

(2016) 08 DEL CK 0087

In the Delhi High Court

Case No : RSA No. 14 of 2016 and CM No. 1183 of 2016

Krishan Kumar Garg

APPELLANT

Vs

Ram Niwas Verma

RESPONDENT

Date of Decision : 29-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, Section 105, Section 151, Section 2(2)

Citation : (2016) 234 DLT 5

Hon'ble Judges : Mr. Valmiki J. Mehta, J.

Bench : Single Bench

Advocate : Mr. Pankaj Gupta and Ms. Rimpay Gupta, Advocates, for the Appellant; Mr. Rama Shankar and Mr. Shivam Garg, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J. (Oral)—The sole issue which is required for consideration in these second appeals filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) is as to whether the jurisdiction of the civil court for entertaining the suits for possession filed by the respondent/plaintiff against the appellants/defendants/tenants is barred as the premises in question are governed by the Delhi Land Reforms Act, 1954 and thus proceedings would have to be initiated before the revenue authorities specified in this Act and not in the civil court. These two second appeals filed by the appellants/tenants concern two shops bearing private shop no.3 at the ground floor of the property no.114, Kavita Colony, Nangloi, New Delhi (tenant is appellant in RSA No.14/2016) and private shop no.1 at the ground floor of the property no.114, Kavita Colony, Nangloi, New Delhi (tenant is appellant in RSA No.19/2016).

2. The Supreme Court in the judgment in the case of Hope Plantations Ltd. v. Taluk Land Board, Peermade and Another (1999) 5 SCC 590 has held that the principle of res judicata applies not only to a subsequent suit, but also to

subsequent stages in the same suit. The relevant paragraphs of the judgment of the Supreme Court in the case of Hope Plantations Ltd (supra) are paras 26 and 31 and which read as under:-

26. It is settled law that principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrated wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the CPC contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

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31. Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, a different if an issue which had been decided in earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile law has changed or has been interpreted differently by higher forum. But that situation does not exist here. Principles of constructive res judicata apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order 47 of the Code (explanation to Rule 1) review is not permissible on the ground -

"that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment",

(emphasis is mine)

3. In the present cases, the issue as to whether or not the Delhi Land Reforms

Act applies, and therefore suit could not have been decided by the civil court, was the subject matter of the decision of the trial court in these suits themselves, by the Order dated 9.2.2010 and this order reads as under:-

"Arguments by plaintiff on issue no.1 & 2 heard. The plaintiff has placed on record the certified copies of order dated 15.03.2008 by Ld. ARC, Rohini & the statement given by deceased defendant, in which he admitted that the DRC Act does not apply to the area where tenanted property is situated, and the Ld. ARC dismissed the defendants petition under Section 27 of DRC Act as withdrawn. Hence, issue no.1 is decided in favour of plaintiff. This suit is not barred under Section 50 of DRC Act.

The defendant had raised objection that Section 185 of DLR Act applies to the property. Plaintiff filed judgment of Hon'ble High Court of Delhi titled Nilima Gupta v. Yogesh Saroha 156 (2009) DLT 129, in which it has been held that when Agricultural land loses its basic character by building houses, then civil court would have jurisdiction to entertain the suits between parties. Hence, issue no.2 is also decided in favour of plaintiff.

As far as issue no.6 is concerned, the Ld. Predecessor Court had not allowed the amendment in Written Statement of defendant, vide order dated 26.02.2009, since tenant can't be allowed to challenge the ownership of landlord. Hence, issue no.6 is deleted today. Fix for plaintiff's evidence on 02.08.2010."

(underlining added)

4. This order was challenged by the appellants before the trial court by filing an application under Section 151 CPC and which was dismissed by the trial court vide Order dated 2.8.2010. The Order of the trial court dated 2.8.2010 was carried in challenge to this Court in CM(M) Nos. 1354/2010 and 1321/2010 and which CM(M)s were dismissed by an Order of a learned Single Judge of this Court dated 2.8.2011 holding that once the Order passed by the trial court dated 9.2.2010 was not challenged by means of filing of a proper appeal or a review petition, the said order could not be challenged by filing an application under Section 151 CPC.

5. The Order dated 9.2.2010 holding that the objection of the appellants of application of the Delhi Land Reforms Act is misconceived relies upon the judgment of a learned Single Judge of this Court in the case of Nilima Gupta v. Yogesh Saroha and Ors. 156 (2009) DLT 129, and in which judgment learned Single Judge of this Court held that once houses are built then agricultural land loses its basis character, and therefore, suits for eviction from such property would be maintainable before a civil court. The order of the learned Single Judge in the case of Nilima Gupta (supra) was carried in challenge before the Supreme Court and the Supreme Court dismissed the challenge thereto in SLP (Civil) No.17529-17532/2009 vide Order dated 20.7.2009.

6. The Order passed by the trial court dated 9.2.2010 holding that the Delhi Land

Reforms Act would not bar the suit of the respondent/plaintiff for possession is a decree as per Section 2(2) CPC because definition of a decree as per Section 2(2) CPC means decision on either one or some or all the issues in the suit. Section 2(2) CPC reads as under:-

"2(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the right of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default."

(underlining added)

7. Learned counsel for the appellants sought to argue that the Order dated 9.2.2010 is not a decree but I cannot agree in view of the explicit and categorical language of what is a decree as per Section 2(2) CPC and which holds that decision even on one of the issues in the suit will result in a decree.

8. Learned counsel for the appellants then sought to argue that the Order dated 9.2.2010 could always have been challenged by the appellants in appeal against the final Judgment and Decree which was passed in the suit on 31.10.2013, and which was done by the appellants, but, this argument is misconceived because the principle invoked on behalf of the appellants is one contained in Section 105 CPC which allows an interim order passed in the suit affecting the final judgment to be challenged in the appeal against the final judgment in the suit, whereas in the present cases the Order passed by the trial court on 9.2.2010 is not in the nature of an interim order but is a decree under Section 2(2) CPC.

9. It is an admitted position on record that the Order of the trial court dated 9.2.2010, amounting to a decree, holding that the Delhi Land Reforms Act will not apply, was not challenged by the appellants by filing a first appeal under Section 96 CPC.

10. In view of the above, no substantial question of law arises for these second appeals to be entertained under Section 100 CPC. The second appeals are accordingly dismissed leaving the parties to bear their own costs.