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IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA(OS) 72/2008

Reserved on: July 23, 2009
Pronounced on: 31st July, 2009

SMT.BARFO DEVI (DECD.) THR. LR (DECD.) THR. LR Appellant
Through Mr.Vipin K. Singh, Advocate.

versus

D.D.A. Respondent
Through Mr. Gaurav Sarin, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE V.K. JAIN

**1. Whether Reporters of Local newspapers 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

V.K.Jain, J.

RFA (OS) 72/2008

1. This is an Appeal against the judgment dated 8.5.2008, whereby CS(OS) No.1589/2007, filed by the Appellant, was dismissed on the grounds that it was time barred, the Plaintiff/Appellant was not in possession of the suit land, and she had filed this suit to initiate proxy litigation for others who were in occupation of the land and, therefore, she had not come to the Court with clean hands.

2. The Plaintiff/Appellant filed a suit for permanent injunction claiming to be in possession of land comprising Khasra No.843/5 admeasuring 2 bighas in Village Mahipalpur. According to her, the suit land was given to her by Gaon Sabha, initially for a period of five years with effect from 26.7.1997. The lease was further extended for a term of five years. The lease was not extended thereafter. The Plaintiff/Appellant claims that she continued in possession and became an Aasami of Gaon Sabha and the property was in her peaceful possession and occupation since then. The proceedings were initiated under Section 86A of Delhi Land Reforms Act, against the son of the Plaintiff/Appellant, in which ejectment Order came to be passed by Revenue Assistant on 6.10.1997. In a Revision Petition filed by the Plaintiff/Appellant before the Financial Commissioner, the matter was remanded back to the Revenue Assistant, who passed a fresh order under Section 86A of Delhi Land Reforms Act on 11.4.2007. A Revision Petition was filed by the son of the Plaintiff/Appellant against the ejectment Order dated 11.4.2007 which was dismissed by the Financial Commissioner on 24.8.2007. The suit was thereafter filed claiming that some officials of the Defendant had come to the suit land and informed the Plaintiff/Appellant that the land belongs to them, being Government land, and they had to carve out a road through the same.

3. The Defendant filed Written Statement contesting the suit and alleged that the Plaintiff had sold some portions of the suit land, totaling an area of about 700 sq. yards, over which construction has been raised by the occupants, whereas the remaining portions are lying vacant. It was further alleged that land in question came to be vested in the Government by virtue of Section 150(3)(A) of Delhi Land Reforms Act and in exercise of the powers conferred upon it by Section 22(1) of Delhi Development Act, the Central Government, acting through the Lieutenant Governor of Delhi, had placed the same at the disposal of DDA. It has also been stated in the Written Statement that Khasra No.843/5 is coming under the alignment of 30 metre proposed road from NH-8 to Mehrauli Mahipalpur road.

4. A suit for perpetual injunction is governed by Article 113 of Limitation Act and, therefore, the prescribed period of limitation is three years from the date when the right to sue accrued. For the right to sue to accrue, the right sought to be vindicated in the suit should have already come into existence and there should be an infringement of it or at least a threat to infringe the same. It implies that the Plaintiff has a substantive and exclusive right claimed by him/her and there is an invasion or a threat of invasion of that right. When the right to sue accrues, depends to a larger extent, on the facts and circumstances of a particular case, keeping in view the relief

sought in that case. Generally the right to sue accrues, when right arises to prosecute to obtain relief by legal means.

5. It is an admitted case that the proceedings against Shri Davinder Singh, son of the deceased Appellant, under Section 86A of Delhi Land Reforms Act, for his ejectment were initiated in the year 1994. The proceedings resulted in an ejectment Order being passed by the Revenue Assistant on 6.10.1997. A perusal of the Order dated 11.4.2007 passed by the Revenue Assistant as well as the Order passed by the Financial Commissioner on 24.8.2007 clearly shows that Gaon Sabha had claimed before the Revenue Court that neither the deceased Appellant nor her son had any right in the suit land, as the land in question was never allotted as per the prescribed procedure, since no resolution was passed and no approval was taken and that they had encroached upon the land immediately prior to initiation of the ejectment proceedings. It is, therefore, obvious that Gaon Sabha had consistently been denying the status claimed by the Appellant and had been insisting that she as well as her son were trespassers. Therefore, as soon as the proceedings for ejectment of the son of the deceased Appellant were initiated before the Revenue Assistant and the plea taken by him was contested by Gaon Sabha by denying the status claimed by him and taking the stand that no proper lease deed had been executed so as to confer status of an Aasami on him/his mother, the Appellant came to know that their right to

continue in occupation of the suit land was being disputed. Therefore, right to sue accrued to her at that time to seek injunction against her dispossession. In any case, as soon as ejectment Order was passed by the Revenue Assistant, the deceased Appellant came to know that she was liable to be ejected from the land in question in execution of the Order passed by the Revenue Assistant. Therefore, even if a liberal view is taken, the right to sue accrued to the Appellant on passing of first ejectment Order dated 6.10.1997. This is not the case of the Appellant that she was unaware the Order of the ejectment passed by the Revenue Assistant. In fact, it was the Appellant who filed a Revision Petition before the Financial Commissioner being case No.266/1997 CA on 10.10.1997, challenging the Order passed by the Revenue Assistant on 6.10.1997 ordering ejectment of her son Shri Devender Singh, on the ground that he had encroached the Gaon Sabha land.

