
(2012) 07 AHC CK 0192

In the Allahabad High Court

Case No : First Appeal From Order No.1056 (defective) of 2012

Rizwan Khan

APPELLANT

Vs

Gaurav Jaiswal & Others

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 104

Citation : (2012) 07 AHC CK 0192

Hon'ble Judges : Rakesh Tiwari, J and Anil Kumar Sharma, J

Final Decision : Dismissed

Judgement

Anil Kumar Sharma, J.—The Vakalantama filed by Sri Shailendra, Advocate on behalf of respondents no. 1, 3 and 4, is taken on record.

2. Having heard learned counsel for the parties on application for condonation of delay, we are of the view that the cause shown in the affidavit filed in support of delay condonation application, is sufficient. Accordingly, delay is condoned. The delay condonation application stands allowed.

3. Heard learned counsel for the parties on merits, and perused the record.

4. The appellant has challenged the order dated 13.4.2012 passed by Civil Judge (Senior Division), Allahabad in O.S. No. 428 of 2011, whereby while disposing of the respondent's application (paper no. 6ga), the court below has directed the parties to maintain status quo in respect of the house in dispute.

5. It is not in dispute that earlier the suit property belongs to Rajesh Kumar Jaiswal. The case of the defendant/appellant is that he purchased the entire suit property from Rajesh Kumar Jaiswal through registered sale deed dated 14.3.2011 and his name was also mutated in the record of Nagar Nigam on 18.4.2011. The appellant has incorrectly described himself as plaintiff in the memo of appeal, while he is defendant in the suit. On behalf of the respondents, it was contended that the appellant is not in possession over the suit property, as it is evident from the written statement filed by him in the suit, whereby he has

preferred counter claim seeking relief of possession over the entire house. These facts clearly show that the defendant is not in possession of the suit property.

6. Learned counsel for the respondents further submitted that the defendant/appellant got the sale deed surreptitiously executed from their father and they have filed suit for cancellation of suit being O.S. No. 305 of 2011, wherein the appellant has not filed written statement so far.

7. In view of the above facts, it is apparently clear that the defendant is not in possession over the suit property. The learned trial court has simply directed the parties to maintain status quo the house in dispute.

8. For the reasons stated above, we do not find any factual or legal error in the order impugned. The appeal is, accordingly, dismissed.