

(2011) 11 DEL CK 0020

In the Delhi High Court

Case No : Regular First Appeal (OS) 35 of 2011

Bhagwan Kishan Gupta

APPELLANT

Vs

Rani Gupta and Others

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Citation : (2011) 11 DEL CK 0020

Hon'ble Judges : S.P. Garg, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Ajay Talesara, for the Appellant;

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM No. 4811/2011

For the reasons stated in the application, delay in filing the appeal is condoned.

RFA(OS) 35/2011

1. With respect to unity of title and unity of possession, suit for partition filed by the appellant was held, with consent of parties, not liable to be proceeded any further in as much as in a parallel suit being CS (OS) No.1363/1998 filed by the opposite party, subject property was partitioned by metes and bounds.

2. In the suit filed by the appellant, the only issue which survived for consideration was whether plaintiff would be entitled to mesne profits, which he claimed on the ground that in the joint property he was in possession of an area which was less than his share as finally determined.

3. Thus, the issue which was settled was: Whether the plaintiff is entitled to any mesne profits as claimed by him? OPP

4. In Paras 7.4 to 10.1, the learned single Judge has opined, with reference to

the decisions reported as National Radio and Electronic Co. Ltd. Vs. Motion Pictures Association, , (1887) ILR 14 493 (Privy Council) , (1889) ILR 16 Cal. 397 Hardeo Baksh and Ors. Vs. Shankar Baksh, T. Ramaswami Aiyar Vs. T. Subramania Aiyar and Others, , (1914) 23 IC 122 Gora Chand Chatterjee and Ors. Vs. Keshab Ohunder Khawas & Ors. and (1894) ILR 19 Bom.532 Bhivrav Vs. Sita Ram that unless it is a case of complete ouster, no joint or co-sharer of a property can be granted any mesne profits merely because he was occupying a lesser area in the joint property.

5. Learned single Judge has held, a fact not in dispute, that in the instant case it was not that the plaintiff was ousted from the joint property. He was occupying, albeit less, a share in the joint property.

6. Learned Counsel for the appellant does not dispute the correctness of the ratio of law culled out by the learned single Judge but urges that the moment a preliminary decree was passed in which plaintiff's share was determined, it became known that the plaintiff would be entitled to physically occupy an area in excess of what he was already occupying in the joint property. Thus, Learned Counsel for the appellant seeks to urge that on this distinction, the plaintiff would be entitled to mesne profits in respect of lesser areas given to him and more areas occupied by the defendants.

7. Suffice would it be to state that ratio of law is that as long as the unity of title and unity of possession continues, no co-owner or co-sharer can stake a claim to mesne profits on the ground that other co-sharers/co-owners are occupying areas in excess of their entitlement. In other words, unless unity of title as also possession is broken, no claim for mesne profits can be laid.

8. Needless to state, unity of possession is broken when an immovable property is partitioned by metes and bounds.

9. Thus, when preliminary decree is passed determining the shares, the same would not afford a ground to maintain an action for mesne profits.

10. Concurring with the view taken by the learned single Judge, we dismiss the appeal but refrain from imposing any cost since the respondents have chosen not to oppose.

CM No. 4810/2011

11. The prayer made is to permit the appellant to lead evidence qua mesne profits.

12. The application is dismissed for the reason we have agreed with the view taken by the learned single Judge that the appellant is not even entitled to maintain an action for mesne profits.