

(2018) 09 DEL CK 0298

In the Delhi High Court

Case No : Regular Second Appeal No. 56 Of 2018 & Cm No.13389 Of 2018

Kanwar Singh (Since Deceased) Through Lrs

APPELLANT

Vs

S.L. Jain & Ors

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 7 Rule 7, Section 96, 100

Citation : (2018) 09 DEL CK 0298

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

RAJIV SAHAI ENDLAW, J

CM No.13388/2018 (for exemption)

1. Allowed, subject to just exceptions.

2. The application stands disposed of.

RSA 56/2018 & CM No.13389/2018 (for exemption from filing entire Trial Court record)

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 31st October,

2017 in RCA No.54629/16 of the Court of Additional District Judge-03 (South-West)] of dismissal of First Appeal under Section 96 of the CPC

preferred by the appellants against the judgment and decree [dated 9th April, 2013 in Suit No.801/12 of the Court of Civil Judge-6 (West)] of dismissal

of the suit filed by the appellants/plaintiffs for (i) declaration of the appellants/plaintiffs as the rightful owner of property bearing no.279 measuring 700

sq. yds. (14 biswas) consisting of built-up rooms shown in the site plan annexed

to the plaint, within the extended abadi of village Isapur, Delhi; (ii)

permanent injunction restraining the respondents/defendants i.e. Block Development Officer, Panchayat Secretary, Halka Patwari and Girdawar all of

village Isapur and/or of the district in which the said village is situated, from dispossessing the appellants/plaintiffs or interfering in the possession of the

appellants/plaintiffs of the aforesaid property; and, (iii) recovery of damages of Rs.2,00,000/- for the demolition action already carried out by the

respondents/defendants over a part of the property.

4. The detailed judgments of the Suit Court and the First Appellate Court, find (i) that the demolition action was carried out over the land, adjoining to

the land of the appellants/plaintiffs, which had been encroached upon by the appellants/plaintiffs; (ii) that in repeated demarcations carried out in

accordance with the Delhi Land Revenue Act, 1954, it was reported that the appellants/plaintiffs, besides their property comprising of 700 sq. yds.,

had encroached over another 70 sq. yds.; (iii) that the appellants/plaintiffs had not challenged the said demarcation reports in accordance with the

procedure prescribed therefor; and, (iv) that the appellants/plaintiffs were already in possession of 700 sq. yds. to which they claimed title and which

was allotted to them in consolidation proceedings.

5. I have thus, notwithstanding the substantial question of law formulated in the memorandum of appeal, enquired from the counsel for the

appellants/plaintiffs, how, in the light of the concurrent findings of fact of the Courts which are final courts of facts, any substantial question of law as

proposed arises.

6. The only arguments of the counsel for the appellants/plaintiffs are, that the two demarcation reports, on the basis of which findings aforesaid have

been returned against the appellants/plaintiffs were in the absence of the appellants/plaintiffs and the first demarcation report, which was carried out in

the presence of the appellants/plaintiffs, is in favour of the appellants/plaintiffs.

7. I have enquired from the counsel for the appellants/plaintiffs, how the demarcation reports can be challenged in a civil suit and whether not the

procedure for making a challenge thereto is prescribed in the Delhi Land Revenue Act itself.

8. The counsel for the appellants/plaintiffs, though unable to controvert, states that unfortunately no such challenge was made. He however contends

that this Court, under Order VII Rule 7 of the CPC, may consider the challenge.

9. I am unable to agree.

10. Not only so, the same does not raise any substantial question of law. The Courts below, which are the final courts of facts, have held that the appellants/plaintiffs are still in possession of the property as per their own site plan and the demarcation action was only with respect to the adjoining property encroached upon by the appellants/plaintiffs.

11. The counsel for the appellants/plaintiffs now states that the appellants/plaintiffs in fact, in the consolidation proceedings, as per the masavi, were allotted 726 sq. yds. and not 700 sq. yds.

12. However on enquiry, whether not the suit from which the Second Appeal arises, itself was for 700 sq. yds. and on the premise that the appellants/plaintiffs were, in consolidation proceedings, allotted 700 sq. yds. only, the counsel for the appellants/plaintiffs again states that unfortunately the appellants/plaintiffs did not make the correct pleadings.

13. The appellants/plaintiffs can succeed on their own facts and cannot succeed on what their case should have been pleaded in the suit from which this appeal arises.

14. For the aforesaid reasons, the need to set out in detail the contents of the pleadings and of the judgments of the Suit Court and the First Appellate Court is not felt.

15. Dismissed.

Â No costs.