

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RSA 5/2010

Date of Decision: January 29, 2010

MISHRI LAL

..... Appellant
Through: Mr. Shailendra Singh, Adv. with
Ms. Madhumita Singh, Adv.

versus

VISHWANATH

..... Respondent
Through: Mr. Pradeep Diwan, Adv.

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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)

Caveat No.3/2010

Mr. Pradeep Diwan appearing for the caveator has submitted that he had informed his client/respondent about the filing of this appeal on receipt of the advance notice but he has not received any instructions from the

respondent so far. Caveat stands disposed of.

RSA 5/2010

1. Plaintiff Vishwanath (Respondent herein) filed a suit for possession against Defendant Mishri Lal (Appellant herein) in respect of Property No.8/238, measuring 25 sq. yds., Khichari Pur, Delhi claiming himself to be the owner/allottee of the said plot which he got in lieu of demolition of J.J. Colony, Mandir Marg, Gole Market (Dhobi Ghar No.2), New Delhi. He raised construction on the said plot from his own resources. He allowed the defendant to stay with him for a temporary period. After few years, when plaintiff was out of India and his wife along with children shifted to 10, Devi Prashad Sadan, Hailey Lane, Bara Khamba Road, New Delhi, defendant occupied the entire plot and thereafter he failed to hand over vacant possession despite repeated requests.
2. Defendant took a preliminary objection that plaintiff had no locus standi to file the suit as the property belonged to DDA. Allotment in favour of the plaintiff has been determined/cancelled by the DDA on 17.09.1985. Defendant claimed himself to be occupier of the plot, which according to him was lying vacant and he raised construction on it and is paying damages under Section 7 of the Public Premises

(Eviction of Unauthorised Occupant) Act, 1971 (hereinafter referred to as 'PP Act'). Defendant also alleged that the suit premises are public premises within the meaning of Section 2 (e) (3) (ii) of the PP Act and by virtue of Section 15 of the PP Act the Civil Court has no jurisdiction to entertain the suit. He also asserted that DDA was a necessary party.

3. The trial court after assessing evidence of the parties adduced on record and considering the submissions made by their respective counsel was pleased to dismiss the suit vide judgment and decree dated 16.02.2002.
4. Plaintiff challenged the judgment and decree of the trial court in appeal being RCA No.101/2002.
5. The Appellate Court vide its judgment and decree dated 9.09.2009 accepted the appeal and set aside the judgment and decree of the trial court. The Appellate Court granted following relief to the plaintiff:-

“16. Relief: In view of the above observations appeal stands accepted with cost. Accordingly suit for possession of the plaintiff is decreed in his favour and a decree of possession qua suit property

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no. 8/238 Khicharipur, Delhi is hereby passed in favour of the plaintiff and against the defendant. Two months time is granted to the defendant to vacate the premises in question and hand over the peaceful and vacant possession of the same to the plaintiff. Decree sheet be prepared. Trial Court record be sent back alongwith Copy of this judgment. Appeal file be consigned to record room."

6. Hence, this second appeal.
7. Mr. Shailendra Singh Advocate, learned counsel for the appellant has submitted that after termination of the licence of the plaintiff by DDA, plaintiff became an unauthorized occupant of the same. Therefore, being unauthorized occupant, he is not entitled to a decree for possession as granted by the Appellate Court. He has further submitted that the property in suit is governed by Public Premises Act and defendant has been paying licence fee under the said Act and therefore, he has acquired a right to remain in occupation of the property so long his licence is not revoked and/or he is not evicted from its occupation in accordance with law or otherwise.
8. It is not disputed that suit plot was allotted to the plaintiff by DDA in

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lieu of demolition of J.J. Colony, Mandir Marg, Gole Market (Dhobi Ghar No.2), New Delhi. Defendant is in possession of the suit premises. Allotment of the plaintiff was cancelled by the DDA on 17.09.1985 on the grounds the plaintiff was not using the plot and the defendant was found in its occupation. This dispute, therefore was narrowed down to the issue, if defendant was a trespasser in the suit premises or was in occupation of the same as a permissive user of the plaintiff.

