

(2014) 07 DEL CK 0232

In the Delhi High Court

Case No : LPA 349/2014

P.K. Sharma

APPELLANT

Vs

Kamlesh Sharma

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100-A, 151, 96
Delhi High Court Act, 1966 — Section 10, 5, 5(2)

Citation : (2014) 07 DEL CK 0232

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G. Rohini, C.J.—This appeal is preferred under Clause 10 of the Letters Patent against the order dated 18.03.2014 passed by the learned Single Judge disposing of an application for stay filed by the respondents herein pending RFA No. 562/2011.

2. The appellant, Prof. P.K. Sharma is the plaintiff in Suit No. 30/2007 filed before ADJ, Delhi seeking a decree for possession of the suit schedule property, i.e., Flat bearing No. 271, 3rd Floor, Pocket-2, Sector-23, Rohini, Delhi as well as mesne profits. By judgment and decree dated 20.05.2011, the suit was decreed to the extent of possession of the suit schedule property. However, the claim for mesne profits was dismissed. The counter claim made by the defendants for specific performance against the plaintiff directing him to execute a sale deed in respect of the suit schedule property was also dismissed.

3. Aggrieved by the same, the defendants/respondents herein preferred RFA No. 562/2011. Pending the said appeal, the appellants sought stay of execution of the judgment and decree under appeal. Having taken note of the fact that the plaintiff/decreed holder had already taken possession of the suit schedule property, the learned Single by order dated 18.03.2014 disposed of the application for stay recording the undertaking of the plaintiff/decreed holder that

he would not create any third party interest with regard to the suit schedule property or encumber in any manner during the pendency of the appeal.

4. The said order dated 18.03.2014 is assailed before us by the plaintiff/decreed holder contending inter alia that the learned Single Judge ought to have dismissed the application for stay as infructuous since the possession of the suit schedule property had already been delivered to him. Placing reliance upon the judgment in National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara, , it is further contended that the order passed by the learned Single Judge cannot be traced even to the inherent powers conferred u/s 151 of CPC.

5. We do not think it necessary to express any opinion on merits of the case since according to us the appeal itself is not maintainable under law.

6. It is to be noticed that the order under appeal came to be passed by the learned Single Judge in a Regular First Appeal preferred u/s 96 of CPC against the judgment and decree of the trial Court. That being so, further appeal is barred by Section 100-A of CPC which reads as under:

100-A. No further appeal in certain cases. - Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment and decree of such single Judge.

7. It is clear from the above provision that the Letters Patent Appeal has been specifically excluded where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court. The effect of Section 100-A of CPC as amended by Act 22 of 2002 providing for a specific exclusion of Letters Patent Appeal has been considered by the Supreme Court in P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others, and the object of the said amendment has been explained.

8. However, it is further sought to be contended by the appellant, who appeared in person, that the appeal is maintainable u/s 10 of the Delhi High Court Act, 1966 which empowers the Division Bench to exercise the appellate jurisdiction against the order of the Single Judge. We are unable to agree with the said contention. Section 10 of the Delhi High Court Act reads as under:-

10. Powers of Judge - (1) Where a single Judge of the High Court of Delhi exercises ordinary original civil jurisdiction conferred by sub-Section (2) of Section 5 on that Court, an appeal shall lie from the judgment of the single Judge to a Division Court of that High Court.

(2) Subject to the provisions of sub-section (1), the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court of Punjab and with respect to all

matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Delhi.

9. A plain reading of the above provision shows that the appeal shall lie to a Division Bench from the judgment of the Single Judge where the Single Judge exercises ordinary original civil jurisdiction conferred by Section 5(2) of the said Act.

10. Admittedly, this is not a case where the learned Single Judge passed the order under appeal in exercise of the ordinary original civil jurisdiction conferred by Section 5(2) of the Act. As noticed above, the suit for recovery of possession preferred by the appellant was decreed by the trial Court by judgment and decree dated 20.05.2011 and as against the said judgment and decree, the respondents herein preferred RFA No. 562/2011 u/s 96 of the CPC. Therefore, the bar u/s 100-A of CPC is attracted.

11. To substantiate his contention that the appeal is maintainable, the appellant has further relied upon the decision in *The Public Trustee Vs. A. Rajeshwartyagi and Others*, . In the said decision, a Division Bench of this court was dealing with the question as to whether the order which was appealed against was a "judgment" within the meaning of Clause 10 of the Letters Patent of High Court of Lahore or of the High Court of Punjab & Haryana or of the High Court of Delhi. Following the ratio laid down by a Full Bench of five Judges in *University of Delhi and Another Vs. Hafiz Mohd. Said and Others*, , it was held that the order assailed cannot be regarded as a judgment within the meaning of Clause 10 of the Letters Patent and therefore the appeal was not maintainable. The ratio laid down in the said decision according to us is of no assistance to uphold the appellant's contention with regard to the maintainability of the present appeal.

12. For the aforesaid reasons, the appeal is dismissed as not maintainable. No order as to costs.