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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Delivered on : 19th December, 2019

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RFA 66/2019, CM APPL.No.3869/2019

ROHTASH (DECEASED) THR LRS

..... Appellants

Through: Ms.Suman Chaudhary, Advocate.

versus

SATBIR & ORS

..... Respondents

Through: Mr.Amit Tyagi, Advocate for R-1
& 2.

Mr.Rishi Kant Singh, Advocate for
R-3.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This appeal is against the judgment dated 10.01.2019 passed by the learned Additional District Judge-03/North District, Rohini Courts, New Delhi (hereinafter referred as the learned '*Trial Court*') in CS No.1539/2016 whereby the plaint filed by appellant for permanent and mandatory injunction was rejected in respect of property bearing Khasra No.180, area admeasuring 01 bigha in Village Mukandpur, Delhi (hereinafter referred as the '*suit property*').

2. Before coming to the impugned judgment, let me state in brief the facts which led to filing of this suit. The appellant herein, initially, had filed Civil Suit No.297/2010 for permanent and mandatory injunction alleging *inter alia* he is a *Kaastkaar*, in possession of suit property and the *Jamabandi* and *Khatoni* etc are in his name. The appellant is alleged to be a recorded owner of the suit property in revenue records, which property has been allotted to him by the Central Rehabilitation

Department since the year 1980 and he is in peaceful possession since then. It is alleged the respondents / defendants are the real brothers of appellant, residing in the adjoining house at a distance of 500 meters, yet are disturbing the peaceful possession of the appellant and are trying to dispossess him from the subject property by taking forcible possession of the suit property with the help of anti social elements. The appellant alleged the cause of action for this suit arose on 01.2.2010, 07.12.2010, and 17.12.2010 when the respondents came to his suit property and had threatened the appellant to dispossess him and hence he filed Civil Suit No.297/2010 in December 2010. However, this suit was dismissed as withdrawn on 05.07.2011 on the statement of the appellant that he does not wish to pursue the suit. The suit was withdrawn *without any liberty to file fresh suit on the same cause of action*.

3. The appellant/plaintiff yet again filed another suit being Civil Suit No.346/2011 for permanent injunction and *declaration* on similar contentions alleging the cause of action for this second suit arose on 28.06.2011. The declaration thus was sought by the appellant to declare him as an owner of the suit property.

4. In both these Civil Suits viz *No.297/2010* and *No.346/2011* the plea of the respondents was they are owners in possession of the suit property, which is an ancestral property and after the death of their father Rishal Singh, it belong to all the four brothers and they are also in possession of the suit property. The second Civil Suit No.346/2011 was rejected being barred under Order XXIII Rule 1 CPC as no permission

was sought in Civil Suit No.297/2010 to file a subsequent suit on the same cause of action.

5. The appellant then filed the present suit viz. Civil Suit No.1539/2016, yet again for permanent and mandatory injunction on same averments. This suit was also dismissed vide the impugned order passed by the learned Trial Court under Order XXIII Rule 1 CPC as follows:-

“ Heard Ld. Counsel for the parties and perused the complete record file as well as the order dated 25.09.2013 and 05.07.2011. I have perused the plaint filed by the plaintiff in CS No.297/2010 and suit no.346/2011. Both the said suits have been filed by the plaintiff against defendants no.1 to 3 on the same cause of action with the same prayer. The suit bearing CS No.297/2010 was withdrawn by the plaintiff without seeking any liberty to file it afresh as is evident from the order dated 05.07.2011. Thereafter, he again filed the suit no.346/2011. Vide order dated 25.09.2013, the plaint in the suit no.346/2011 was rejected by the concerned court on the ground that plaintiff is precluded from instituting any fresh suit in respect of subject matter or part of claim U/o.23 Rule 1 CPC.

