

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

+ **RFA No. 741/2002**

% **28th November, 2011**

MAUZI RAM THR LRS AND ORS Appellants
Through : Mr. Jasbir Singh Malik and
Mr.D. Sharma, Advocates.

versus

SH. HOSHIAR SINGH Respondent
Through : Mr. Mukesh Kumar Verma,
Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 20.7.2002 which decreed the suit for partition and possession filed by respondent/plaintiff.

2. The brief facts of the case are that the land comprising of 4 bighas and 10 biswas out of khasra no. 308 situated in the Revenue Estate of Village Masood Pur, Tehsil Mehrauli, Delhi was given on lease by the Gram

Panchyat through its president to 18 Harijans of the village by giving them each a plot of 250 sq. yds. The resolution which was passed by the Gram Sabha is dated 5.8.64 and the lease deed executed and registered is dated 24.10.64. Plaintiff/Sh.Hoshiar Singh along with his uncle-defendant No.1/Sh.Mauji Rama and plaintiff's cousin-Sh. Rai Singh, who is the son of Sh. Mauji Ram, got a total plot of 750 sq. yds. i.e. 250 sq. yds. each.

3. Since, the appellants/defendants refused to partition the plot by giving 250 sq. yds. plot to respondent/plaintiff, the subject suit for partition and possession of the plot of 5 biswas measuring 250 sq. yds. was filed.

4. The appellants appeared in the suit and contested the case by laying out various defences. The first defence was that infact the plot which was allotted to respondent/plaintiff was already sold by him through his son. Another defence was that the land was acquired by the Government and therefore the suit is not maintainable. Another defence was that the suit was bad for non-joinder of necessary parties inasmuch as either the Gram Sabha or the Government i.e. the Forest Department ought to have been made a party to the suit.

5. After the pleadings were completed, the Trial Court framed the following issues:-

“1. Whether the suit is not maintainable due to non-

joinder/mis-joinder of the alleged necessary parties as alleged in preliminary objection No.1 in written statement? OPD

2. Whether the plaintiff has got no right to file the present suit in view of alleged sale of his own plot to one Sh. Ram Kumar as alleged in Para 2 of the preliminary objection in written statement? OPD

3. Whether the present suit is not maintainable in view of alleged fact of the alleged deed having become dead and thus creating no right, title and interest as alleged in para No.4 in preliminary objection? OPD Further if so what is its effect on the rights of the parties? Onus on parties.

4. Whether the suit has not been properly valued for the purpose of court fees and jurisdiction? OPD

5. Whether the defendants have become exclusive owner of the suit land by way of alleged adverse possession as alleged in Para 6 in preliminary objection? OPD

6. Whether the plaintiff is entitled to a decree for partition and possession as prayed for? OPP

7. Relief.”

6. On the aspect of non-joinder/mis-joinder (and which will also govern other aspects of the case) the Trial Court has observed as under:-

“11. Onus to prove this issue was upon the defendant in discharge of which the defendants had produced and examined DW-1 Shri Ramesh Kumar. Though DW-1 had deposed on certain material facts in his examination in chief as well as cross-examination, but in his entire statement he deposed nothing regarding maintainability of the suit on the basis of non-joinder or mis-joinder of any parties. However, he had admitted that the suit property was allotted to 18 villagers of village Masoodpur and allotment was made by village Pradhan to 18 persons by lease deed executed in 1964 for 10 years

and the name of 18 persons were also stated. Though he further stated that the said land was acquired by the government in 1967 vide Award No. 2040 copy of which was marked as D-1 but it has been admitted that the government had not taken the possession of the said land. It has also been admitted that the said land was falling in Khasra No. 308 and the land so allotted to 18 persons was 4 bighas 10 biswas. On cross-examination he had admitted to be correct that the area of one plot allotted to 18 persons each was of 5 biswas; that the entire land allotted to 18 persons were designed in the name of Harijan Basti; that there was a President; that the site plan of the Harijan Basti was got prepared by the President Ex. PW3/1 was the same which was got prepared by the president of Harijan Basti. He admitted to be correct that the three plots were also allotted to Hoshiar Singh, Rai Singh and Mauji Ram by the Gram Panchyat; that the area of the each plot was equal one and that after the allotment, the possession was given by the Gram Panchyat to each allottees separately and that accordingly the possession was given to each allottee at the site by making demarcation. He further admitted to be correct that the government has not taken possession of the said land and that Ishwari was having three sons namely Roop Chand, Suraj Mal and Mauji Ram; that the plaintiff was the son of Suraj Mal who had died; that the father of the plaintiff had died since long and he had not seen him during life time and that Mauji Ram, deceased was the real uncle-Chachaji. Accordingly, in the entire statement he has admitted certain facts to be correct in favour of the plaintiff but deposed nothing that any persons named in the statement was necessary or proper party to be impleaded as a parties to the suit on any ground. At the same time nothing has been deposed to the effect that U.O.I. was also the necessary parties on any ground. On the other hand it has been specifically admitted by DW-1 Shri Ramesh Kumar that the land in question was in their possession including the other person and that the government had not taken possession

