

R-184

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

% Judgment reserved on: 18.02.2011
Judgment delivered on:23.02.2011

+ **RSA No. 145/2005 & CM 7522/2005**

SHUSHILA RANI Appellant
Through: Mr.Keshav Hegde, Advocate.

Versus

SADHU RAM JAIN & ANR. Respondents
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.

1. This appeal has impugned the judgment and decree dated 29.1.2004 which had endorsed the finding of the trial judge dated 15.9.1999 whereby the suit filed by the plaintiff Sushila Rani seeking possession of the suit property i.e. land measuring 600 sq. yards in Khasra No.666, Ghonda Gujran Khadar, Illaqa Shahdara (Jai Prakash Nagar), Delhi had been dismissed.
2. Plaintiff claimed herself to be the owner of the aforementioned suit property. The defendant had three years ago illegally trespassed upon an area about 400 sq. yards out of the aforementioned plot of land and made unauthorized construction therein. In spite of requests she did not vacate the suit property. Suit was accordingly filed.

3. In the written statement defendants have taken the defence that the plaintiff is not the owner of the suit property and has no locus standi to file the present suit; bar of Section 185 of Delhi Land Reforms Act stood attracted; since it was agricultural land civil court did not have jurisdiction.

4. On the pleadings of the parties the following nine issues were framed:

“1. Whether the plaintiff is the owner of the property in dispute? OPP

2. If the answer to Issue number 1 is in affirmative, then whether the defendants have become owners by adverse possession? If so, its effect? OPD

3. Whether the suit is bad for mis-joinder or non-joinder of the parties? OPD

4. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPD

5. Whether the suit is barred u/s 185 of Delhi Land Reforms Act? OPD

6. Whether the suit is barred u/s 34 and 41 of the Specific Relief Act? OPD

7. Whether the defendants have illegally encroached upon the suit land measuring 400 square yards and have raised unauthorized construction thereon as alleged in para 2 of the plaintiff? OPP

8. Whether the plaintiff is entitled to recover possession of the suit plot either on the basis of title or on account of previous possession as alleged ? OPP

8A. Whether the suit is barred by time? OPD

9. Relief.”

5. Oral and documentary evidence was led. The suit of the plaintiff was dismissed. In appeal vide order of the first appellate Court dated 12.12.1989, the matter had been remanded back to the trial judge to decide the matter afresh in term of the new site plan which the plaintiff had been permitted to produce and prove. The plaintiff thereafter examined herself and proved the site plan

as Ex.PW-2/A; as per her versions the draftsman Bhoop Singh had prepared this plan. He had also been examined as PW-2. There were thus two site plans on record. The first site plan is Ex.PW-1/B and the second site plan is Ex.PW-2/A. As per her version both the site plans were correct. They were scrutinized before the trial judge afresh. Suit of the plaintiff stood dismissed on 15.9.1999.

6. The first appellate Court vide the impugned judgment dated 29.11.2004 had reaffirmed this finding. The Court was of the view that the identity of the suit land has not been proved.

7. This is a second appeal court. After its admission on 01.8.2008, the following substantial question of law was framed:

“Whether the courts below fell in error in dismissing the suit of the appellant on the ground that she failed to identify the suit property in spite of having held that she was owner of suit property?

8. On behalf of the appellant, it is submitted that the registered sale deed by virtue of which the plaintiff claims herself to the owner of the aforementioned 600 sq. yards of land had been proved before the trial court as Ex.PW-1/A. The boundaries in the said sale deed matched the boundaries in the site plan Ex.PW-2/A as also site plan Ex.PW-1/B. There is no variation. Courts below had erred in dismissing the suit of the plaintiff.

9. The impugned judgment in this context had recorded its findings as follows:

“10. The entire case of the plaintiff/appellant hinges on the sale deed Ex.PW-1/A. She has claimed that she purchased a land measuring 600 square yards out of Khasra number 666 situated at Village Ghonda Gurjan Khadar, Illaqa Shahdara, Delhi, bounded as under:

East- Land of Urmila Jain West- Land of Betha Wala
Sourth- Land of Others North- Road

11(a). Before the remand of the case she proved the site plan Ex.PW-1/B to show that the respondents were in unlawful possession over 400 square yards of her property out of the said 600 square yards of land. However, after the remand of the case before the learned trial court the appellant filed another site plan and proved the same as Ex.PW-2/A alleging that the area marked as red was in unlawful possession of the respondents. Both site plans are in contradiction to each other. In the site plan Ex.PW-1/B the land shown as alleged to be in possession of the respondents is adjacent to the house of Smt.Saraswati w/o Sh. Sohan Lal. The dimensions of the boundary walls of the said land is 18.7 ½ X 21.6 feet. This land does not tally with the directions as mentioned in the sale deed Ex. PW-1/A.

