

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

+ RFA 104/2006 & CM No. 5381/2008

Date of Decision: May 26, 2008

Bua Singh Appellant
Through: Mr. Ravinder Sethi, Sr. Adv. with
Mr. Lalit Gupta, Ms. Vandana
Bhatia, Advocates

versus

Dalip Singh Cheema & Ors. Respondents
Through: Mr. Jagat Rana & Mr. Akhilesh
Arora, Advocates

CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE S.L.BHAYANA

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

JUDGMENT

S.L. Bhayana, J.

This appeal has been filed by defendant no. 2 arising out of a suit for possession which was decreed in favour of the plaintiff-respondent No. 1. The facts giving rise to the filing of the suit may be summarized as under:

2. The suit property bearing plot no. 11 measuring 250 sq. yds. situated at C-51, Vijay Vihar, Phase-II , Village

Rithala, Delhi, originally belonged to Vijay Singh,PW-1 as a part of his ancestral property.

3. Briefly stated the plaintiff's case is that his wife Amarjit Kaur purchased the suit property on 23.01.1984 vide a registered sale deed from Vijay Singh for Rs. 6000/-. The plaintiff further stated that a boundary wall demarcated the suit property and three rooms were constructed on the said plot. In the year 1989, defendant No.1 Gurdeep Kaur filed a suit for permanent injunction against the plaintiff stating that the plaintiff had illegally and in an unauthorized manner occupied the suit property. Subsequently the suit for permanent injunction against the plaintiff was dismissed yet the defendants continued to occupy the suit property.

4. In the original suit no. 197/2002 filed by the plaintiff against the defendants, a claim for the payment of mense profit/ damages and for the possession of the suit property was made.

5. The defendant no. 2-appellent filed his written statement in the suit in which he alleged that the property

in respect of which the plaintiff intends to exercise his rights is different from the defendants' property.

6. On the pleadings of the parties the trial court framed the following issues:

- I. Whether the plaintiff has no cause of action to file the present suit? OPD
- II. Whether the suit is not valued properly for the purpose of court fee and jurisdiction? OPD
- III. Whether the plaintiff is entitled for the decree of possession, as so prayed in the plaint? OPP
- IV. Whether the plaintiff is entitled to *mense* profits, if so, then at what rate and to what extent? OPP
- V. Whether the plaintiff is entitled for permanent injunction, as so prayed in the suit? OPP
- VI. Relief.

7. In support of his case, the plaintiff appeared as his own witness apart from examining Vijay Singh, the original owner of the suit property. On the other hand, defendant no.2 besides recording his own deposition, examined three witnesses Manjit Singh, Patwari, DW-1, Smt. Krishna Devi, DW-3 and Dinesh Kumar, DW-4. Krishna Devi, DW-3 is the neighbor and her statement is not of much help. The

statement of DW-4 is also not of much help to the appellant-defendant no.2, Bua Singh.

8. Vijay Singh the original owner of the suit property filed an affidavit Ex. PW1/A corroborating the case of the respondent-plaintiff. He in his cross-examination has stated that he sold the suit property to Amarjit Kaur, wife of the respondent-plaintiff vide a registered sale deed dated 23.01.1984, Ex PW1/1 and the possession of the property was also delivered to Amarjit Kaur. He also stated that he was unaware of Gurdeep Kaur from whom the defendant no. 2 has alleged to have purchased the suit property. Vijay Singh has also denied having executed the documents produced by the defendant-appellant as evidence including the G.P.A and the agreement to sell. In his cross-examination, he has admitted that before selling the property, he got the property identified by the Tehsildar and the Patwari in order to determine the Khasra number. He admits that he had sold entire five kilas of land to a property dealer by the name of Sh. Ramesh Chand Jain who sold the property to different people, and used to take him to the office of the Sub-Registrar for the execution and registration of the sale deeds. He has also admitted to have gone to the spot to

verify the plot which was being sold and the properties sold by him were sold by virtue of a sale deed and not a G.P.A.

9. Dalip Singh Cheema, PW-2 is the husband of the Amarjit Kaur to whom the suit property was sold by Vijay Singh, PW-1. He has filed his affidavit, Ex.PW2/A. He has admitted that he had not made any complaints regarding the forcible dispossession of the suit property till the filing of the suit.

