

(2019) 01 DEL CK 0163

In the Delhi High Court

Case No : Regular First Appeal No. 288 Of 2017

Ram Bharat Sharma

APPELLANT

Vs

Ram Kishore Sharma

RESPONDENT

Date of Decision : 16-01-2019

Acts Referred:

Citation : (2019) 01 DEL CK 0163

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Amit K. Nain, Gagandeep Sharma

Judgement

Valmiki J. Mehta, J

CM No. 1774/2019 (Exemption)

Exemption allowed subject to just exceptions

CM stands disposed of.

CM Nos. 1776/2019 (delay in filing the review petition) & 1777/2019 (delay in re-filing)

For the reasons stated in the application, delays in filing and re-filing the review petition are condoned.

CMs stand disposed of.

Review Petition No. 14/2019 (filed against the order dated 18.09.2018)

1. This appeal was disposed of by a Consent Order, in the presence of the appellant, on 18.09.2018, and this Order dated 18.09.2018 reads as under:

"CM No. 38111/2018 (for waiving of cost)

1. There is no opposition to this application which is allowed, alongwith the fact and as recorded hereinafter that the appeal is not pressed.

CM stands disposed of.

CM. 38112/2018 (Exemption)

2. Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No.288/2017

3. On the oral prayer of the appellant, the appeal is restored but appeal is disposed of as not pressed with the appellant being granted time to vacate the suit property on or before 31.3.2019. Also, the claims towards mesne profits are satisfied because respondent has received from the appellant a sum of Rs.25,000/- after passing of the impugned judgment and decree, and in case the appellant vacates the suit property on or before 31.3.2019 then the respondent will fairly give up any other claims towards damages/mesne profits. Appellant will however clear charges towards electricity, water etc as payable for the suit premises till the time the appellant stays in the suit property.

4. Let the appellant file his affidavit of undertaking in this Court in terms of the present order within 10 days, and on the appellant filing the undertaking and complying with the terms of the same, while disposing of the appeal as not pressed and restricting the claim to the mesne profits of Rs.25,000/- in favour of the appellant, appellant will positively vacate the suit property as per the affidavit of undertaking to be filed on or before 31.3.2019.

5. Appeal is accordingly disposed of in terms of the aforesaid consent order."

2. The aforesaid Order shows that the appeal had been dismissed in default and after restoring it was disposed of as not pressed and the appellant/defendant was granted time to vacate the suit premises on or before 31.03.2019 with the appellant/defendant getting the benefit of decree for mesne profits which stood satisfied on the respondent/plaintiff receiving a sum of Rs. 25,000/- only. I may note that the parties to the suit and the appeal are real brothers.

3. Before turning to the facts as stated in the review petition and the connected applications, it is noted that the subject suit was filed by the respondent/plaintiff against the appellant/defendant with respect to the property bearing no. RZ-C-2/147, Gali No.2, Mahavir Enclave, Part-II, New Delhi situated on a plot of 45 sq. yds. The respondent/plaintiff pleaded to be the owner of the suit property in terms of the documents executed in his favour in 1985 by Sh. Baleshwar being the usual set of documents i.e. the agreement to sell, power of attorney etc. The appellant/defendant being the elder brother was at his request permitted to stay in the suit property. As the appellant/defendant failed to vacate the suit property, the respondent/plaintiff served the Legal Notice, and thereafter filed the suit.

4(i). The appellant/defendant in his written statement claimed that he had purchased the suit property in 1984 for consideration of Rs. 5500/-, and that the original documents of the suit property were handed over by the appellant/

defendant to the respondent/plaintiff on 10.09.2001 to obtain an electricity connection. It is stated that the suit is filed by the respondent/plaintiff on the basis of forged and fabricated documents and thus the suit was prayed to be dismissed.