11(b). In the subsequent site plan PW-2/A the area shown in red has boundary walls with dimensions 60 x 55.10 ½ feet. The said area is stated to be in possession of the respondents bounded on the East with the house of Smt.Urnala Jain. On the West there is a street measuring 10.4 ½ feet. On the North of the said plot there is house of others and towards the South is again a street measuring 15.7½ feet. The directions mentioned in site plan Ex. PW-2/A of the said area also does not tally with the directions of the plot purchased by the appellant vide the sale deed Ex. PW-1/A.

11(c). In the sale deed Ex. PW-1/A towards the East there is a land of Urmila Jain but towards the West there is the land of Betha Wala. Whereas as according to the site plan Ex. PW-2/A the open plot of Betha Wala and the house of Smt. Saraswati is towards the western side of the area marked as red in the site plan but there is also a street measuring 10.4 ½ feet in between the 3 plots i.e. the disputed land, house of betha Wala land house of Saraswati. Similarly, in sale deed Ex.PW-1/A towards the North there is a road and towards the South land of others is shown. Whereas in the site plan Ex.PW-2/A towards North house of others is shown and towards South there is a street measuring 15.7 ½ feet.

12(a). PW-1 Smt. Sushila Rani the appellant through proved the subsequent site plan Ex.PW-2/A but she could neither tell the municipal number of her property nor could tell the Khasra number of the said property. She deposed that inside the portion marked red there was just a boundary and no construction was raised. However, in the site plan Ex.PW-2/A inside the area marked red, 12 constructed rooms have been shown. PW-1 also deposed that the site plan was prepared by the draftsman as per her directions.

12(b). However, PW2 Sh.Bhoop Singh the draftsman who had prepared the site plan Ex. PW-2/A testified that Khasra number

666 mentioned on Ex.PW-2/A was written by him as disclosed to him by PW-1. He also testified that he had not entered any of the rooms and had made the sketch of the rooms from outside as the main door was locked. He also could not tell the municipal number of the portion marked red. Thus the testimony of both PW1 and PW2 is in contradiction with each other and the testimony of PW1 is further in contradiction with the site plan Ex.PW-2/A.

13. On behalf of the appellant it was contended that the site plans filed on behalf of the respondents do not tally with the directions as mentioned in their title deeds. Thus they cannot claim ownership and possession over the disputed land. I do not find any force in the said contention. Since the appellant/plaintiff has to prove her case and she cannot derive any benefit by alleging that respondents have failed to prove the identity of the land in their possession. While deciding issue number 1, the learned trial court has at length discussed about the ownership of the disputed property. I do not find any infirmity or illegality in the said discussion made by the learned trial court.

14(a). On behalf of the appellant it was also contended that since Sh.Hukum Chand had already sold 600 square yards of land in khasra number 666 in favour of the appellant vide a registered sale deed, he could not have resold the same area of the said property to any other person. Thus the subsequent title documents, if any, produced by the respondents are void. To support this contention learned counsel had cited Narain Singh Vs. Mahinder Singh etc (supra) the Hon'ble Delhi High Court observed "If an owner sells his land in 1970, then he has no right to sell same land in 1989."

14(b). Appellant has claimed that Sh. Hukum Chand sold her 600 square yards of land on 26.7.71. Respondent number 2 has alleged that Sh.Hukum Chand also sold her 200 square yards of land vide registered sale deed on 26.7.71. Both the parties have proved the sale deeds in their favour. Respondent number 1 has claimed that Sh.Hukum Chand sold him 300 square yards of land on 9.2.74 vide documents, General Power of Attorney etc. As already discussed, the sale deed Ex.PW-1/A proved by the appellant in respect of 600 square of land is in contradiction to the site plan Ex. PW-2/A. The testimonies of her witnesses are also contradictory.

14(c). Furthermore, though the appellant has marked in red an area alleged to be 400 square yards out of 600 square yards in Khasra number 666 unlawfully occupied by the respondent but she has failed to show the remaining 200 square yards of land out of 600 square yards of land in her site plan Ex. PW-2/A. This shows that the site plan Ex.PW-2/A filed on behalf of the appellant is not

correct according to the site.

14(d). Moreover, the appellant also does not seem to be satisfied with the site plan Ex.PW-2A filed and proved by her. As during the hearing of the appeal an application under section 151 CPC was moved on her behalf mentioning that the appellant could not prepare the site plan after going into the properties in possession of the respondents. It was contended that the respondents were denying the correctness of the site plan filed by her and the site plans filed by the respondents were wrong, confusing and misleading. Thus a prayer was made to prepare a new and proper site plan of the properties in the possession of the respondents. However, the said application was dismissed by the learned Predecessor vide orders dated 22.5.02. It is thus evident that the appellant is herself contradicting the site plan Ex.PW-2/A by stating that the same was not prepared after going into the properties whereas in the site plan Ex. PW-2/A twelve constructed rooms have been shown. Therefore, the facts of the case Narain Singh Vs. Mahinder Singh etc (supra) is distinguishable from the facts of the present case. In the present case the appellant has failed to show that Sh.Hukum Chand resold area of land from the land owned by the appellant measuring 600 square yards.

