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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.282/2010

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2nd November, 2011

ATULYA PROPERTIES AND BUILDERS PVT. LTD. Appellant
Through : Mr. V.K. Shukla, Advocate.

versus

LOH RAM AND ORS Respondents
Through : Ms. Mansi Gupta, Advocate for
respondent No.3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers 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?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.19937/2011

This is an application to bring on record the legal heirs of deceased respondent No.1/defendant No.1, who as per the service report has expired. The respondent No.1/defendant No.1 was the seller who had transferred the rights of the suit land to the appellant/plaintiff under an agreement to sell. The defendant No.1/respondent No.1 remained ex-

parte in the trial Court. When a person who does not file a written statement, remains exparte and subsequently dies, the Court has power to exempt the appellant/plaintiff from bringing on record his legal heirs (under Order 22 Rule 4 sub-rule (4)). The object of this provision is that if the original person is not interested, then, obviously his legal heirs would also not be interested.

This application is therefore allowed and the appellant is exempted from bringing on record the legal heirs of the deceased respondent No.1.

Application stands disposed of.

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1. The challenge by means of this Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 is to the impugned judgment of the trial Court dated 2.1.2010 which dismissed the suit of the appellant/plaintiff in which the appellant/plaintiff had sought the reliefs of possession, injunction and specific performance.

2. The case of the appellant/plaintiff was that under the documents being agreement to sell, general power of attorney, Will and receipt dated 17.9.1991, the appellant/plaintiff purchased the rights in the property being a plot of land measuring 75' X 230' ft. falling in khasra

No.95/2, Pitam Pura Village, Delhi. The appellant/plaintiff claimed to have paid a sum of Rs.50,000/- out of the total sale consideration of Rs.6 lacs on the date of entering into the agreement dated 17.9.1991. The alleged seller-Sh. Loh Ram was arrayed as defendant No.1 in the suit and the defendant Nos.2 and 3 were Delhi Development Authority (DDA) and Municipal Corporation of Delhi (MCD), respectively. The stand of defendant No.2/DDA was that the suit land did not fall in khasra No.95/2 but in fact fell in khasra No.119 min. and in khasra No.93/2 min. These khasra Nos. 119 min. and 93/2 min. were acquired vide Award No.1948 and were placed at the disposal of the DDA vide notification dated 20.5.1972 under Section 22(1) of the DDA Act, 1957. Even the land comprised in khasra No.95/2 was acquired under the Award No.895 dated 28.11.1958. As already stated defendant No.1 did not contest the suit and remained exparte.

3. The main issue which was called for determination in the suit was issue No.i which reads as under:-

“i. Whether the plaintiff has acquired any right, title or interest in the property described as Khasra No.95/2, Pitam Pura Village, Delhi as alleged? OPP”

4. On this aspect, the trial Court has given the following findings and conclusions:-

“The plaintiff has proved on record the agreement to sell dt. 17.9.1991 executed by defendant no.1 Sh. Loh Ram in its favour in respect of suit land as Ex.PW-1/2. This exhibit shows that land falling in Khasra No.95/2 has been sold by defendant no.1 to the plaintiff for a total sale consideration of Rs. 6 lakhs. However, no document has been produced on record by the plaintiff to substantiate that Sh. Loh Ram was the owner of the land falling in Khasra No.95/2. Similarly, there is no document on record filed by the plaintiff to establish that the land owned by Sh. Loh Ram and sold to plaintiff by virtue of aforesaid agreement to sell Ex.PW-1/2 was situated in Khasra No.95/2 and not in Khasra No.119 min. and Khasra No.93/2 min. as alleged by defendant No.2 DDA. In the absence of such document, it is impossible to hold that the plaintiff has acquired any right, title or interest in the land falling in Khasra No.95/2, Pitam Pura Village, Delhi. PW-1 Sh. N.K. Talwar has also deposed in his cross examination recorded on 1.4.2006 that he did not get the demarcation done from the Revenue Department before taking over possession of the land from the defendant no.1.

