(2011) 08 DEL CK 0380

In the Delhi High Court

Case No : Regular Second Appeal No. 93 of 2011

Jagdish Chander APPELLANT

Vs

Sri Chand and Others RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3A, Order 7 Rule 11, 100, 151
Delhi Land Reforms Act, 1954 — Section 11, 66
Limitation Act, 1963 — Section 14, 5

Citation : (2011) 08 DEL CK 0380

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Mohit Ramdeo, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular Second Appeal filed u/s 100 CPC is to the two concurrent decisions of the Courts below, first of the Trial Court dated 4.8.2010, and the second of the Appellate Court dated 14.3.2011, by which judgments, the plaint of the Appellant/Plaintiff has been rejected under Order 7 Rule 11 CPC on account of the same being barred by time.

2. The facts of the case are that certain parcels of land in village Rajokri, Delhi were sold by father of the Appellant to the Respondents in the year 1993. The Appellant thereafter filed an application before the Revenue Assistant in the year 1997 u/s 11 of the Delhi Land Reforms Act, 1954 alleging that the share of his father was wrongly recorded as 1/6th and 1/4th in two parcels of land whereas the share of the Appellant, and the father and brother of the Appellant was 1/18th and 1/12th each. The Appellant sought a declaration that he was bhumidar of 1/18th share out of the land khata khatoni No. 36/29 and 1/12th share in khata khatoni No. 37/30 standing in the revenue record by filing an application. During the proceedings before the Revenue Assistant on 24.6.2004, the Appellant entered into a compromise and signed a memorandum of

understanding with the Respondents for amicable settlement of the dispute and the Appellant received a sum of Rs. 1,00,000/- towards "cost of the proceedings". However it is not disputed that by virtue of a compromise it was agreed that the Appellant has no right in the land in question and for which a memorandum of understanding was executed. Consequently, the Appellant withdrew his application filed u/s 11 of the Delhi Land Reforms Act, 1954 and which application was signed by the Appellant and his counsel. Subsequently, thereafter on 27.7.2004 the Appellant filed an application u/s 151 CPC stating that a fraud had been played upon him and that his application u/s 11 of the Delhi Land Reforms Act, 1954 be restored. The Revenue Assistant dismissed the application which sought recall of the compromise order. The appeal filed by the Appellant before the Deputy Collector was also dismissed. The Deputy Collector while dismissing the appeal has noted in his order that the father of Appellant had sold his holdings to the Respondents through a General Power of Attorney and mutation was sanctioned in favour of the Respondents and it appears that there would have been disputes which led to some dissatisfaction between the two parties with respect to the value of the land and which were not in the purview of the disputes before the Revenue Assistant. Further, an appeal filed u/s 66 of Delhi Land Reform Act, 1954 before the Financial Commissioner was also dismissed by a detailed and reasoned order. It was noted in the order of the Financial Commissioner that when the statement of the Appellant was recorded by the Revenue Assistant with respect to the compromise, his counsel was also present and the application u/s 11 of the Delhi Land Reforms Act was withdrawn after receiving the agreed amount from the Respondents. The Appellant further challenged the order of the Financial Commissioner by means of a Writ Petition in the Delhi High Court and which Writ Petition was withdrawn after addressing arguments inasmuch as the counsel for the Appellant made a statement that the Appellant was in the process of instituting a civil suit to challenge the settlement as fraudulent. The suit was dismissed as time-barred and the appeal which was thereafter filed against the order dismissing the suit under Order 7 Rule 11 CPC being barred by time was also dismissed.

3. The Courts below have held that there is no question of giving benefit of Section 14 of the Limitation Act, 1963 to the Appellant because the earlier proceedings which were pending before the Revenue Assistant were not such proceedings which were initiated in the Court of wrong jurisdiction. Cause of action had accrued on 27.7.2004 for which the limitation period expired on 26.7.2007 and the suit was however filed much later on 22.12.2008. In fact, the Appellate Court noted that the Appellant did not even file an application u/s 14 of the Limitation Act. The Appellate Court has taken a view, and with which I agree, that once a compromise is recorded in a civil proceeding, the spirit of Order 23 Rule 3(A) CPC applies that no independent proceedings will be allowed thereafter to challenge a compromise decree and it is only before the same Court which recorded the compromise that an application for recall has to be filed. Admittedly this application for recall was filed and dismissed right till this Court.

4. Learned Counsel for the Appellant sought to argue that he was entitled to file a civil suit in order to challenge the memorandum of understanding which was executed pursuant to which the case before the Revenue Assistant was compromised on 24.6.2004. Firstly, I have already observed that the spirit of Order 23 Rule 3(A) CPC applies and it was before the Revenue Assistant himself that proceedings for recall of the compromise order should have been filed, and which were in fact filed and thereafter dismissed right upto this Court. Consequently, the issue is not of entitlement to file the suit but that the suit was filed beyond limitation. It is trite that there is no question of condonation of delay u/s 5 of the Limitation Act with respect to a suit filed beyond limitation period and the provisions of Section 14 of the Limitation Act has rightly been held not to be applicable in the facts of the present case.

5. A second appeal u/s 100 Code of Civil Procedure, against two concurrent judgments of the Courts below will only lie if there arises a substantial question of law. In the guise of the second appeal, matters which are already argued and held against the Appellant by both the Courts below by means of valid reasons cannot be said to be a substantial question of law.

6. In view of the above, there is no merit in the appeal. No substantial question of law arises. Dismissed.