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

Date of Decision : 06.03.2020

+ **RSA 48/2020 & CM Nos. 8966/2020, 8967/2020, 8968/2020 & 8969/2020**

HARBHAJAN SINGH @ BHUGGI & ORS

..... Appellants

Through: Mr.M. Hasibuddin, Adv.

versus

VANDANA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This appeal has been filed challenging the judgment and order dated 29.02.2020 passed by the learned Additional District Judge-01, North-East District, Karkardooma Courts, Delhi in RCA No. 61/2018 titled *Harbhajan Singh @ Bhuggi & Ors. v/s Vandana & Ors.* dismissing the appeal filed by the appellants herein.

2. By way of the above appeal, the appellants had challenged the judgment and order dated 07.06.2018 passed by the learned Additional Civil Judge, North East District, Karkardooma Courts, Delhi in Civil Suit No. 315/2016 titled *Vandana v/s Harbhajan Singh @ Bhuggi & Ors.*, partially decreeing the suit filed by the respondent no. 1 herein.

3. The respondent no. 1 had filed the above suit praying for a decree of permanent injunction against the appellants herein restraining the appellants from creating any hindrance or obstruction in the installation of a new electricity connection in the first floor portion of the house bearing no. H-203, New Seelampur, Delhi-110053 (hereinafter referred to as the 'suit property') and further for a decree of mandatory injunction against the respondent no. 2 directing the respondent no. 2 herein to install a new electricity connection in the abovementioned property.

4. The learned Trial Court was pleased to partially decree the suit by its judgment and order dated 07.06.2018, restraining the appellants herein from causing any obstruction in the installation of the electricity connection by the respondent no. 2 in the suit property, however, dismissing the suit with respect to the relief of mandatory injunction against the respondent no. 2.

5. Aggrieved of the same, the appellants preferred the first appeal being RCA No. 61/2018, which was dismissed by way of the Impugned Judgment and Order.

6. The learned counsel for the appellants submits that the learned Trial Court as also the learned Appellate Court have erred in not dismissing the suit filed by the respondent no. 1 on the ground of it being barred by the principle of *res judicata*. He submits that before filing of the present suit, a suit, being CS No. 266/2014 (originally numbered 381/2011), was filed by one Shri Harjit Singh, impleading the appellants herein as defendant no. 1, 2 and 5. Respondent no. 1 herein was impleaded as the defendant no. 6 in the said suit. The said

suit sought a decree of partition and of permanent injunction with respect to the house bearing no. H-203, New Seelampur, Delhi-110053. The said suit is still pending adjudication. In the said suit, by an ad interim order dated 01.06.2011, the parties were directed to maintain *status quo* with respect to the property. The said order was made absolute by the order dated 02.08.2016 passed by the learned Additional District Judge. In the said suit, the respondent no. 1 filed an application praying for a direction *inter alia* against the appellants herein to re-connect the electricity supply to the room allegedly occupied by her on the first floor of the property. This application was dismissed by the learned Additional District Judge by his order dated 07.01.2012 passed in the above suit. The learned Additional District Judge had placed reliance on the Report of the Local Commissioner appointed by the Court and observed as under:-

“Heard. Ld. Counsel for defendant no. 6. Perused the report of the local commissioner. Ld. Local Commissioner after inspecting the premises has reported that he could not find any electricity meter or electricity supply in the premises. He also reported that there was no ceiling fan on wall in the premises and found only certain wires going into electricity power boards. He also reported that there was no drain pipe connected with the pipe coming out from the toilet at the first floor and that there was no visible sign of any tempering or removal of any drain pipe from the toilet. He reported that the toilet did not seem to be used for a consideration period of time. From the perusal of the report of local commissioner allegations of defendant no 1 do not appear to be substantiated. Accordingly the

*application of defendant no. 6 dated 02/06/11
(filed on 04/06/11) is dismissed.”*

7. The learned counsel for the appellants further submits that the mother of the appellants filed a suit bearing no. 366/2012 against the respondent no. 1 herein praying for a decree of permanent injunction. The said suit was withdrawn by the mother on a statement given by the respondent no. 1 that she will not trespass into the tenanted premises, as recorded in the order dated 30.01.2014. He submits that therefore, the respondent no. 1 was admittedly not in possession of the premises till that date and a *status quo* therefore having been passed in the first suit referred hereinabove, she could not have entered possession in the suit property.

