

S-5B

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

% *Judgment Reserved on: 20.12.2010*
Judgment Delivered on: 22.12.2010

+ **RSA No.105/2007 & CM Nos.5044-5045/2007**

SHRI RAM HER & ORS. Appellants
Through: Mr.M.R.Chawla & Mr.N.Vinoba
Bhoopathy, Advocates

Versus

SHRI RAM CHANDER & ORS Respondents
Through: Mr.Ashok Sethi and Mr. S.K.Jain,
Advocates

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. This present appeal has impugned the judgment and decree dated 08.7.2005 whereby the suit of the plaintiff Ram Chander & Ors. seeking permanent injunction had been dismissed. Vide the impugned judgment and decree dated 23.3.2007 the judgment and decree of the trial judge had been reversed; suit of the plaintiff stood decreed.

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2. Briefly stated the factual matrix is as follows:
- i. Plaintiffs (five in number) claimed to be owners of a plot in Khasra No.98, Lal Dora in the extended Lal Dora of Village Samaspur , Khalsa Delhi 1/4th share was owned by plaintiffs no.1 to 4 and 1/4th share was owned by plaintiff no.5. This was in terms of a khatoni dated 19.12.1994.
 - ii. Defendants were stated to be powerful musclemen having an evil design over the property of the plaintiffs. On 18.1.1995 they threatened the plaintiff. Suit for permanent injunction was accordingly filed.
 - iii. Defendant contested the suit. It was stated the suit is not maintainable. It was stated that out of 1600 sq. yards (1 Bigha and 12 Biswas) comprised in the Khasra No.98 of which the plaintiffs claimed 800 sq. yards was actually in their possession. The present suit is a malafide garb to grab the property of the defendant on which the plaintiffs have no right or title.
 - iv. Trial judge had framed the following five issues; they inter alia read as follows:
 - “1. Whether plaintiffs are entitled to the relief of permanent injunction as sought for? OPP
 2. Whether the present suit is not maintainable in view of the fact that defendants are owners and in possession of the suit property? OPD

3. Whether there is no cause of action for filing the present suit? OPD

4. Whether the present suit is bad on account of mis-joinder and non-joinder of necessary parties? OPD

5. Relief.”

v. Plaintiff has examined three witnesses of whom PW-2 was the Patwari. Defendant had examined six witnesses. Trial Judge held that entries relied upon by the plaintiffs in the revenue record were most likely wrong entries; there was no occasion for the plaintiff to get extra land in the Consolidation Proceedings then what they possessed earlier. The suit was dismissed.

vi. In appeal vide impugned judgment the findings of the trial judge were reversed. The impugned judgment had called for the record of the Consolidation Officer; relying upon the certified copy of the said record coupled with the documentary evidence i.e. the site plan (proved as Ex.PW-1/1) khatoni entries for the year 1991 evidencing the name of the plaintiff in the said revenue record (proved as Ex.PW-2/1) had decreed the suit of the plaintiff.

3. This is a second appeal. It was admitted on 07.7.2009; the following substantial questions of law (contained in page 13 of the memo of appeal) were framed:

- “i. Whether the first appellate court had the jurisdiction under the Land Reforms Act to declare the title of the respondents?
- ii. Whether the Id.Trial Court had the jurisdiction to declare the title of the respondents/plaintiffs which was neither claimed in the plaint nor in the Ground of appeal?
- iii. Whether the learned trial court had jurisdiction to decide the title on the basis of the alleged Revenue Entries.”

Thereafter the following additional substantial question of law had been formulated:

“Whether the impugned judgment dated 23.3.2007 relying upon the Consolidation Proceedings could be read in evidence when the said proceedings saw the light of the day for the first time before the first Appellate Court? If so, its effect?”