10. Manjit Singh, DW-1 the Patwari affirms that the nishandehi report bears his signatures and that the same was prepared by him after visiting the location at the behest of Bua Singh, defendant no.2 – appellant. He has also admitted that the name of the appellant, Bua Singh was not entered in the revenue records. He has admitted that officially measurement is done only at the request of those persons whose names are entered in the revenue record, however, in this case the same was done at the request of defendant no.2 –appellant as he was told that a dispute in relation to the property was going on in Court. He has also stated that the corner of Khasra no. 93/3 touches one corner of 93/9/1. In the cross-examination, he further admitted that he was unaware in which musavi or

khasra number the fixed points were located. He also stated that he did not know if a notice was given to the owners of the adjoining Khasra numbers and the same was not necessary. He also stated that he did not know through which Khasra number, a 44 feet and 20 feet roads respectively pass. No plotted *sizra* was prepared by the revenue authority as the same was to be prepared by the Coloniser. As the *sizra* was deposited in the Court, the measurement was done through a Musavi and the same is available with the Girdawar. He further stated that only a photocopied portion of the musavi is available with the Girdawar. He has also admitted that he has not seen the musavi, and an order of measurement can be passed only by the SDM. He was also unaware whether any such order was passed by the SDM.

11. Bua Singh, DW-2 the appellant in the present appeal deposed that, Sardar Kapoor and he purchased a plot measuring 250 sq. yards bearing no. C-51 out of Khasara no. 93/3, Vijay Vihar, Rithala, Delhi from Gurdev Singh and Harinder Singh. He further stated that Vijay Singh sold the above stated plot to Gurdeep Kaur who later transferred the said property to her husband Gurdarsdan Singh. It was sold by Gurdarshan Singh to Gurdev Singh and Harinder

Singh from whom the appellant, Bua Singh purchased the property. He further stated that he had purchased a plot out of Khasra no. 93/9/1 whereas the plaintiff-respondent has purchased a plot out of khasra no. 93/3.

12. The main premise of the submissions of learned counsel for the appellant is that the property of the appellant is entirely different from that of the plaintiff-respondent. He has submitted that the appellant had purchased 500 sq.yds of land which was situated in Khasra no. 93/3. Further the plot of the respondent- plaintiff is situated in Khasra no. 93/9/1. He has also submitted that all the documents produced by him, i.e., the agreement to sell and the G.P.A dated 15.06.1983 clearly bear the Khasra number of the land measuring 500 sq.yds as Khasra No. 93/3.

13. Learned counsel for the appellant has also contended that the land in his possession was demarcated by Manjit Singh, Patwari, DW-1. DW-1 has stated that Khasra No. 93/9/1 is below Khasra no. 93/2 and Khasra no. 93/3 is above khasra no. 93/8. He further argued that the learned Trial Court erroneously ignored the fact of the

plots having different Khasra numbers and separate boundaries.

14. The appellant has further contended that the learned Trial Court has ignored the fact there is no evidence to prove that the construction over the plot was raised by the plaintiff-respondent. It is also submitted by the appellant that a prudent man would have lodged a complaint with the police for unauthorized occupation of his property by the appellant however, the respondent – plaintiff kept silent till the filing of the suit in January 2001. It is submitted that the suit was dismissed only on the basis of statement of Vijay Singh, PW-1 who was in collusion with respondent no.1, who had fabricated false documents in favour of respondent No.1.

15. Learned Counsel for the respondent-plaintiff has argued that the appeal is not maintainable, as the appellant has no right or title in the suit property. He further argued that the documents adduced by the appellant in support of his case, i.e., the agreement to sell, G.P.A etc are fabricated. Vijay Singh, the original owner of the plot has appeared as a witness in the suit and has specifically denied having executed any documents in favour of

Gurdeep Kaur from whom the appellant purchased the suit property.

16. It is further argued by the respondent-plaintiff that the plot purchased by Amarjeet Kaur had been well described in the sale deed Ex.PW-1/2. Vijay Singh has also categorically denied having sold the land or executed any documents in favour of Gurdeep Kaur. He further argued that the demarcation report provided by Manjit Singh DW-1 has no evidentiary value as firstly there was no office order of the SDM to carry out the demarcation. Secondly it is not based on the Mausavi or aks sizra of the revenue department nor does it say anything in respect to the existence of the fixed point for the purpose of demarcation. It is contended by the respondent-plaintiff that there is no ambiguity in the Khasra number as the appellant has derived his right from Gurdeep Kaur who had filed suit no. 450/1989 for permanent injunction against the appellant with respect to Khasra no. 93/3.