14(c). On behalf of the appellant reliance was placed on the judgment Chitturi Perraju and another Vs. Yednapudi Venkamma and others (supra) in which it has been held "Description of property in document. Boundaries given with precision. Boundaries prevail even if there is some discrepancy about actual extent of land." However, in the present case in the sale deed only the total area of the land is mentioned and no measurement of the boundaries of the land is given. In the site plan PW-2/A the dimensions of the boundaries are given but these dimensions are only in respect of 400 square yards and the appellant has miserably failed to show the remaining 200 square yards of land in her ownership and possession. Thus the appellant has failed to identify her entire 600 square yards of land in Khasra number 666 purchased by her vide sale deed Ex.PW-1/A.

15(a). It was also contended on behalf of the appellant that the respondent number 1 cannot claim ownership in respect of 300 square yards of the land as the same is alleged to have been purchased by him through documents GPA etc. which do not confer any title of ownership. On behalf of respondents it was submitted that respondent number 1 is in possession of the said land and is also paying house tax and is thus the owner of the said land. To support this contention judgment Asha Khanna & Anr. Vs. Vishnu Charan was cited. It was observed by the Hon'ble

Delhi High Court "If a person receives house tax bill, then he is owner and occupant cannot claim adverse possession. Survivors of owners succeed as owners."

15(b). The judgments Balbir Singh Vs. Pehlad (supra) and Jai Bhagwan & Ors Vs. Union of India & Ors (supra) have been cited on behalf of the respondents. Judgment Ram Lubhaya Vs. Dr. J.R. Chawla (supra) was cited on behalf of the appellant to strengthen the arguments pertaining to issue number 5. But as already observed respondents have not filed any cross appeal to challenge the findings on the said issue. The other judgments cited on behalf of the respondents are distinguishable from the facts of the present case.

16(a). On behalf of the appellant it was also contended that since the appellant is in possession of the suit land thus she is entitled to a decree of possession. In support of the said contention reliance was placed on the judgments Shariff Iqbal Hussain Ahmed Vs. Kota Venkata Subbamma & Ors (supra) and Somnath Berman Vs. Dr. S.P. Raju and Another (supra). It was submitted that the appellant was delivered the possession of the suit plot at the time the sale deed was registered.

16(b). In the sale deed Ex. PW-1/A it has been mentioned that the Vendor has delivered the actual physical possession of the said land unto the Vendee on the spot. Nonetheless, the appellant has failed to identify the said plot purchased by her to ascertain her ownership and possession over the piece of land measuring 600 square yards. It is not disputed that appellant purchased 600 square yards of land in Khasra number 666 vide registered sale deed of which she was also delivered the possession. But she has failed to establish the identity of the said area of the plot. Thus she has also failed to prove that the respondents have illegally encroached upon her land measuring 400 square yards on which they have unauthorizedly raised construction."

10. The first appellate Court had rightly noted that both the site plans proved by the plaintiff i.e. Ex.PW-1/B (which was the site plan initially filed before the civil judge) and the second site plan Ex.PW-2/A (which had been filed after the matter had been remanded back to civil judge) are contrary to one another.

Ex.PW-1/B contained the following boundaries:

"North – House of other

South – House of Betha Wala
East – Street 10.4¼ feet wide
West- House of Sawaswati W/o Sohan Lal”

Ex.PW-1/A the sale deed had noted the following boundaries:

“North – Road.
South – Land of Others
East – Land of Urmila Jain
West – Land of Betha Wala”

As is evident from Ex.PW-1/B the disputed portion is adjacent to the house of Sarswati; the dimensions of the boundary wall are 18.7½ x 21.6 feet; these do not tally with the sale deed Ex.PW1/A.

In the second site plan Ex.PW-2/A the plots of Betha Wala and house of Sarswati are in West along with the street measuring 10.4½ feet. The dimensions of the boundary wall in Ex.PW-2/A are 60 x 55.10½ feet; it depicted the following boundaries:

North – House of other
South – 55.10½ feet wide street
East – House of Urmila
West – House of Betha Wala and Saraswati W/o Sohan Lal

These boundaries in Ex.PW-2/A do not tally with the boundaries mentioned in the sale deed Ex. PW-1/A.

11. These are fact findings and had been delved into in an in-depth detail. After examination of oral and documentary and scrutiny of the site plans Ex.PW-1/B and Ex.PW-2/A and the sale deed Ex.PW-1/A the identity of the suit land having not been established the suit of the plaintiff was rightly dismissed.

12. These fact findings call for no interference. This is a second appellate Court only; it can interfere only if there is a perversity; no such perversity is shown. Substantial question of law is answered accordingly.

13. Appeal has no merit. The appeal as also pending application is dismissed.

INDERMEET KAUR, J.

FEBRUARY 23, 2011
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