4. On behalf of the appellant arguments have been addressed at length. It is pointed out that the findings in the impugned judgment are an illegality; they are perverse and liable to be set aside. Attention has been drawn to the order of the Appellate Court dated 24.1.2006 and the subsequent order dated 22.12.2006. It is pointed out that the certified copy of the record of the Consolidation Officer had been taken on record by the Appellate Court without examining the person who had produced the record from the Consolidation Department. What was the record was not detailed; no opportunity to cross-examine or examine this record has been granted to the appellant/defendant. It is pointed out that even as per the case of the plaintiffs, it was in the Consolidation Proceedings

which has culminated in the year 1972 when the plaintiffs had allegedly acquired right and title in the suit property; he is, however, relying upon khatoni entries of the year 1991 i.e. after a lapse of more than 17 years thereby establishing that this record was fabricated and manipulated. It is pointed out that the father of the plaintiff was probably alive in 1972 when the Consolidation Proceedings had taken place and not the plaintiffs themselves; they could not have deposed qua that period. The provisions of Section 41 of Delhi Land Revenue Act, 1954 on which the impugned judgment had placed reliance have been misunderstood and misread; there has been no compliance of the said provision. Attention has been drawn to para 11 of the impugned judgment where the Court had returned a finding that the entries in the khatoni are conclusive on ownership and possession. It is submitted that this finding is perverse and liable to be set aside. Reliance has been placed upon (1996) 6 SCC 223 *Swarni Vs. Inder Kaur* (2003) 10 SCC 352 *Dalip Singh & Ors. Vs. Sikh Gurdwara Prabbandak Committee* (2004) 12 SCC 58 *Suman Verma Vs. Union of India & Ors.* to substantiate his submission that entries in the revenue record do not establish title or ownership. It is submitted that even otherwise the jurisdiction of the Civil Court was barred qua the present proceedings; a suit relating to entries if the revenue record

could not be agitated before a Civil Court; for this proposition reliance has been placed upon (1995) 4 SCC 496 Vidya Devi Vs. Prem Prakash & Ors. , 1970 (2) SCC 841 Hatti Vs. Sunder Singh as also another judgment of (2007) 4 SCC 213 Kamla Prasad & Ors. Vs. Kishna Kant Pathak & Ors. It is pointed out that the impugned judgment could not have reversed the findings of the Trial Court without assigning sufficient and cogent reasons; which has not been done so in the instant case and for this proposition reliance has been placed upon (2007) 4 SCC 163 Chintamani Ammal Vs. Nandagopal Gounder and Anr. It is submitted that a judgment which has been obtained by fraud is a nullity; in this case, the plaintiff had relied upon the entries in the khatoni which were fabricated. To support this proposition reliance has been placed upon (2007) 4 SCC 221 A.V. Papayya Sastry & Ors. Vs. Govt. of A.P. & Ors. It is pointed out that the present suit was a suit for injunction simpliciter; question of title could not have been gone into on which the impugned judgment had incorrectly returned a finding. The findings being perverse are liable to be set aside.

5. Arguments have been countered. It is pointed out that the Consolidation Proceedings had been completed in the year 1972; there is a provision under The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948

(hereinafter referred to as 'the Act') to file an appeal within a stipulated period; this provision had not been adhered to by the appellants/defendants; they had given up all their rights. They have not disputed the record of the Consolidation Proceedings; only defence being that the entries were incorrectly recorded; yet the appellant did not take any action against the said record. The impugned judgment has not recorded any finding on title or ownership; the suit was merely for injunction as the plaintiff was confident about his ownership and possession qua the suit property. Reliance has been placed upon (1996) 3 SCR 617 Abdul Waheed Vs. Bhawani to support a submission that entries in the register of rights is a presumptive piece of evidence and is presumed to be correct until the contrary is proved. In this case, the Consolidation Record and the khatoni evidenced a presumption in favour of the plaintiff of ownership and possession which the defendant had failed to rebut. For the same proposal reliance has been placed upon AIR 1976 SC 2299 M.Kallappa Setty Vs. M.V. Lakshminarayan Rao. It is submitted that the impugned judgment calls for no interference.

