

Pushpa Rani and ors. Vs. Dda

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Court : Delhi

Decided On : Jan-20-2014

Judge : Valmiki J. Mehta

Appellant : Pushpa Rani and ors.

Respondent : Dda

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + RSA No.80/2009 % 20th January, 2014 PUSHPA RANI & ORS.Appellants. Through: Mr. Subhash Chand, Advocate VERSUS DDA Through: Respondent. Mr. Rakesh Mittal and Mr. Kamlesh Anand, Advocate. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This regular second appeal is filed impugning the judgment of the appellate court dated 11.12.2008 by which the appellate court dismissed the appeal against the judgment of the trial court dated 29.11.1997. Trial court had partly decreed the suit by decreeing the relief of injunction but the prayer of the plaintiff for quashing of the demand was rejected. The effect of both the judgments is that the suit of the plaintiffs filed for declaration before the trial court to question the demand raised by the respondent-DDA for shop No.C-500, Sabzi Mandi, New Delhi upon Sh. Hund Raj, predecessor-in-interest of the appellants-plaintiffs, stands dismissed but is decreed so far as the relief of injunction is concerned. The appellate court has confirmed the judgment of the trial court by making the

following relevant observations in para-18, and which reads as under:

18. In respect of issue no.1, Ld. Civil Judge has observed that suo-motto revision of the cost from Rs.25,200/- to Rs. 45,034/appears to be untenable. Apparently, the cost of the alternative plot was not enhanced apart from the cost of Rs.25,200/-, but the interest portion was added and then a consolidation demand of Rs.45,034 was raised. The main case of the appellants before the Ld. Trial Court was that consent of late Sh. Hund Raj should not be considered as free consent as he was forced to withdraw the suit and to accept the enhanced demand by the DDA. It was alleged that Sh. Hund Raj accepted the demand of the DDA with the view to get possession of the shop. In evidence, the plaintiff has examined two witnesses. None of the witness has stated anything material to establish the case that Ld. Hund Raj was forced by the DDA to accept their demand of enhanced price or to withdraw his suit. Merely by a bald statement in this regard, it cannot be accepted that late Sh. Hund Raj was forced or pressurized. After careful consideration of testimony of witnesses, I am convinced that in balance of probabilities, it could not be proved that in fact late Sh .Hund Raj was forced or pressurized. If it would not have been a genuine case as stated by the plaintiffs, late Sh. Hund Raj who was involved in long litigation, could have take steps to challenge the action of DDA and it would have been taken five years to file the present suit. In fact, it could not be proved to convince that late Sh. Hund Raj was in fact forced to pressurized. Moreover, Ld. Trial Judge, while giving his findings on issue no.1, has observed that late Sh. Hund Raj has himself accepted the revised payment as indicated in para 20 of the plaint vide letter dt. 22.3.84 and no steps were taken by him during his lifetime to challenge the same. The process of Law requires finality at some stage or the other. Therefore, the concept of principals of res-judicata and estoppel has been incorporated in law. Late Sh. Hund Raj not only had withdrawn the earlier suit filed by him but also accepted the enhanced demand made by DDA and still no action was taken for about five years till the filing of the present suit.

(underlining added) 2. Really therefore the issue which now survives for adjudication in this regular second appeal is the claim of the appellants-plaintiffs of revision of the cost by the DDA from 25,200/- to Rs.45,034/-. Enhancement of the

amount really is only on account of claim of interest. The trial court by its judgment while dealing with issue no.1 in para-11 made observations suo moto of revision of cost being untenable, however ultimately this issue was found against the appellants-plaintiffs. Para 11 of the judgment of the trial court reads as under:

11. ISSUE NO.1 The case of the defendant in the written statement is that the plaintiff was not offered the shop on the terms and conditions as offered to the original allottees of the old Subzi Mandi but was offered on re consideration as per the terms and conditions as per letter dated 11.6.1981. However, since in the deposition of DW-1, the terms and conditions as signed and forwarded by Shri Hund Raj, have been exhibited by the witness of the defendant as agreed the terms and conditions, it has been contended by the counsel for plaintiff on the basis of the said terms and conditions on the basis of the said terms and conditions which are Ex.DW1/2. However, it may be observed that the offer of the shop, as per letter dated 11.6.1981, was not as per terms and conditions which were forwarded by Shri Hund Raj and exhibited as Ex.DW1/2, as the same has been specific stand of the DDA in its written statement, though the same have been exhibited as Ex.DW1/2 in the deposition of the witness of the defendant. No discrimination was made to Sh. Hund Raj with reference to the cost qua the earlier allottees since the terms and conditions with regard to the present allotment were different as per letter dated 11.6.1981. It may be observed that the cost of the shop in question was initially offered at Rs.25,200/- as per letter dated 11.6.1981. However, the same was further revised to amount of Rs.45,034/-, as per letter dated 3.10.1981. Shri Hund Raj is stated to have accepted to pay the revised cost without free consent in order to take possession of the shop. The revised cost is stated to have been calculated on the basis of the table Ex.DW1/5, as per the cost arrived by the concerned department of the defendant. On the fact of it, the suo moto revision of the cost after offer at Rs.25,200 vide letter dated 11.6.1981 appears to be untenable. The cost could not have been revised vide subsequent letter dated 13.10.1981. The revised offer of the suit shop at a prices of Rs.45,034 could not have been made. However, it may be observed that that Shri Hund Raj himself accepted the revised demand, as indicated in para 20 of plaint vide letter dated 22.3.1984 and no steps were taken by him during his life time to challenge the same. The issue is accordingly decided.

