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

+ **RSA 16/2023& CM APPL. 2233/2023**

PRITAM SINGH

.....Appellant

Through: Mr. Deepanshu Raheja and
Ms.Himani Aggarwal, Adv.

versus

RAJBIR SINGH & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **12.12.2024**

1. The instant appeal has arisen out of judgment and decree dated 01.09.2022 passed by the Court of Additional District Judge-02, North, Rohini Court Complex in *RCA DJ No.5/16/14*, dismissing the appeal preferred by the appellant against the judgment and decree passed by the Trial Court in Civil Suit bearing no. *C.S. 371/2010* dated 09.05.2014, whereby, the suit filed by the appellant/plaintiff was dismissed.
2. A perusal of the facts indicates that the appellant/plaintiff instituted a Civil Suit stating therein that in the year 1976, under the 20 Point Programme of the Central Government, the appellant/plaintiff was allotted a plot bearing no.2/2, measuring 150 sq. Yards out of Khasra No.765 situated within the revenue estate of village Siraspur, Delhi-42, and since then the appellant/plaintiff has been in possession of the same.
3. The appellant/plaintiff then contended that respondent no.1 is the



allottee and resident of the adjacent plot and in May 2010, respondent nos.2 and 3 claiming to have acquired half of the plot of respondent no.1, tried to open a gate towards the plot of the appellant/plaintiff.

4. There appears to have been certain complaints made by the appellant/plaintiff since the respondents therein, did not stop the interference, therefore, the appellant/plaintiff instituted the Civil Suit before the aforesaid Court for claiming the following reliefs:-

“It is, therefore, prayed that this Hon’ble court may be pleased to restrain the defendants by way of ex-parte ad interim injunction thereby restraining the defendants, his agents, servants, employees and any other person acting and working on behalf of the defendants from interfering in the construction work of the plaintiff and also from forcibly dispossessing the plaintiff from the suit property bearing plot No. 2/2 out of Khasra No. 765, situated within the revenue estate of village Sirsapur, Delhi, till the disposal of the present suit”

5. The Civil Suit filed by the appellant/plaintiff came to be rejected by the Trial Court and therefore, the appellant/plaintiff preferred the First Appeal which was also dismissed *vide* impugned judgment and decree, and therefore, the appellant/plaintiff is in the instant appeal.

6. Learned counsel appearing on behalf of the appellant/plaintiff contends that in order to ascertain the exact location of the plot in question, the Trial Court ought to have appointed a local commissioner. He further submits that the findings rendered by the Courts below are perverse and therefore, interference is called for.

7. I have considered the aforesaid submissions and have also perused the record.

8. If the findings rendered by the first Appellate Court in paragraph



no.15 are perused, the same indicates that the appellant/plaintiff did not adduce any evidence to show that both plots which are in different Khasra numbers were adjacent to each other.

9. Paragraph no.15 of the aforesaid impugned judgment and decree reads as under:-

“15. Respondent examined concerned Halka Patwari Sh D. K. Bansal as DW1 who brought Aks Sijra Ex DW1/1 of the area which shows that Khasra No.103 and Khasra No. 765 of Village Siraspur, Delhi are quite apart with no sharing of its boundary at any point. DW1 was cross examined but Aks Sijra was not disputed nor was any suggestion given to the effect that Khasra No. 103 and Khasra No. 765 share its boundary at least at the plot bearing No.2/2 in khasra No. 765 and plot No.11 in Khasra No. 103 in village Siraspur, Delhi. Appellant did not summon any record to show that both plots which are in different khasra numbers were adjacent to each other, neither did appellant bring any evidence to show that plot allotted to father of the respondent No.1 was also in khasra No. 765. Hence, there is no evidence that plot of the appellant was adjacent to the plot of respondent No.1 which fact Ld. Trial Court correctly caught hold of in dismissing the suit of the appellant as once appellant's plot is not adjacent to the plot of the respondents there cannot be any cause of action for appellant to approach the court alleging that respondents had opened gate towards, his plot or obstructing the appellant in raising construction of his plot.”

