

(2013) 11 DEL CK 0335

In the Delhi High Court

Case No : Regular Second Appeal No. 51 of 2012

Banarsi Dass Decd. thr. Lrs. and Others

APPELLANT

Vs

Suraj Bhan and Others

RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2013) 11 DEL CK 0335

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : L.D. Adlakha, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a regular second appeal filed by the appellant. I have heard the learned counsel for the appellant.

2. The main contention of the learned counsel for the appellant is that his application under Order 41 Rule 27 CPC seeking permission to adduce additional evidence was rejected on 20.04.2010 and the appeal RCA No. 197/2002 was also dismissed on the same date. It was stated by the learned counsel for the appellant that the application under Order 41 Rule 27 CPC ought to have been allowed by the learned appellate court to adduce evidence to show that he along with his brother was the recorded owner of the suit land in the revenue record. The second contention of the learned counsel for the appellant is to the effect that the learned trial court as well as the first appellate court has failed to appreciate the evidence adduced before the trial court.

3. The present appellant had filed a suit for permanent injunction against the respondents/defendants i.e. Sh. Suraj Bhan, Sh. Ran Singh and Sh. Dharam Pal. The case which was set up in the plaint by the appellant was that he along with his younger brother Ram Narain had inherited a parcel of land situated in village Barola. The said parcel of land was stated to have been owned by their ancestors

and after inheritance of the said parcel of land, Sh. Ram Narain and appellant divided the said parcel of land as a consequence of which Sh. Ram Narain got the parcel of land which was adjoining to the suit land. It was alleged that Ram Narain had raised initially a kacha construction over his plot and latter made pucca construction in his portion of the land in the year 1961 and the land which had fallen to the share of the appellant/plaintiff was slightly low lying which the appellant tried to get filled up with earth. He raised the level of his plot by more than one foot so that the rain water did not collect there. It is also alleged by him that he had got some bricks in order to raise construction on the portion of land falling to his share. However, the respondents/defendants had obstructed to the appellant raising the construction. The stand of the respondents/defendants was that the appellant is not the owner of the land and therefore had no right to construct on the same. In any case, it was also alleged that the suit is bad on account of non joinder of the necessary party Sh. Ram Narain, the younger brother of the appellant/plaintiff inasmuch as the appellant himself was claiming that he is the co-owner of the land in question along with his younger brother Sh. Ram Narain.

4. On the pleadings of the parties, the following two issues were framed:

- 1) Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP.
- 2) Whether the suit is bad for non joinder of necessary party Ram Narain? OPD.
- 3) Relief.

5. The parties adduced their respective evidence. The issue No. 1 was decided in favour of the respondents holding that the suit itself was not maintainable on account of non joinder of necessary party because the appellant was himself claiming to be co-owner of the land in question along with his brother Ram Narain and, therefore, he ought to have impleaded Sh. Ram Narain as a party. So far as the question of permanent injunction is concerned, the same was refused by the trial court. The appellant feeling aggrieved by the said dismissal of the suit, preferred an appeal which was also dismissed vide the impugned order dated 20.04.2010 by the first appellate court. In view of the dismissal of the appeal by the learned ADJ, the appellant has filed the present regular second appeal and raised the issues as have been urged before the courts below. All the contentions of the learned counsel for the appellant are essentially questions of fact which cannot be the subject matter of adjudication in a regular second appeal. The regular second appeal is permissible only if a substantial question of law is made or is involved in the second appeal. The learned counsel for the appellant has failed to show any question of law much less a substantial question of law arising from the present appeal. The question which is involved in the instant case is as to whether the appellant was entitled to permanent injunction, as prayed for in the suit, and the said issue having been decided against the appellant concurrently by the two courts below, no other question for

adjudication by this court arises from the instant appeal. The appeal is accordingly dismissed.