

the land; the plaint was thereafter amended and apart from the relief of permanent injunction, mandatory injunction has also been sought to the effect that the defendant be directed to hand over the possession of the suit property back to the plaintiff.

3. Case of the plaintiff as set out in the plaint is that she had been allotted a plot of land by Delhi Administration measuring 100 sq. meters in Khasra No.42/9/5, plot no.8 under a scheme for landless persons who were not in position to purchase land for construction of houses. Certificate to this effect had also been issued by the Delhi Administration to every allottee; a nominal sum of Rs.45/- had been paid. This certificate of allotment has been proved in the course of the trial as Ex.PW-1/B. It is in fact the basis of the case of the plaintiff. Version of the plaintiff is largely hinged on this document. This document is dated 11.1.1977 and was purported to have been issued by the Pradhan of the village allotting 100 sq. yards of land in Khasra No.42/9, village Badli to the plaintiff; condition was that the allotment was for a period of nine years; the construction on the plot had to be made within two years from the said date. The plaintiff has also relied upon a receipt of payment dated 29.9.1976 Ex.PW-1/A supporting her stand that Rs.45/- was paid by her in advance pursuant to which this allotment was made in her favour. The other documents relied upon by the plaintiff are Ex.PW-1/C i.e the site plan depicting the area in her possession and Ex.PW-1/D which is the khasra girdawari for the year 1981-82 showing that the aforementioned property which is located in Khasra No.42/9/5 is in the name of the plaintiff Sushila Devi.

4. In the written statement the defence of the defendant was

that he is in possession of the suit land. The case of the plaintiff is false. Plaintiff is neither the owner or in possession of the suit land. Defendant in support of his case relied upon khasra girdawaris for the year 1979-90 (Ex.D-1), for the year 1982 (Ex.D-3) showing his possession of the suit land. It was denied that the Delhi Administration had ever allotted the aforementioned plot of land to the plaintiff; in fact there was no such scheme.

5. On the pleadings of the parties, trial judge had framed four issues. Oral and documentary evidence was led. Documents relied upon by the plaintiff, Ex.PW-1/B the allotment letter purported to have been issued by the Pradhan of the village in her favour, Ex.PW-1/A the receipt evidencing the payment of Rs.45/- against the said allotment was disbelieved. Per contra the documents of the defendant found favour; on the preponderance of the probabilities the suit of the plaintiff was dismissed.

6. In appeal this finding was endorsed. Findings of the first appeal court are as follows:

“ A perusal of allotment certificate Ex.PW-1/B shows that plot No.8 of 100 sq. yards in Khsara No.42/9 village Badli was allotted to Smt.Sushila Devi on 11.1.1977. Receipt Ex.PW-1/A of ₹45/- on form No.37 was issued on 29.9.1976. Vide certificate Ex.PW-1/B plaintiff Smt.Sushil Devi was allotted Patta of the plot No.8 of 100 sq. yards for a period of nine years. One of the conditions of Patta was that the house could be constructed within two years. It is worth noting that a period of nine years from the alleged allotment of land on 11.1.1977 has already expired. Accordingly, plaintiff Smt.Sushila Devi cannot claim any right in the plot in question on the basis of certificate Ex.PW-1/B. Further, the plot was to be constructed within two years w.e.f. 11.1.1977. It does not appear probably that plaintiff had collected construction material of the plot in the first week of July 1982.

12. As per admitted case of plaintiff Smt.Sushila Devi, she is not in possession of the plot in question. Accordingly,

the relief of permanent injunction is not maintainable. As regards the relief of mandatory injunction, it is worth noting that plaintiff is claiming possession in the relief of mandatory injunction. Present is not the suit for possession and in particular a suit under Section 6 of Specific Relief Act. I am of the considered view that the relief of possession cannot be granted to plaintiff Smt.Sushila Devi in the present suit for mandatory injunction. As regards contempt application, it is worth noting that while passing order dated 30.7.1982 in order sheet directing the parties to maintain status quo till 10.8.1982 there is no finding that plaintiff was in possession of the suit land. Further, possession of plaintiff of the suit land cannot be inferred from the said order. Still further, documents on record do not specifically show any possession of plaintiff at the time of passing of order dated 30.7.1982. thus, record does not show violation of order of direction to parties to maintain status quo by defendant.

