

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on : 30th August, 2011
Judgment Pronounced on: 5th September, 2011

+ LPA 272/2011

FATEH SINGH Appellant
Through: Mr.Amit Anand Tiwari, Advocate
and Mr.Ashutosh Jha, Advocate.

versus

RAJ KARAN & ORS. Respondents
Through: Mr.Rakesh Tiku, Senior Advocate
with Mr.Arun Rathi, Advocate
for R-1 & R-2.
Mr.B.S.Mann, Advocate and
Mr.Hardeep Singh, Advocate for R-3
Mr.V.P.Rana, Advocate for R-4.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

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

PRADEEP NANDRAJOG, J.

1. Instant appeal is the culmination of a lis fought between appellant Fateh Singh and the respondents who are all sons of late Sh.Balwant Singh and it relates to land comprised in Khasra No.82/30, 82/31, 96/2, 96/3, 96/8, 96/9,

96/12, 62/15/2, 63/11/1, admeasuring 32 bigha and 16 biswa comprised in the revenue estate of village Khera Kalan. The lis commenced before the Revenue Assistant when an application was filed by the respondents on 22.7.1985 for correction of the Khasra Girdawari as also an Ejectment Application dated 24.10.1985 under Section 84 of the Delhi Land Reforms Act 1954 was filed.

2. Needless to state, proceedings under Section 84 of the Delhi Land Reforms Act 1954 relate to a claim made by the recorded bhoomidar of the land to eject a person in unlawful occupation of the land in question.

3. It was the claim of the respondents in both applications that the appellant Sh.Fateh Singh moved a frivolous application in which respondents were impleaded as respondents and without serving them and instead of them producing imposters, obtained an order on 29.1.1985 in his favour, to the effect that he was in cultivatory possession resulting in an entry being made in the Khasra Girdawari for the rabi season pertaining to the year 1984 showing appellant to be in possession. It was pleaded by the respondents that their late father Balwant was the recorded bhoomidar of the land as per khatauni in the year 1977-78 and that said mutation entry was never challenged and that in the Khasra Girdawaries prepared from 1977-78 onwards, till the year 1985 they were shown to be in cultivatory possession. That after obtaining the collusive entry in his favour the appellant took over physical possession and hence the claim.

4. The appellant pleaded the bar of limitation and for which he stated that a litigation was fought in a Suit which was filed in the year 1962 in which possession was litigated between the appellant and father of the respondents, resulting in a decree in favour of the appellant and as per said decision it was held that the appellant was in cultivatory possession of the subject lands. It was pleaded that in Appeal, vide order dated 20.9.1968, the father of the respondents made a statement that he would take recourse to action as per law. It was highlighted that as per the Delhi Land Reforms Act 1954 unless ejectment proceedings were initiated within 3 years from the date of unauthorized occupation, the same would be barred by limitation.

5. The respondents denied any decree being passed against their father as alleged or a settlement and reiterated their stand in the ejectment petition and the application seeking correction in the Khasra Girdawari.

6. The parties were directed to lead evidence.

7. Documentary evidence filed by the respondents was the Khata Khatauni and the Khasra Girdawaris in their favour till the year 1985 when the offending entry was made in the Khasra Girdawari. Certified copies of Khata Khatauni and Khasra Girdawaris were filed and proved as per law. The respondents also led oral evidence by examining one Ganga Bishen and one Joginder Singh, fellow villagers to prove their continuous possession.

8. The appellant examined himself as his witness and tendered 'Nehri Girdawaris' i.e. receipts issued by the Irrigation

Department evidencing certain payments made on account of irrigation water consumed for the lands in question. The appellant also tendered a certified copy of an order dated 20.9.1968 passed by the Additional Senior Sub Judge recording a settlement between the appellant and the father of the respondents as per which the appellant was declared to be in possession of land comprised in Khasra No.96/2, 96/3, 96/8, 96/9, 96/12 and 41/8/2.