4(ii). During the trial, the respondent/plaintiff proved the title documents in his favour as Ex.PW1/B (colly) from the previous owner Sh. Baleshwar. Other documents were also duly proved as stated in para 12 of the impugned judgment, which reads as under:

"12. PW1 has reiterated the contents of the plaint in her affidavit in the nature of examination in chief Ex. PW1/1. She also proved the site plan of the suit property as Ex. PW1/A, the copies of GPA, agreement to sell, affidavit and receipt executed by the previous owner Sh. Baleshwar in favour of her husband as Ex. PW1/B (colly), copy of complaint dated 15.11.2006 lodged by her husband in PS Dabri as Ex. PW1/C1, copy of another complaint dated 23.4.2011 as Ex. PW1/C4, legal notice got served upon the defendant as Ex. PW1/D, its postal receipt as Ex. PW1/E, copy of pass book of her husband as Ex. PW1/G, copy of passport of her husband as Ex. PW1/H, copy of water bills of the suit property as Ex. PW1/I and copy of electricity bill dated 09.12.2004 related to the suit property as Ex. PW1/J.

5. The appellant/defendant however led no evidence to show ownership of the suit property and the same is recorded in paras 16 to 19 of the impugned judgment, and these paras read as under:

16. In view of the above noted oral as well as the documentary evidence led by the plaintiffs, the burden shifted upon the defendant to prove his ownership regarding the suit property. In his written statement, the defendant has claimed to have purchased the plot of land, upon which the suit property existed, admeasuring 45 sq. yards in the year 1984. He has nowhere mentioned the name and other particulars of the person from whom he had purchased the same. He has not mentioned the name of the seller even in his affidavit in evidence Ex. DW1/A. No document at all has been produced or proved by the defendant on the basis of which he claims to have purchased the suit property.

17. Thus there is nothing on record, except the oral testimony of the defendant (DW1) and his wife (DW2) to show that the defendant was the owner of the suit property having purchased it in the year 1984. It be noted here that the title to an immoveable property can only be proved by way of requisite title documents and not merely by leading oral evidence.

18. The defendant has tried to explain the absence of title documents of the suit property with him by saying that he had handed over those to the plaintiff to enable him to obtain electricity connection in the suit property and the plaintiff later on did not return those to him. It is further stated by the defendant that he had lodged a written complaint in this regard against the defendant in PS Dabri on 30.10.2001. However, he has not field on record any copy of such complaint.

He also did not serve any notice upon the plaintiff either before the filing of the suit or during the proceedings of the suit calling upon him to produce those original documents before this court. Even if it be assumed for the sake of argument that defendant had handed over the original title documents of the suit property to the plaintiff and the plaintiff did not return those to him later on, yet the defendant could have easily proved his ownership of the suit property by producing the copies of the title documents and by examining the seller as a witness. To the contrary, he has neither mentioned the name of the seller in his pleadings or in his evidence, nor has he filed any copy of his title documents.

19. Therefore, the defendant has clearly failed to discharge his burden of proving the purchase of suit property by him in the year 1984, as contended by him.

6. It is in the light of the aforesaid facts that the trial court decreed the suit filed by the respondent/plaintiff, and the appellant/defendant in his own interest therefore agreed to the Consent Order on 18.09.2018 in his presence.

7. Now today, a new counsel appears for the review petitioner/appellant/defendant who has absolutely no clue of what actually transpired in the Court on 18.09.2018 but very brazenly it is argued that the appellant/defendant did not understand what happened on 18.09.2018 although he was personally present. The unfortunate position is that to file the present review petition, the appellant/defendant has most dishonestly filed a complaint against the earlier Advocate in the Bar Council, though it is not disputed that neither the appellant/defendant nor his present counsel ever contacted the earlier counsel as to whether or not what was recorded in the Order dated 18.09.2018 was or was not understood by the appellant/defendant. In my opinion, therefore, the legal fraternity is to be blamed simply because an Advocate gets a case and is asked to file a review petition and the same is filed, although such review petition is based on utter falsehood and has been filed only to resile from the Consent Order passed on 18.09.2018.

7. In view of the aforesaid discussion, the review petition and the stay application are wholly misconceived and an abuse of the process of law and these applications are therefore dismissed with costs of Rs. 25,000/-. Costs shall be paid to the respondent/plaintiff within a period of four weeks from today.

8. Also, I may clarify that since the appellant/defendant has not complied with the terms of the Order dated 18.09.2018 by filing his affidavit of undertaking, and since the appeal was disposed of as not pressed, the respondent/plaintiff is at complete liberty to execute the impugned Judgment and Decree dated 03.12.2016 as it stands. Dismissed.