

i.18

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

+ **RFA 453/2008**

% *Date of order: 19.11.2008*

DHARAM VIR ..... Appellant  
Through: Mr.Niraj Chaudhry, Adv.

versus

N.C.T. OF DELHI & ORS. .... Respondent  
Through

**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)

**CM 16311/2008**

Allowed subject to just exceptions.

**RFA 453/2008**

1. Heard learned counsel for the appellant.
2. Since all relatable documents, being the plaint of Suit No.259/2003 and the written statement filed by the

contesting defendants in said suit as also the judgment and decree dated 20.3.2004 dismissing said suit; the pleadings in the instant suit out of which the instant appeal arises have been produced before us which have been perused by us, we are disposing of the appeal in limine.

3. Vide impugned judgment and decree dated 14.8.2008 the suit filed by the appellant has been dismissed holding the same to be an abuse of the process of Court. We also note that the learned Trial Judge has held that the issue raised in the suit was litigated on an earlier occasion by the appellant resulting in the claim being dismissed vide judgment and decree dated 20.3.2004 which has attained finality and hence the suit is barred.

4. Way back, in the year 1999, the appellant had filed a suit for permanent injunction alleging that he was the owner of 150 sq.yds. of land bearing Municipal No.IX/5249-B Old Seelampur situated on a part of land comprised in Khasra No.604/301 Village Seelampur. The appellant alleged that the defendants of the suit namely Anoop Sharma, Rakesh Sharma, Baljeet Singh, Arjun and Lakhi were obstructing the use and occupation of the subject property by the plaintiff.

5. Prayer made in the suit was to restrain the defendants from dispossessing the plaintiff from the subject property and from preventing the plaintiff from raising

constructions thereon.

6. Anoop Sharma, Rakesh Sharma, Baljeet Singh, Arjun and Lakhi filed a written statement alleging that the land in question is Patwar Ghar.

7. On the pleading of the parties following issues were settled in the suit:-

- “(1) Whether the plaintiff is in possession of House No.9/5249-B Old Seelam Pur, Delhi in Khasra No.604/301 Seelam Pur Village, Delhi? OPP
- (2) Whether the plaintiff has any cause of action to file the present suit?
- (3) Whether the plaintiff is entitled to relief as claimed by him? OPP
- (4) Relief.”

8. Parties led evidence. Official witnesses were summoned. Revenue record was summoned. Record of MCD was summoned.

9. The finding returned by the learned Trial Judge vide judgment and decree dated 20.3.2004 was that the plaintiff has obtained certain documents in collusion with officers of the Municipal Corporation of Delhi. With reference to the evidence of the Halka Patwari who was examined as DW-2, the finding returned was that the land in question is not comprised in Khasra No.604/301. On the said finding the suit was dismissed.

10. We may note that the suit filed by the appellant in

the year 1999 to which we have noted herein above, on transfer was re-assigned No.259/03 in the year 2003.

11. Having been disarmed by virtue of the judgment and decree dated 20.3.2004, the appellant resorted to the stratagem of contrivance. Very cleverly he filed the instant suit impleading Government of NCT of Delhi as defendant No.1, the SDM (East Delhi) as defendant No.2, Halka Patwari as defendant No.3, the Tehsildar as defendant No.4, Commissioner (MCD) as defendant No.5, the Additional Deputy Commissioner (Land & Estate Department) MCD as defendant No.6 and Assessor & Collector of the MCD as defendant No.7. In the suit, the appellant claimed a relief of declaration that he be declared the owner of property No.IX/5249-B Old Seelampur. He also sought various consequential reliefs against the defendants.

12. Anoop Sharma, Rakesh Sharma, Baljeet Singh, Arjun and Lakhi learned about the strategy adopted by the plaintiff and sought impleadment in the second suit filed by the plaintiff. Impleadment was allowed. They were impleaded as defendants No.8 to 12.

13. Vide impugned judgment and decree dated 14.8.2008, learned Trial Judge has held that the plaintiff has resorted to abusing the judicial process by impleading government officials as defendants by suppressing that on the

same issue he had fought the battle with the private respondents, who with reference to government record successfully non-suited the appellant.

14. Finding returned is that the decision dated 20.3.2004 estoppes the plaintiff to re-agitate the issue of title qua the property in dispute.

15. Learned counsel for the appellant urges that the defendants No.1 to 7 impleaded by him in the instant suit were not defendants in the earlier suit and no relief was claimed against the said defendants in the earlier suit. Learned counsel urges that the bar of res judicata requires that in the previously instituted suit, the parties or their predecessors are the same as in the subsequent suit.

16. Suffice would it be to state that Section 11 of the Code of Civil Procedure does not exhaust the principles of res judicata and on general principles of res judicata a plea of issue estoppel can always be urged.

17. Where a finding of fact has been returned inter se litigation between different parties the same can operate as an issue estoppel in a subsequent litigation between different parties subject to the condition that the party against whom the plea of issue estoppel is raised was a party in the earlier litigation.

18. In the instant case, it has to be noted that the

defence of Anoop Sharma and others in the previous suit was that the suit property was a Patwar Ghar i.e. belonged to the Government. They successfully established the same with reference to the record of the Government. The said finding thus operates as an issue estoppel and the appellant cannot litigate on the same cause for a second time.

19. We note that the learned Trial Judge has been extremely lenient on the appellant by simply dismissing the suit leaving the parties to bear their own costs.

20. Frivolous litigation has to be dispatched with a heavy hand.

21. We do so.

22. We dismiss the appeal imposing costs of Rs.50,000/- (Rupees Fifty Thousand only) on the appellant for wasting judicial time and misusing the process of law.

23. The costs shall be deposited by the appellant with the Delhi High Court Legal Services Committee within a period of 4 weeks from today.

24. Proof thereof would be furnished before the Registrar (Appeals).

25. The appeal shall be formally listed before the Registrar (Appeals) on 19.1.2009.

26. Learned counsel for the appellant states that he would ensure presence of the appellant before the Registrar

(Appeals) on the date notified so that proof of costs being deposited can be furnished before the Registrar (Appeals).

**PRADEEP NANDRAJOG, J.**

**J.R. MIDHA, J.**

NOVEMBER 19, 2008  
Dharmender