

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

% *Date of Judgment: 03.06.2011*

+ **R.S.A.No. 97/2011 & CM Nos. 11495/2011, 11496/2011 & 11497/2011**

BUDDHIST SOCIETY OF INDIA**Appellant**

Through: Mr. Amit Bansal, Advocate.

Versus

BHANTE NAGA SENA**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 has impugned the judgment and decree dated 11.05.2001 which had endorsed the finding of the trial judge dated 22.02.2010 whereby the suit filed by the plaintiff i.e Buddhist Society of India seeking permanent injunction against the defendant restraining him from interfering with the possession of the plaintiff qua the suit land (as depicted in red colour in the site plan) had been dismissed.

2. The plaintiff is a society; suit had been filed through Attorney, Sh. R.S. Gautam; it had been set up by persons belonging to the scheduled castes community of the Munirka Villate since about four decades; it was carrying activities on the Abadi land of the village; land had been assessed to house tax since 1979 and comprised of a Bhavan and other rooms; it was in an area of 1600 sq. yards of land; suit property was possessed and managed by the plaintiff society; it was for worship and other charitable purposes. Defendant being a native of the Village Munirka, became a monk in June 1985 and since then he had been showing all his zeal to preach Buddhist sermons; defendant had plans to take possession of the building illegally and forcibly and was threatening to usurp this property which would create a law and order situation; this threat was first given on 12.11.1985; it was again given on 17.11.1985; present suit was accordingly filed in November, 1985 seeking the aforementioned reliefs.

3. In the written statement, it was denied that the plaintiff had any concern with the Munirka Budha Vihar Trust; defendant was a monk and preacher of Buddhist religion; defendant had constructed four rooms, one toilet and one bath room in the property in dispute and he had spent more than ₹ 14,000/- for the

said purpose; plaintiff had no connection with the said property; suit was liable to be dismissed.

4. On the pleadings of the parties, the following five issues were framed:-

1. *Whether the plaintiff has locus-standi to file the present suit? OPP*

2. *Whether the suit has not been properly valued for the purposes of Court fees and jurisdiction and whether this Court has no jurisdiction to try this suit? OPD*

3. *Whether the present suit is bad for non-joinder of necessary parties? OPD*

4. *Whether the plaintiff is entitled for the relief of permanent injunction, as prayed in the plaint? OPP*

5. *Relief.*

5. Oral and documentary evidence was led.

6. Both the fact finding courts were of the view that the plaintiff had failed to disclose since when he was in actual possession of the suit land; he had no possessory title. No details have been furnished by the plaintiff. Trial Judge had noted that

this is not a suit for possession or declaration of title but since the plaintiff had failed to show his legal possession in the suit land, he was not entitled to any relief. This finding was endorsed in appeal.

7. This is a second appeal. It is yet at the stage of admission and substantial questions of law have had been embodied at page 2 of the body of the appeal.

8. On behalf of the appellant, it has been urged that the courts below have gone wrong to deal with the question of title and in a suit for injunction, title is not relevant; it is only a settled possession which has to be established which the plaintiff has been able to establish.

9. The relief sought by the plaintiff is an equitable relief; he had sought relief of injunction. Perusal of the plaint shows that the plaintiff has given the impression that he is in legal possession of the suit land; however, the plaint is sadly lacking in material particulars; para 4 of the plaint states that this society has been running since the last four decades but when the society came into possession of this land has not been given. This is also lacking in the deposition of the witnesses of the plaintiff and has been rightly noted in the impugned judgment. PW-1 in his

examination-in-chief stated that they are in possession of the suit land since 1967; it has come on record that this land is a Government land; plaintiff was silent on this in his plaint; he had willfully and intentionally concealed the fact that this so-called society is operating from Government land. Plaintiff had not come to the court with clean hands. No documentary evidence had also been brought on record by the plaintiff to show his so-called settled possession. Plaintiff was, in fact, not even aware of the khasra no. in which this property was located.

10. In these circumstances, the equitable relief of injunction had rightly been disallowed; there was a willful concealment by the plaintiff and he had for ulterior reasons not disclosed this fact in this plaint; this fact had emanated in his replication for the first time when an objection was taken to the said effect in the written statement filed by the defendant.

11. The impugned judgment had, in this context, noted as follows:-

"It is a settled position of law that the legal remedy flows from a legal right. In other words where there is no right there is no remedy. Therefore, plaintiff in order to show that he is entitled to the relief of permanent injunction has to show his right in the suit property.

However appellant in the entire plaint has nowhere mentioned as to how he came into possession of the suit property. On the other hand respondent has stated that the property in suit is a government land but used and occupied by plaintiff for charitable purpose. The plaintiff has failed to establish before the ld. Trial court that its occupation on the said land was lawful. Ld. Civil Judge has rightly observed that plaintiff has failed to adduce any evidence to show that he is entitled to run the Buddha Vihar from the suit property. PW1 in cross examination admitted that as per government record the suit property belongs to the government. The fact that suit property is a government land was within the knowledge of the appellant but same was not disclosed in the plaint. The report of the Local Commissioner in the ld. trial court record is also against the appellant. The appellant has not challenged this report. Appellant chose not to summon any document or witness from the DDA or Land Acquisition Department to prove its title over the suit property.”

12. No interference is called for in this finding. In no manner can it be said to be perverse. No substantial question of law has arisen; appeal as also the pending applications are dismissed in limine.

INDERMEET KAUR, J.

JUNE 03, 2011

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