

Om Prakash and ors. Vs. Gian Chand and ors.

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Court : Delhi

Decided On : Dec-02-2010

Judge : Indermeet Kaur .J.

Appeal No. : RSA No.27/2004 AND CM No.1301/2004

Appellant : Om Prakash and ors.

Respondent : Gian Chand and ors.

Advocate for Def. : Mr. Amit Vohra, Adv

Advocate for Pet/Ap. : Mr.Rajat Aneja, Adv

Judgement :

1. This appeal has impugned the judgment and decree dated 01.9.2003 which has endorsed the finding of the trial judge dated 24.1.1994 whereby the suit of the plaintiff seeking mandatory injunction had been dismissed.

2. This is a second appeal. On behalf of the appellant, it has been pointed that findings in the impugned judgment are perverse; the report of the hand writing expert DW-1 has not been considered in its correct perspective; the plaintiff no.4 Mohd. Javed had all along denied that he had ever written the disputed letter dated 2.4.1984. It is submitted that the only way of access of the plaintiff to his suit property was through a staircase of which he has now been denied access by defendant. All these submissions have raised a substantial question of law.

3. Arguments have been countered.

4. Perusal of the plaint show that this was a suit for mandatory injunction wherein it had been averred by the plaintiff that he is a tenant in the first floor of house No.977, Pam Mandi, Sadar Bazar, Delhi. The defendants recently with malafide intention had tried to close the entry of the plaintiff by constructing a four inch thick wall in the main entrance gate of the plaintiff thereby denying him access through main entry. Learned counsel for the respondent has pointed out that in the entire plaint there is not a whisper of a staircase which is now the bone of contention before this Court and finds mention in the substantial questions of law which have been formulated by the appellant in the body of the appeal. This submission of the learned counsel for the respondent is correct.

5. Be that at it may, both the fact finding Courts below had delved with the report of the hand writing expert DW-1 and had concluded that the disputed letter dated 02.4.1984 had been written by the plaintiff no.4 Mohd.Javed to the respondents. In terms of the said letter, the plaintiffs had sought permission to break the wall of the defendants and to use the staircase thereby establishing that the plaintiffs were earlier not using any such staircase and there was a wall in the disputed portion.

6. This Court is not a third fact finding Court; only if a substantial question of law arises is this Court vested with jurisdiction. No such substantial question of law having arisen, there is no merit in the appeal. Appeal as also the application is dismissed in limine.

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