

**Satpal vs.satyawan**

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**SooperKanoon Citation :** [sooperkanoon.com/1205567](http://sooperkanoon.com/1205567)

**Court :** Delhi

**Decided On :** Apr-26-2017

**Appellant :** Satpal

**Respondent :** Satyawan

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + % SATPAL RSA No.126/2017 26th April, 2017 Through: versus ..... Appellant Mr. Pawan Sharma, Advocate. .... Respondent SATYAWAN CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) C.M. No.15743/2017 (exemption) 1. Exemption allowed subject to just exceptions. C.M. stands disposed of. C.M. No.15744/2017 (for condonation of delay) 2. For the reasons stated in the application, delay of eight days in re-filing the appeal is condoned. C.M. stands disposed of. RSA No.126/2017 and C.M. No.15742/2017 (stay) 3. This Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is filed against the concurrent judgments of the courts below; of the Trial Court dated 1.11.2014 and the First Appellate Court dated 9.2.2017; by which the suit for RSA No.126/2017 Page 1 of 4 permanent injunction filed by the respondent/plaintiff was decreed and the appellant/defendant was injuncted from obstructing the right of way of the respondent/plaintiff from the main entrance gate of plot No.5 and also from the public street, for ingress and egress to plot no.6 measuring 120 sq. yds in khasra no.282/2/21 Village Ghuman Hera, New Delhi. Appellant/defendant was also

restrained from interfering with the peaceful possession and enjoyment of plot no.A-6 of the respondent/plaintiff as shown in red color in the site plan.

4. The subject suit was filed by the respondent/plaintiff pleading that there are three continuous plots i.e A-4, A-5 and A-6. Plot No.A-6 belongs to the respondent/plaintiff and plot No.A-4 belongs to the appellant/defendant. The plot in between i.e plot no.A-5 belongs to the father of the parties. The respondent/plaintiff pleaded that the plot of the father jointly belongs to both the appellant/defendant as also the respondent/plaintiff and therefore the appellant/defendant could not encroach/use exclusively upon the plot no.A-5. Accordingly, the subject suit was filed seeking the reliefs of injunctions against the appellant/defendant.

5. Appellant/defendant contested the suit and pleaded that there were two family settlements between the parties, one of the year 1994-1995 and another of the year 2005 reiterating the earlier RSA No.126/2017 Page 2 of 4 settlement, and that as per these settlements the appellant/defendant gave up his rights in the ancestral properties and in return thereof all the three plots fell to the share of the appellant/defendant.

6. Both the courts below have arrived at a finding that the oral family settlement relied upon by the appellant/defendant was not proved either by direct evidence or even by circumstantial evidence. The family settlement dated 13.10.2005 was not proved by the appellant/defendant and the same was only marked as D-1 and was not exhibited. There was no original document filed with respect to this settlement dated 13.10.2005 and the document was not proved by witnessing the signatories of the documents by putting/affixing their signatures on the documents.

7. The courts below in my opinion have rightly held that the family settlement relied upon by the appellant/defendant was not proved and hence the defence raised thereon could not succeed.

8. Another valid reason given by the courts below to discard the family settlement is that as per the family settlement and the case of the appellant/defendant, the appellant/defendant had relinquished his rights in the ancestral properties on

account of the family settlement, RSA No.126/2017 Page 3 of 4 but it was found as a fact that the appellant/defendant in fact however was continuing to pursue litigation with respect to ancestral properties.

9. A second appeal is only maintainable if a substantial question of law arises. Arriving at the conclusions from the evidence on record does not raise a substantial question of law, much less when the appellant/defendant has failed to prove his case of there being the family settlement dated 13.10.2005.

10. No substantial question of law arises. Dismissed. APRIL26 2017 Ne VALMIKI J.

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