Now again the plaintiff has filed the present suit against the same parties on the same cause of action. He has deliberately impleaded defendant no.5 and defendant no.6 i.e. NDMC without any basis. The present suit of the plaintiff is barred U/o. 23 Rule 1 CPC. Further, the similar suit on the same cause of action between the same parties has already been dismissed vide order dated 25.09.2013. Present plaint is accordingly rejected being without any cause of action with cost of Rs.20,000 to be deposited with DLSA, North District, Rohini Courts, Delhi. Decree sheet be prepared accordingly. File be consigned to Record Room.”

6. The learned counsel for the appellant argued the earlier Civil Suit No.297/2010 was withdrawn since there was a settlement between his real brothers. However, this contention is belied by the simple reason the Civil Suit No.297/2010 was withdrawn on 05.07.2011 after filing of second suit No.346/2011 on 02.07.2011. Thus, the submission there was some settlement between the parties is wholly incorrect and is false.

7. Admittedly, the second Civil Suit No.346/2011 was a suit for *declaration* qua the documents, if any, executed by the defendants in

respect of suit property viz sale, alienation, transfer etc be declared as *null and void*. This prayer was made on an alleged basis the appellant is an absolute owner of the suit property. Admittedly, no appeal was filed against such order of rejection and for declaring the appellant to be an absolute owner of the suit property or the Court has wrongly rejected the plaint of Civil Suit No.346/2011. Instead the appellant had filed this third suit for permanent and mandatory injunction on same averments.

8. We are in the year 2019, the appellant has been filing suits, one after the another, since the year 2010 by making cosmetic changes in the plaint. All through his plea was he is an owner in possession of the suit property; whereas the plea of the respondents/defendants was the suit property is an ancestral one, equally owned and possessed by all the four brothers, including the appellant. Can the appellant be allowed to file suits, one after the another and leave them in lurch without taking those to logical conclusions? If he had any grievance he is an owner, he ought to have filed an appeal against order dated 25.09.2013 passed in Civil Suit No.346/2011 to obtain a declaration qua his ownership. He failed to do so, but filed this suit and was rightly discouraged by the learned Trial Court vide the impugned order.

9. The contention of the appellant he has a right to file subsequent suits per Order VII rule 13 CPC is also misconceived. The provision is as under:

“ORDER VII – Plaint

Rule 13. Where rejection of plaint does not preclude presentation of fresh plaint.—*The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.”*

10. Now first suit i.e. civil suit No.297/2010 was for permanent and mandatory injunction. Its plaint was never rejected by the Court under Order VII Rule 11 CPC, but it was a simple withdrawn without any *leave* to file fresh suit on the same cause of action.

11. Admittedly the plaint of suit No.346/2011 was never rejected under Order VII Rule 11 CPC on any of the grounds viz. *a)* it does not disclose a cause of action; or *b)* the relief claimed is undervalued or *c)* the relief claimed was though properly valued, but requisite court fee is not paid or *d)* earlier suit No.297/2010 was barred by law or *e)* there being a failure to comply with the provisions of Rule 9 of Order VII CPC. Thus Rule 13 of Order VII CPC, *prima facie*, has no applicability in the facts of the present case.

12. It was only in second suit no.346/2011 the plea of Order VII Rule 13 CPC if available, could have been raised but certainly not in a subsequent/third suit. One may note under Order XXIII Rule 1(4) CPC the words used are *the plaintiff shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim*. The *subject matter* includes the cause of action and relief claimed. It relates to series of acts or transactions alleged to exist giving rise to the relief claimed or in other words the facts sufficient to justify a right to sue to obtain money, property or enforcement of a right. Admittedly, the Civil Suit no.297/2010 and 346/2011 were based on the premise the plaintiff/appellant is an absolute owner of the subject property and whereas the respondents case was it is an ancestral property. The relief claimed in both these suits as also in the present (third) suit being

essentially based on same bundle of facts, the learned Trial Court rightly held this suit is barred under Order XXIII Rule 1 CPC.

13. In view of above, no interference is called for by this Court. The appeal is accordingly dismissed, bereft of any merit. The pending application(s), if any, are also dismissed. LCR be remitted forthwith. No order as to costs.

DECEMBER 19, 2019

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YOGESH KHANNA, J.

