

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

% *Date of Judgment: 14.03.2011*

+ **RSA No. 106/2004**

SH. KASHI RAM & ANR.**Appellants**

Through: Mr. Ankit Jain, Advocate.

Versus

GAON SABHA NASIRPUR**Respondent.**

Through: None.

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. (Oral)

1. This appeal is directed against the impugned judgment and decree dated 12.02.2004 which has endorsed the finding of the trial judge dated 07.02.2000 whereby the suit filed by the plaintiff, Sh. Kashi Ram seeking permanent injunction against the defendant i.e. Gaon Sabha Nasipur, had been dismissed.

2. The case of the plaintiff is that they are co-owners in possession of 4 Bhigha 14 Biswas land in khasra No. 365, 8 bighas 11 Biswas in Khasra No. 66 of the Village Nasirpur, Palam since 1948-49. In 1975, the Pradhan of the village tried to dispossess the plaintiff. A suit was filed wherein a decree was passed in

favour of the plaintiff in terms of which it was held that after 1954, plaintiffs were in possession of the aforementioned property. It is contented that the defendants are threatening to interfere with the peaceful possession of the plaintiff. Present suit for permanent injunction was filed.

3. In the written statement, defence was that the defendants are the owners and in possession of the suit land.

4. Replication was filed reiterating the averments made in the plaint and denying the defence of the defendant.

5. The trial judge had framed four preliminary issues. They read as follows:-

"1. Whether the suit of the plaintiff is not maintainable in view of Section 99 of Delhi Panchayat Raj Act? OPD.

2. Whether suit of plaintiff is not maintainable for non-joinder of necessary party u/s 161 of Delhi Land Reform Act? OPD.

3. Whether this court has no jurisdiction to try this suit? OPD.

4. Whether this suit is hit by Section 41 (h) of the Specific Relief Act? OPD"

6. Issue no. 3 was decided in favour of the plaintiff. It was held that the civil court has no jurisdiction to entertain the present suit. All other issues were decided against the plaintiff. This finding of the trial judge was endorsed in first appeal.

7. This is a second appeal. It had been admitted and on 16.07.2004, the substantial question of law had been formulated which reads as follows:-

" Whether service of Notice under Section 99 of the Delhi Panchayat Raj Act, 1954 is necessary before filing the suit."

On 14.02.2011, in view of the additional arguments urged before this court, two additional questions of law had been formulated. They read as follows:-

"1. Whether the finding in the impugned judgment dated 12.02.2004 qua the interpretation of the provisions of Order 1 Rule 9 of the Code of Civil Procedure are perverse and if so, its effect?

2. Whether the finding in the impugned judgment dated 12.02.2004 qua Section 41 (h) of Specific Relief Act are perverse and if so, its effect?"

8. Arguments have been heard. No one has appeared for the respondent although notice has been sent to the respondent and on 09.03.2011, it had been recorded that the respondent has been served.

9. Learned counsel for the appellant has submitted that the findings in the impugned judgment suffers from illegality. Section 99 of the Delhi Panchayat Raj Act, 1954 reads as follows:-

"Suits against Gaon Panchayat or Circle Panchayat or its Officer:- (1) No suit or other legal proceedings shall be instituted against a Gaon Sabha or a Gaon Panchayat or against a member, Panch officer or servant of the Gaon Panchayat or Circle Panchayat or against any person acting under it or his direction for any thing done or purporting to have been done in any official capacity under this Act, until the expiration of two months next after notice, in writing has been, in the case of a Gaon Panchayat or Circle Panchayat and in the case Gaon Sabha, delivered in or left at the office of the Gaon Panchayat or Circle Panchayat and in the case of a member, Panch officer or servant or any person acting under this direction or the direction of the Gaon Panchayat or Gaon Circle Panchayat, delivered to him or left at his office or place of abode, explicitly stating the cause of action, the nature of the relief sought, the amount of compensation, if any, claimed and the name and place of abode of the intending Plaintiff and the plaintiff and the plaint shall contain a statement that such notice has been so delivered of left.

(2) No action such as is described in sub-section (1) shall be commenced otherwise than within six months next after the accrual of the cause of action."

This section specifically postulates that no suit shall be instituted against a Gaon Sabha or a Gaon Panchayat or against a member, Panch officer or servant of the Gaon Panchayat or Circle Panchayat or against any person acting under it or his direction for

any thing done or purporting to have been done in any official capacity, until a two months notice has served, in writing. It is urged that the act of the defendants was not in any official capacity; the impugned judgment has erred in holding that the suit is not maintainable in view of the aforementioned provision. There is force in this submission. Parties should have been granted an opportunity to lead evidence before deciding this issue as to whether the acts of the defendant qualified in an official capacity or not.

10. Learned counsel for the appellant has next urged that the finding on Section 161 ((A) of Delhi Land Reform Act, 1954 is also an illegality as the Union of India is not a necessary party in a suit of the present nature which was simplicitor a suit for permanent injunction. Attention has also been drawn to the provision of Section 36 (2) of the Delhi Land Reform Act, 1954 and the finding in the impugned judgment which had expanded the scope of Section 36 (2) of the said Act. Finding of this issue is also liable to be set aside.

11. The impugned judgment had thus illegally returned findings on issue nos. 1 and 2 without giving an opportunity to the respective parties to adduce their evidence. These issues could not have been decided as preliminary issues. The finding on issue no. 4 is also liable to be set aside for the same reason.

12. The appeal is accordingly allowed. Matter is remanded back to the concerned District & Sessions Judge, Tis Hazari Courts, Central District. Parties are directed to appear before the concerned court at 10.30 am on 21.03.2011 who shall assign the case to the concerned civil court to decide the case on its merits

after giving opportunity to the parties to adduce evidence. Appeal disposed of in the above terms.

MARCH 14, 2011
ss

INDERMEET KAUR, J.