

**(2011) 07 DEL CK 0065**  
**In the Delhi High Court**  
**Case No : FAO No. 283 of 2011**

Sh. Tara Singh and Others

APPELLANT

Vs

Smt. Laxmi Rana and Another

RESPONDENT

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**Date of Decision :** 04-07-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 6 Rule 17, Order 7 Rule 11, 105(1), 151

**Citation :** (2011) 8 AD 80

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Advocate :** Summit Kaushal, for the Appellant; None, for the Respondent

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**Judgement**

Valmiki J Mehta, J.

CM No. 11863/2011(exemption)

Allowed subject to all just exceptions.

Application stands disposed of. CM No. 11862/2011(condonation of delay)

Delay in filing the appeal is condoned subject to just exceptions. Application stands disposed of.

+ FAO No. 283/2011

1. The challenge by means of this First Appeal under Order 43 Rule 1(u) CPC is to the impugned judgment dated 10.2.2011 of the Appellate Court, and which judgment of the Appellate Court has set aside the judgment of the Original/First Court dated 3.3.2010. By the judgment dated 3.3.2010, the Original Court of the Civil Judge dismissed an application under Order 6 Rule 17 CPC of the Respondents herein (the Plaintiffs in the suit) and also simultaneously allowed an application u/s 151 CPC of the present Appellants (the Defendants in the suit) thereby dismissing the suit. The suit had been dismissed even before any evidence was led by the parties i.e. not at the stage of normal final arguments,

and effectively under Order 7(11) Code of Civil Procedure, on the grounds that proper cause of action was not pleaded and the Respondents/Plaintiffs had stated false facts in the suit plaint.

2. The facts of the case are that one Sh. Budh Singh, the predecessor in interest of the Respondents/Plaintiffs owned the property being Khasra No. 586, Karkardooma, Tehsil Vivek Vihar, East Delhi. The family tree of Sh. Budh Singh is given at page 3 of the impugned judgment and which shows that Budh Singh had three sons namely Thandi Ram, Tej Singh and Tara Singh. The Plaintiffs are the grand children of Thandi Ram. The Appellants/Defendants are the successors in interest of Tej Singh and Tara Singh, the other sons of Budh Singh. Originally the Plaintiffs had laid out a case in the plaint that there was a partition of the property and a particular portion in the property fell to their share and which was accordingly claimed in the plaint. Thereafter, the Plaintiffs sought to amend their plaint to convert the suit into a suit for partition. This amendment application (hereinafter the first amendment application) was dismissed by the Civil Judge vide order dated 8.9.2008. Subsequently, the subject amendment application (hereinafter the second amendment application) came to be filed on the ground that in another civil suit between the legal heirs of Budh Singh being suit No. 188/06/97 titled as Om Prakash v. Sh. Budh Singh and Ors. it was decided by a judgment and decree dated 18.12.2006 that the subject property was an ancestral property, and consequently by the second amendment application, the Respondents/Plaintiffs sought to bring on record their entitlement to share in the property by virtue of the judgment and decree dated 18.12.2006 passed by the Court of Sh. Atul Kumar Garg, ADJ, Karkardooma Court, Delhi in the suit titled as Om Prakash v. Sh. Budh Singh and Ors. As stated above, the Court of the first instance while dismissing the second application of the Respondents/Plaintiffs under Order 6 Rule 17 Code of Civil Procedure, simultaneously allowed an application u/s 151 CPC of the present Appellants/Defendants for dismissal of the suit. The relevant portion of the order of the First Court dismissing the suit reads as under:

I have heard the arguments and perused the record. Perusal of the suit shows that the Plaintiff has filed a suit for declaration and permanent injunction thereby alleging that the family arrangement was made by Sh. Budh Singh with regard to suit property and the same was accepted by the parties, but the sons of Late Sh. Budh Ram namely Sh. Tej Singh, Tara Singh and Thandi Ram raised the construction over the portion to accommodate themselves and their families. It is further alleged that the Plaintiffs are now in exclusive possession of portion of the suit property as shown in the site plan which has been disputed by the Defendants. It is further alleged that the Defendants are not having good relations with the Plaintiffs and they are creating nuisance and Defendant No. 9 to 13 are minors and Defendant No. 6 to 8 are married who are living separately. In para 12 and 13 Plaintiffs have disclosed the cause of action that the Defendants are creating hurdles in the possession of the Plaintiffs and on 4.8.2005, the Defendants have loudly uttered that the Plaintiff would be thrown