17. The respondent-plaintiff has further rebutted the contention of the appellant by submitting that keeping a *Chowkidar* after the purchase of the suit property is not a criteria for possession or title. The real criteria for that is

the registered sale deed which had been executed by Vijay Singh in favour of Amarjeet Kaur.

18. If the appellant-defendant's case is to be judged on the basis of the above averments made by him then in our considered opinion there are no clear assertions made by the appellant either in the written statement or in the depositions.

19. The appellant has further raised an issue with respect to the location of the property, *i.e.*, whether the suit property is situated in khasra no. 93/9/1 as claimed by the respondent-plaintiff or whether it is in khasra no. 93/3 as claimed by the appellant.

20. The argument of the appellant that the property has been demarcated by the Patwari, Manjit Singh DW-1, in order to show that the suit property falls in Khasra no. 93/3 is not supported by the deposition of Manjit Singh. Manjit Singh has clearly stated in his testimony that the revenue records do not reflect the name of Sh. Bua Singh, appellant, and the land could not be demarcated at his behest, as such can only be done by those whose name is entered in the revenue record. The witness has also

admitted that he does not know in which musavi and khasra number the fixed points of the nishandehi were fixed. He has further stated in his deposition that after the consolidation in 1975-76, musavi was deposited and without the musavi, no measurements could have been made. Further there was no order of the SDM for measurements without which no official measurement could be made. Hence, we concur with the opinion of the trial court on this point. The demarcation report Ex. DW-1/A has no evidentiary value as there was never any office order to carry out the demarcations and secondly it is not based on a musavi or aks sijra of the revenue department. Also the demarcation is silent about the existence of fixed points.

21. Both parties concur that Vijay Singh PW-1 was the original owner of the property, and Vijay Singh in his deposition supported the case of the respondent-plaintiff. He in his deposition has clearly denied having sold any plot of land to Gurdeep Kaur and having executed any document in her favour. He has denied his signatures on the G.P.A, agreement to sell, receipts and affidavits which are placed on record as Ex. DW2/PA. Vijay Singh has also volunteered that the entire sale of land was effected by him

through registered sale deeds and not by way of G.P.A and no sale in respect of any plot was ever made by him to Gurdeep Kaur. The present appellant hence cannot derive any right on the basis of forged documents. The court finds substance in the argument advanced by the respondent-plaintiff that there is no ambiguity with respect to the Khasra numbers. The appellant has derived his right in the suit property from Gurdeep Kaur, who had filed Suit no. 450/1989 regarding Khasra no. 93/3. Hence, there is no dispute as regards the description or numbering of the property. The Patwari's report has no evidentiary value on account of it being an unofficial measurement and in light of the fact that the original owner Vijay Singh has denied having sold any land to Gurdeep Kaur. Since Vijay Singh did not sell any land to Gurdeep Kaur, therefore the contention of the appellant regarding the explanation of 83 sq. yds. is a frivolous exercise by the appellant. Defendant no.1 Gurdeep Kaur had already filed a civil suit claiming that the suit land was bearing Kharsa no. 93/3 and she was the owner of the land on the basis of this claim. This suit was dismissed and the said decision has become final.

22. It is evident from a plain reading of the above that the defendant –appellant's entire case rests on the fact that the

suit property is situated in khasra no. 93/3 and not in khasra no, 93/9/1 as claimed by the respondent-plaintiff.

23. Keeping in view the deposition of Shri Vijay Singh PW-1 along with the registered sale deed he executed in favour of the respondent-plaintiff we feel that the suit property falling in khasra no. 93/9/1, belongs to the respondent-plaintiff and the appellant has no right over the same. The appellant-defendant has not been successful in proving that the suit property is different from the property which is claimed by the respondent-plaintiff. The appellant-defendant has further been unable to prove himself to be the owner of property in khasra no. 93/3. Vijay Singh PW-1 has categorically denied having sold any property to Gurdeep Kaur from whom the appellant is alleged to have purchased the property in dispute.

24. In the result, the present appeal has no merits and is dismissed with costs quantified at Rs. 10,000/- payable not later than four weeks from today failing which the amount shall carry simple interest at 6% per annum.

(S.L.BHAYANA)
JUDGE

(MUKUL MUDGAL)
JUDGE

MAY 26 , 2008
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