9. The learned Revenue Assistant, vide decision dated 12.10.1994, returned a verdict in favour of the respondents observing that the Khata Khatauni Ex.P-9 was the oldest document, of the year 1967, which showed mutation in the name of the respondents upon the death of their father as Bhoomidars of the land. It was held that the Khasra Girdawaris, duly proved, by the respondents showed their possession. Highlighting that as per procedure prescribed by law a mutation entry, pertaining to succession of bhoomidari rights, required a field visit to ascertain cultivatory possession, it was held that Ex.P-9 would prove that the Revenue Authorities, at the spot found, respondents to be in possession of the land. With respect to the Khasra Girdawaris it was opined that as per the provisions of the Delhi Land Revenue Act 1954, the Patwari had to visit the agricultural lands in the village under his jurisdiction for kharif and rabi and on the basis of spot investigation was obliged to record cultivatory possession. Thus, it was opined that the Khasra Girdawaris proved by the respondents were good evidence of their possession till 1985.

10. On the correction got effected by the appellant in the Khasra Girdawari pertaining to the Rabi season of the year 1984, it was opined that there was no proof that the respondents had appeared before the Tehsildar. The said order dated 29.1.1985 was accordingly held to be without a legal sanction. As regards the nehri girdawaris it was held that since they were not to be on the basis of any spot verification, the same would not be better evidence of appellant's possession.

11. Thus, on the aforesaid process of reasoning the claim of the respondents was decreed.

12. Appeals filed before the Additional Collector by the appellant were dismissed vide judgment and order dated 22.5.1995. The reasoning of the learned Additional Collector is the same as that of the learned Revenue Assistant.

13. Appellant's Revision Petition was allowed by the learned Financial Commissioner vide order dated 30.11.1995, against which respondents preferred a writ petition being WP(C) No.4798/1995, which was disposed of vide order dated 14.1.2010 with the matter being remanded before the Financial Commissioner for fresh adjudication keeping in view the evidence led before the learned Revenue Assistant.

14. At the remanded stage, vide order dated 19.10.2010, the learned Financial Commissioner has confirmed the order passed by the Revenue Assistant as upheld by the learned Additional Collector.

15. Appellant's writ petition before the learned Single Judge was dismissed vide impugned order dated 20.1.2011 on the ground that concurrent finding of facts would not be gone

into by a writ court. The claim of the appellant with respect to the decree dated 20.9.1968 passed by the Civil Court has been negated on the ground that pertaining to revenue matters, decisions passed by civil courts are a nullity.

16. We note the reasoning of the learned Financial Commissioner as per the order dated 19.10.2010.

17. After noting the backdrop facts and the document and oral evidence led, with reference to the Khasra Girdawaris and Khata Khatauni which have to be maintained as per the Delhi Land Revenue Rules, in para 5 and 6 of the decision, the learned Financial Commissioner has summarized the law as under:-

“5. It is admitted fact that land is governed by provision of Delhi Land Reforms Act, 1954. Under the scheme of the Act, possession is of utmost importance. Person can lose his bhumidari rights if he does not take steps for regaining of the possession from unauthorized occupant within prescribed period. Since issue in this petition revolves around possession over the suit land, therefore, law on possession as contained in the Delhi Land Revenue Act needs to be properly appreciated. Under Delhi Land Revenue Act, 1954, record of rights is maintained by the Deputy Commissioner. Under the said record of rights which is also called Annual Register, all the changes and transactions regarding bhumidari rights and possession are required to be entered. If a person obtains possession either on admission by Gaon Sabha or by succession or by transfer, he is required to make report to the Tehsildar in order to record the same in the record of rights. As per section 22(5), Revenue Courts are barred from entertaining a suit or application on behalf of the person unless report regarding possession is made to the Tehsildar u/s 22.

U/s 30 and 41 of the said Act, the entries in the annual register are to be presumed true unless and until contrary is proved. U/s 21 and 26 of the Revenue Act, Revenue Courts can correct any error or mistake proved to have been made in the Annual Register. The Delhi Land Revenue Rules provided how Khasra Girdawari and khatoni would be prepared. Khasra Girdawari is prepared under Form P-4 and khatoni is prepared under Form P-6. As per Rule 49, partwari is required to make three field inspections every year of every village in his halka. As per Rule 54, column No.1-5 of P-4 have to be written up before the first tour, column No.7-9 during first tour and column 10-12 during second tour and column 13-15 during third tour. Entries in column No.6 are made during each of the three tours as conditions may require. As per Rule 63, column No.4 and 6 are to be filled in on the basis of entries in the khatoni of the current year and patwari is prohibited from making any changes, except on the basis of orders from the competent authorities and such changes are required to be made in red ink. As per Rule 56, entries in Khasra are required to be made in accordance with actual facts and according to the instructions in the Rules. As per Rule 63(3), if person other than one recorded in column No.4 and 5 of Form P-4 is found to be in actual cultivatory occupation, his name and crop is required to be shown in form P-5 in case land is recorded in the name of individual and in form P-5A in case land is vested into Gaon Sabha.

