

(2012) 05 DEL CK 0650
In the Delhi High Court
Case No : Ex. S.A.No. 3 of 2012

Bhagwat Parshad Aggarwal	Vs	APPELLANT
Hans Raj Banga (Dereased) and Another		RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Evidence Act, 1872 — Section 13
Punjab High Court Rules and Orders — Rule 15

Citation : (2012) 7 AD 97 : (2012) 190 DLT 203

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Rajinder Singh, for the Appellant; Seeraj Baggar, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Since the appellant in this case is the counsel who appears in this Court, considering the facts of the present case, at the outset, I put it to the counsel for the appellant who is appearing in person as to whether he wanted time to vacate the premises. The matter was passed over once. The matter was passed over again. The appellant states that he seeks to argue the appeal on merits. I have therefore heard the appellant on merits in this Execution Second Appeal (ESA). This ESA impugns two orders of the Courts below i.e. of the first Court dated 2.7.2010 and of the appellate Court dated 6.3.2012 whereby the objections of the appellant, and who is the real brother of the defendant/Judgment Debtor have been dismissed. It may be relevant to state that the suit for possession which was filed by the respondent No.1/plaintiff/Decree Holder went right upto the Supreme Court and the Supreme Court vide its judgment dated 29.4.2005 held the respondent No.1 to be the owner of the suit property. The Supreme Court also held that father namely Sh. Bhagwan Das, of the Judgment Debtor and who is also the father of the present objector/appellant was not a tenant in the suit property as he had failed to exercise his rights of tenant by failing in his obligations to pay the rent.

2. The appellant argued before me in this second appeal, which cannot be entertained unless there is a substantial question of law, the following points:-

(i) The respondent No.1 is not the owner of the property inasmuch as fraud has been played upon the Government and since the respondent No.1 is not the owner of the suit property, judgment and decree which was passed in favour of the respondent No.1/decree-holder/plaintiff dated 29.4.2005 is obtained by fraud, and hence not binding. I may note that this judgment dated 29.4.2005 is the judgment of the Supreme Court which has been referred to above. I may also mention that a review was preferred against the judgment of the Supreme Court dated 29.4.2005 and which was dismissed by the Supreme Court vide order dated 17.8.2005.

(ii) The father of the appellant was in fact the tenant and therefore the appellant is not liable to be evicted from the suit premises as he has inherited the tenancy rights from his father.

3. Before making observations on the arguments as urged on behalf of the appellant, one has to make remarks as to how judicial process is abused in this country by unscrupulous litigants. The judgment and decree in favour of the respondents/plaintiffs/decree holders became final over seven years back, however, till date the respondents/plaintiffs/decree holders have not been successful in obtaining possession. The judgment of the Supreme Court dated 29.4.2005 shows that there were two previous litigations. The first litigation was when before the Settlement Commissioner under the Displaced Persons (Compensation and Rehabilitation Act) 1954, appellant, appellant's mother and his brother i.e. defendant/Judgment Debtor raised objections to dispute the title of the respondent No.1/plaintiff. The appellant, the Judgment Debtor and their mother were not successful before the Settlement Commissioner and the proceedings attained finality when the challenge by the appellant, Judgment Debtor and their mother in this Court by way of a writ petition filed was dismissed on 9.4.1979. This was therefore one endeavour over a period of time to cast cloud on the title of the respondent No.1/plaintiff. I am informed by the counsel for the respondents that order of this Court dismissing the writ petition was also challenged in the Supreme Court and the Civil Appeal No.615/1982 was withdrawn on 13.7.1990. The second litigation was the subject suit which has been decreed in favour of the respondent No.1/plaintiff for possession by the highest Court on the land on 29.4.2005 and where once again challenge to the title of the respondent No.1/plaintiff was dismissed. As already stated, the Supreme Court upheld the ownership of the respondent No.1/plaintiff of the suit premises and dismissed the challenge to the title raised by the Judgment Debtor/defendant and who is none other than the real brother of the present appellant.

4. Obviously, therefore the family of the appellant has been endeavouring to somehow or the other cast cloud on the title of the respondent/plaintiff since the year 1960 i.e. for over 50 years but it has been unsuccessful. The objections to execution which have been dismissed by the two courts below is the third

litigation challenging the title of the respondent/plaintiff.