9. From the admitted facts, it is clear that it was the plaintiff who was allottee and in possession of the plot in suit. According to the plaintiff, he had permitted the defendant to reside with him in the said house and after he left for Dubai and his family shifted to other premises, defendant took possession of the entire property. Whereas, according to the defendant, he occupied the vacant plot and raised constructions on the same. He has disputed that he was inducted in the premises by the plaintiff. Be that as it may, as discussed above, it is clear that it was the plaintiff who was allottee of this plot by DDA in lieu of demolition of J.J. Colony, Mandir Marg, Gole Market (Dhobi Ghar No.2), New Delhi. Therefore, under all circumstances, the defendant remained unauthorized occupant of the suit property.

The nature of possession of the defendant in the suit property in no manner changed its feature when the allotment of the plaintiff was cancelled by the DDA on finding defendant in occupation of the suit property as plaintiff had no right to create third party interest in the same.

10. Under these circumstances, plaintiff being the allottee of the plot, even if allotment was cancelled but DDA did not take possession of the suit property, had every right to file a suit for possession against the defendant. Defendant, undisputedly has not claimed better title than that of the plaintiff.
11. Appellate Court relied upon '*State of U.P. vs. Lucknow Development Authority, AIR 1999 Supreme Court 997*', wherein it was held:-

“ A lessor, with the best of title, has no right to resume possession extra judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise”

12. The court below concluded that once plaintiff had established the allotment of the premises in his favour even if he ceased to hold the

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said allotment after cancellation, had every right to take back possession once it was established that he had handed over the possession of the property to the defendant for use. Finding of facts, under the circumstances of the case, that defendant was in occupation of the property as permissive user, cannot be questioned by the appellant in the present appeal by giving format of substantial question of law. The trial Court has analysed evidence and submission of the parties in the following manner:-

“.... Ld. Trial Court has observed that plaintiff's title in the suit premises has ceased to exist since the date of cancellation of the allotment. The said observation is correct as far as title is concerned but cannot be correct as far as possession is concerned. If the plaintiff establishes that he had handed over the possession to the defendant then he has further right to take back the possession. The defendant cannot be permitted to say that Ex.DW-5/a and DW-5/2 has been executed in his favour hence he has right to protect the possession because DDA could not have written these letters without taking back the possession from the plaintiff. The possession of the defendant even on the date of inspection was not lawful qua DDA and DDA could not have allotted the land to a trespasser and if defendant was in permissive possession from the plaintiff then the plaintiff will be deemed to be in constructive possession and the argument of defendant that he was found in

possession will not clothe him with any right, title or interest. The defendant had to tell clearly as to what was his status. In the WS he has simply stated that plot in question was lying vacant and he raised pacca construction, meaning thereby he alleges trespassing. As per him it was nine years ago i.e. near about in 1977 when he raised the construction but no documents of construction were ever produced on record. Moreover if he was residing since 1977 there was no reason for DDA to allot the plot to plaintiff and issue licence fee receipt to the plaintiff. Mere fact that allotment was cancelled which was in favour of the plaintiff clearly shows that initially the plaintiff was having allotment and defendant was nowhere in the picture. Mere deposition of some amount with DDA and acceptance of the amount by the DDA will not amount to debar the plaintiff from asserting his right. DDA never gave possession to the defendant. The argument of the defendant that Local Commissioner was sent and he found the defendant in possession is of no help to the defendant because it is a case of the plaintiff himself that he is not in possession and defendant is in possession. DW-5 had admitted that plot stood in the name of Sh. Vishwanath once. DW-5 also admitted that there is no allotment in the name of defendant. DW-5 also admitted that actual possession was never taken by the MCD. DW-6 also admitted that there is nothing on record to show that intimation of cancellation of allotment was ever sent to Vishwanath. DW-7 has stated that he has visited the spot and Mishri Lal was

