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IN THE HIGH COURT OF DELHI

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RSA.No.145/2004

Mohd.Yusaf Appellant
through: Mr.Mohd.Iqbal, Advocate

VERSUS

A.S.Khanna (through LRs) & Anr. Respondent
through: Mr.P.K.Rawal with Mr.Ajay Bahl,
Advocates.

% DATE OF DECISION
19.03.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

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

: **PRADEEP NANDRAJOG, J.**(Oral)

1. Till date no question of law has been framed in the instant appeal. Having heard learned counsel for the parties I am of the opinion that no question of law arises for consideration in the instant appeal for the reason decisions passed by the learned Trial Judge and the First Appellate Court are based on appreciation of unimpeachable evidence, being documentary evidence emanating from government record, and no material circumstance in favour of appellant has been

ignored by the Courts below.

2. Respondent, A.S.Khanna, filed a suit for possession and damages against the appellant inter alia alleging that suit property bearing Municipal No.XIV/2140-41 Gali Chullehewali, Pan Mandi, Sadar Bazar, being an evacuee property, vested in the custodian of evacuee properties and was put to auction. He i.e. A.S.Khanna was the successful bidder. His bid was accepted. He was declared to be the owner and vide sale certificate dated 25.9.1968, Ex.P-1, was declared the owner of the property. He further stated that the plaintiff was in possession of the property since 1947-48. He stated that as a result of Ex.P-1 he acquired title by becoming the owner of the property and that the defendant entered upon a portion of the property in January 1967.

3. In the written statement filed, the defendant took a plea that the suit property i.e. the property which was alleged to be in his unauthorized possession was actually a part of property bearing Municipal No.XIV/2146 Gali Chullehewali, Pan Mandi, Sadar Bazar. He stated that the owner of the said property was M/s.Bodh Raj Ghai & Sons and that he was a tenant under the said firm at a monthly rent of Rs.1,500/-.

4. In view of the defence taken by the defendant M/s.Bodh Raj Ghai & Sons was also impleaded as a co-

defendant who I incidentally note filed an application under Order 1 Rule 10 CPC seeking impleadment.

5. Needless to state, even M/s.Bodh Raj Ghai & Sons pleaded a case in conformity with the one pleaded by the sole defendant i.e. the appellant.

6. In view of the pleadings of the parties, the learned Trial Judge rightly framed the issue whether the appellant is tenant under the owner M/s.Bodh Raj Ghai & Sons and whether the plaintiff was the owner of the suit property.

7. The Courts below have concluded the issue in favour of the plaintiff with reference to the sale certificate Ex.P-1, the objections, Ex.P-2, filed by Shri Shadi Lal Ghai, a partner of M/s.Bodh Raj Ghai & Sons, the decision thereon, Ex.P-5, an appeal filed by M/s.Bodh Raj Ghai & Sons against the decision, Ex.P-5, decided vide order Ex.P-6.

8. When the property was sold by the custodian of evacuee properties to the plaintiff (respondent in the instant appeal), M/s.Bodh Raj Ghai & Sons filed objections vide Ex.P-2 before the Assistant Settlement Commissioner pointing out that part of their property bearing Municipal No.XIV/2146 appears to have been sold to A.S.Khanna by mistake. Prayer made in the application Ex.P-2 is as under:-

“It is, therefore, prayed most respectfully in the

interest of justice that the sale deed dated 13.3.1967 be declared to be illegal and the same be set aside, and the property No.XIV/2146 belonging to the petitioner be earmarked clearly before the property No.2140-41 is sold.”

9. As noted above, the said objection was dismissed vide Ex.P-5 being an order dated 18.9.1967 passed by Shri S.P.Sood, Assistant Settlement Commissioner who recorded that what was sold vide Ex.P-1 is not a part of property No.XIV/2146 and that what was sold was property No.XIV/2140-41.

10. The order Ex.P-5 was taken in appeal before the Assistant Settlement Commissioner by M/s.Bodh Raj Ghai & Sons. The appeal failed vide order dated 27.2.1968, Ex.P-6. The Assistant Settlement Commissioner affirmed the findings returned in Ex.P-5.

11. M/s.Bodh Raj Ghai & Sons did not leave the matter at that. They availed of a revisional remedy available to them under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act 1954. They approached the Central Government. The said petition filed on 21.3.1968 was dismissed by Mr.Rajni Kant, the officer to whom powers of the Central Government is delegated. The order is dated 3.7.1968 which has been proved as Ex.P-7.

12. The findings returned vide order dated 27.2.1968

Ex.P-6 were affirmed in appeal.

13. Needless to state the owner of the property bearing Municipal No.XIV/2146 namely defendant No.2 in the suit i.e. M/s.Bodh Raj Ghai & Sons lost the title battle vis-a-vis the plaintiff and since both i.e. the plaintiff and defendant No.2 claimed title under the Central Government, orders passed and as noted above, concluded that the suit property was not part of property bearing Municipal No.XIV/2146 but was bearing Municipal No.XIV/2140-41.

14. I need not deal with other evidence gone into for the reason Ex.P-1, P-2, P-5, P-6 and P-7 conclude the issue in favour of A.S.Khanna and against the appellant as also M/s.Bodh Raj Ghai & Sons.

15. Before concluding I may record that M/s.Bodh Raj Ghai & Sons who have lost the title battle with A.S.Khanna have not challenged the impugned judgment and decree.

16. Since appellant claimed to be a tenant under M/s.Bodh Raj Ghai & Sons obviously his possessory rights have to fail.

17. Thus, appellant would indeed be a trespasser in the suit property for the reason neither the custodian nor A.S.Khanna inducted him as a tenant.

18. The RSA is dismissed.

19. Costs to follow.

March 19, 2008
d.k.bainsla

PRADEEP NANDRAJOG, J.