6. Perusal of Rules shows that entries regarding crop and the person who cultivates the land are required to be entered on the basis of actual facts on the spot based on physical inspection by Halka Patwari during inspection tour. Further, there is an exception to it that in case person other than recorded Bhumidar is found in possession on the spot during inspection tour, then, the possession is required to be recorded in Form P-5 or P-5A as the case may be. Patwari is required to prepare form P-5

in triplicate and to hand over same to the person recorded as Bhumidar in column No.4 and 5. If he is not in a position to hand over the entries in form P-5 to the concerned Bhumidar by personal service, then same is required to be sent under postal acknowledgement. On receipt of form P-5 prepared by Halka Patwari, Girdawar Kanungo shall ensure that patwari has made personal service of the copy to the recorded Bhumidar and thereafter, Girdawar Kanungo shall fix up schedule for his inspection for verification of the entries in the list of form P-5. If entries in form P-5 prepared by Halka Patwari are confirmed by Girdawar Kanungo, same shall be handed over to the Tehsildar who will further make inquiries and thereafter, shall confirm entries in form P-5 and P-5A. The above Rules shows that every precaution has been made in order to ensure that recorded Bhumidar should get full opportunity to know that possession of his land is being claimed by some other person so that he may take requisite steps for recovery of the possession."

18. It is apparent that the reasoning of the learned Financial Commissioner with respect to the appreciation of the Khasra Girdawaris and Khata Khatauni and the legal inferences to be drawn therefrom, is the same as that of the Revenue Assistant as upheld by the learned Additional Collector and to put it briefly, the reasoning is that the entries have to be made after spot verification and thus the said documents would be good evidence pertaining to a claim for possession of agricultural land.

19. In the next paragraph, also numbered as paragraph '6', the learned Financial Commissioner has contrasted the evidentiary value of the Khasra Girdawaris and Khata Khatauni with the evidentiary value of Nehri Girdawaris as under:-

“6. Now in the light of above discussed Rules, I shall discuss the issue of limitation recorded by Revenue Assistant and also which of the Khasra Girdawari relied upon by both the parties should be held to have been prepared in accordance with law and facts. Present respondents have relied upon Khasra Girdawari under P-4 from the year 1977 till 1993. It is an undisputed fact that in Khasra Girdawari from 1977, name of the present respondents has been recorded as Bhumidar and crop has been mentioned. It is also admitted fact that in the remarks column, name of the present appellant is not recorded as cultivator. It is also admitted case that appellant has not relied upon any form P-5 nor he has said that he was found in possession by field staff at any point of time. Even the change in Khasra Girdawari in the year 1984 is based on alleged admission by the respondents and not based on spot inspection. So far as Khasra Girdawari produced by appellant from Canal Department is concerned, nothing has been produced before this Court as to under which law those girdawars are prepared and what is the basis for preparation of those Khasra girdawaris. Record shows that even for the purpose of rebuttal of the presumption attached to the Khasra Girdawari produced by the respondents no witness from the Canal Department, specially who prepared those Khasra Girdawari, was produced for examination by the Court. It seems that simple copies of canal Girdawari has been tendered in evidence. In my view, those canal girdawars have failed to rebut a presumption of correctness which are attached to the khasra Girdawari produced on record by the respondents in view of provision of Sections 30 and 41 of Delhi Land Revenue Act. On the basis of above discussion, I held that Trial Court as well as Appellate Court rightly relied upon Khasra Girdawari produced by respondents and discarded canal Girdawari produced by the present appellant on the issue of possession.

20. Indeed, the reasoning of the learned Financial Commissioner is *pari materi* with that of the Revenue Assistant as upheld by the learned Additional Collector in the appeal filed.