13. In view of the above discussion, present appeal fails and is dismissed.”

7. The documents relied upon by the plaintiff in support of her claim had been adverted to. It was held that in Ex.PW-1/B khasra number has been noted as 42/9 whereas the contention of plaintiff in her plaint is that she was allotted plot of land in khasra No.42/9/5. It is further worthwhile to mention that in the plaint averment was made that she has been allotted 100 sq. meters of land whereas the document Ex.PW-1/B mentions 100 sq. yards of land. Ex.PW-1/A was disbelieved as there were cuttings in the said document. Moreover this document is dated 29.9.1976 purporting payment of Rs.45/- in lieu of an allotment which was effected seven months later i.e. on 11.1.1977. Moreover the contents of Ex.PW-1/A also did not spell out the purpose for which this receipt had been issued. The trial judge had also noted that a single stray document Ex.PW-1/D which was the khasra girdawari for the year 1981-82 does not establish the possession of the plaintiff as

plaintiff had failed to produce the revenue record for earlier years i.e. of 1977; this was relevant in view of the fact that the contention of the plaintiff that she had been allotted this plot of land in the year 1977. Moreover there were counter documents produced by the defendant showing counter entries for the same plot of land which were for the year 1979-80 and 1982; the impugned judgment had also noted that the case of the plaintiff was based upon a scheme of the Delhi Administration for the grant of land to landless persons; no such scheme has been proved or brought on record. Specific contention of the defendant in the written statement was that there was no such scheme in existence. Learned counsel for the defendant has also filed on record certified copy of an order dated 26.5.1983 wherein an earlier suit filed by the defendant herein (i.e. Amar Singh) seeking permanent injunction against the Union of India and Gaon Sabha, Badli Village had been withdrawn by him on the statement of the counsel for the defendants that they would not interfere with the peaceful possession of the suit land of the plaintiff. A perusal of the plaint in that suit (certified copy of which is on record) shows that the plaintiff claimed himself to be the owner and in possession of 352 sq. yards comprised in Khasra No.42/9/5 in the revenue estate of Village Badli, Delhi. The defendants i.e. the Union of India and Gaon Sabha, Badli through their counsel agreed not to interfere with the possession of the defendants; in these circumstances the suit of the plaintiff had been withdrawn on 26.5.1983. Contention of the defendant is that the possession of the defendant had been established through this document as well.

8. PW-4 Nathu had come into witness box to substantiate the

case of the plaintiff that Ex.PW-1/B had been issued by him. Attention has been drawn to his version. Nowhere in his entire testimony PW-4 has deposed that he has come into witnesses box in his capacity as the Pradhan of the village. It was incumbent upon him to have deposed so if he had come into witness box in his official capacity. Whether PW-4 Nathu has come in the capacity of Pradhan or otherwise has not been explained. Testimony of this witness was rightly not relied upon. The case of the plaintiff is largely based on the fact that the plot of land had been allotted to him by the Delhi Administration. Plaintiff had also failed to prove that any such resolution was passed by the Delhi Administration or this plot of land had been allotted to her through them. No official witness has come into witness box to support this stand. Both the courts below had rightly held that the plaintiff has not been able to prove her case.

9. Learned counsel for the respondent has also drawn attention of this Court to Section 47-A(h)(2) of the Delhi Land Reform Rules, 1954. It is pointed out that a lease of land for purpose other than agriculture can only be by way of a public auction; an agreement in writing then has to be executed with the Gram Panchayat providing that no permanent structure without the prior sanction of the Deputy Commissioner shall be raised. It is pointed out that admittedly this provision has not been adhered to. Attention has also been drawn to Rule 178 of the Delhi Panchayat Rules, 1959 which postulates that in the case of a lease without premium transferring immovable property vested in the Gaon Panchayat, a reasonable annual rent shall be reserved and made payable. It is pointed out that this has also neither averred nor

proved by the plaintiff.

10. This is a second appeal and it has been admitted. The substantial question of law was formulated on 14.2.2011; it reads as follows;

“Whether the finding in the impugned judgment dated 18.10.2004 are perverse, if so, its effect?”

11. The contentions raised and noted hereinabove do not in any manner show that the findings in the impugned judgment are perverse. The findings returned in the impugned judgment had on appreciation and re-appreciation of the evidence both oral and documentary drawn a conclusion that neither Ex.PW-1/A nor Ex.PW-1/B could be relied upon. Ex.PW-1/B which was a patta prescribed a condition that the house shall be constructed within two years. Plaintiff had averred that she had collected building material for construction in the first week of July 1982 which was much later; this condition has also not been complied with.

12. This court is not a third fact finding court. Findings of fact can be interfered with only if the same are perverse and on no other count. These findings cannot be said to be perverse. They call for no interference. Substantial question of law is answered accordingly. Appeal is dismissed.

INDERMEET KAUR, J.

MARCH 18, 2011
nandan