5. Let me now turn to the objections which have been raised on behalf of the appellant. The appellant contended that the respondent No.1/plaintiff is guilty of obtaining judgment of the Supreme Court dated 29.4.2005 by fraud inasmuch as the respondent No.1/plaintiff is not the owner of the property and the property is not an evacuee property. I am amazed at this argument as the same is nothing but old wine in a new bottle. As already stated one set of litigation was dismissed right till the Supreme Court when the Civil Appeal No.615/1982 was withdrawn on 13.7.1990. Again this issue of lack of ownership of the respondent No.1 of the suit property was taken till the Supreme Court in the subject suit and the Supreme Court held in favour of the respondent/plaintiff by decreeing the suit of the respondent/plaintiff. When the government, the owner which transferred property to the respondent way back is not objecting, how can the appellant herein seek to do the same merely by uttering a mantra of "fraud". I therefore hold that there is no substantial question of law involved for the appellant even to contend, and which is accordingly declined, that there arises a substantial question of law as to challenge the ownership rights of the respondents/plaintiffs. In fact, if I accept the argument as urged on behalf of the appellant, then effectively I will have to sit in appeal over the judgment of the Supreme Court dated 29.4.2005 which has held the respondent No.1/plaintiff as the owner of the suit property after a long drawn out contest. I therefore refuse to go into the issue of challenge to the ownership of the respondent No.1/plaintiff. I may for the sake of record, at this stage, mention that the brother of the appellant i.e. the Judgment Debtor even after the judgment of the Supreme Court, has filed a suit alleging fraud in obtaining the judgment from the Supreme Court on 29.4.2005, and the fraud being that the respondent/plaintiff was not the owner of the suit property. That suit is pending but no interim orders have been passed therein.

6. So far as the second objection of the father of the appellant and the Judgment Debtor becoming the tenant of the property, once again this issue is squarely covered by the judgment of the Supreme Court dated 29.4.2005 where the plea urged on behalf of the Judgment Debtor/defendant was dismissed and it was held that father of the present appellant and the Judgment Debtor, namely, Sh. Bhagwan Dass had no tenancy rights to the suit property. In fact, I am informed that the appellant herein had argued this matter personally in the Supreme Court appearing as a lawyer for his brother/Judgment Debtor/defendant.

7. I may note that though a judgment may not be inter parties and yet the same is binding on a person who is not a party to the earlier litigation when the issue of title is decided in the earlier litigation. Two Division Benches of the Supreme Court, of four Judges and three Judges, in the cases of Sital Das Vs. Sant Ram and Others, and S Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, have so held that a judgment which holds that a person is an owner, such a judgment is very much admissible in evidence to show assertion of title

inasmuch as the judgment is a transaction pertaining to the subject matter of the dispute u/s 13 of the Indian Evidence Act, 1872. In my opinion, this is another reason to hold that respondent No.1/plaintiff is owner of the subject property, and the challenge which is led by the appellant/objector is without any basis.

8. A second appeal is only entertained if there arises a substantial question of law. The present second appeal, in view of the facts of the case, is an endeavour to overreach the Court. Ordinarily applying the ratio of the judgment of the Supreme Court in the case of Rameshwari Devi and Others Vs. Nirmala Devi and Others, would have imposed actual costs on the appellant as I have the power to impose actual costs by virtue of Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15 but I refrain to do so in of course a very illusory hope that the appellant will still not contest further and hand over possession of the suit property to the respondent No.1/plaintiff/Decree Holder. Appeal is accordingly dismissed, leaving the parties to bear their own costs. The Executing Court will ensure that warrants of possession with respect to the suit property i.e. the property against which a decree has been upheld right till the Supreme Court, is executed forthwith and there is no further delay caused in execution of the judgment and decree of the Supreme Court dated 29.4.2005. The respondent No.1/plaintiff is entitled to file an affidavit mentioning the factum of dismissal of this appeal of the appellant to the two orders of the Courts below dismissing the objections before the Executing Court where the execution proceedings are stated to be listed tomorrow.