

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

% **C.R.P.NO. 06/2011**

+ **Date of Decision: 20th July, 2011**

MOHD. FAROOQ **....Petitioner**

! Through: Mr. Vikas Singh, Sr. Advocate with
Mr. Zuibair A. Khan, Advocate.

Versus

\$ **ANEESA BEGUM & ANR.** **....Respondents**

Through: Mr. Sanjiv Sindhvani, Advocate for R-1.
Mr. Ashok Bhasin, Sr. Advocate with
Mr. Tarique Siddique, Advocate for R-2.

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. **Whether Reporters of local papers may be allowed to see the judgment? (No)**
2. **To be referred to the Reporter or not? (No)**
3. **Whether the judgment should be reported in the digest? (No)**

ORDER

P.K BHASIN,J

The revision petition has been filed under Section 115 of the Code of Civil Procedure ('CPC' in short) against the order dated 15-12-2010 passed by the learned Senior Civil Judge whereby the application of the petitioner-defendant under Order VII Rule 11 CPC for rejecting the plaint in the suit for possession, injunction and damages filed by the respondent no.1-plaintiff herein in respect of a piece of land measuring 200 sq. yds. forming part of Khasra No. 378/172, Johri Farm, Noor Nagar Extn.,

Jamia Nagar, Okhla, New Delhi (hereinafter to be referred to as the 'suit land') was dismissed.

2. The relevant facts are that the respondent No.1 filed a suit for possession, permanent injunction and damages against the petitioner and respondent no.1 herein in respect of the suit land alleging that she was the owner thereof having purchased it from its erstwhile owner Rashiduddin who had executed in her favour an agreement to sell, general power of attorney etc. on 16.05.2009. It was further claimed in the plaint that on 2.11.09 she found that the defendants (petitioner and respondent no.2 herein) had unauthorisedly occupied her land. Thereafter criminal complaint was lodged with the police. Primarily, on these allegations the suit was filed.

3. Both the defendants after entering appearance in the suit instead of filing any written statement jointly filed one application under Order VII Rule 11 CPC. It was alleged that application there that no cause of action had arisen in favour of the plaintiff and possession of the suit land could not be sought by her as the land in khasra no. 378/172 had been acquired by the Government in the year 1984 vide Award no. 195/83-84. The petitioner also referred to one order dated 29-08-2001 passed by this Court in Suit no. 2855/1996 whereby similar application under Order VII Rule 11 filed in that suit, which was also a suit for possession filed by

some persons claiming themselves to be the original recorded owners through the abovenamed Rashiduddin in respect of other parts of khasra no. 378/172 which had also been allegedly unauthorizedly occupied by the defendants in that suit persons, was allowed and the plaint was rejected.

4. The learned trial Court dismissed this application filed by the defendants vide impugned order which is re-produced below:

“The defendant had moved an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 for the rejection of the plaint on the ground that the plaintiff falls within the jurisdiction of Delhi Development Authority (DDA) and the plaintiff has encroached upon the disputed property. Some other grounds were also alleged by the defendants.

I have pursued the application of the defendant very carefully. I am of the view that this application does not fall within the ambit of Order 7 Rule 11 of CPC. Accordingly the same is dismissed. Adjourned for filing written statement to 06.01.2011.”

5. Feeling aggrieved, the petitioner only, who was arrayed as defendant no. 1 in the suit has challenged the said order of the trial Court, while his co-defendant, respondent no.2 herein, has not formally challenged the same by filing any separate petition but through his learned senior counsel has orally supported the petitioner's arguments advanced by his learned senior counsel.

6. Mr. Vikas Singh, learned senior counsel for the petitioner mainly relied upon the order passed by a Single Judge bench of this Court(A.K.Sikri,J) in suit no.2855/96, reference to which suit has already been made. That order reads as under:

“ The plaintiffs have filed the suit against the defendants for recovery of possession of suit properties bearing Khasra No. 183, 378/172, Village Okhla, Tehsil & District Mehrauli, New Delhi. The prayers contained in para 16 of the plaint read as under:

- a) Declare that the plaintiffs – GPA are the title holder, owner, persons to enjoy peaceful possession of the suit properties bearing Khasra No. 183, 378/172, Village Okhla, Tehsil & District, Mehrauli, New Delhi against any persons of the public including the defendants, their servants, agents constituent mentioned in the present suit.
- b) Order for possession of the three plots in Khasra No. 183 and one plot in Khasra No. 378/172, Village Okhla, Tehsil & District, Mehrauli, New Delhi from the illegal occupants who are occupying the said plots at the behest of the defendants.
- c) Order for permanent injunction restraining the defendants, their agents, servants from forcefully, unlawfully, illegally occupying the vacant lands which are in possession of the plaintiffs- GPA as also restrain the defendants, their agents, servants from ‘alienating, crating encumbrance over the properties which are under illegal occupation and possession, more amply mentioned in the suit.
- d) Order for mesne profits of the plots which are illegally occupied by the occupants at the behest of the defendants, as this court may deem fit and proper.

