

Rajinder Prasad and ors. Vs. Devi Dayal

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Court : Delhi

Decided On : Aug-08-1983

Reported in : 1983(5)DRJ221

Judge : D.K. Kapur and; S. Rangnathan, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rule 58(5)

Appeal No. : Regular First Appeal No. 53 of 1983

Appellant : Rajinder Prasad and ors.

Respondent : Devi Dayal

Advocate for Pet/Ap. : J.P. Sharma and; J.K. Seth, Advs

Judgement :

D.K. Kapur, J.

(1) We have heard the parties on the question of maintainability of the suit which is the only issue decided by the trial court. The learned counsel for the respondent submitted that it has rightly been held that the suit does not lie.

(2) We have gone through the orders and the judgment. The suit only lies under Order 21 Rule 58(5) of the Code of Civil Procedure if the objections are dismissed under the proviso to Order 21 Rule 58(1). It does not appear that the objections

were dismissed by application of the proviso They were dismissed on the merits. Learned counsel for the appellant contended that there was hardly any trial. On the other hand, whether the objections are dismissed on a full trial or on any other ground they are dismissed. It is only if they are dismissed on the ground that the property had been sold or on the ground that the court will not entertain the objections because they are delayed that the proviso applies. It is only in this case that the suit can be filed.

(3) As the proviso was not applied, the suit also did not lie and the trial court had rightly dismissed the same. We may also mention that against the objections the petitioner came in revision to this court which was dismissed in the default. It was restored but it was again dismissed for non prosecution We, accordingly, find that we cannot but dismiss the appeal in liming.

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