6. It is true that the order passed by the Revenue Assistant on 6.10.1997 was set aside by the Financial Commissioner on 27.3.1998 and a fresh order of ejectment came to be passed on 11.4.2007. That, however, would not give a fresh starting point of limitation to the Appellant, as far as the relief of injunction is concerned. Once Gaon Sabha denied the claim of the Appellant and took the stand that she/her son had encroached upon Gaon Sabha land, period of limitation started running, as far as the relief of

injunction is concerned. Therefore, she was required to file the suit within three years from the date of ejectment Order dated 6.10.1997.

7. It was contended by learned counsel for the Appellant that Rule 170 of Delhi Land Reforms Act, 1954 gives right to the Appellant to institute a suit to establish the right claimed by her when an order of ejectment is passed and, therefore, she could have filed the suit within three years from the date of passing of ejectment order dated 11.4.2007. Even if we assume, as is contended by learned counsel for the Appellant, that the right to file the suit, granted under Rule 170(6) of Delhi Land Reforms Rules arises only when the Order dated 11.4.2007 was passed and not when the first ejectment order was passed on 6.10.1997, that would be of no help to the Appellant, as, in our opinion, the suit envisaged under Rule 170(6) of Delhi Land Reforms Rules is a title suit for declaration of the right claimed by the aggrieved party and not a suit for grant of injunction on apprehension of invasion of the right claimed by her. This suit not being a title suit, it cannot be said that the suit filed by the Plaintiff/Appellant was not barred by limitation.

8. There is yet another reason, we would not like to interfere with the Order passed by the learned Single Judge. Emanating from equity jurisdiction, injunction is a discretionary relief. This is made amply clear also by Section 38 of Specific Relief Act which specifically provides that a perpetual injunction may be granted to the plaintiff.

The Court is not bound to grant injunction merely because it is lawful to do so. Even if the plaintiff is able to make out violation of an alleged right, the Court may still refuse to protect him, if it is satisfied that looking into his conduct, it will not be equitable to exercise the discretion in his favour. No doubt, discretion when applied to a Court of Law, is to be based on sound principles of law and cannot be exercised in an arbitrary manner and must be governed by Rules. The discretion has to be exercised in such a manner that the Judge has satisfaction not only of having decided a case according to law but also of having delivered justice to the parties. The conduct of a party seeking injunction is an important factor to be taken into consideration by the Court while exercising its discretion in a matter. The Court relies upon the pleadings set out and documents filed before it, in forming the requisite opinion and, therefore, it naturally expects the injunction seeker to disclose all the material and relevant facts which would enable the Court to form a correct opinion and exercise a sound judicial discretion. If a material fact having bearing on the matter in controversy, which was in the knowledge of the plaintiff has been withheld, he would be disentitled to grant of injunction in his favour. The Court would then rather not enter into merits of the case and may deny relief to him on this ground alone. The plaintiff in an injunction suit must come to the court with clean

hands and do nothing which is not expected from an honest, upright and deserving litigant.

9. Admittedly, the Revision Petition filed by the Appellant on 27.3.1998 against the Order of the Revenue Assistant dated 11.4.2007 was dismissed by the Financial Commissioner vide Order dated 24.8.2007. A perusal of the Plaint would show that though it purports to be typed on 24.8.2007, the date on which the Order was passed by the Financial Commissioner, the suit was actually filed, for the first time, on 25.8.2007. In fact the Affidavit of Attorney of the Appellant has been sworn only on 27.8.2007. The Order passed by the Financial Commissioner on 24.8.2007 has not been disclosed in the Plaint. This is not the case of the Appellant, in the Replication filed by her, that though the Order was passed on 24.8.2007, it came to her knowledge only after filing of the suit. The plea taken by her in the Replication is that the Order itself was passed by the Financial Commissioner during the pendency of the Suit. This plea is patently incorrect as is evident from the date of the Order itself. It appears to us that the Plaintiff/Appellant did not want to disclose the fact that the Revision Petition, filed by her against the Order passed by the Revenue Assistant dated 11.4.2007 had been dismissed on 24.8.2007. In fact, filing of the suit on 25.8.2007 by itself indicates that when the Plaintiff/Appellant could not get any relief from the Financial Commissioner and her Revision Petition was dismissed on 24.8.2007,

she filed this suit on 25.8.2007, though the date of preparation of the Plaint was shown as 24.8.2007. This view stands fortified from the fact that the Appellant affixed stamp paper of Rs.3/- only on the plaint and bulk of the Court Fee was purchased only on 30.8.2007.

10. We are, therefore, of the view that while filing this suit, the Plaintiff/Appellant concealed a material fact which was very much in her knowledge at the time of filing the suit. Taking the conduct of Plaintiff/Appellant into consideration, we feel that she has not come to the Court with clean hands as she has not disclosed all the material facts and, therefore, is not entitled to discretionary and equitable relief of injunction.

11. One more reason we can not grant injunction to the Appellant is availability of an equally efficacious remedy to her. Section 185 of Delhi Land Reforms Act read with its Schedule, provides an Appeal to the Deputy Commissioner against the ejectment Order passed by the Revenue Assistant under Section 86A of the Act. Section 41(h) of Specific Relief Act provides that an injunction cannot be granted, when equally efficacious relief can certainly be obtained by any other usual mode of proceedings except in case of breach of trust. The availability of an effective remedy, in a different forum, takes away the right of injunction. Admittedly, the Appellant did not file any Appeal against the Order dated 11.4.2007 passed by the Revenue Assistant though she challenged it by filing a Revision

Petition before the Financial Commissioner. Since the remedy of the Appeal was still open to the Appellant even after dismissal of the Revision Petition filed by her, she should have availed that remedy instead of rushing to the Civil Court.

For the reason given in the preceding paragraphs, we find no merit in the Appeal and same is hereby dismissed.

(V.K. JAIN)
JUDGE

(VIKRAMAJIT SEN)
JUDGE

July 31, 2009.
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