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found there but he did not ask any copy of ration card. It is not brought on record as to how the DDA came to the conclusion that Mishri Lal is in possession in the capacity of trespasser or how the damages were asked from him. It will be easy for anybody to oust the original allottee by force and thereafter apply to DDA and start paying misuser charges on the basis of illegal possession and then oust the allottee for all times to come and if the defendant says that he is not in permissive possession then he has no case against the plaintiff. Thus on both the eventualities whether the defendant is in permissive possession or illegal possession he has no legs to stand. Ld. Trial Court has stated that the plaintiff was out of India and date, month and year are not mentioned when defendant came to live in suit premises. The same applies to defendant also because documentary evidence was in favour of the plaintiff and he stated that he permitted the defendant to live and if the initial onus is discharged then the burden is shifted on the defendant. When it is proved from the statement of witnesses that plaintiff permitted the defendant to live in the premises it becomes irrelevant when an dhow. Ld. Trial Court also observed that it was hard to conceive that the defendant would continue to live in the same room with the wife and family of the plaintiff while plaintiff himself went away to Kuwait. This has also been explained by the plaintiff that after handing over the possession to the defendant the wife had shifted to Halley Road. The observation that plaintiff has

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failed to produce any document to show that he resided in suit premises also is of no help because the allotment in his name is not disputed and the possession was corollary to the allotment. This is not the suit of possession on the basis of title where the plaintiff is bound to prove his ownership and title also and mere assertions of possession on his behalf were suffice for him to discharge the onus. The most important point is that even after the cancellation of allotment if plaintiff has not given the possession the DDA could have filed a suit for possession after cancellation of allotment against the plaintiff and not defendant. Ld. Trial Court has though held that allotment in favour of the plaintiff accorded only licence and he has no right but forgot that licensee has a better right against the trespasser or permissive user and the right vis a vis licensee can be a dispute between the DDA and the plaintiff and not between the plaintiff and the defendant. Hence in these circumstance I reverse the findings of Ld. Trial Court on issues no.2 and 4 and both of them are decided in favour of the plaintiff and against the defendant. Hence plaintiff is entitled to a decree of possession and has also got locus standi to file the suit even though his allotment was cancelled.....”

13. Second limb of arguments of the defendant is that jurisdiction of the Civil Court is barred under Section 15 of the PP Act as the property belonged to DDA after cancellation of the allotment. The trial court rightly held that dispute was not between DDA and the plaintiff. The

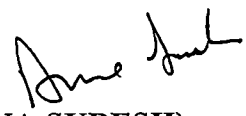
dispute which is the subject matter of the suit is viz-a-viz plaintiff and the defendant and that too, in a different cause of action. Plaintiff being allottee of the land have every right to protect his possession and take it back from the person to whom he had given or who otherwise claimed himself to be an unauthorized occupant.

14. Section 2 (c) of PP Act defines premises and Section 2 (e) defines Public Premises. It is not in dispute that the suit property belonged to DDA and it was allotted to the plaintiff. After cancellation of the allotment, it was for the DDA to initiate proceedings against the plaintiff for re-entry or for taking possession of the suit property. DDA under no circumstances can seek re-entry in the premises or claim possession of the same from the defendant. There is nothing on record to suggest that DDA had licenced the property in suit to the defendant.

15. Section 2 (g) of P.P. Act defines "*unauthorized occupation*" in relation to any public premises as an occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority under which he was allowed to occupy the

premises has expired or has been determined for any reason whatsoever.

16. Under these circumstances, provision contained in the P.P. Act cannot be invoked.
17. Therefore, findings of the appellate Court regarding jurisdiction of the Civil Court are based on facts of the case. No substantial question of law arise which needs adjudication.
18. The judgments cited by the appellant in the appeal are of no consequence to the case set up by the appellant in the appeal.
19. Hence, I find no merit in the appeal, the same is accordingly dismissed.
20. CM APPL Nos.341-342/2010 also stand disposed of accordingly.


(ARUNA SURESH)
JUDGE

JANUARY 29, 2010

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