6. Perusal of the record shows that in 1972 Consolidation Proceedings had taken place qua the suit land. Prior to the Consolidation Proceedings khasra No.228 (earlier khasra number) comprised of 1 bigha 14 biswas; thereafter after the

Consolidation Proceedings the land forming part of khasra No.98 (new number) compromised of 1 bigha 12 biswas. The record of the Jamabandi for the year 1962-63, 1964-65 were all prior to the Consolidation Proceedings where the title of the defendants was evident; however, the record shows that there is not a single document brought by the defendants/appellant before the Courts below evidencing their title or claim to the suit land after the Consolidation.

7. The said Act was extended to the Union Territory of Delhi vide a Government Notification of the Ministry of Home Affairs dated 18.12.1951. The object of the Act is to provide for the compulsory consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings and for the assignment or reservation of land for common purposes of the village. A reading of the various provisions of the said Act shows that the persons who were in possession of certain land, either as tenants or mortgagees or owners or otherwise were entitled to allotment of that land in the same capacity after the consolidation. According to this scheme of this Consolidation the entire land of the village had been brought under the common pool. The plaintiff was thereafter allotted the land comprised in khasra No.98 along with another co-sharer. Section 14 declares the intention of the Government to make a

scheme for the consolidation of holdings publication has to be effected for the said purpose and a Consolidation Officer is appointed who shall prepare scheme of consolidation of holdings after advice of the land owners of the concerned estate. The scheme also provides for payment of compensation to any owner who is allotted any holding of less market value than that of his original holdings and vice-a-versa. Darft Scheme published and persons likely to be affected by the scheme are permitted to file objections within 30 days. Scheme is confirmed only thereafter and repartition is then carried in accordance with the scheme of consolidation which has to be then confirmed under Section 20 of the said Act. At this stage as well a person aggrieved by the repartition may file written objections within 15 days. Persons aggrieved with the order of the Consolidation Officer can file an appeal before the Settlement Officer; thereafter to the Chief Commissioner and the Appellate Authority may entertain the appeals even after the expiry of the period of limitation if sufficient cause is shown for the said purpose. Under Section 22 of the said Act, the record of rights is prepared and if there is no objection the parties are permitted to enter into possession forthwith.

8. Admittedly in this case, the Consolidation proceedings had been completed in the year 1972-73; no appeal had been

filed by the defendant under Section 21 of the Act. Contention of the defendants is that they were not aware of the wrong entries in the khatoni till the present suit was filed; he had thereafter filed an application under Section 43A of the said Act; contention being that the consolidation record had incorrectly not mentioned the name of the defendants. This application had been dismissed on 26.3.1996 vide a speaking order. The Consolidation Officer had held that the record being very old it had been consigned to record room; the proceedings had long since culminated; the application under Section 43 A was accordingly dismissed. Admittedly the defendants had not taken any remedy or recourse to any legal proceedings after the order dated 26.3.1996.

9. The impugned judgment has correctly noted that the defendants were trying to confuse the Court by setting up a plea of their title to the suit land which was prior in time to the Consolidation Proceedings. Once the Consolidation Proceedings had culminated in the year 1972-73 all records prior thereto were irrelevant; there was not a single document produced on record by the defendants to show that they were in possession of the suit land after the consolidation had been effected.

10. The plaintiff had filed a suit for permanent injunction. To support his case they has produced the Patwari who had been

examined as PW-2. He had proved Ex.PW-2/1 which was the khatoni for the year 1990-91 evidencing the possession of the plaintiff in the suit land i.e. the half of khasra No.98. In his cross-examination he had admitted that he had not brought the record of the consolidation officer as the same had not been summoned. Pw-3 was a neighbour; he was the owner of the half share in khasra No.98 of Village Samaspur. He had certified that the consolidation proceedings had taken place in 1972 and khasra No.98 was partitioned; all allottees were in possession of their properties. PW-1 was the plaintiff himself. In defence the defendants/appellants had brought five witnesses. DW-1 Satbir Was defendant no.4. In his cross-examination he had admitted that the disputed khasra No.98 was never allotted to him after the consolidation. DW-4 had produced the khatoni for the year 1964-65. DW-5 had produced the summoned record who had deposed that pre-consolidation suit land comprised in khasra no.98 which was the new khasra; old khasra was khasra No.288; the pre-consolidation land comprised in khasra No.228 was 2 bighas 14 biswas and after consolidation khasra no.98 was comprised of 1 bigha 12 biswas. In his cross-examination he had admitted that the consolidation of the residential plots was made on the basis of the demand made by the respective individuals.

