

(2018) 08 DEL CK 0285

In the Delhi High Court

Case No : Regular Second Appeal No. 343 OF 2015, CM No.5075, 5076 OF 2016

Ram Rich Pal Sharma & Ors

APPELLANT

Vs

Bhushan Lal Sahni

RESPONDENT

Date of Decision : 03-08-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96, 100

Delhi Land Reforms Act, 1954 — Section 185

Court Fees Act, 1870 — Section 7(V)(b)

Citation : (2018) 08 DEL CK 0285

Hon'ble Judges : RAJIV SAHAI ENDLAW, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

RAJIV SAHAI ENDLAW, J

1. This Regular Second Appeal under Section 100 of the CPC is preferred against the judgment and decree [dated 17th January, 2015 in RCA

No.82/2013 (Unique ID No.02402C0163782012) of the Court of Additional District Judge, Shahdara] in First Appeal under Section 96 of the CPC

preferred by the respondent against the judgment and decree [dated 2nd May, 2012 in Civil Suit No.860/2006 (Unique Case ID

No.02402C0000431988) of the Court of Senior Civil Judge, North East)] in a suit filed by the appellants/plaintiffs against the respondent/defendant.

2. The Regular Second Appeal came up first before this Court on 18 th September, 2015, when without indicating the substantial question of law if any

arising for consideration, notice thereof was ordered to be issued for 2nd November, 2015. On 2nd November, 2015, the appellant/plaintiff withdrew

the appeal. However, counsel for the respondent/defendant, who had been

served with the notice of the appeal, submitted that the respondent was desirous of filing cross-objections under Order XLI Rule 22 of the CPC and for filing of which the respondent/defendant had one month time from the date of service on 16th October, 2015 and which time had not expired. This Court, though dismissed the Regular Second Appeal as withdrawn, but reserving the right of the respondent/defendant to file the cross-objections.

3. Thereafter, the respondent/defendant filed CM.No.5075/2016 under Order XLI Rule 22 of the CPC by way of cross-objections, along with

application for condonation of 48 days delay in re-filing the cross-objections and application for stay of the impugned judgment and decree.

4. The aforesaid applications came up before this Court on 16th February, 2016 and thereafter on 19th April, 2016 when, again without indicating the

substantial question of law if any arising in cross-objections, notice thereof was ordered to be issued. Since then, the cross-objections are pending

consideration.

5. The counsel for the respondent/defendant/cross-objectitioner has been heard and the copies of the Trial Court record annexed to the Memorandum

of Appeal perused.

6. The appellants/plaintiffs instituted the suit, from which the second appeal which stands withdrawn and the cross-objections which are for

consideration arise, for recovery of possession of property no.641D, Khasra No.2891/104, Village Chandrawali, now known as Shahdara, near Loni

Road, Ram Nagar, Delhi and for ancillary injunctions and mesne profit. The respondent/ defendant/cross-objectitioner contested the suit and a

preliminary issue, as under, was framed on 31st March, 1989:

â??Whether the suit has not been properly valued for the purposes of court fees and jurisdiction? OPDâ??

7. The aforesaid preliminary issue was decided vide order dated 11th April, 1990, in favour of the appellant/plaintiff and against the respondent/

defendant/cross-objectitioner, holding that the suit was properly valued for the purposes of court fees and jurisdiction. Neither party preferred any

challenge to the aforesaid order dated 11th April, 1990.

8. Thereafter, the following issues were framed in the suit on 15th May, 1991:

â??1) Whether jurisdiction of this court is barred under DLR Act? OPD

- 2) Whether the suit is bad for mis-joinder of defendant no.2? OPD
- 3) Whether the plaintiff has no locus standi to file the present suit? OPD
- 4) Whether the defendant no.1 has become owner of the suit property by adverse possession? OPD
- 5) Whether the plaintiff is entitled to the relief of injunction as prayed for in the suit? OPP
- 6) Whether the plaintiff is entitled for decree of possession of the suit property? OPP
- 7) Whether the plaintiff is entitled to damages or mesne profit if so at what rate? OPP
- 8) Reliefâ??

9. The suit court, vide judgment dated 2nd May, 2012, passed a decree for recovery of possession and a decree for injunction and mesne profits in favour of the appellant/plaintiff and against the respondent/defendant/cross-objectitioner.

10. The respondent/defendant/cross-objectitioner preferred First Appeal and which has, vide impugned judgment dated 17th January, 2015, been allowed and the judgment and decree dated 2nd May, 2012 of the Suit Court has been set aside and the suit has been remanded to the Suit Court for decision afresh including on the following issues:

- â??a) Whether the suit property as on the date of filing of the suit was agricultural land or not?
- b) If not whether the suit of the plaintiff is undervalued and whether proper court fee is paid or not?â??

