

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 05.07.2010*

+ **RSA No.141/2003 & C.M.Appl.No.417/2003**

WASU RAM

.....Appellant
Through: Mr. Girish Aggarwal &
Mr. Abhishek Aggarwal

Versus

HARI CHAND
Through LRs

.....Respondent
Through: Ms.Kanchan Bala for
Mr.Prasoon Kumar, Advocate
for respondent no.1.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. Substantial question of law formulated by this court reads as follows:

“Whether in the absence of any evidence by the respondents/defendants in support of their defence could the courts below return a finding against the appellant/plaintiff despite his un-rebutted evidence?”

2. This second appeal has been directed against the impugned judgment dated 8.4.2003 whereby the appeal preferred by the appellant/plaintiff namely Wasuram had been dismissed. The first appellate court vide the aforementioned judgment had confirmed the finding of the trial court dated 7.12.2002.

3. Wasu Ram had filed a suit for possession of property no.1019, Ward No.7, Mehrauli, New Delhi wherein it had been alleged that the defendant had illegally and unauthorisedly

encroached upon a portion of his property i.e. about 50 sq.yds. from which a Keekar tree along with other building material of the plaintiff had also been removed. Decree of possession of 50 sq.yds of this encroached portion of land along with Rs.6000/- as damages for use and occupation as also a sum of Rs.2500/- on account of the keekar tree had been claimed by the plaintiff.

4. The suit was contested by the defendant. The particulars of the correctness of the suit property as also the defence of adverse possession had been set up by the defendant. In para 2 of the written statement the defendant while disputing the claim of the plaintiff had averred that the plaintiff is in the habit of filing frivolous suits and one such suit had been filed against Tirath Dass. In the corresponding para of the replication no specific denial of the same was made by the plaintiff.

5. One witness was examined by the plaintiff i.e. plaintiff himself. Issue no.1 i.e. whether the defendant had unauthorisedly trespassed and occupied the afornted 50 sq.yds of property of the plaintiff, was the crucial issue. It was decided against the plaintiff. Testimony of PW-1 had been examined in detail by the trial court wherein PW-1 had admitted that the house of the defendant is about 50 steps away from his house and in-between, the house of Tirath Dass and Smt.Champa is located; further that none of the walls of the defendant are joined with the property of the plaintiff.

6. It was in this background that the site plan Ex.PW-1/5 filed by the plaintiff was examined and scrutinized by the trial court. Trial court had held that it was for the plaintiff to have explained as to how the house of Tirath Dass and Champa were constructed

on the same plot falling in-between the property of the plaintiff and the portion now claimed to be in illegal possession of the defendant but no such evidence had been led by the plaintiff. Suit of the plaintiff was dismissed on this count as also for non-joinder of parties.

7. The first appellate court had also considered the submissions which have now sought to be advanced before this court. The submission of the counsel for the appellant that since the defence of the defendant of adverse possession stood disproved, the suit of the plaintiff should automatically have been decreed has also been pleaded before this court. This plea had been negated by the appellate court. The evidence led before the trial court had been re-appreciated and re-examined. It had been held by the Additional District Judge that the plaintiff had failed to prove his claim and the site plan filed by him had failed to pinpoint the location of the house of Tirath Dass and Champa which admittedly and undisputedly had fallen in-between the property of the plaintiff and the property now claimed to be in the illegal and unauthorized possession of the defendant. As such the suit of the plaintiff had rightly been dismissed.

8. Both the fact-finding courts below had correctly appreciated the oral and documentary evidence and which facts cannot now be re-agitated before this court which is a court seized of jurisdiction only if a substantial question of law arises. There is no rule of law which states that merely because a party comes before the court and files a claim, it has to be decreed. It was for the plaintiff to have proved before the court that the defendant had unauthorisedly and illegally occupied 50 sq.yds.of his property

which he has failed to prove. Even though in the written statement the defendant had taken a specific defence that the plaintiff is in the habit of filing frivolous suits and one such suit was filed against Tirath Dass, yet the plaintiff had not specifically answered this either in his pleadings i.e. in his replication or in evidence before the court below that Tirath Dass and Champa were also in unauthorized and illegal possession of the property of the plaintiff and he had filed suits for possession against them as well which is now sought to be averred before this court. This Court cannot go into questions of facts which were even otherwise not pleaded before both the courts below.

9. The substantial question of law framed by this court has to be answered in the negative and against the appellant.

10. This appeal is without any merit; it is dismissed.

INDERMEET KAUR, J.

JULY 05, 2010

rl