10. So far as the fact that the father of respondent no.1 was also allotted the plot is concerned, the aforesaid position has been admitted by the appellant. However, the allotment of the plot to the appellant/plaintiff itself was disputed by the respondents. The Court, therefore, in paragraph no.16 of the impugned judgment has held that the appellant/plaintiff did not adduce any evidence to establish that in the 20 Point Programme, the appellant/plaintiff was also allotted the plot. The findings rendered in the aforesaid paragraph reads as under:-

“16. Appellant did not dispute allotment of plot to father of the respondent No.1 but respondents have disputed any such allotment of plot to plaintiff under the above said programme of the Central



Government therefore in this circumstance plaintiff was required to prove allotment of plot in his favour not only by placing on record Allotment Certificate but also by calling for the record from concerned office to show allotment of plot in his favour. Interestingly, when DWI was in the witness box appellant did get i him admit that numbering of plots which were given in 20 points programme and the record of the same was lying in the office of BDO, North-West, Alipur. Thus, when records of allotment and numbering etc. are available in the office of BDO, there was nothing which prevented appellant from summoning those record to prove allotment in his favour. Besides, appellant in his cross examination admitted that his name had not been entered in the records as an allottee or as an Asami. How this was possible that his name despite alleged allotment was not entered as allottee. Further, appellant did not examine said Ramphal and Jitender Kumar to prove his possession through them over the plot allegedly adjacent to the plot of the respondents. Appellant grossly failed to prove allotment of the plot No. 2/2 in Khasra No. 765 in his favour and that said alleged plot allotted to the appellant was adjacent to the plot admittedly allotted to the father of the respondent No.1. It was the suit of the appellant and the onus to prove above facts was upon him but he miserably failed to prove so and therefore, Ld. Trial Court rightly dismissed the suit of the appellant."

11. In view of the aforesaid, it is amply clear that the contention of the appellant herein rests only on the fulcrum of factual finding which has been affirmed by the Courts below.

12. A Court of the second appeal, normally, would not interfere in the impugned judgment on the ground of erroneous findings of fact, however, gross or inexcusable the error may seem to be¹. It is pertinent to point out that post the 1976 amendment, the scope of the second appeal under Section 100 CPC was further curtailed, and only in cases wherein substantial questions of law arise, a second appeal is permissible, as discussed above. The rigors of Section 100 CPC become more stringent when the second appeal is filed assailing the concurrent findings of the Courts below, as in

¹ Ramtran Shukul v. Mussumat Nandu (1892) 19 Cal 249 (252) (PC).



the case at hand. In ***Bholaram v. Amirchand***², the second Appellate Court set aside the impugned judgment on the ground that the findings are perverse and in disregard to the material available on record. However, the Supreme Court while setting aside the High Court judgment held that, even if we accept the rationale of the High Court, at best it could be termed as an error in findings of fact but that itself would not entitle the High Court to interfere in the absence of a clear error of law. As seen from the decision in the case of ***Thiagarajan v. Sri Venugopalaswamy B. Koil***³, the Supreme Court has observed that where the findings of facts by the lower Appellate Court are based on evidence, the second Appellate Court cannot ouster such finding and substitute it with its own finding on re-appreciation of evidence merely on the ground that another view was possible.

13. Interference in the concurrent findings of the fact is permitted but only in exceptional circumstances, such as erroneous application of law, casting the wrong burden of proof, incorrect inference based on a misapplication of the law, etc. As a second appeal is not the third trial on facts and the first Appellate Court is the final arbiter of facts, this interference by the second Appellate Court is a rarity rather than regularity. In ***Jai Singh v. Shakuntala***⁴, the Supreme Court held that it is permissible to interfere even on questions of fact but it has to be done only in exceptional circumstances. The Court observed as under:-

“6. ...While scrutiny of evidence does not stand out to be totally prohibited in the matter of exercise of jurisdiction in the second appeal and that would in our view be too broad a proposition and too rigid an interpretation of law not worthy of acceptance but that does not also

²(1981) 2 SCC 414.

³ (2004) 5 SCC 762.

⁴AIR 2002 SC 1428.



clothe the superior courts within jurisdiction to intervene and interfere in any and every matter—it is only in very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible—it is a rarity rather than a regularity and thus in fine it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection.”

14. Therefore, as the issues raised fall entirely within the domain of factual inquiry and verification of documents, this Court finds no merit in the present appeal. The questions formulated by the appellant fail to meet the threshold of substantial questions of law and do not merit interference. The appeal, thus, stands dismissed, along with the pending application(s).

PURUSHAINdra KUMAR KAURAV, J

DECEMBER 12, 2024/MJ