11. Though I am of the opinion that these cross-objections preferred after the withdrawal of the appeal were not maintainable and ought not to have been entertained, but this Court, while dismissing the appeal as withdrawn, having reserved the right of the respondent/ defendant/cross-objectitioner to file cross-objections and thereafter the cross-objections having been entertained, it is not deemed appropriate to reject the cross-objections on this ground alone. Though the counsel for the respondent/defendant/cross-objectitioner in this regard has drawn attention to Order XLI Rule 22 of the CPC, but the same also permits filing cross-objections when the appeal is pending and not after the appeal stands withdrawn. Not only so, the question of limitation for preferring the cross-objections would have arisen if the appeal had

been admitted for hearing and the period of 30 days is to be counted therefrom. However, since the respondent/defendant/ cross-objectitioner could have always preferred a second appeal and to now ask him to prefer a second appeal, when this Court itself had reserved the right on his contention and entertained the cross-objections, would not be proper.

12. Be that as it may, the grievance of the respondent/defendant/cross-objectitioner with the judgment dated 17th January, 2015, though in favour of the respondent/defendant/cross-objectitioner inasmuch as setting aside the judgment and decree in the Suit Court against the respondent/defendant/ judgment debtor, has been enquired.

13. The contention of the counsel for the respondent/defendant/judgment debtor is that the question, whether the jurisdiction of the Civil Court to entertain the suit was barred by Section 185 of the Delhi Land Reforms Act, 1954 or not, was no longer res integra having already been decided by the order dated 11th April, 1990. The contention of the counsel for the respondent/defendant/cross-objectitioner is, that the appellants/plaintiffs had valued the suit for the purposes of court fees and jurisdiction treating the same to be for possession of agricultural land paying annual revenue to the Government, and the order dated 11th April, 1990 deciding the preliminary issue in favour of the appellant/plaintiff was also premised on the valuation of the suit being as per the valuation prescribed under Section 7(V)(b) of the Court Fees Act, 1870 for the agricultural land.

14. I have however enquired from the counsel for the respondent/ defendant/ cross-objectitioner, whether all agricultural lands in Delhi are governed by the Land Reforms Act. As per my knowledge, while some lands are governed by the Land Reforms Act, other lands are governed by the Punjab Land Revenue Act, 1887. Not only so, the impugned order dated 17th January, 2015 also takes note of the dicta of this Court in *Neelima Gupta vs. Yogesh Saroha* 156 (2009) DLT 129 holding that once agricultural lands are encroached upon and used for other purposes, they cease to be agricultural and the bar of Section 185 would not apply.

15. Moreover, the order dated 11th April, 1990 was only on the issue of valuation and not on the issue of, whether the suit was barred by Section 185 of the Land Reforms Act and merely because the valuation has been determined believing the nature of the land to be agricultural would not again in

my view amount to a finding of the suit being barred by Section 185. Interestingly, a reading of the order dated 11th April, 1990 shows that the respondent/defendant/cross objector was then controverting the land to be agricultural. Findings of fact, particularly as to jurisdiction of court, cannot be based on inferences.

16. Finding that the judgment of the Suit Court, on the issue with respect to the bar of Section 185 of the Land Reforms Act is against the

respondent/defendant/cross-objector and the First Appellate Court, to the prejudice of the appellant/plaintiff, has granted yet another opportunity to

the parties to lead evidence on the same and have the same determined, I have enquired from the counsel for the respondent / defendant / cross-

objector, whether the respondent/defendant/cross-objector is willing to make a statement in the Court that this Court may consider the Second

Appeal by way of cross-objections on the basis of evidence already existing on the Suit file.

17. The counsel for the respondent/defendant/cross-objector, earlier replied in the negative, now states that he be allowed to take instructions.

18. The said attitude is not acceptable. The respondent / defendant / cross-objector, while on the one hand is not willing to have the issue of bar of

Section 185 decided on the existing evidence, he, on the other hand is wanting this Court to decide the said issue against the appellants/ plaintiffs. The

plea, of taking instructions, after full hearing and after the judgment is dictated, is nothing but a dilatory tactic inasmuch as the counsel, before

appearing in the Court, ought to have weighed the said possibility which is a natural corollary to his arguments. It is quite evident that the

respondent/defendant/cross-objector, without binding himself to have the said issue determined on the basis of existing evidence and without giving

up the benefit of remand granted by the First Appellate Court, is only wanting that the appellant/plaintiff should not be able to lead any further

evidence.

19. The counsel for the respondent/defendant/cross-objector has next contended that cross-objections have also been preferred qua the finding of

ownership. Attention is drawn to order dated 19th August, 2016 on this proceeding.

20. After some hearing, the counsel for respondent/defendant/cross-objector

states that he will be satisfied if it is clarified that the Suit Court, pursuant to remand by First Appellate Court, will decide all issues afresh.

21. The same is clear from the judgment of First Appellate Court and there is no need for any clarification. Be that as it may, the counsel for the appellant/plaintiff admits that the order of First Appellate Court is of complete remand, with fresh findings being required to be returned on all issues.

It is clarified accordingly. It is however further clarified that evidence will be permitted to be led only on the additional issues framed.

22. The cross-objections thus are abuse of the process of the Court in the aforesaid circumstances and are dismissed with costs of Rs.50,000/-payable to the appellants/plaintiffs as a condition precedent to further participation in the suit.

23. On request of the counsel for the respondent/defendant/cross-objectioner, costs imposed are waived.