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IN THE HIGH COURT OF DELHI AT NEW DELHI

**RESERVED ON: 10.08.2009
PRONOUNCED ON: 24.08.2009**

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CS (OS) 825/2005

MAHESH CHANDRA AGARWAL Plaintiff
Through: Mr. A.K. Singla, Sr. Advocate
with Mr. Karan Jain, Advocate.

versus

RAMESHWAR AND ORS. Defendants
Through: None.

**CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

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

Hon'ble Mr. Justice S.Ravindra Bhat:

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1. The plaintiff in this Suit seeks declaration that he is a joint owner and in settled possession of a plot measuring 1184.4 sq. yds.; he also seeks cancellation of documents dated 18.03.1970, favoring the second defendant and a General Power of Attorney dated 24.03.1988 stating that they do not pertain to his property. An injunction consequential to the declaration, to restrain the defendants from interfering with the plaintiff's possession is also sought.

2. The plaintiff contends that the suit property measures 1184.4 sq. yards

and is a part of a plot admeasuring 1814.4 sq. yds, situated in Khasra No.263/134 and 264/134, Village Zamrudpur, New Delhi. The plaintiff relies upon a coloured map annexed to the suit. It is alleged that some portions of the said plot are encroachments to the extent of 630 sq. yards, which are shown in black colour. It is submitted that the suit property is not a regular sized one, and is enclosed by several plots of varying sizes. According to the plaintiff, the site is enclosed by boundary wall with a few grown trees with hutments. The plaintiff claims to be the joint owner with his other family members and who are all in settled possession of the land. The plaintiff traces ownership of the plot, by stating that originally the plot measured 7 bighas, reflected in khewat jamabandhi No.49-48 and khatoni No.117 of village Zamrudpur. The plaintiff says that his ancestors were in occupation and cultivation of the land. The last mutation reflects the name of legal heirs of Smt. Laxmi Devi. It is submitted that the plaintiff is her eldest son and his two married sisters have authorized him to file the Suit.

3. The plaintiff alleges that in the evening of 23.5.2005, some persons, who later on transpired to be fourth and sixth defendants threatened the guard at the location (of the suit property) seeking entry into the plot claiming themselves to be the owners of the property. The plaintiff states that when his son reached the site none of the persons or the said individuals could be traced. It is alleged that the said defendants again went to the plot and stated that they were its owners, relying upon the sale deed dated 18.3.1970 and sale agreement, power of attorney, Will etc. dated 24.3.1988. It is submitted that

copies of such documents were furnished to the plaintiff.

4. The plaintiff alleges that neither he nor anyone connected with the land or in occupation of it or having any manner of interest in it had executed the said documents relied on by the defendants; according to him, the Suit property is not described as 133/3 of Khasra No. 21 and does not measure 600 sq. yds., as described in the documents furnished by the defendants. The plaintiff alleges that the so-called documents dated 18.3.1970 do not reveal the dimension of the plot. It is submitted that the defendants' action amount to threat of interference with the plaintiff's ownership and possession of the land; consequently, the plaintiff seeks declaration and consequential relief of injunction, as also cancellation of the said documents.

5. The summons in the Suit were issued on 10.06.2005, returnable on 23.8.2005. The Court also directed the parties to maintain status-quo in respect of possession of the suit property. The defendants could not be served through the normal process; accordingly, the Court permitted substituted service through publication in the newspaper "Punjab Kesari" on 8.3.2006 as well as in English Newspaper "The Tribune" on 20.3.2006. The returnable date indicated in the publication was 3.4.2006. The defendants did not choose to appear in the proceedings and were accordingly set down *ex parte* by the Court on 7.7.2006. The plaintiff thereafter proceeded to lead evidence in support of the claim, in the suit.

6. The plaintiff's son Shri Lalit Aggarwal (also a legal representative, since the original plaintiff expired by then) deposed by way of an affidavit dated

1.3.2007. He tendered the affidavit in evidence before the Court on 8.5.2008; the affidavit was marked as Ex. PW-1/A. The plaintiff also relied upon documents, exhibited as Ex. PW-1/2 site plan filed along with the Suit; Ex. PW-1/3 photographs; Ex. PW-1/4 Form No.11, showing Khasra Girdawari extracts, and Ex. PW-1/5, report of Patwari recording demarcation of the suit property. It is contended that all these documents reveal that the plaintiff is joint owner and in settled position of the suit property. The plaintiff alleges that the defendants do not have any right, title or interest and cannot claim possession or any manner of rights in respect of the suit property, by virtue of the sale deed dated 18.3.1970 and agreement for sell, power of attorney, Will etc. dated 24.3.1988. Photocopies of those documents have been produced as Annexure C to E. The witness states that the plaintiff's property is not No.133/3, mentioned in the documents relied upon by the defendants.

