

Subhash Madan Vs. Ramesh Madan

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Court : Delhi

Decided On : May-03-2001

Reported in : 2001VAD(Delhi)380; 92(2001)DLT413

Judge : Mr. Devinder Gupta and; Mr. Sanjay Kishan Kaul, JJ.

Appeal No. : F.A.O. (OS) No. 96 of 2001

Appellant : Subhash Madan

Respondent : Ramesh Madan

Advocate for Def. : Mr. P.K. Sharma, Adv.

Advocate for Pet/Ap. : Mr. Ashok K. Mahajan, Adv

Judgement :

ORDER

Sanjay Kishan Kaul, J.(Oral)

1. The present appeal arises from an order dated 15th February, 2001 of learned Single Judge whereby Suit No. 601/2000 filed by the appellant seeking decree for specific performance and in the alternative for recovery of a sum of Rs.10,80,000/- with interest at the rate of 12% per annum has been dismissed on the short ground that the appellant had suppressed material fact of filing prior suit for permanent injunction against the respondent in which no injunction was granted

by the Civil Judge, Delhi, and the suit was dismissed in default. The learned single Judge in the impugned order has recorded that in the replication the appellant has admitted the factum of filing of a suit for permanent injunction.

2. In the suit filed by the appellant out of which the present appeal arises, decree for specific performance in respect of an oral agreement dated 9.5.97 alleged to have been entered between the appellant and the respondent with regard to one half portion of the second floor of property No. F-38, Bali Nagar, New Delhi which is in possession of respondent was claimed. In the alternative a money decree for Rs. 10,80,000/- with interest was also claimed. The plaint of the prior suit filed before the Court of Senior Civil Judge, Delhi, has been placed on record. This was a suit for grant of a decree for permanent injunction filed by the appellant against the respondent restraining the respondent from using and operating the ground floor of premises bearing number F-28, Bali Nagar, New Delhi, i.e. the residential place as a commercial godown Along with certain consequential reliefs.

3. It is submitted by learned counsel for the appellant that admittedly the suit property in the suit filed for specific performance and the suit filed for permanent injunction before the Civil Judge are different. Learned counsel for the respondent has sought to argue that in view of the judgment of a Division Bench of this Court in the case of Satish Khosla vs . Eli Lilly Ranbaxy Limited and another : 71(1998)DLT1 the order of the learned single Judge was correct in as much as a party which attempts to overreach the Court, is liable to be non-suited on that ground.

4. It is not necessary for us to go into the issue raised by learned counsel for the Respondent in view of the fact that admittedly the sole ground on which the learned single Judge has dismissed the suit is a factum of non-disclosure of filing the prior suit. In view of the fact that the subject matter of the two suits are two different properties, and the reliefs claimed are different, non-disclosure of a fact of filing a prior suit is not at all material. A party has the option to file different suits in respect of different properties and for different cause of action.

5. In view of the aforesaid, the impugned order dated 15th February, 2001 is liable to be set aside.

6. Appeal accordingly is allowed. The impugned order is set aside. the suit filed by the appellant is ordered to be restored to its original number with direction to decided it in accordance with law. The parties are left to bear their own costs. CM No. 270/2001 for interim stay does not survive and is dismissed as infructuous. the parties are directed to appear before the learned single Judge on 17th May, 2001.

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