

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

Date of Reserve: 21.10.2009
Date of Order: October 23, 2009

CS(OS) No. 1877/2009

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23.10.2009

Talat Parveen Naqvi

... Plaintiff

Through: Mr. P.K.Duggal, Advocate &
Mr. Sanjay Bhasin, Advocate

Versus

Delhi Development Authority & Anr.

... Defendants

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

This suit has been filed by the plaintiff for perpetual injunction wherein plaintiff has claimed to be the owner and in possession of land falling in khasra nos. 64, 65, 66, 101, 102 & 103 (min) situated in the Revenue Estate of Village Kotla, Delhi. She stated she was in possession of land falling in khasra no. 103 (min) measuring 3000 sq. yards a built up property and was in continuous use occupation of plaintiff ever since she acquired rights from her predecessor viz. Shri Hari Ram Mittal vide Probate proceedings in respect of Will executed by him. She submitted that a squad of the defendant no.1 came to the premises on 17.3.2009 and started demolishing the premises citing the same as a recent unauthorized construction. The squad threatened to take possession of the land in case the materials belonging to plaintiff were not removed. She submitted

that the defendant's squad was inimical towards the plaintiff on account of religious bias and had to leave the place because of the intervention of the local police but they went away renewing the threat to come back again to accomplish their illegal designs. She stated that the action of the defendant in part demolishing the property and the threat was illegal as defendant had no right, title or interest over the property and the plaintiff was never issued a show-cause notice. The area under occupation of plaintiff was an urbanized village and was an unauthorized colony which has been given provisional recognition. Thus, defendant no.1 had no right to interfere in the possession of plaintiff as the area had already been transferred to defendant no.2 i.e. MCD and the policy statement was issued by the authorities that urbanized villages in Delhi would be transferred to control and administration of defendant no.2. It is stated that vide notification dated 19.5.1987 the area in question was transferred from defendant no.1 to defendant no.2 and therefore defendant no.1 had no right to take demolition action. A prayer has been made that the Court should issue a perpetual injunction in favour of plaintiff and against defendant no.1 restraining defendant no.1 from forcibly evicting, dispossessing or causing any interference in use, enjoyment and possession of the plaintiff in respect of khasra no.103 (min), Revenue Estate of Village Kotla, Delhi.

2. The site plan filed by the plaintiff shows that the entire area as open land or part demolished land. No existence of structure can be made out from the site plan. In the site plan a gate has been shown and on both sides of the gate demolished portion has been marked. Right through the gate, a passage has been shown going upto end of a piece of land and along the passage some trees, open areas and demolished portion has been shown. On one side of the passage, a Charitable Medical Centre has been

written however, no structure plan of such Charitable Medical Centre is there. The other documents filed by the plaintiff describe the land as agricultural land. The khasra Girdawari entries only show what was sown in the land and when it was sown. Khasra Girdawari does not show existence of any structure on the land. Even the Will filed by the plaintiff, under which the plaintiff has claimed ownership, records that it was about a vacant piece of land. The Will does not state that there was a khasra no. 103(min). Will relied on is of one Mr. Hari Ram Mittal and in this Will he has stated that he was owner of vacant land lying in khasra nos. 64, 65, 66, 101, 102, 103, 104 & 105 of Village Kotla. Out of this land a part of the land belonging to him had been acquired and he authorized plaintiff, by way of a power attorney, to collect compensation in respect of acquired properties. He further stated that after his death the aforesaid (un-acquired) properties shall be absolutely of the plaintiff. It is nowhere stated in the Will what were the acquired portions and what were the un-acquired portions.

3. The plaintiff obtained Probate of this Will in her favour. It is settled law that Probate Court only determines genuineness of the Will. Grant of Probate does not confer any title on the person in whosoever favour Probate is granted. A person is free to make Will in respect of any property, whether he owns it or not. A person can make Will in respect of his neighbor's properties or any government land. There is no bar on making Will by a person of President's House or Red Fort. Merely because Will is a genuine Will neither the President's House nor the Red Fort would be owned by the legatee. The title of the property in favour of the legator has to be established independent of the Will, before legatee can claim any right under a Will.

4. The plaintiff has also failed to place on record the award by which part of the properties was acquired. The other documents placed by the plaintiff on record are house-tax receipt, electricity bill, water bill. In none of the documents, the description of property is given as khasra no.103 (min). It is obvious that the plaintiff has failed to show any title over the land nor the plaintiff has shown if any construction at any point of time existed on the vacant land, which she allegedly inherited.

5. I consider that no injunction can be granted by the Court in a suit where plaintiff has failed to show even prima facie that there was a structure existing on the property which the plaintiff allegedly owned. I also find that the allegations made by the plaintiff against defendant of religious bias are unfounded and contumacious allegations. Defendant no.1 is a statutory authority and such pleadings of unfounded allegations of religious bias must be scored off by the court. I find no merits in this suit. The suit is hereby dismissed being not maintainable.

October 23, 2009
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SHIV NARAYAN DHINGRA, J.