

CASE NO.:
Appeal (civil) 6558 of 1999

PETITIONER:
SARJAS RAI & ORS

RESPONDENT:
BAKSHI INDERJIT SINGH

DATE OF JUDGMENT: 01/12/2004

BENCH:
B.P.SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

We have heard counsel for the parties.

This appeal by special leave is directed against the order of High Court of Delhi in Regular Second Appeal No.12 of 1999 dated 12th April, 1999 whereby the High Court dismissed the Second Appeal preferred by the appellant on a finding that there was no substantial question of law involved in the Second Appeal.

The Second Appeal arose from a suit filed by landlord-respondent for perpetual and mandatory injunction against the appellants alleging that they had carried out certain structural changes in the premises let out to the

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appellant whereby the premises were substantially damaged and some parts of the building developed cracks, it being an old building. It is not necessary for us to refer in detail to the allegations made in the plaint. After examining the evidence the Trial Court came to the conclusion that the plaintiff had proved his case and this was a fit case for grant of permanent injunction. Accordingly, on 31.3.1998, the learned Civil Judge passed a decree of mandatory injunction.

Against the decree passed by the Trial Court an appeal was preferred before the learned Senior Civil Judge, Tis Hazari, Delhi. By judgment and order dated 19.12.1998 the said appeal was dismissed.

The appellant then preferred a Second Appeal before the High Court of Delhi being Regular Second Appeal No.12 of 1999 which, as earlier noticed, was dismissed by the High Court on a finding that no substantial question of law was involved in the Second Appeal. Thereafter the petitioner preferred a special leave petition and after

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grant of special leave this appeal has been placed before us for disposal.

After hearing the parties and going through the material placed before us we concur with the finding of the High Court that this case does not involve any substantial question of law which deserved consideration under Section 100 CPC. All the findings recorded by the Courts below are either pure findings of fact or at best mixed question of law and fact. It has been found as a fact by the Courts below that the floor of the shop was sought to be changed and in that process the level of the floor has been brought down one feet below the road level. Similarly certain alterations were made in the structure by removing pillars with a view to give a wider frontage to suit the convenience of the appellant. On the findings arrived at by the Courts below, no substantial question of

law arises. The High Court was therefore, justified in dismissing the Second Appeal.

We, therefore, find no merit in this appeal and the same is accordingly, dismissed.

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Counsel for the appellants submitted before us that he is willing to obey the decree of the Courts below and comply with the directions contained therein. He submitted that since execution has been laid he is under constant threat and warrant of attachment has been issued. We have no doubt that if the appellant takes steps forthwith to comply with the decree passed against him, the executing Court on being satisfied about his bona fide and genuineness, may grant him time to complete the work and permit the decree to be executed.