of any land in question of the alleged award by which the said land was acquired. From the deposition of DW-1 it stands proved and admitted that the land in question i.e., 4 bighas and 10 biswas land was allotted by the Pradhan of the village Masoodpur to 18 persons in 1964 by a lease deed executed in that regard. Though the said lease deed was for 10 years but it is also admitted case of the defendant that the said land was falling in Khasra No. 308. It is also admitted case of the defendant that the plaintiff and the defendants were allotted three plots amongst the said 18 persons and the area of each plot was equal. Accordingly from the admissions made by DW-1 in his statement the land in question was falling in Khasra No. 308 only, and not Khasra No. 308-1. In the plaint also the plaintiff has pleaded that the land measuring 4 bhigas 10 biswas allotted in favour of 18 Harijan by a lease deed executed on 24.10.64 by Sheo Lal, the Pradhan Gram Panchyat was out of Khasra No. 308 situated in Revenue Panchyat of Village Masoodpur. In response to the facts pleaded by the plaintiff in paras 1,2,3 and 4 there was no denial much less than specific denial. Accordingly, I find that the defendants had admitted the case of the plaintiff that the suit land allotted to the 18 Harijanms by the lease deed dated 24.10.64 was falling in Khasra No. 308 and not on Khasra No. 308-I. The defendant had pleaded the acquisition of the said land by the U.O.I. by an award No. 2040. The defendants had pleaded in paragraph 1 of the objection that as per revenue record of Khasra No. 308 village Masoodpur Tehsil Mehrauli land was owned by government (Forest Department) and it stood acquired by award No. 2040 dated 12.2.67 and in the present suit U.O.I. and other necessary have not been impleaded. Certified copy of the award referred in this para has been filed. I have gone through certified copy of the Award which is also containing the details of the land allegedly acquired by way of the said award. The land has been specified which has been acquired and the area has also been mentioned. The details of the award does not

contain any land falling in Khasra No. 308 Masoodpur, on the other hand the land falling under Khasra No 308/I was specified. The award relied by the defendant specified the acquisition of the land falling in Khasra No. 308/1 and does not specifies the acquisition of any land falling in khasra No. 308. At the same time the name of the plaintiff or his father was not mentioned in the list of the persons to whom the compensation was awarded as the land in question at the time of acquisition was in their possession under the lease executed by the Gram Panchyat. At the same time it is admitted case of the defendants that the government had not dis-possessed them nor any of the 18 person to whom the said land was allotted jointly by said lease deed nor had been paid the compensation for the acquisition of the said land nor they had received any compensation from the government in respect of the said land in pursuance of the said award. Therefore, I find that the defendants bitterly failed to prove the acquisition of the said land by way of the Award No. 2040 dated 12.6.67. Accordingly, I find that the defendant bitterly failed to prove that the Union of India or any of the 18 persons were the necessary parties to the present suit since the claim of the plaintiff is only in respect of partition for one of the three plots, possession of which was jointly taken by the plaintiff and the defendants at the time their allotment. Therefore, the claim of the defendants that the suit is not maintainable for a non-joinder and mis-joinder of parties is absolutely frivolous and baseless and the same is liable to be rejected as the U.O.I and the other persons out of those 18 persons had nothing to do with the three plots jointly owned and possessed by the defendants which is the subject matter of the partition and possession of the present suit. So this issue stands decided in favour of the plaintiff and against the defendants.”

(underlining added)

7. Learned counsel for the appellants once again argued that the suit is

bad for non-joinder of UOI or the other 15 Harijans who are also allotted plots by the lease deed dated 24.10.64. Since, I have exhaustively reproduced the relevant portion of the impugned judgment (necessary portions being underlined), I need not repeat the reasons except stating that the witness of the defendants/appellants-Sh.Ramesh Kumar, who deposed as DW1, admitted that the plan Ex. PW3/1 which demarcated the 18 plots, was prepared by the President of Harijan Basti and that three plots totaling 750 sq. yds. were allotted to plaintiff, Sh.Mauji Ram and Sh.Rai Singh. This witness also admitted that possession was given by the Gram Panchyat to each allottee separately and this possession was separately given to each allottee at the site by making demarcation.