7. The first of the two most important documents relied upon by the plaintiff in this case is Ex. PW-1/4, extracts of Khasra Girdawari, dated 2.6.2005. It records that the owner of khasra No. 263/134 (area being 0.3 bigha) and khasra No.264/164 (area being 1.13 bigha) is Narayan Singh, s/o Kallu; cultivator or occupant with rent is shown to be Puran, through Ramesh Chandra, Mahesh Chandra, Pisran and Smt. Laxmi Devi, Baba Bhartendu and Mustriya; in respect of Khasra No.264/134, it is Puran through Ramesh Chandra, Mahesh Chandra, Pisran and Smt. Laxmi Devi, half part, Ajay Narayan and Vinay.

8. The second vital document is Ex. PW-1/5 a demarcation report dated

17.8.1996. The demarcation refers to case No. D-59/96 in the village Zamrudpur and the original plaintiff Mahesh Chand, s/o Shri Bhartendu is recorded as a complainant who had claimed measurement. Apparently, there was a dispute between the plaintiff and one Vijay Gupta. Notice was also issued to owners or occupiers of the adjacent property including the Secretary of the Kailash Apartments Owners Association. According to the demarcation exercise, about 1-12½ biswa of khasra No. 263/134/3 was possessed by the plaintiff; the report also discloses that some 3 biswa was occupied, similarly, in another nearby Khasra Number.

9. The plaintiff seeks a declaration that he is owner of the suit property, which is in two parts. It is also stated that the suit land forms part of Kailash Colony, New Delhi and bounded by Kailash Apartments Group Housing Society in the West and North by Ajit Arcade, another Group Housing Colony. The second relief claimed is cancellation of the documents, which the plaintiffs state, as sale deed dated 18.3.1970 by the first defendant in favour of the second defendant and other documents dated 24.3.1988 such as General Power of Attorney, Agreement to Sell etc. Although the relief is claimed against the latter documents, the plaintiff has not produced any authentic or certified copy of the same. No attempt was made on his behalf all this while though the Suit has been pending on the file of this Court for four years. What has been produced are photocopies which the plaintiff vouches to be true copies.

10. Having regard to the nature of evidence, i.e., the lack of any authentic documents, which claim to confer property interest in favour of the plaintiff,

the Court is of the opinion that it would be too hazardous to examine their genuineness or correctness and pronounce upon it. The copies placed on the record clearly reveal that some of the documents are registered. In these circumstances, the Court deems it imprudent to consider granting the second relief of cancellation.

11. So far as the declaratory relief sought by the plaintiff is concerned, the suit is premised upon two documents, i.e., the demarcation report (Ex.PW-1/5) and the extract of Khasra Girdawari issued in June, 2005. The latter document records that one “Mahesh Chandra s/o Shri Bhartendu is cultivator of the land”. The photographs annexed along with the Suit and even the Khasra Girdawari clearly state that the site is an unauthorized colony. The plaintiff claims to be in “settled possession” of the lands and further states that they are ancestral. If that were the case, having regard to the dimension of the plot i.e.1184.4 sq. yds., surely the plaintiff would have been able to produce something more. It is well known that revenue records are not title documents and that courts do not rely upon them while deciding issues of ownership. Often revenue laws contain provisions that enjoin presumptive value of the entry made in the record; however, such presumption is only that such entries are made and the extracts in such entries having correctly shown in the certified copy issued for the purpose. They are never seen as vouchsafing veracity of the source reflecting the true position. It has thus been held in *State of Bihar v. Radha Krishna Singh* 1983 (3) SCC 118 that in the absence of the revenue records disclosing how and what manner of enquiry was conducted

before the entry was made, the Court will not accord it evidentiary value. The Court also concluded that such document is never to be treated as evidence of title. This view, i.e., the revenue records are not documents of title has also been affirmed in other decisions [refer *Corporation of City of Bangalore v. M. Papaiah* 1989 (3) SCC 612; *Guru Amarjit Singh v. Rattan Chand* 1993 (4) SCC 349; *Nagar Palika v. Jagat Singh* 1995 (3) SCC 426]]. There is one more dimension to the dispute. Apart from the two revenue documents, there is singular lack of evidence of any title to the property on the part of the plaintiff. Significantly, the plaintiff's consequential relief for cancellation is really in the alternative, i.e., in the event the Court finds that the defendants have some interest in the property. The main consequential relief is injunction against the defendants. Even for this relief, the mere reliance upon the demarcation report of the year 1996 and revenue entries, are, in the opinion of the Court are insufficient to establish entitlement. Here, the Suit is primarily for declaration with a consequential relief of injunction. The plaintiff's Suit is premised on ownership of the land and possession. The plaintiff has not proved ownership. The meagre evidence in support of the possession is, as observed, an old demarcation report and the khasra girdawari for 2005, which shows that unauthorized colonies exist. The most contemporaneous document does not show the plaintiff to be occupant, but only as a registered cultivator.

12. The plaintiff has not shown any other evidence such as property tax receipts or contemporary documents evidencing possession to establish the claim for injunction, based on possession. For these reasons, the relief of

injunction – even if it appears to be construed as an independent one, cannot be granted.

13. The Suit has to, for the above reasons, fail; it is accordingly dismissed without any order as to costs.

14. All the pending applications are also disposed of.

**S. RAVINDRA BHAT
(JUDGE)**

**AUGUST 24, 2009
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