The defendants have filed IA No. 3087/98 under Order VII Rule 11 CPC stating that the plaintiffs cannot be the owners of the land as the land in question stands acquired by the Government for which notification was issued way back in the year 1964. In order to ascertain this fact, notice was issued to DDA and DDA has filed affidavit affirming the aforesaid position stating that the disputed land was acquired vide notification under Section 6 of the Land Acquisition Act on 7th December, 1966 and thereafter the Award dated 95/83-84 was made and land in question stands acquired vide aforesaid Notification in the year 1984. Learned counsel for the plaintiffs does not dispute this position. However, his submission is that the custodian, way back in December, 1961, declared the plaintiffs to be the owners of the land which is in illegal possession of the defendants. It may be so. However, after that the land was acquired by the Government vide the aforesaid Notifications and now vests with the DDA, therefore, the plaintiffs cannot be given the declaration to the effect that they are the owners of the land. Once that is the position in law, their prayer for possession of the suit property also is not maintainable, as they have, as of today, no locus standi to file the suit with such a prayer. If the plaintiffs are aggrieved against the order of acquisition and their case is that it is

wrongly passed and since there cannot be acquisition of land which was given to them under rehabilitation scheme, appropriate remedy for the plaintiffs is to challenge the Notification. The position which stands as of today is that the plaintiffs ceased to be the owners of the land after the same was acquired even if it is presumed that they are the owner earlier. This suit is therefore not maintainable.

*The IA No. 3087/98 is allowed. Complaint is rejected.
All other IAs also stand disposed of.”*

7. Mr. Vikas Singh submitted that after the land in khasra no.378/172 had been acquired by the Government some members of land mafia led by one Rashiduddin started projecting themselves to the general public that the said land still belonged to the recorded owners and Rashiduddin had with him the power of attorneys executed in his favour by them and by misrepresenting the facts they have been cheating innocent persons by taking money from them as sale consideration for the acquired land and Rashiduddin had also been executing power of attorneys, agreements to sell etc. in their favour knowing fully well that the land in khasra no. 378/172 was Government's land. Rashiduddin had filed the above referred suit before this Court as attorney of the recorded owners and had attempted to get a declaration of title in respect of the acquired land but this Court foiled his attempt by rejecting the complaint of his suit. Thereafter Rashiduddin approached subordinate Courts for similar reliefs in respect of different pieces of land in the acquired khasra by putting in the forefront some fake persons who claimed themselves to be the owners having purchased the lands from Rashiduddin through agreements to sell,

power of attorneys etc. and some Courts have rejected the complaints relying upon the above noted order of A.K.Sikri, J while in the present suit the learned trial Judge has refused to respect that verdict of this Court by rejecting the application under Order VII Rule 11 CPC on the ground that this provision of law does not apply to this case. Mr. Singh thus contended that this Court should now step in to see that public land does not go to the land mafia particularly when even the authorities do not appear to be in any way interested in protecting the acquired land.

8. It was also submitted by Mr. Singh that as far as the petitioner is concerned he is not even in possession of the suit land but he is fighting this legal battle as a good citizen to see that people like Rashiduddin do not succeed in getting some declaration of title in their favour in respect of Government land. Same was the submission of Mr. Ashok Bhasin, learned senior counsel for respondent no. 2 while supporting other submissions also of Mr. Vikas Singh.

9. On the other hand, Mr. Sanjiv Sindhvani, learned counsel for respondent no. 1 – plaintiff contended that the learned trial Court has rightly rejected the application of the petitioner – respondent no. 2 under Order VII Rule 11 CPC. It was further submitted that for rejection of a plaint under order VII Rule 11 CPC all that the Court is to look at is the averments in the plaint only and if on a plain reading of the plaint it

appears to the Court that the plaint does not disclose any cause of action or that the suit is barred by law only then the plaint can be rejected but for that purpose the averments made in the plaint have to be accepted as a gospel truth. In the present case, counsel contended, the respondent no. 1 – plaintiff had pleaded in the plaint that she was the owner of the suit land and the petitioner and respondent no. 2 herein had encroached upon the same and, therefore, these allegations had to be considered to be correct till such time the same were proved to be false by the defendants by contesting the same. Mr. Sindhwani further submitted that in view of the averments made in the plaint, it could not be said that the plaint did not disclose any cause of action or that the suit was barred by any law and, therefore, the learned trial Court was fully justified in not rejecting the plaint. As far as the order passed by this Court in suit no. 2855/96 and relied upon by the learned counsel for the petitioner is concerned, Mr. Sindhwani submitted that in that case the defendant in the suit had admitted that the suit land had been acquired by the Government and that was the reason for this Court to reject the plaint while in the present suit there is no such admission made by respondent no.2 – plaintiff.

10. After giving my thoughtful consideration to the rival submissions I am of the view that the plaint in the present suit is liable to be rejected (Suit no. 2855/1996) and the trial Court itself should have rejected it in

view of the fact that this Court has already in another suit conducted an enquiry as to whether the suit land stood acquired or not and after having been satisfied that it was actually acquired way back in the year 1984, it was held in that suit that no declaration of title or relief of possession could be given to the plaintiff of that case and that decision was not challenged in appeal. Same being the position here, there is no point in going ahead with the trial of the case when the final result is going to be the same as was in the above referred suit. In the reply to the application it was not specifically denied by the respondent no. 2 that the suit land was acquired by the Government. Therefore, this petition deserves to be allowed.

11. This petition is accordingly allowed. The impugned order of the learned trial Court is set aside and consequently the plaint in the suit filed by the respondent no. 1 herein shall now stand rejected.

P.K. BHASIN,J

July 20, 2011/
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