11. Ex.PW-1/1 was the site plan filed by the plaintiff/respondent. The plot in question was bounded by two gallies on two sides of the property; on one side was the house of Subh Ram and Balram sons of Kanwar Lal; their names have been depicted in Ex.PW-1/1. PW-3 came into witness box and had deposed to the said effect. It is pointed out by learned counsel for the respondents that the name of Subh Ram was wrongly hand written as Shri Singh Singh but correctly noted as son of Kanwar Lal. This submission is not disputed by learned counsel for the appellant as is also evident from the signature of PW-3 wherein he had signed his deposition in hindi as Subh Ram. Ex.PW-1/1 is the correct site plan depicting the identity of the suit property.

12. This oral and documentary evidence had been adverted to into the impugned judgment. The present suit had not decided the question of title; the documents adduced by the plaintiff had prima facie proved his possession in the suit property entitling him to a decree of permanent injunction. There was no bar to such a suit under Section 185 of the Delhi Land Reforms Act, 1954. Defendant per contra had only produced record prior to consolidation whereas the documents of the plaintiff which was the khatoni for the year 1990-91; his site plan Ex.PW-1/1 and the certified copy of the Consolidation Officer's order dated

26.3.1996 Ex.Pw-1/2 evidenced the fact that consolidation of the disputed land had taken place as way back as in the year 1972. The defendant in his written statement had not disputed that the consolidation had not taken place; only defence being that the entries were wrongly made by the Revenue Authority. No action or legal recourse was resorted to as was provided for in the Act. On 26.3.1996, the application of the defendant under Section 43A i.e. for correction in the revenue record was dismissed; even thereafter no recourse or remedy was availed of by the defendant.

13. There is no dispute to the proposition that entries in the khatoni do not per se establish ownership. This is a relevant piece of evidence which the court can look into and which the court had rightly done so in decreeing the suit for permanent injunction in favour of the plaintiff. Title was not the question before the trial judge and no such issue was also framed in this regard. Para 17 of the impugned judgment which has been highlighted by learned counsel for the appellant has only recorded that the khatoni was a record of rights and was admissible as evidence under the provisions of Section 41 of the said Act; there was a presumption in favour of the person producing that document which was a rebuttable presumption but the defendant/appellant had failed to rebut this

presumption. In these circumstances, Section 41 of the said Act had been relied upon in favour of the plaintiff. This is a statutory provision and there is no fault in the impugned judgment qua this proposition.

14. The contention of the defendant always was that he was in physical possession of the suit property. He had in fact filed an application under order 26 Rule 9 of the Code seeking appointment of a local commissioner to verify the factum of possession. This application was dismissed by a speaking order on 03.9.1996. No revision or appeal was filed against the said order that order had attained finality. Plaintiff was claiming right over the suit land which he averred was owned by him and was in his possession. Defendant did not lead any evidence to subvert that proposition. The judgments relied upon by the learned counsel for the appellant in this scenario does not come to his aid.

15. The orders dated 24.01.2006 and 22.12.2006 of the first Appellate Court clearly show that it was with the consent of the parties that the record of the Consolidation Officer had been requisitioned. Further perusal of the record shows that at no point did the appellant/defendant ever contended that he wished to cross check the said record; it was never his case before the Courts below that the record of the Consolidation Officer which

was summoned from the Tis Hazari Courts (as is evident from the summons appended in the file) was manipulated or not correct. In this back ground the first Appellate Court had rightly relied upon the said record to arrive at the correct findings.

16. There is no fault in the finding in the impugned judgment. Substantial questions of law are answered accordingly. Appeal as also the pending applications are dismissed.

INDERMEET KAUR, J.

DECEMBER 22, 2010
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