21. With respect to the decree dated 20.9.1968 relied upon by the appellant as statedly passed by the learned Senior Civil Judge, in para 9 the learned Financial Commissioner has opined as under:-

“9. On the issue of decree dated 20.9.1968, it has been claimed by the present appellant, that there is presumption of continuity of possession since 1968 in favour of present appellant. In my view, stand taken by appellant is not in accordance with law. Under the Act and Rules, possession is required to be recorded after every six months and in a year three tours have been prescribed to be made by the Halka patwari. A person who is found in possession of Rabi season is not necessarily to be found in possession in the partial of Kharif season and it is duty of the patwari to record change of possession whenever he finds it in any of the season. So in order to claim continuous possession, a person is required to prove continuous three years possession preceding date of filing petition u/s 85 of Delhi Land Reforms Act by producing cogent evidence which leads to only conclusion that it was only appellant and not recorded Bhumidar, was in possession. In this case right from 1968 till 1984, possession has been recorded of the respondents, nowhere it is said or claimed that any attempt was made to challenge those Khasra Girdawari by filing application u/s 21 or u/s 26 of Delhi Land Revenue Act. Said document of 1968 was first time produced and claimed in the proceeding by present appellant in the year 1985. This casts doubt over genuinity of the said document. It is unlikely that a person would conceal such a vital and important document in his favour in

respect of such a vast area of agricultural land in Delhi for a continuous period of 17 years and would never challenge Khasra Girdawari and other revenue records which had been prepared continuously in the name of present respondent. I further find that name of father of the respondents is mentioned as Sh.Nand Lal in the decree, though it is admitted case of the present appellant that Sh.Balwant Singh, father of the present respondents, was adopted by Sh.Uday Singh prior to 1960 and therefore, decree which is against Sh.Balwant Singh s/o Sh.Nand Lal and not against Sh.Balwant s/o Sh.Uday Singh becomes doubtful for the reason that it is based on admission. Further no attempt was made by the present appellant to prove the alleged statement made before the civil Court. Close scrutiny of the decree would also show that there is difference of Khasra numbers mentioned in the decree and those mentioned in the application and order of Tehsildar. I further find that in the decree, area of khasra has not been mentioned. So the factum of how much area was part of suit land cannot be ascertained in the absence of evidence to this fact. Further, records show that said copy of decree has been tendered in evidence by Sh.Fateh Singh in his examination in chief. No attempt was made to prove the said facts by calling the record from the Civil Court. In view of this, I am of the opinion that Trial Court as well as Appellate Court has rightly discarded alleged judgments of 1968."

22. With respect to the order dated 21.9.1985 passed by the learned Tehsildar which related to the rabi season for the year 1984, in para 10 of the impugned decision, the learned Financial Commissioner has opined as under:-

"10. In my opinion, the order dated 29.1.1985 by Tehsildar has not given any right to the present appellant. It is only for one season i.e. Rabi 1984 and application u/s 84 was filed in October, 1985.

Therefore, even if said order is found to be correct, then also application was filed within limitation. I further find that even said order dated 29.1.1985 is not free from doubt as same is based on the alleged admission of the present respondents and not on the basis of spot inspection. Further, when present appellant was aware that not only Khasra Girdawari of Rabi 1984, the Khasra Girdawari prior to it were recorded in the name of present respondents, then what prevented the appellant from seeking correction of all the Khasra Girdawari. All these facts, if taken together, goes to show that this order of Tehsildar dated 29.1.1985 is not free from doubt and cannot be relied upon for the purpose of grant of bhumidari rights to the present appellant.”

23. To the reader of the present decision it would be obvious that a question of fact has been adjudicated upon by 3 Revenue Forums and there is a concurrent finding in favour of the respondents and against the appellant.

24. It is settled law that a finding of fact returned by a Court of Competent Jurisdiction would not be interdicted by a Review Court after re-appraising the evidence. The only scope of a judicial review interference would be that if it is shown that a wrong principle of law was adopted while appreciating the evidence with respect to the inference to be drawn or material evidence was ignored or irrelevant evidence was considered or the inference drawn is so perverse that no reasonable person would have so drawn.

25. In the instant case it is not the case of the appellant that any irrelevant evidence was considered. The argument urged was that the reasoning of the learned Financial Commissioner to ignore the consent decree has resulted in the

consent decree dated 20.9.1968 being ignored and thus it was argued that it is a case of material evidence being ignored.

