

Madhu Vs. Ashok Kumar

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Court : Delhi

Decided On : Nov-29-2013

Judge : V.K.Shali

Appellant : Madhu

Respondent : Ashok Kumar

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + RSA No.57/2011 Date of Decision :

29. 11.2013 MADHU Appellant Through: Mr.J.C.Mahindroo, Advocate. versus
ASHOK KUMAR Respondent Through CORAM: HONBLE MR. JUSTICE V.K.
SHALI V.K. SHALI, J.

(ORAL) CM No.6584/2011 1. Allowed subject to deficiency being rectified. The application stands disposed of. CM No.6585/2011 (Condonation of Delay) 1. For the reasons stated in the application, the delay of one day in filing the instant appeal is condoned and the application is allowed. RSA No.57/2011 & CM No.6583/2011 (Stay) 1. This is a regular second appeal which is pending in this court since 31.03.2011. No substantial question of law has been formulated till date.

2. I have heard the learned counsel for the appellant on the formulation of a substantial question of law involved in the matter. It has been contended by the learned counsel for the appellant that the property in question being C-1/62B,

Ashok Vihar, Phase-II, Delhi-110052, was purchased from the funds emanating from the father of the appellant and, therefore, the suit property was an ancestral property. On account of the demise of her father on 11.02.2000, the appellant being one of the legal heirs, inherited the property along with the respondent, who is the brother of the appellant. It has also been contended that the appellant had filed an application under Section 26 r/w Section 12 of the Domestic Violence Act, 2005 for treating the house in question as a shared accommodation and, therefore, the appellant could not be dispossessed from the suit property.

3. Prima facie, I feel that the questions which are sought to be raised by the appellant with regard to the property in question being an ancestral property or for that matter, the property being a shared accommodation, are questions of fact which cannot be adjudicated in the instant regular second appeal. It may be pertinent here to give a brief background of the case.

4. The respondent/plaintiff filed a suit for recovery of possession and mesne profits against the present appellant/defendant. On the pleadings of the parties, the following issues were framed:

i) Whether the plaintiff is entitled to recover the possession of the first floor portion of property no.C1/62B, Ashok Vihar, Phase-II, Delhi-110052, from the defendant?. OPP. ii) Whether the plaintiff is entitled to recover the mesne profits from the defendant?. If so, at what rate and for what period?. OPP. iii) Whether the suit has not been properly valued for the purposes of court fees and jurisdiction?. OPD. iv) Whether the market value of the suit property is `18 lacs?. OPD. v) Relief.

5. So far as the present appellant is concerned, she had resisted the suit. However, no plea of shared accommodation was taken in the pleadings. Therefore, the plea of the property in question being a shared accommodation is something which is beyond the pleadings of the suit. As regards the suit property being ancestral, the respondent had proved a conveyance deed ExPW1/1 purported to have been executed by the DDA in his favour. This conveyance deed was executed by the DDA much prior to the date of death of the father of the respondent. On the basis of the said conveyance deed, a decree for possession was passed in favour of the respondent holding him to be the owner of the suit

property and the appellant was also directed to pay `250/- as damages for the pre-suit period and `500/- per month from 01.03.2003 till possession of the property in question is handed over to the respondent/plaintiff.

6. The appellant feeling aggrieved preferred an appeal being RCA No.28/2008 before the first appellate court where all these pleas, which are sought to be urged before this court, were raised. The first appellate court did not find any merit in the appeal and dismissed the same. The plea of the appellant as regards the property in question being a shared accommodation under Domestic Violence Act, 2005 was raked up for the first time before the appellate court and that was not dealt with. The question whether an accommodation is a shared accommodation or not is essentially a question of fact. When there is no pleading in this regard, the question of adducing proof of the same does not arise. In any case, the appellant did not adduce any evidence. I do not find any question of law arising from the appeal much less a substantial question of law.

7. Accordingly, the present appeal is totally misconceived and the same is dismissed. V.K. SHALI, J.

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