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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 16th January, 2020

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CM (M) 25/2016, CM APPL. 1169/2016 & CM APPL. 8848/2018

SHANTI DEVI & ORS.

..... Petitioners

Through: Mr. Himat Akhtar, Advocate.
(M:9810456889)

versus

MOHD FURMAN

..... Respondent

Through: Mr. Prakash Gautam and Mr. Neeraj
Kumar, Advocates. (M:9818995976)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition is preferred against the impugned order dated 18th December, 2015 by which various applications of the Petitioners herein/Defendants in the suit (*hereinafter 'Petitioners'*) have been rejected by the Id. Civil Judge. A suit for possession was filed initially by the Respondent - Mr. Mohd. Furman against Mr. Om Prakash in which, decree and judgment dated 31st July, 2010 was passed. The operative portion of the said decree reads as under:

“20. In view of my above discussion and findings on issue no. 1 and 6, the suit of the plaintiff is decreed with costs. The defendant is directed to put the plaintiff into possession of property bearing No.2892/1, Ward No.14, Chowk Shinghara, Qutab Road, Delhi as shown in color red in the site plan attached. The defendant is restrained from changing the structural position of the premises in suit any manner whatsoever and from transferring/handing over the possession of the suit property in whole or in part to any third party i.e. any

person other than the plaintiff Decree sheet be prepared accordingly.”

2. The said judgment was challenged in appeal by the legal heirs of Mr. Om Prakash, who are the Petitioners before this Court. In the said appeal, the Id. Appellate Court remanded the matter for fresh adjudication. The operative portion of the said appellate order reads as under:

*“13. **Relief:-** In view of the above observation, the appeal is accepted with costs. The case is remanded back to Ld. Trial Court to give finding afresh on all the issues. Parties are directed to appear before Ld. Trial Court on 06.02.2014. Copy of this judgment be sent to concerned trial court alongwith trial court record. Copy of this judgment be sent to concerned judicial Officer. Decree sheet be prepared. Appeal file be consigned to record room.”*

3. On remand when the matter was listed before the Trial Court, the Petitioners moved applications firstly, to seek framing of an additional issue and certain other applications. In effect, the applications seek prayers that the Petitioners ought to be permitted to lead additional evidence in the matter and for framing of issue in respect of the identification of the specific property. All these applications were rejected by the Trial Court.

4. Ld. counsel for the Petitioners submits that the Appellate Court was approached on several grounds - firstly, that when the decree was passed Mr. Om Prakash had already passed away and the legal heirs were never impleaded. Thus, the decree was passed against a dead person. Secondly, reliance was placed on an earlier judgment in a litigation between Mr. Om Prakash who was the Plaintiff and Mr. Satya Narain, the predecessor of the Respondent herein. The said judgment, according to the Id. counsel was not

considered by the Trial Court and thus, the Appellate Court had rightly set aside the decree which was passed by the Id. Trial Court. It is submitted that the perusal of the earlier judgment would show that the number of the property is in fact 2892/1/A and the Petitioners have ownership rights in respect of the said property. The suit for possession has been filed in respect of property bearing no. 2892/1 and hence there is a need to frame an issue as to whether the Petitioners have ownership rights and cannot be evicted. He further submits that several documents exist which show that the Petitioners are the owners of 2892/1/A and accordingly, the right to lead additional evidence ought to be granted. He submits that the impugned order, to the extent that it rejects all the applications of the Petitioners and also does not permit the legal heirs to file an additional new written statement and defend the suit on merits, is erroneous.

5. On the other hand, Id. counsel appearing for the Respondent who is the Plaintiff in the suit submits that the scope of the petition under Article 227 is very limited, even incorrect findings of fact cannot be interfered with. The suit was initially filed in the year 2000 and the first judgment was passed by the Id. Trial Court on 31st July, 2010. Thereafter, due to the Appellate Court's order dated 21st January, 2014 - remanding the matter, the matter has gone back to the Trial Court. He submits that the operative portion of the Appellate Court's order is very clear that the matter has been remanded back to the Trial Court to give a finding afresh on all the issues. The said appeal was filed by legal heirs of Mr. Om Prakash who are the Petitioners before this Court. At that stage, no leave was sought in respect of leading any additional evidence, framing of any additional issue or filing of fresh written statement(s). Thus, the Trial Court was right in rejecting the

applications of the Petitioners.