26. The reasons why the consent decree dated 20.9.1968 has been ignored have been extracted by us, as they find a mention in para 9 of the impugned decision, and we find the same to be good reasons. We may supplement the same with the reasoning of the learned Revenue Assistant who has found a serious infirmity, casting a doubt upon the genuineness of the certified copy of the decision dated 20.9.1968 inasmuch as, the dispute between the parties pertained to land comprised in Khasra No.82/30, 82/31, 96/2, 96/3, 96/8, 96/9, 96/12, 62/15/2, 63/11/1, ad-measuring 32 bigha and 16 biswa comprised in the revenue estate of village Khera Kalan, but the decree referred to land comprised only in Khasra No. 96/2, 96/3, 96/8, 96/9, 96/12 and 41/8/2. Now, wherefrom reference could be made to Khasra No.41/8/2 in the decree remains a mystery as also a mystery pertaining to land comprised in 4 khasras i.e. 82/30, 82/31, 62/15/2 and 63/11/1 which do not find a mention in the consent decree. Indeed, we find that the so called consent decree, certified copy whereof was filed by the appellant has not even been issued by the Court concerned evidenced by the fact that it has a seal of the Office of the Deputy Commissioner thereon. On the face of it, the certified copy relied upon purports to be a certified copy of a certified copy i.e. it purports to be a certified copy issued by the Deputy Commissioner of a certified copy of the decree produced in his Court. Now, there is no litigation between the parties before the Deputy Commissioner, and we wonder from

where would, the Deputy Commissioner's office, issue a certified copy of a certified copy of a decree passed by a Civil Court. Indeed, law requires certified copy of a document to be proved by summoning the authority which has purportedly issued the certified copy.

27. The said certified copy of the alleged decree has rightly been negated.

28. We would highlight that the debate between the parties has to be settled with reference to the Nehri Girdawaris filed by the appellant and the Khasra Girdawaris and the Jamabandi entry filed by the respondents coupled with the oral evidence of 2 persons led by the respondents.

29. We have noted herein above the reasoning of the 3 Revenue Foras to ignore Nehra Girdawaris if the same come into conflict with entries in the Khasra Girdawaris and we affirm the same noting that in the decision dated 15.5.1984 in RSA No.16/1984 Lakshman Singh vs. Nathu Singh, a learned Single Judge of this Court held that Khasra Girdawaris have a greater evidentiary value vis-à-vis Girdawaris issued by the Irrigation Department. Same view was taken by a learned Single Judge of the Punjab & Haryana High Court in the decision reported as 2002 (2) All India Land Laws Reporter (Vol.69) 120 Om Pratap vs. Chuhriya Ram pertaining to Jamabandi entries as per the revenue record and Nehri Girdawaris. Decisions pertaining to mutation proceedings have been opined to be proceedings relating to issues of fact as per the decision reported as 2003 (10) SCC 360 Chatarpal vs. Mandir Thakurji & Ors. With respect to factual foundation and proof of possession, in the

decision of a learned Single Judge of this Court reported as 150 (2008) DLT 105 Phoolwati & Ors. vs. Ram Dei & Ors. it was held that entries in Revenue Record which are the result of verification at the spot have a presumption backed by the legal principle that officials acts have to be presumed to have been carried out in accordance with the procedure laid down and the onus would be on the party alleging to the contrary that the procedure was not followed.

30. We may highlight that in the instant case that the appellant has not even dared to question the procedures laid down when the various mutation entries and possessory entries were made in favour of the respondents.

31. The argument of learned counsel for the appellant that though decrees passed by civil courts on matters pertaining to revenue disputes may be ignored but evidence led before a civil Court in the form of statements made by parties can be used as evidence and thus decree dated 20.9.1968 can be looked into with reference to the consent recorded therein of appellant being in possession of the subject lands stands negated for the reason proof of the statement allegedly made resulting in the consent decree has been sought to be achieved by the appellant by tendering a certified copy of the decree, which certified copy we find is a highly tainted document and for which reasons of the learned Financial Commissioner in para 9 of the impugned order with further reasons as per para 26 above would be sufficient.

32. Concurring with the view taken by the learned Single Judge that questions of fact could not be re-appreciated

in the teeth of 3 concurrent findings returned against the appellant, for the additional reasons give by us herein above, we dismiss the appeal with costs assessed at ₹25,000/- against the appellant and in favour of the respondents.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

SEPTEMBER 05, 2011
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