8. Therefore, in my opinion, the trial Court has rightly decided that there was no need to join the other 15 Harijans to the suit because they had no concern whatsoever with respect to the plot so far as the respondent/plaintiff is concerned. On the aspect of joinder of UOI, the trial Court has referred to the fact that the Government after acquisition of the land, never took possession from any of the persons. Infact, it has come on record that the subject land was never acquired by the Government inasmuch as the original khasra No. 308 in Village Masood Pur was carved into two khasra nos. 308 and 308/1, and the land falling in khasra no. 308 which was given to the 18

Harijans was not acquired because the Award in question talks of acquisition only of khasra no. 308/1 i.e. the balance portion of khasra no. 308 after leaving out the area of 4 bighas 10 biswas which was the subject matter of the lease deed executed on 24.10.1964 by the Gram Sabha.

9. Therefore, looking at the issue in the manner whatsoever, whether to the fact that UOI never took the possession of the subject land pursuant to the alleged acquisition and infact the subject land was never acquired, UOI rightly was not a necessary party to the suit. I, therefore, reject the argument that the suit was bad for non-joinder of necessary parties. Necessary parties, by their very nature, mean such parties whose rights will be affected by a decision in the subject case, and such decision should not be taken in their absence. No rights of anyone else except the parties to the suit are affected by the present judgment and, therefore, it cannot be said that the suit was bad for non-joinder of the other 15 Harijans or the UOI.

10. The second argument raised on behalf of appellants/defendants in the Trial Court, and also before this Court, was that the plaintiff/respondent had infact sold his plot of 250 sq. yds. and only thereafter the subject suit came to be filed, which is therefore stated to be liable to be dismissed. The subject issue in this regard is issue No. 2 as framed by the trial Court. This issue has been dealt with by the trial Court by making the following observations:-

“11. Onus to prove this issue was upon the defendants in discharge of which the defendants had produced and examined DW-1 Shri Ramesh Kumar. In his statement DW-1 Shri Ramesh Kumar has deposed nothing regarding the sale of any land by the plaintiff through his son on any date by any document placed or proved on record prior to the filing of the present suit. Therefore, I find that the defendants bitterly failed to prove the sale of any land forming part of the three plots allotted to Hishiar Singh, Rai Singh and Mauji Ram by the Gram Panchyat to any person. Therefore, the plea taken by the defendants in their written statement could not be sustained by any evidence on record to prove the sale of the plot of the plaintiff by him to Ram Kumar through his son, as pleaded in para 2 of the objection. In the absence of any evidence led by the defendant in that regard the sale of the said plot cannot be taken as proved by the defendant to rebut the claim of the partition in the present suit. So the defendant bitterly failed to prove this issue, accordingly. So this issue stands decided in favour of the plaintiff and against the defendant.”

(underlining added)

(I note that the number of this para as para no. 11 is repeated because even the earlier para is numbered as 11).

I completely agree with the aforesaid findings and conclusion of the trial Court because firstly, by making a self-serving statement without any documentary proof whatsoever it cannot be argued that respondent/plaintiff has sold his plot of land. Infact, in the cross-examination, the respondent/plaintiff denied that he had ever sold his land. The subject plot numbers, as per the evidence of the appellants in the trial Court, are plot

numbers 32, 33 and 34 and the documents which were filed through which the subject plot was alleged to be sold, were however, not the documents with respect to the subject plots, but for another plot No. 91, which was not the subject matter of the suit. In fact, even these documents showing their sale of the plot No. 91 have not been exhibited and proved before the trial Court. Therefore, in my opinion, the appellants/defendants quite clearly failed to prove that respondent /plaintiff had sold his plot. In fact, I put it to counsel for the appellants as to what is the area which is under their occupation, and are they interested only in area of 250 sq. yds. or more, but however, to this query of Court, only an ambivalent reply was given, inasmuch as obviously the appellants are in possession not only of their own 250 sq. yds. but also of 250 sq. yds. in the plot of respondent/plaintiff.

11. A civil case is decided on balance of probabilities. The balance of probabilities, as also the various admissions made by the appellants in trial Court show that the lease executed by Gram Sabha in favour of 18 Harijans is an admitted fact, and that three of the persons out of these 18 Harijans included the plaintiff-Sh.Hoshiar Singh and two other persons namely Sh.Mauji Ram-defendant No.1 and Sh. Rai Singh -defendant No.2, and, it further emerges on record that the Gram Sabha had infact given possession of separate plots to each of the 18 Harijan persons by demarcation at site.

The site plan has been proved on record as Ex.PW3-1 and which quite clearly shows specific plot number 32 as allotted to respondent/plaintiff i.e., Sh. Hoshiar Singh. Plot numbers 33 and 34 in this very plan have been shown as allotted to Sh. Mauji Ram and Sh. Rai Singh respectively. Clearly therefore, respondent/plaintiff was rightly held entitled by the trial Court to partition and possession of plot of 250 sq. yds. plot no. 32 which was found to be in possession and occupation of the appellants.

12. In view of the above, there is no merit in the appeal and the same is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

NOVEMBER 28, 2011

AK