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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 13th SEPTEMBER, 2019

+ RSA 89/2018 & CM No. 23926/2018

KASTURI LAL SACHDEVA

(SINCE DECEASED) THRU LRS. Appellants

Through: Ms. Navruti Ojha, Adv.

versus

MOHINDER PAL

..... Respondent

Through: Mr. Shahrukh Inam, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent had instituted a civil suit (no. 231/2013) against the predecessor-in-interest of the appellant on 18.05.2001 respecting premises described as shop no. 60, Khanna Market, Lodhi Colony, New Delhi -110003, claiming the relief of recovery of possession and *mesne profits*. The suit was contested, the predecessor-in-interest of the appellant, i.e. the original defendant passed away during the pendency of the case, the appellants having been substituted in his lieu on application under Order XXII of the Code of Civil Procedure, 1908 (CPC) being moved. Several issues were framed on the basis of which the case went to trial. The said issues included second issue concerning valuation of the suit for purposes of payment of court fee and jurisdiction, the burden of proof in such regard being placed on the defendant. The Civil Judge, by judgment dated 12.08.2016 upheld

the objection to the valuation and answered the second issue against the plaintiff (i.e. the respondent herein) and proceeded to reject the plaint under Order VII Rule 11 CPC, terminating the proceedings declining to render any decision on the remaining issues observing that it was not necessary to do so, directing thereafter for a decree sheet to be prepared accordingly.

2. The judgment dated 12.08.2016, having the effect of rejection of the plaint under Order VII Rule 11 CPC on account of improper valuation, was challenged by the respondent by regular civil appeal no. 20374/2016. The additional district judge to whom the said appeal was allocated upheld the contentions of the plaintiff (respondent herein) and, by judgment dated 04.05.2018, accepted as correct valuation as set out in the plaint for purposes of court fees and jurisdiction and, thus, reviving the proceedings in the suit directing the said court to render its decision on the other issues as per law.

3. The second appeal at hand raises the question of maintainability of the first appeal entertained by the court of additional district judge, the submission being that such order as was passed by the civil judge could not have been challenged before the additional district judge invoking the appellate jurisdiction, the only remedies available being either a revision petition or a petition under Article 227 of the Constitution of India.

4. Having heard the submissions, this court finds no substance in the appeal. The rejection of the plaint is also deemed to be a decree within the meaning of the expression defined in Section 2 (2) of CPC.

The appeal which was preferred before additional district judge had invoked the jurisdiction of the said court in terms of Section 96 C.P.C. There is no merit in the contention that only a revisional challenge or challenge by petition under Article 227 of the Constitution of India could have been preferred.

5. The appeal is dismissed Rs. 25,000/- as costs.
6. *Dasti* under the signatures of Court Master to both sides.

R.K.GAUBA, J.

SEPTEMBER 13, 2019

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