

(2013) 11 DEL CK 0049

Delhi High Court

Case No: Regular Second Appeal No. 238 of 2004 and CM No. 15428 of 2004

Santokh Singh thru Lr"s

APPELLANT

Vs

Sucha Singh

RESPONDENT

Date of Decision: Nov. 18, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Hon'ble Judges: V.K. Shali, J

Bench: Single Bench

Advocate: S.N. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Shali, J.

The present regular second appeal has been pending for the last nine years. The appellant is present in person.

2. He has prayed for an adjournment on the ground that his counsel is not available. The request for adjournment is vehemently opposed by the learned counsel for the respondent.

3. A perusal of the record shows that the instant regular second appeal is pending since 07.12.2004 i.e. almost for the last nine years. Though the matter has been taken up for hearing on different dates, the same has been adjourned at the request of the counsel for more than 15 times. There is a stay order against dispossession of the appellant from the suit premises passed on 07.12.2004, but no sincere efforts have been made by the learned counsel for the appellant during all these years to make submissions with regard to formulation of a substantial question of law. On the contrary, repeated adjournments have been taken on one ground or the other. I am not inclined to adjourn the case any further as the court has already been very indulgent in granting adjournments during all these nine years. The regular second appeal cannot be entertained until and unless a

substantial question of law is involved in the matter.

4. My attention has been drawn by the learned counsel for the respondent to the fact that he had filed a suit for possession in respect of the suit property which happens to be a residential property bearing No. 1/210/3-A, Haji Mohd. Ishaq Building, Sadar Bazar, Delhi Cantt. The case which was set up was that the respondent had purchased the suit property as an evacuee property from the Ministry of Rehabilitation and he came into possession of a portion of the property in the year 1948 while as a portion of the suit property was under the occupation of the present appellant. It was alleged that the appellant being in unauthorized occupation of the suit property deserves to be evicted. The appellant filed his written statement and took the plea that he is the tenant of the custodian in respect of the suit property and in that capacity he becomes the tenant under the respondent also. On the pleadings of the parties, the following issues were framed:

- i) Whether the suit has been correctly and properly valued for the purposes of court-fee and jurisdiction? OPP.
- ii) Whether the plaintiff is the owner of the suit property? OPP.
- iii) Whether the defendant is a tenant in the suit property? If so, to what effect? OPD.
- iv) Whether the defendant has become the owner of the property by perfecting his title by adverse possession? OPD.
- v) Whether the plaintiff is entitled to any damages for use and occupation of the property? If so, at what rate and for what period and how much? OPP.
- vi) Relief.

5. Issue No. 3 was whether the appellant/defendant was a tenant in the suit property? If so, to what effect? The said issue was decided against the appellant as he failed to prove that he is the tenant under the custodian. This finding was upheld by the first appellate court on being challenged by him. Another defence which was set up by the appellant was that he had become the owner by way of adverse possession. The said issue was also decided against the appellant by the two courts below. It is after the two concurrent findings having been returned against the appellant/defendant by the two court below that the appellant/defendant has chosen to file the present regular second appeal. Section 100 CPC clearly lays down that the regular second appeal would not be maintainable unless and until a substantial question of law is shown to have been involved. During all these nine years, no sincere effort has been made to argue and convince the court that the matter involves substantial question of law. On the contrary, on the last 4-5 dates of hearing, it has been a common practice that the counsel does not appear on the first call and even on the second call the case is taken up for hearing at the fag end of the day when the matter gets adjourned.. I am not inclined to adjourn the matter further. I have gone through the impugned order as well as the order of trial court.

The present regular second appeal does not involve a substantial question of law. Accordingly, the same is dismissed.