6. This Court has heard the Id. counsels for the parties and has perused the record. The initial findings of the Trial Court in order dated 31st July, 2010 no longer hold good. The issues that were framed in the suit which are to be adjudicated by the Id. Trial Court are as under:

“1. Whether the plaintiff is the owner of property no.2892/1. Ward No.14, Chowk Singhara, Qutub Road, Delhi-06? OPP

2. Whether the suit is bad for non-joinder of parties? OPD

3. Whether the suit is barred by the principles of res-judicata? OPD

4. Whether the suit has not been correctly valued for the purpose of court fee and jurisdiction? OPD

5. Whether the plaintiff is entitled for the possession from defendant being licensee as claimed for? OPP

6. Relief.”

7. The Appellate Court’s order is clear that the matter was remanded back to decide on all the issues afresh. The Appellate Court has made a specific observation in respect of the judgment in the case filed by Mr. Om Prakash against Mr. Satya Narain. The said observation is to the effect that the Trial Court had failed to consider the judgment in the earlier round:

“The Ld. Trial Court mentioned in the judgment that defendant has not led any evidence. This previous judgment was perse admissible as certified copy is available and no proof is required and even otherwise it had been put to PW-2 during his cross-examination and same was not denied by Satya Narain the alleged vendor of plaintiff so observation of Ld. Trial Court that defendant has failed to prove any evidence to disprove this issue is ipso facto wrong and effect of this

judgment should have been considered. It cannot be ruled out that Ld. Trial Court ignored this document because none of the parties had argued the matter before Ld. Trial Court and even the respondent / plaintiff has submitted before the court that he would like to have right to clarify the judgment before the Ld. Trial Court.”

8. The above observation of the Appellate Court clearly shows that the Appellate Court, as part of the remand expects the Trial Court to consider the scope and effect of the earlier judgment dated 10th January, 2000. One of the findings in the said judgment is that Mr. Om Prakash has been held to be the owner of premises 2892/1/A, Chowk Singhara, Qutab Road, Delhi Delhi. One of the issues framed in the present suit is in respect of *res judicata* as also an issue as to whether the Plaintiff i.e. Respondent herein has established his ownership rights in respect of 2892/1 and whether he is entitled to possession. This Court is of the opinion that as part of the adjudication of the said issues in respect of ownership of the Plaintiff and possession thereof, the Trial Court would have to consider the earlier judgment passed in 2000, as also the scope and effect of the judgment as also the question as to whether the property in question i.e., 2892/1 belongs to the Plaintiff and if so, to what effect. The Trial Court would also have to consider if the Petitioners herein have any rights in respect of 2892/1/A and if so, to what effect. As part of issue No.3, the Id. Trial Court would also have to adjudicate as to whether the suit itself is barred by *res judicata*. Thus, while clarifying that as part of the issues framed in the suit, the Trial Court would take into consideration the earlier judgment passed in ***Suit no. 346/1993*** titled ***Om Prakash v. Satya Narain*** dated 10th January, 2000. Considering the order of remand by the Appellate Court, the Petitioners

cannot be permitted to lead any further evidence or amend the written statement inasmuch as Mr. Om Prakash who was their father fully contested the suit in question and it was only just before the passing of the final decree, that he had passed away. The question as to whether the legal heirs of late Mr. Om Prakash were impleaded prior to the passing of the decree would no longer require any adjudication inasmuch as the legal heirs have preferred an appeal and the matter has been remanded back to be adjudicated on merits. That question is moot at this stage.

9. With these observations the petition and all pending applications are disposed of.

JANUARY 16, 2020

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**PRATHIBA M. SINGH
JUDGE**