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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 16th December, 2020

+ **RSA 158/2018 & CM APPL. 45795/2018**
MUNISH KUMAR Appellant

Through: Mr. Bharat Malhotra, Advocate.
versus

SH. H D BHALLA (DECEASED) THR LRS Respondent
Through: Mr. Vivek Bhalla, Respondent in
person.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present appeal challenges the impugned order dated 13th September, 2018 passed by the JSCC-cum-Additional Senior Civil Judge, Dwarka Courts, by which the Appellate Court has remanded the matter back to the Trial Court, for a decision on the preliminary issue.
3. This appeal has a long and chequered history. A suit for injunction, ***Suit No. 224/02***, titled ***H.D. Bhalla v. Dr. Manish Kr.***, was filed in 2002 by one Sh. H.D. Bhalla – Respondent/Plaintiff (*hereinafter ‘Plaintiff’*) against the Appellant/Defendant No. 1 (*hereinafter ‘Defendant’*), in respect of the land measuring 250 sq. yards, forming part of Khasra No.121/ 9, situated at Village Palam, Delhi, now known as Defence Enclave (*hereinafter ‘suit property’*).
4. The case of the Plaintiff, who has since passed away and is represented by his son and other legal heirs, was that he had purchased this property initially from Sh. Pal Singh who had in turn purchased the plot from Sh. Baljeet Singh. The entire chain of documents in respect of the purchase by the Plaintiff, Sh. H.D. Bhalla, has been set out in the plaint. Initially, the premises was given on tenancy, however, the Plaintiff came to know on 20th May, 2001, when he visited

the premises, that the Defendant -Sh. Munish Kumar, accompanied by anti-social elements, was trying to dispossess the tenant of the Plaintiff. It is stated that the Defendant also threatened the Plaintiff and tried to remove the name plate of the Plaintiff from the outer gate of the suit property. A suit for injunction against dispossession was then filed by the Plaintiff before the Trial Court. The reliefs sought in the suit are as under:

- “a) Restrain the defendants No.1 and 2, their agents, servants, employees and friends by means of permanent injunction from forcibly dispossessing the plaintiff, his tenant and employees from the suit premises bearing No.26, Defence Enclave, A Block, Palam Village, Delhi shows red in the plan attached.*
- b) Any other relief the Hon'ble Court deems fit and proper be also granted.”*

5. The case of the Defendant on the other hand was that a simple suit for injunction is not maintainable. According to him, the Plaintiff ought to have sought declaration prior to filing a suit for injunction. The Defendant claimed to have purchased the suit property from M/s Rajnish Trust, who had in turn purchased it from Sh. S.C. Madhok.

6. After completion of pleadings, the following issues were framed in the matter by the trial court, vide an order dated 15th February 2005:

- “1. Whether suit has not been valued properly for the purpose of Court fees and jurisdiction? OPD*
- 2. Whether there does not exists any privity of contract between the parties? OPD.*
- 3. Whether plaintiff has no locus standi to file the present suit? OPD*
- 4. Whether plaintiff is entitled for the decree of Permanent Injunction as prayed for? OPP*
- 5. Relief.”*

7. Thereafter, five applications were moved by the Defendants:

- (i) An Application under Order VII Rule 11 of the CPC;
- (ii) An Application under Order XXVI Rule 10A of the CPC;
- (iii) An Application under Order VI Rule 16 of the CPC;
- (iv) An Application under Section 340 of the CrPC and
- (v) An application for verification of the suit property.

These applications, surprisingly, were decided in 2013 after a gap of 12 years. Vide order dated 18th July, 2013, the Trial Court observed that there is a cloud over the title of the Plaintiff and hence a preliminary issue was framed to the following effect:

“Whether the suit is maintainable in its present form? OPP.”

8. The Trial Court, vide order dated 7th July, 2017 rejected the plaint under Order VII Rule 11(d) of the CPC, on the ground that the suit for injunction is not maintainable without seeking a prayer for declaration. The said order was then carried in appeal by the Plaintiff, in which the impugned order remanding the matter back to the Trial Court, has been passed by the Id. ASCJ, Dwarka Courts.

9. The submission of Mr. Malhotra, Id. counsel for the Defendant in this appeal, is that the Plaintiff had also moved an application under Order VII Rule 17 of the CPC for adding the prayer of declaration, which was also rejected by the Trial Court. He further submits that the order of possession has also been passed in the favour of his client, by the SDM, which has however been stayed. On a query from the Court, he submits that the Defendant is presently in possession of the property.

10. On behalf of the Plaintiff, Mr. Vivek Bhalla appears in person and submits that the trial of the suit is not proceeding due to the pendency of the present appeal, despite the fact that there is no stay on the Trial Court proceedings. Moreover, he submits that all the documents, by which his father had purchased

the property, are registered documents and the documents of the Defendant are unregistered documents. He further submits that he only prays for an expeditious trial of the suit, as his father passed away in the year 2010, while pursuing the present litigation.

11. A perusal of the chronology of events in the present appeal shows that the suit was instituted in 2002 and issues were framed in 2005. However, till date, the trial of the matter has not been proceeded with, for one reason or the other. Trial Courts are usually inundated with applications after applications by the parties only in order to make sure that the trial of the suit does not proceed, as is seen in the present case. Once the issues were framed, the Trial Court ought to have earnestly put the matter for trial, and not continue to entertain applications, especially applications under Order VII Rule 11 CPC.

12. The first application in the suit, under Order VII Rule 11(a) of the CPC, was dismissed in 2005. The entire order sheet is not before this Court, however, the gap in the order sheet from 2005 to 2013, as filed in the present appeal, itself shows that for a period of 12 years, merely applications have considered by the Trial Court.

13. Even the order to remand the matter back to the Trial Court, passed by the Appellate Court in the impugned order, lacks clarity and has created confusion as to the manner in which the trial court is to proceed.

14. Adjudication of the maintainability of the suit would require the Trial Court to go into the evidentiary value of the Plaintiff's and the Defendant's title documents, which in effect would mean that all the issues can be decided together. After perusing the issues on record and hearing submissions of the parties, this Court is of the opinion that the issues which were framed on 15th February, 2005 and the issue in respect of maintainability of the suit, ought to be

decided together comprehensively by the Trial Court.

15. In view of the above, the following directions are issued:

- i) The evidence on all issues, including the issue as to the maintainability of the suit, shall be recorded by the Trial Court;
- ii) The Plaintiff is stated to have filed its evidence by way of affidavit way back in 2010. However, considering the fact that the Plaintiff has passed away, the Plaintiff's LRs may take a re-look at the matter, and file fresh affidavits in evidence, if needed within six weeks from today;
- iii) The cross-examination of Plaintiff's witnesses shall now take place either in person or through video conferencing.
- iv) Thereafter, the Defendant's evidence shall be recorded by the Trial Court.

16. All the issues framed on 15th February 2005 and on 18th July 2013 shall be adjudicated upon comprehensively by the Trial Court. The Trial of the suit shall be concluded within a period of 8 months from the first date of hearing.

17. List on 22nd December, 2020 before the Trial Court, for the Court to take note of the present order and to fix dates for recording of Plaintiff's evidence. A copy of this order be communicated to the learned Chief Judge- 06 (Central), Tees Hazari Courts.

18. This appeal and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

DECEMBER 16, 2020

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