

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

Date of Order : 15.10.2008

+ **RFA 746/2003**

MCD Appellant
Through: Mr. Ashok Bhasin, Sr. Adv. with
Ms. Smita Shankar, Advocate

versus

DALJIT SINGH BHATIA & ORS. Respondents
Through: Mr. Kirti Uppal, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE J.R.MIDHA

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

: PRADEEP NANDRAJOG, J.(Oral)

1. Heard learned counsel for the parties.
2. Vide impugned judgment and decree dated 9.4.2003
suit filed by the respondents seeking decree for possession and

mesne profits has been decreed. Appellant and DESU who were impleaded as defendants 1 and 2 have been directed to surrender possession of the land mark 'X' and 'Y' in the site plan Ex.PW-1/1. Mesne profits in sum of Rs.1,00,000/- have been awarded, to be paid in the ratio 9:1 by the appellant and DESU.

3. The short issue which arose for consideration before the learned Trial Judge was whether the respondents were the owner of the suit land and whether the appellant and DESU had trespassed into the same. An ancillary issue also arose whether the claim for possession and mesne profits was barred by limitation. Certain technical defences were urged and in respect whereof issues were framed but since at the hearing of the appeal learned counsel for the appellant has urged submissions limited to the findings returned on issue No.7 and additional issue No.1 we would be noting the facts relevant for said issues.

4. Issue No.7 was whether the plaintiffs (respondents) are the co-owners of the plot in suit. Additional issue No. 1 was (I) whether the plaintiff is entitled to possession of the suit property?

5. The respondents proved title of their predecessor through the medium of the sale deed Ex.P-1 which records that the property sold to S.Niranjan Singh is bearing Municipal No.27, Subhash Mohalla, Gandhi Nagar. The linkage of the said municipal No. to the agricultural land on which the unauthorized colony Subhash Mohalla, Gandhi Nagar was carved out is through the medium of Ex.PW-1/4 and Ex.PW-1/5, being a certified copy of the Khata Khatoni and Khasra Girdawari showing that Niranjan Singh (the predecessor-in-interest of the respondents) was in possession of 1 bigha and 18 biswa of land comprised in Khasra No.601/110 in the revenue estate of Village Seelam Pur.

6. Learned Trial Judge has accordingly returned a finding that the sale deed Ex.P-1 coupled with the entries in the revenue record establish title of S.Niranjan Singh as owner of the land comprised in khasra No.601/110 and that Municipal No.27, Subhash Mohalla, Gandhi Nagar was assigned to the said land.

7. It is not in dispute that a large track of agricultural land of village Seelam Pur came under unauthorized

colonization. The colony was called Subhash Mohalla, Gandhi Nagar, Delhi.

8. The issue whether the land sold under the sale deed Ex.P-1 was the same which was comprised in Khasra No.601/110 and whether it was this land which was in occupation and possession of MCD has been answered by the learned Trial Judge with reference to a suggestion put by the counsel for the MCD to PW-1. The same is as under:-

“Q: It is put to you that the MCD is functioning on plot bearing Municipal No.6521/2, Subhash Mohalla, Gandhi Nagar built on Khasra No.601/110.”

9. The answer to the question was that PW-1 was not aware as to wherefrom MCD was referring to Municipal No.6521/2, Subhash Mohalla, Gandhi Nagar but admitted that it was correct that the school was built on land comprised in Khasra No. i.e. 601/110.

10. There being no evidence led by the MCD that the land was given Municipal No.6521/2, learned Trial Judge has opined that the suggestion of the MCD that the land in question wherefrom a municipal school was functioning was built on

Khasra No.601/110 concluded that matter against the MCD, that the site occupied by MCD was on Khasra No.601/110 belonging to S.Niranjan Singh.

11. So holding, learned Trial Judge has decreed the suit for possession.

12. Mesne profits were claimed @ Rs.5 per sq. yds. per month. Learned Trial Judge has awarded a lump sum of Rs.1,00,000/-.

13. A short and crisp submission is urged at the hearing today by Sh.Ashok Bhasin learned senior counsel for the MCD. Counsel urges that without a demarcation no finding could be returned that the land in question is comprised in Khasra No.601/110. As an extended limb of the submission it is urged that there is no material to show that the land in question is bearing Municipal No.27, Subhash Mohalla, Gandhi Nagar, Delhi. An alternative submission made is that the MCD, which has established the school at site, is occupying an area ad-measuring approximately 1625.45 sq.yds. but the decree relates to land ad-measuring only 1300 sq.yds. Counsel urges that

without demarcation it would not be possible to execute the decree.

14. Though no submissions have been urged in relation to the suit being barred by limitation we may note that the defence of the MCD was that it occupied the site in the year 1974. We note that the suit was filed in the year 1983. The suit sought a decree of possession relating to land and being filed within 12 years of the date of alleged trespass, obviously, the suit was within limitation.

15. On the plea whether the respondents established title to the suit land and whether it was comprised in Khasra No.601/110 Village Seelam Pur, it would be relevant to note that MCD while cross examining PW-1 itself suggested that the site in question was comprised in Khasra No.601/110. This suggestion which has been found to be fatal by the learned Trial Judge, indeed concludes the issue against the MCD and is sufficient to hold that the land in question was comprised in Khasra No.601/110 Village Seelam Pur.

16. On the issue of title, it is true that Ex.P-1 does not describe the land with respect to the khasra number and records

that the land bears Municipal No.27, Subhash Mohalla, Gandhi Nagar. But, Ex.PW-1/4 and Ex.PW-1/5 being the certified copy of the Khata Khatoni and Khasra Girdawari pertaining to the years 1979 and 1980 show that in the revenue record name of S.Niranjan Singh was recorded as the owner of 1 bigha and 18 biswa of land falling in Khasra No.601/110. Under the column of cultivator possession it was recorded that the land has come under an illegal colonization. Thus, Ex.PW-1/4 and Ex.PW-1/5 by themselves establish the ownership of Sardar Niranjan Singh and clearly relate to land comprised in Khasra No.601/110.

17. Thus, whether the land in question was assigned Municipal No.27 recedes in the background.

18. Even otherwise, we do not find that MCD has tried to link the land purchased by S.Niranjan Singh vide Ex.P-1 to some other site.

19. On the preponderance of probability we find there is good evidence to sustain the finding returned by the learned Trial Judge.

20. In the view we have taken above, it hardly matters whether the site was demarcated.

21. Issue of the demarcation would have become relevant if MCD had claimed that the land in question was bearing some other Khasra number and not the one which was alleged by the respondents.

22. As regards the alternative contention that MCD has occupied about 1625.45 sq.yds. of land but the decree relates to only 1300 sq.yds. suffice would it be to state that the respondents have proved the site plan of their property as Ex.PW-1/1. The portions in respect whereof decree has been passed against the appellant and DESU have been delineated in the said site plan. The portion mark 'X' is shown in possession of MCD and the portion mark 'Y' is in possession of DESU. Thus, the decree would have to be executed only in respect of the land mark 'X' and 'Y' in Ex.PW-1/1. We see no scope of any interference on said issue except clarifying that the Executing Court would be conscious of the fact that the decree has to be executed as per the site plan Ex.PW-1/1.

23. We find no merit in the appeal.

24. The appeal is dismissed with cost.

25. We take on record the statement made by Sh.Kirti Uppal counsel for the respondents that his clients would not execute the decree for a period of 6 months from today.

PRADEEP NANDRAJOG, J.

J.R.MIDHA, J.

OCTOBER 15, 2008
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