
(2014) 01 DEL CK 0033

In the Delhi High Court

Case No : Regular Second Appeal No's. 285 and 286 of 2013

Sat Narain Gupta and Another

APPELLANT

Vs

Shri Bansi Lal and Another

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 3 100

Citation : (2014) 173 PLR 13

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Amarjit Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

RSA No. 285/2013

1. This Regular Second Appeal filed u/s 100 of the Code of Civil Procedure, 1908 (CPC) impugns the concurrent findings of facts and law by the Courts below dismissing the suit for possession, mesne profits etc filed by the appellants herein (the plaintiffs in the trial Court). Trial Court dismissed the suit for possession etc by the judgment dated 13.8.2012. The appellate Court dismissed the appeal filed by the present appellants/plaintiffs by its judgment dated 31.8.2013, hence this present second appeal u/s 100 CPC. Both the Courts below have dismissed the suit of the plaintiffs on two counts. First is that if the plaintiffs claim that the suit property was part of the property no. ER 15 to ER 20, Inderpuri, New Delhi-12 which form part of khasra nos. 1647 to 1649 and the defendants claim that the suit property was not part of khasra nos. 1647 to 1649 but was part of khasra no. 1652, then it was upon the appellants/plaintiffs to discharge the onus of proof that the suit property falls in the khasra nos. 1647 to 1649 and not in khasra no. 1652. Courts below have held that mere filing of site plan showing location of the suit property and the cross-examination of the

witnesses of the other side will not necessarily prove that the suit property will form part of khasra nos. 1647 to 1649 and not of khasra no. 1652. The Courts below have also held that merely because appellants/plaintiffs proved that they were the owner of the property no. ER-15 to ER-20 forming part of the khasra nos. 1647 to 1649 by virtue of earlier decrees obtained against the Delhi Development Authority (DDA), it does not necessarily follow that the defendants are in fact in possession of a part of khasra nos. 1647 to 1649 and not khasra no. 1652 as claimed by the appellants/plaintiffs.

The second aspect which has been held against the appellants/plaintiffs for dismissing of the suit is that the suit filed in the year 2000 is hopelessly time barred and hit by Article 65 of the Limitation Act, 1963 in view of the fact that predecessor-in-interest of the defendant no. 2 (being the defendant no. 1 who sold and transferred his rights alongwith possession to defendant no. 2) was in possession of the suit property way back from 1980. This possession at least from 1980 became clear from the suit filed by the defendant no. 1 in 1980 wherein he stated he was in possession of the suit property as owner, and in this suit the predecessor-in-interest of the appellant no. 1/plaintiff no. 1 was the defendant no. 1. The present suit was filed in the year 2000 i.e. after 12 years from 1980 when the predecessor-in-interest of the appellant no. 1/plaintiff no. 1 was put to notice about the illegal possession of the defendant no. 1. Therefore, suit on this account was accordingly dismissed as barred by limitation.

2. Before me, counsel for the appellants/plaintiffs argues that the Courts below have committed illegality in overlooking the provision of Order 7 Rule 3 CPC which states that in case of a suit relating to immovable property it is sufficient to identify the property by a plan and since the appellants/plaintiffs had proved and exhibited site plan of the suit property the trial Court ought to have held that defendants were in fact in possession of part of khasra nos. 1647 to 1649. To buttress this argument, it is also urged that onus of proof of issue no. 2 was on the defendants as to whether defendants were in possession of khasra no. 1652 and since the defendants failed to prove the issue no. 2 and discharge the burden of prove qua this issue no. 2, appellants/plaintiffs should succeed by the Courts holding that defendants are in possession of part of khasra nos. 1647 to 1649 and not khasra no. 1652.

(ii) The argument urged on behalf of the appellants before me is misconceived because the only object of Order 7 Rule 3 CPC is to identify the property for seeking its possession, but this provision will not apply where the issue is of location of the property as to whether the same falls in khasra nos. 1647 to 1649 as claimed by the appellants/plaintiffs or it falls within khasra no. 1652 as per the stand of the defendants. To discharge this onus the appellants/plaintiffs had to summon and prove through the record of the revenue authorities the exact location of the suit property. The appellants failed in discharging their onus as in the suit no demarcation was got done from the revenue authorities with respect to location of the suit property as to the same falling within khasra nos. 1647 to

1649 and not khasra no. 1652. Therefore, the argument urged on behalf of the appellants by placing reliance upon Order 7 Rule 3 CPC is misconceived and rejected and the Courts below have rightly held that appellants have failed to prove that the property of which possession is claimed from the respondents/defendants was situated in khasra nos. 1647 to 1649.

3. The second aspect of the suit being barred by limitation is also rightly decided by the trial Court and counsel for the appellants could not dispute that from the year 1980 the predecessor-in-interest of the appellant no. 1/plaintiff no. 1 knew that the defendant no. 1 was in possession of the suit property and through whom the defendant no. 2 now claims. I may note that as per the legal position under Article 65 of the Limitation Act, 1963 there is a principle of tacking i.e. different periods of different trespassers can be tacked so as to form a total number of 12 years and it is not necessary that for entire period of 12 years there should only be one trespasser. The aspect of 12 years is a period so far as the owner is concerned for filing of the suit, and the period of 12 years is not with respect to a single trespasser who need not continue for the entire period of 12 years. I may also note that the Courts below have noted the fact that the appellant no. 1/plaintiff no. 1, who is successor-in-interest of the original owner late Sh. Bidhi Singh, in the sale deed in his favour there is the mention of the fact that actual physical possession of the suit property was not delivered to the appellant no. 1/plaintiff no. 1 and it was stated in the sale deed that the suit property is in possession of the tenants. Counsel for the appellants concedes that both; the present appellant no. 1 and the main contesting defendant no. 2; are in fact successors-in-interest of the original contesting parties being late Sh. Bidhi Singh, the original owner and the defendant no. 1 being the alleged original trespasser. Therefore, I do not find that the Courts below have in any manner committed any error in its findings and conclusions of the suit being hopelessly barred by time as the suit is filed in the year 2000 and at least in 1980 it was the defendant no. 1 who was in possession of the suit property and through whom the defendant no. 2 claims. A second appeal u/s 100 lies only if there is a substantial question of law. The aforesaid discussion shows that there is no question of law involved, much less a substantial question of law, as required u/s 100 CPC for this Court to interfere. The appeal being without any merit is therefore dismissed, leaving the parties to bear their own costs.

+ RSA No. 286/2013

This appeal will also stand dismissed in view of aforesaid discussions while dismissing RSA No. 285/2013.