8. The learned counsel for the appellants further submits that the respondent no. 1 also filed a suit, being Suit No. 220/2012, praying for a decree of mandatory injunction which was dismissed by the learned Civil Judge by the judgment and order dated 31.08.2015. He submits that it was only thereafter that the respondent no. 1 filed the present suit, which, in view of the above orders, was clearly barred by *res judicata*.

9. I have considered the submissions made by the learned counsel for the appellants, however, find no merit in the same. Admittedly, the order dated 07.01.2012 passed in CS No. 381/2011 (Re-numbered as CS No. 266/2014) is merely on an interim application. The said application was premised on an allegation that the appellants herein have disconnected the electricity connection of the respondent no. 1 as also damaged the sewerage line. The learned Court in the said suit

found the said allegation to be unsubstantiated based on the Report of the Local Commissioner and found that the same did not show the presence of an electricity connection or the sewerage connection to the property. This order can certainly not act as a *res judicata* to the suit filed by the respondent no. 1 herein, which has been decreed by the judgment and order dated 07.06.2018.

10. As far as the suit filed by the mother of the appellants is concerned, as observed by the learned Trial Court, in absence of the pleading of the said suit it is difficult to ascertain what was the cause of action set up by the mother of the appellants. Even the statement of the respondent no. 1 herein as recorded in the order dated 30.01.2014 refers to a “tenanted premises”. What is this “tenanted premises” is not discernible without the pleadings of the said suit. This order therefore, again cannot act as a *res judicata*.

11. As far as the reliance of the appellants on the judgment and order dated 31.08.2015 passed by the learned Civil Judge in Suit No. 220/2012 is concerned, the same is again misplaced. Against the said judgment and order, the respondent no. 1 had preferred an appeal, being RCA No. 31/2015. The same was dismissed by the learned Additional District Judge by an order dated 28.10.2015, however, observing as under:-

“However, there is no dispute that electricity is a basic amenity now a days, without which it is difficult to survive comfortably in the present circumstances. The report of local commissioner in suit no. 381/11 somehow indicates that first floor room was in possession of the plaintiff as it was having her locks. I am not deciding the status of the

plaintiff qua this room, whether legal or unauthorized or under any settlement as this dispute is not required to be dealt with in the present appeal. During arguments, it is informed on behalf of defendant no. 1 that even electricity connection can be given on temporary basis to a person who is found in possession of any part of the property or even to person occupying the property unauthorizedly but after due verification and after taking sufficient security etc. Though, the present appeal is hereby being dismissed and one of the reasons of dismissal is that plaintiff had given wrong information and submitted fabricated document while applying for electricity connection on 3-2-2012 but she is still at liberty to apply afresh for a new connection in respect of her first floor portion and defendant no. 1 can deal with the same as per rules and guidelines. The dismissal of the present appeal is not a permanent bar for the plaintiff to get the electricity supply forever. It is also directed to defendant no. 1 to hold inhouse inquiry regarding the manner of sanctioning the electricity connection without spot verification on basis of incomplete filled up documents and apparently on the basis of wrong inspection report Mark-C.

12. A reading of the above order would clearly show that the learned Additional District Judge had observed that the respondent no. 1 was in possession of the room on the first floor of the said property. It was further held that whether such possession was lawful or not, even an unauthorized occupant can be granted electricity connection. The learned Additional District Judge further granted liberty to the respondent no. 1 to apply afresh for a new connection with respect to the first floor of the said property.

13. In view of the above judgment and order dated 28.10.2015, the suit filed by the respondent no. 1 cannot be said to be barred by principle of *res judicata*. Infact, specific liberty was granted to the respondent no. 1 to apply for a new electricity connection. The respondent no. 1 filed the suit, being Civil Suit No. 315/2016, alleging that she was being granted such electricity connection by the respondent no. 2, however, the appellants were interfering in installation of such connection. This was clearly a new cause of action.

14. No other submission has been made by the learned counsel for the appellants.

15. I, therefore, find no infirmity in the Impugned Judgment and Order passed by the learned Additional District Judge.

16. In view of the above, the present appeal is dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

MARCH 06, 2020/rv