

8

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

Date of Reserve: 28.11.2008
Date of Order: December 19, 2008

CM(M) No. 1094/2007

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19.12.2008

Delhi Development Authority

... Petitioner

Through: Mr. Ajay Verma, Advocate

Versus

Mr. Jagdish Prasad

... Respondent

Through: Mr. Bhupesh Kumar Varma, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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?

JUDGMENT

The petitioner is aggrieved by an order dated 4.5.2007 of the learned ADJ (first Appellate Court) whereby an application of the petitioner under Order 41 Rule 27 read with Section 151 CPC for bringing on record additional evidence by way of filing public documents was dismissed with costs.

2. The respondent herein had filed a suit for permanent injunction against defendant (petitioner herein) restraining defendant from interfering in any

9

manner with the possession of the respondent on a property bearing no. D-250, Village Peeragarhi and from demolishing the same. The respondent claimed that he was owner of the suit property situated in *lal dora* of village Peeragarhi. The property was used by his father as a place for storing fodder for cattles. Subsequently, respondent started running a milk dairy he thereafter raised *pucca* structure on the property and claimed that a municipal number was assigned after urbanization of the land. Respondent shifted his milk dairy and installed *dharmakanta*. He filed suit claiming that there was threat of dispossession.

3. The petitioner/DDA (defendant before the Trial Court) claimed that the suit property formed part of khasra no. 487 village Peeragarhi and the same was transferred to DDA vide notification no. F9(4)89/L&B dated 5.10.1989. There was a pond in the said khasra which was filled up by DDA pursuant to the directions of this Court in CWP No. 1331 of 1999. The plaintiff had encroached upon this government land forming part of the pond and started running his *dharmakanta* as an unauthorized encroacher. The suit of the respondent was decreed by the Civil Judge and petitioner was restrained from interfering in any manner from the possession of the plaintiff. Aggrieved by this judgment, petitioner preferred an appeal before the Appellate Court and filed an application under Order 41 Rule 27 CPC seeking to adduce following documents by way of additional evidence:

- i) *Copy of Aksizra for the year 1873 showing pond measuring 27 bigha, 7 biswas in village Peera Garhi.*

- ii) *Copy of khasra paimaish for the year 1880 containing field book showing existence of pond in khasra no. 781 now corresponding to khasra no. 487 of village Peera Garhi.*
- iii) *Copy of Wzib-ul-urg of the year 1908-09 at the time of settlement of village Peera Garhi.*
- iv) *Copy of Jamabandi for the year 1908-09 in respect of khasra no. 387 in village Peera Garhi.*
- v) *Certified copy of Masavi for the year 1908-09 of village Peera Garhi.*
- vi) *Certified copy of Masavi for the year 1954-55 in respect of village Peera Garhi showing the pond in the land shown as abadi.*
- vii) *Copy of notification under section 507 of MCD Act dated 23.04.1982.*
- viii) *Copy of Khatoni for the year 1985-86 of village Peera Garhi showing the entry mutation in the names of Gaon Sabha/Government of India vide notification dated 23.04.82.*
- ix) *Copy of report of Patwari dated 12.12.70 of Delhi Administration for the purpose of issue of Lal Dora certificate applied by the party. The said report makes it clear that the land in respect of which Lal Dora certificate is issued is on the South Side of Cremation Ground, but the land in dispute falls on the North Side of the Cremation Ground.*

4. The learned Appellate Court observed that the judgment of the Trial Court showed that the appellant (petitioner herein) had produced sufficient documents such as notification no. F9(4)89/L&B dated 5.10.1989 showing that the land had been transferred to DDA and Lal Dora certificate dated 12.12.1970 filed on behalf of the non-applicant showing that sufficient evidence was produced on behalf of both the parties. The Court came to the conclusion that

11

the documents sought to be produced by the appellant were not required for adjudication of the present appeal.

5. The order of the learned ADJ has been challenged stating that the learned ADJ failed to appreciate that the petitioner only wanted to place on record public documents, where there was no possibility of fabrication. These public documents were necessary to be considered to appreciate the entire past record of the land in question and how the land in question formed part of a pond, which was filled up at the instance of this Court and then was handed over to DDA. It is submitted that even if the petitioner had earlier produced some evidence, which petitioner considered was sufficient to bring home the point that the property, in question, was a public property, the petitioner had a right to produce this past record to show that the Trial Court has not appreciated the evidence in proper prospective and had taken only cursory view of the evidence.

6. It is settled law that where the documents sought to be adduced as additional evidence would facilitate the Court to arrive at a just conclusion and the documents are such which cannot be fabricated and which formed part of the public record, there was no chance of forgery, the documents could be allowed as additional evidence so that the Court may have a full picture of the material. No doubt the Court has a duty to examine the documents before allowing them, but once it is found that the documents sought to be adduced are of such quality

12 ✓

and caliber that it will substantially assist the Court in arriving at the just decision, the Court must allow placing of these documents on record.

7. The Counsel for the respondent submitted that the petitioner wants to fill up a lacuna by way of adducing additional documents. I consider this argument does not hold good. The additional evidence is always given only to fill up a lacuna. If, there is no lacuna, there is no necessity of giving additional evidence. Supreme Court in *Municipal Corporation for Greater Bombay v. Lala Pancham of Bombay & Ors.* AIR 1965 SC 1008 held that it was only a lacuna in the evidence that would empower the Court to allow additional evidence.

8. In case of the claim of a person on Gaon Sabha land without any title deeds, the Court must be very careful in scrutinizing entire land record to come to a conclusion about the claim of a person. Where the documents which the appellant wish to produce were copies of the revenue record and other documents, which were official in nature and the respondent could be compensated by costs, if necessary, the appellant should be given an opportunity to place such additional evidence by way of documentary evidence on record. I, therefore set aside the order dated 4.5.2007 of the learned Appellate Court rejecting the application and allow this petition.

9. The application of the petitioner under Order 41 rule 27 CPC is allowed. The petitioner is at liberty to place these documents before the Court and prove the same by way of additional evidence. The respondent shall

13

however, have liberty to file additional documents, if any, in rebuttal of the documents filed by the petitioner.

December 19, 2008
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SHIV NARAYAN DHINGRA, J.

