

(2017) 11 DEL CK 0317

In the Delhi High Court

Case No : Regular First Appeal No. 800, 959 Of 2017, Civil Miscellaneous No. 41211-41214 Of 2017

Gopal Devi

APPELLANT

Vs

Tek Ram & Ors.

RESPONDENT

Date of Decision : 20-11-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96, 105

Citation : (2017) 11 DEL CK 0317

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Naveen Kumar Raheja, Arti Anupriya, Sapna Chaudhari

Final Decision : Disposed Of

Judgement

Valmiki J. Mehta, J

RFA No. 959/2017

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of

the trial court dated 27.2.2017 whereby the trial court has dismissed the suit filed by the appellant/plaintiff seeking possession, partition, injunction, declaration etc.

2. Learned counsel for the appellant/plaintiff rightly argues that the suit was listed on 3.8.2015 when issues were framed and evidence of the

appellant/plaintiff was to be recorded on 11.3.2016 which was the first date fixed for evidence, but the trial court however on this very first date fixed

for evidence closed the evidence of the appellant/plaintiff, and has thereafter dismissed the suit. It is also argued that this aspect is mentioned in para 7

of the impugned judgment and which states that appellant/plaintiff has not led any evidence.

3.(i) In my opinion, the impugned judgment dated 27.2.2017 has to be set aside because it is an extremely harsh action of the trial court to close the

evidence of the appellant/plaintiff in a suit on the very first date of hearing fixed for recording of evidence. As already stated above, issues were

framed on 3.8.2015 and the suit was listed for evidence of the appellant/plaintiff for the first time on 11.3.2016, and on this first date itself, on account

of the appellant/plaintiff not leading evidence, the evidence of the appellant/plaintiff was closed.

Resultantly, the suit has been dismissed.

(ii) As per Section 105 CPC, an order such as the impugned order dated 11.3.2016 closing right of the appellant/plaintiff to lead evidence, can be

challenged in an appeal against a final judgment and in ground (F) of this appeal the appellant/plaintiff has questioned the closing of her evidence on

the very first date of hearing fixed for evidence.

4. In view of the aforesaid discussion, this appeal is allowed. The impugned judgment dated 27.2.2017 is set aside and the appellant/plaintiff is given

liberty to lead evidence. Appellant/plaintiff will however ensure that her evidence in affirmative is closed by taking not more than three opportunities.

5. Parties to appear before the District and Sessions Judge, Central, Tis Hazari Courts, Delhi on 18.12.2017 and the District and Sessions Judge will

now mark the suit for disposal to a competent court in accordance with law.

RFA No. 800/2017

6. This appeal was filed by the defendant no.1 in the suit. The suit was dismissed by the self-same impugned judgment dated 27.2.2017 and the

appellant/defendant no.1 had challenged certain findings against him in the impugned judgment.

7. I have already set aside the impugned judgment dated 27.2.2017 in terms of the aforesaid judgment in RFA No. 959/2017, and therefore once the

self-same impugned judgment dated 27.2.2017 is set aside, this appeal would become infructuous, because there does not survive any impugned

judgment which can be challenged by the appellant/defendant no.1. This appeal is also accordingly disposed of.