3. Therefore, effectively, both the courts below have dismissed the challenge led by the appellants-plaintiffs to the demand raised by the DDA of Rs.45,034/-; by the trial court observing that the revised demand was accepted; and the appellate court observing appropriately in para 18 as stated above. Appellate court has however further in para 18 of its judgment observed that no convincing evidence could be placed to show that late Sh. Hund Raj was forced and pressurized to accept the revised demand, as no convincing evidence was led by the appellants-plaintiffs to prove this aspect. Late Sh. Hund Raj took benefit by taking possession of the suit shop from the respondent-DDA and thus principle of estoppel was held to apply against Hund Raj and the appellants-plaintiffs who are the successors-in-interest of Hund Raj.

4. Learned Counsel for the appellant before me argued that both the courts below have erred in arriving at the finding that the suit of the appellants-plaintiffs was delayed because actually late Sh. Hund Raj himself had filed a suit challenging the demand way back on 22.4.1985, and which was withdrawn by the appellants-plaintiffs subsequently on account of defect of not giving the notice under Section 53-B of the Delhi Development Act, 1957 and liberty was granted to file a fresh suit after giving a notice under Section 53-B of the said Act, and therefore, the present suit was filed. It is argued that the present suit actually therefore can be taken as continuation of the suit filed by late Sh. Hund Raj in April, 1985 and consequently the courts below were not justified in making the observations with respect to limitation against the appellants-plaintiffs of the suit being barred by limitation or that Sh. Hund Raj never challenged the demand. It is also further argued that before the appellate court appellants had filed an application under Order 41 Rule 27 CPC for filing documents being the earlier suit plaint filed by Hund Raj and orders passed therein to show that the suit filed by Sh. Hund Raj was defective on account of lack of notice under Section 53-B and was withdrawn with permission to file a fresh suit vide order dated 11.10.1988 of the concerned civil court and thereafter the subject suit was filed by the appellants-plaintiffs after giving the notice under Section 53-B of the Delhi Development Act and hence there is no delay nor lack of challenge to the demand by Hund Raj as held by the courts below. 5(i) Counsel for the appellant is correct in arguing that the application under Order 41 Rule 27 was not decided by the appellate court, though I must

simultaneously also add that if really this application was pressed and not decided by the appellate court, appellants-plaintiffs ought to have moved before the appellate court, but be that it may, I am exercising powers under Order 41 Rule 24 CPC read with Order 42 Rule 1 CPC which says that in second appeals also the procedure as prescribed under Order 41 shall apply. Therefore, I allow the application of the applicants/defendants under Order 41 Rule 27 CPC by taking on record the document being the plaint in the earlier suit filed in April 1985 by late Sh. Hund Raj, which was withdrawn subsequently in the year 1988. Alongwith the plaint, I also take on record the copies of the orders which are filed which show that the suit was filed by late Sh. Hund Raj in April, 1985 and which was withdrawn by the appellants-plaintiffs because of a technical defect of not serving of a notice under Section 53-B of the Delhi Development Act. (ii) The question which now arises is that what then follows. The issue to be decided is that whether even if the documents which are filed by the appellants-plaintiffs in the application under Order 41 Rule 27 CPC are considered, will the suit of the appellants-plaintiffs succeed?. I have already noted the provision of Order 41 Rule 24 CPC above and as per which, an appellate court can pass a judgment on merits as per the record and which is necessary to remand the case.

6. By considering the additional documents filed on behalf of the appellants-plaintiffs, the only result would be that there would be no issue of limitation or delay against the appellants-plaintiffs, however, the issue will still remain as to whether the appellants-plaintiffs are entitled to get the demand of the respondent-defendant with respect to the subject shop quashed and are they not estopped because Hund Raj by accepting to pay the demand had taken benefit of taking the possession of the shop from respondent/DDA. I put it to counsel for the appellants-plaintiffs as to what was the evidence which was led before the trial court as to coercion being put upon late Sh. Hund Raj, and only because of that coercion Sh. Hund Raj is alleged to have accepted the illegal demand. I note that I have already reproduced para 18 of the judgment of the appellate court and which rightly holds that alleged coercion against Hund Raj is not proved. In this regard, counsel for the appellants however argued that no evidence except the documentary evidence which is filed by the appellants-plaintiffs is required inasmuch as the document itself shows that the demand raised is illegal and therefore there was coercion

upon late Sh. Hund Raj.

7. I cannot agree. Firstly coercion is a factual aspect and which can be proved only by leading factual evidence. Secondly, person cannot be allowed to approbate and re-probate. A person cannot take benefit of a state of fact i.e of accepting of the higher demand and thereafter taking possession, and after having the benefit of having taken possession of the suit shop from the defendant-respondent, thereafter refuse to pay the enhanced demand on the ground that there was coercion upon Sh. Hund Raj. If courts permit such an action to manipulate the public authorities, then every person will take benefit by conceding to a demand, take possession of the property, and thereafter challenging the demand by not paying the same and yet continue to stay in possession of the property of which possession is taken after accepting the demand. Therefore, in my opinion, appellants and late Sh. Hund Raj were clearly estopped in challenging the demand by the respondent-defendant as illegal inasmuch as the benefit was taken of taking possession of the subject shop from DDA. I note that the appellants-plaintiffs, and before them Late Sh. Hund Raj, have continued to be in possession of the suit shop from the last 30 years, and which possession of the suit shop has been with the appellants-plaintiffs without paying the additional demand.

8. In view of the above, I do not find any merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs. JANUARY20 2014
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