

SUPREME COURT OF INDIA

Noor Nagar Ext. Welfare Association

Vs.

Oruj Ahmad

C.A.No.3866 of 2017

(Kurian Joseph and R.Banumathi,JJ.,)

09.03.2017

JUDGMENT

Kurian Joseph,J.,

SLP(Civil)No.27286 of 2015

1. Leave granted.
2. In the nature of the order we propose to pass, it is not necessary to go into the merits of the matter.
3. The appellants in this appeal were the defendants in CS(OS) No. 2310 of 2011 on the file of the High Court of Delhi. They filed an application under Order VII Rule 11 CPC as I.A.No. 17544 of 2011. The application was allowed by the learned Single Judge of the High Court.
4. The plaintiffs pursued the same in appeal before the Division Bench of the High Court. The Division Bench set aside the order passed by the learned Single Judge and remitted the matter to the learned Single Judge. The relevant paragraphs 10, 11, 12 and 13 read as follows:-

"10. In view of the above, the impugned order dated 30th September, 2014 is not sustainable and is hereby set aside and quashed. The matter is remanded for consideration afresh. Needless to say the impact of the statutory provisions noted by us hereinabove so far as the acquisition pursuant to the notification of 1966 and on the order dated 29th August, 2001 is left open for consideration in the suit. In case, the respondent nos. 2 and 3 file an application in accordance with law for seeking rejection of the plaint setting out tenable grounds, the same may be considered by the learned Single Judge afresh.

However, the application being

I. A.No. 17544 of 2011 would stand disposed of.

II. The parties shall appear before the Joint Registrar for further proceedings in the suit on 24th April, 2015.

12. In view of the restoration of the proceedings in the suit, we direct status quo as on date with regard to the title, possession and construction of the suit property till further orders by the learned Single Judge or any other court.

13. This appeal as well as pending application are allowed in the above terms."

5. Having heard Sh. Ravinder Srivastava, learned senior counsel appearing for the appellants and Sh.Sanjay Hegde, learned senior counsel appearing for Respondent No. 1 and having also heard Respondent No. 2, who has appeared in-person, we are of the view that since the Division Bench has chosen to remit the matter to the learned Single Judge with liberty to the parties to file a fresh application under Order VII Rule 11 CPC, the very same I.A.No. 17544 of 2011 also should have been revived with liberty to the parties to take fresh contentions and also with liberty to amend the pleadings, if so required.

6. In that view of the matter, we set aside the impugned order to the extent of disposal of I.A. No. 17544 of 2011 and dispose of this appeal, making it clear that before the learned Single Judge, I.A.No. 17544 of 2011 will also stand revived. The parties are also at liberty to amend the pleadings.

7. Since the remission is for fresh consideration by the High Court, we make it clear that it will be open to both the parties to take all available contentions before the High Court, which shall be considered on their own merits, uninfluenced by any of the orders already passed, either by the learned Single Judge or by the Division Bench.

8. No costs.