

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 42/2009**

Date of decision : 13th July, 2009

SMT. DURGA DEVI Appellant

Through : Mr. S.C. Singhal Advocate with
Mr. S.R. Sharma, Advocate

Versus

DELHI DEVELOPMENT AUTHORITY & ORS.
.....Respondents

Through : Nemo.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM APPL.4713/2009 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of

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Signature Not Verified

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

CM APPL.4714/2009 (delay)

Heard.

For the reasons stated in the application, the same is allowed.

Delay of six days in filing the appeal is hereby condoned.

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1. Appellant (hereinafter referred to as Plaintiff) has challenged the judgment and decree dated 25.10.2008 of the First Appellate Court passed in RCA No.45/2005 whereby the learned Additional District Judge while upholding the judgment and decree of the Civil Judge dated 02.02.2005 dismissed the appeal.
2. In brief, claim of the plaintiff is that she is the owner and in actual physical possession of Gher/Gitwar, situated in Khasra No.1659 (Old) and 1115 (New Khasra No.) in the revenue estate of Village Mehrauli New Delhi, known as Harijan Basti. She alongwith her family members are using the said land for purposes of storing cow dung, putting

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uplas, bitoras and tethering of cattle for the last more than 30 years i.e. since 1948.

3. Plaintiff has sought relief of Permanent injunction against the respondents (hereinafter referred to as defendants) from dispossessing her from the suit land or from raising any construction and blocking the passage leading thereto in the said land, being in possession of the same.
4. Defendant No.1 DDA has refuted the claim of the plaintiff alleging that it had removed unauthorized construction in 1991 and since thereafter it is in possession of the same and the land is lying vacant.
5. According to the DDA, the suit land is a Gaon Sabha land which was vested in the Central Government on urbanization of the village and the Government further placed the land at the disposal of DDA vide Notification No.2190 dated 20.8.1974. When plaintiff tried to encroach upon the Govt. land, her attempt was frustrated and a complaint was lodged with the police.
6. Plaintiff has challenged the vesting of the land by the Revenue Assistant of Gram Sabha as being

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illegal and void and also that no physical possession was ever effected and therefore according to her, the vesting of the land is void and dishonest.

7. It is not in dispute that the suit land vested in the Gram Sabha by the orders of the competent authority and after urbanization of the village, land belonging to the Gram Sabha stood vested in the Central Government. The Central Government handed over the possession of the land to DDA vide Notification No.SO-2190 dated 20.8.1974 and since thereafter the suit land is being controlled and managed by the DDA.
8. Under these circumstances, simply because plaintiff is illegally using the land for storing cow dung, putting uplas, bitoras and tethering of cattle does not confer any legal possessory rights in the suit land in favour of the plaintiff. Plaintiff, therefore, is an unauthorized user and is in possession of the land in which she has no right, title or interest. Plaintiff had filed a suit for injunction which is a discretionary relief and the trial court rightly dismissed the suit as discretionary and equitable

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relief cannot be granted to a tress-passer on a Government land and such like relief cannot be granted in favour of the tress-passer to prove or to perpetuate the wrong committed by her.

9. The trial court while dismissing the suit of the plaintiff, rightly observed vide its order dated 2.2.2005:-

"9. I am not, however, in agreement with the submission of Learned Counsel for the Plaintiff. The Plaintiff has filed a simple suit for permanent injunction. Delhi Land Reform Act, 1954, came into effect in the year 1954 itself. The Plaintiff has not mentioned when the order was passed by the revenue Assistant through which the land was vested in the Gram Sabha, Mehrauli. I am of the opinion that the Plaintiff, by raising the issue at this stage, cannot get the order of the Revenue Assistant, through which the land was vested in the Gram Sabha, set aside indirectly while no direct relief is being prayed in this respect. It has not been disputed that land vested in the Gram Sabha by orders of the Competent authority. After urbanization of the village land belonging to Gram Sabha stood vested in the Central Government, DDA has placed on record copy of notification No. SO 2190 dated 20/08/74, Ex.

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DW1/1 through which the land was placed, by the Central Government, at the disposal of DDA. I am, therefore, of the opinion that land is under legal management and control of DDA.

11..... Mere keeping cow dung or tying the cattle etc. in the suit land do not confer possession of the land in favour of the Plaintiff, when the land is validly vested in the Central Government. Even if the said acts are done by the Plaintiff, they are nothing but an unauthorized use and occupation of the land which cannot confer any interest in favour of the plaintiff. Even user of the land with respect to land cannot be termed as valid possession of the land. Issue is, accordingly, decided against the plaintiff and in favour of the DDA, who is legal manager and controller of the land."

10. The First Appellate Court also considered this issue in the right perspective when it observed that the Notification dated 20.8.1974 pertaining to the land in suit as that of Central Government on urbanization of the village and given at the disposal of the DDA for the purpose of development and maintenance of land as green was never

challenged. The Appellate Court rightly held that after the urbanization of the village, plaintiff seized to have any interest in the property being a trespasser and therefore has no right to claim adverse possession.

11. The Appellate Court while dismissing the appeal of the plaintiff vide order dated 25.10.2008 observed:-

"29. In these circumstances, I am of the considered view that the Ld. Trial Court was right in holding that the plaintiff by raising issue at this stage cannot get order of the Revenue Assistant through which the land was vested in gaon sabha set aside. Indirectly no direct relief is being prayed. After referring to notification No.S02190 dated 20/8/1974 Ex.DW1/1 it has also been held that the land was placed by the Central Government at the disposal of DDA. I am further of the considered view that the Ld. trial court was also right while considering act of plaintiff regarding keeping cowdung or tying cattle in the suit land that even if the said acts are done by the plaintiff they are nothing but an unauthorized use and occupation of land which cannot confer any interest in favour of the plaintiff and even user of the land cannot be termed in valid

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possession of land. The Ld. Trial Court has also rightly held that plaintiff is not entitled for any relief of injunction being encroacher upon the government land. It is pertinent to mention that plaintiff no.2 Manohar Lal is not party in this appeal. Appeal has been filed by his wife Durga Devi only."

12. Under these circumstances, no substantial question of law can be formulated and findings on facts are concurrent throughout. The question as suggested in the appeal rather raises question of fact and appreciation of evidence. No such question has been formulated or suggested which can be treated and considered as substantial question of law.
13. Hence, I find no merit in the appeal and the same is accordingly dismissed.
14. CM APPL.4712/2009 for stay also stands dismissed.


(ARUNA SURESH)
JUDGE

JULY 13, 2009
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