that the plaintiff-appellant now also seeks the relief of possession, which undoubtedly is based on her claim that she is the owner of the suit property, which claim has been rejected as aforesaid, cannot be said to imply that her suit is not hit by Section 11 CPC. Learned Trial Court, in my opinion, has rightly observed that the suit of the plaintiff is hit by the provisions of Section 11 CPC and is liable to be dismissed."

9. Apropos the first issue framed by the Trial Court i.e. whether the plaintiff was the owner of the suit property or not, after considering the strength of the documents relied upon by the plaintiff, the learned Trial

Court held that she cannot be declared as the owner of the suit property. Therefore, it has been held twice over that the plaintiff is not the owner of the suit property. Similarly, regarding issues No. 2, 3 and 4 i.e. (i) whether the suit was not maintainable in its present form; (ii) whether the plaintiff is entitled to relief of declaration and permanent injunction as claimed for; and (iii) whether the plaintiff is entitled to the relief claimed for, the Trial Court held that the plaintiff had sought reliefs similar to that of the previously instituted suit. Hence, the issues were decided against the plaintiff.

10. The learned counsel for the defendant submits that in any case, after the dismissal of the previously instituted suit, the second suit seeking identical/similar reliefs ought to have been dismissed, being covered by the principles of *res judicata*.

11. From the preceding discussion, it is evident that both the suits had sought the same reliefs, regarding the same property and concerned the same parties. But each time, the plaintiff failed to prove her case. Hence, the suits and the successive appeals were rightly dismissed. This appeal too is destined to suffer the same fate because in view of its aforesaid antecedents, it is squarely covered by the principle of *res judicata*.

12. In the aforesaid circumstances, the Court finds no reason to interfere with the impugned order. Accordingly, the appeal, alongwith pending applications, is dismissed.

NAJMI WAZIRI, J.

FEBRUARY 23, 2018

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