On the other hand, DW-2 was fairly stated in his examination in chief as well as in cross examination that the suit land falls partly in Khasra No.93/2 min. and partly in Khasra No.119 min. There is nothing in the cross examination of this witness to disbelieve the aforesaid statement. Even the land falling in Khasra No.95/2 stands acquired by Government vide award No.895 dt.28.11.1958. Ld. counsel for the plaintiff sought to argue that the Khasra No.95/2 does not find mention in the notification under Section 4 of Land Acquisition Act dt. 4.8.1945 pursuant to which the aforesaid award was passed later on and therefore, the said land cannot be taken to have been acquired legally and properly by the Government. The submission of the Ld. counsel, though are attractive but lack in force for the reason that plaintiff has not laid any challenged to the award No.895 dt. 28.11.1958 in itself. Plaintiff has not challenged the aforesaid award in any forum of law so far. In this suit also, there is no such prayer made in the plaint. Therefore, this Court cannot go beyond what is mentioned in the aforesaid award and cannot determine the legality or otherwise of the process pursuant to which the said award was

passed. Therefore, this issue is decided against the plaintiff and in favour of the defendant.” (underlining added)

5. A reference to the aforesaid findings and conclusions shows the following:-

(i) The appellant/plaintiff claimed to have purchased the land from the defendant No.1, however, the title of defendant No.1/Sh. Loh Ram himself was never proved.

(ii) The land in question in fact was required to be proved to be situated in Khasra No.95/2, however, the appellant/plaintiff failed to discharge its onus and did not summon any revenue official for demarcation to prove that the land in fact is situated in khasra No.95/2 and not in khasra No.93/2 min. and 119 min.

(iii) Even if the land in question is situated in khasra No.95/2, the same was acquired by Award no.895 dated 28.11.1958.

6. I do not find any illegality or perversity in the impugned judgment for this Court to interfere in exercise of its appellate powers under Section 96 CPC. It is undisputed and which is also clear from the copy of the Award No.1948 Ex.DW2/1 filed as Annexure R-III to the appeal by the appellant that the land comprised in khasra No.93/2 min. and 119 min. was acquired. Even the Award No.895 dated 28.11.1958 as Annexure R-I shows that Khasra No.95/2 was also acquired by the

Government. Therefore, the trial Court has rightly held that not only the appellant/plaintiff failed to prove that Sh. Loh Ram/defendant No.1 was the owner, but also that Sh. Loh Ram/defendant no.1 himself could not have been the owner because the land stood acquired by the Government. In the opinion of this Court, even assuming that Sh. Loh Ram was the owner, at best the right of the appellant will be to take compensation from the Government assuming that Sh. Loh Ram was the owner and appellant/plaintiff purchased the rights of Loh Ram in the suit property.

7. Learned counsel for the appellant argued that the appellant's application under Order 41 Rule 27 CPC (C.M. No.8014/2010) filed in this Court be allowed as the appellant had filed a khatoni with the suit to show that Sh. Loh Ram was the owner. Firstly, the object of Order 41 Rule 27 CPC is not to allow a party to fill a lacuna in his case. If the appellant/plaintiff failed to prove khatoni (revenue entry) on record, surely, the trial Court was justified in arriving at a finding that Loh Ram was not the owner. During the course of hearing, I wanted to examine the khatoni which was required to be filed with the application being C.M. No.8014/2010 under Order 41 Rule 27 CPC in order to appreciate the validity and the contention as put forth in the application, however, the

appellant/plaintiff has not even cared to file the photocopy of the khatoni in this Court alongwith C.M. No.8014/2010. In any case, a mere khatoni would not create any title in favour of Sh. Loh Ram once the land is found to have been acquired by the Government. The contention of the counsel for the appellant that the land was not validly acquired as there was no valid notification is an argument without merit inasmuch as in the suit no such cause of action was laid out and no relief was claimed for cancellation of the Award on the ground that there was no notification under Sections 4 and 6 of the Land Acquisition Act, 1894.

8. In view of the above, I do not find any merit in the appeal which is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

NOVEMBER 02, 2011

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