away on the street and only this incident has made cause of action to file this suit. In the entire plaint, the Plaintiffs have nowhere alleged in what manner the Defendant have denied the legal status of the Plaintiffs being the LR of Late Sh. Dhoni Ram or in what manner they are interfering or threaten to create third party interest over the suit property or to dispossess the Plaintiff without due process of law. In the absence of any specific incident, it is clear that the cause of action of the property is not complete. Merely by going through the plaint of the Plaintiff, it is clear that the Plaintiffs have no cause of action in their favor. Just by uttering that the Plaintiffs would be dispossessed has no sufficient cause to file the suit. Until and unless, the Defendants have done any substantial act against the Plaintiffs, till then they would have no cause of action to file the suit. Besides it, Defendants No. 9 to 13 have been made party to this suit despite the fact that they are minor and Defendant No. 6 to 8 are married and are living separately. If these persons have no concern with the alleged cause of action of the Plaintiff and even they have not challenged the title of the Plaintiff in any manner, then the suit is not maintainable against them as well. As such, the Plaintiffs have not disclosed any cause of action in the suit and the suit of the Plaintiff is liable to be rejected Under Order 7 Rule 11 CPC and the same is hereby rejected. Decree sheet be prepared accordingly. File be consigned to record room.

3. I have already referred to the fact that the suit has not been dismissed at the stage of final arguments after evidence has been led by both the parties. A reference to the aforesaid portion of the judgment dated 3.3.2010 of the Court of first instance shows that the suit has been dismissed effectively on merits and thereby has decided disputed questions of facts without trial. Whether or not a threat has been meted out for the purpose of seeking injunction on the basis of averments in the plaint is a disputed question of fact which requires trial. Further, even assuming that the Plaintiffs may have stated some false facts would not mean that a suit of this nature, seeking rights in an immovable property, can be dismissed at the threshold without trial. It has been repeatedly laid down by the Supreme Court in its various judgments that the doctrine of *falsus in uno, falsus in omnibus* has no application in India. Of course it is a moot point as to whether any false facts were stated by Plaintiffs, because, this finding cannot be given unless there is trial on the disputed facts.

4. Learned Counsel for the Appellants sought to vehemently argue two basic points:

- i) The Respondents/Plaintiffs had not come to the Court with clean hands and since they had lied with respect to their possession in the suit property, the suit was rightly dismissed by the first court.
- ii) Secondly, it was argued that the second amendment application was not maintainable as the first amendment application had already been dismissed by an earlier order dated 8.9.2008.

5. In my opinion, both the arguments urged on behalf of the learned Counsel for the Appellants cannot be accepted. On the first argument I have already stated above that the doctrine of *falsus in uno, falsus in omnibus* has no application in India. Additionally, a suit as per the procedure laid down in Code of Civil Procedure, where there are disputed questions of facts, can only be decided after trial and not on an interim application of the Defendants/Appellants u/s 151 Code of Civil Procedure. To the second argument the answer is that the doctrine of *res judicata* does not apply to an amendment application when new/subsequent facts are sought to be introduced by the amendment. Furthermore interim orders passed by a first court also can be set aside in an appeal against a final judgment of the first court in view of the provision of Section 105(1) of the Code of Civil Procedure. The judgment of the first court dated 3.3.2010 dismissed the suit, and which judgment was challenged in an appeal, and thus the Appellate Court was fully entitled to consider even the validity of the earlier order dated 8.9.2008 dismissing the first amendment application by virtue of Section 105(1) Code of Civil Procedure. No doubt, the Appellate Court does not seem to have referred to this provision, but in substance, it is this provision which really can be applied.

6. In my opinion, merely because two views are possible, this Court is not entitled to interfere with the impugned judgment, whereby the suit has simply been remanded back to the Trial Court for a decision in accordance with law after evidence is led by both the parties. There is no illegality in allowing of an amendment application whereby subsequent events are sought to be brought on record. In any case, once rights in the immovable property are claimed in the suit, merely because additional set of facts are sought to be added for claiming relief with respect to same immovable property, more so on same subsequent events, I do not feel that there is any injustice caused by impugned judgment of the Appellate Court dated 10.2.2011 which allowed the second amendment application. If the Appellants/Defendants have any case on merits then they are well advised to contest the suit on merits and seek to get it dismissed on the basis of their stand which according to them is correct. However, it is not permissible for the Courts to presume the case of one party to be correct and the other party to be incorrect and thus dismiss a suit involving disputed questions of facts without trial, and which is sought to be got done by the Appellants. In view of the above, there is no merit in the appeal. Dismissed.