

threatened the plaintiff to demolish the super structure and remove him from the site. Present suit was accordingly filed.

3. Written statement filed by the Delhi Development Authority (DDA) had contested the suit; it was pointed out that the land has been placed under the disposal of the DDA and it belongs to the DDA; plaintiff is a rank trespasser. No relief can be granted in his favour.

4. Defendant no.2 Rattan Singh had filed a separate written statement. He had supported the stand of the plaintiff; the contention of the plaintiff that he was a tenant of Rattan Singh (defendant no.2) was affirmed by the defendant no.2. After filing written statement the defendant no.2 was proceeded ex parte. He did not appear thereafter.

5. On the pleadings of the parties three issues were framed: they read as follows:

- "1. Whether the suit property has been acquired and placed at the disposal of the DDA? OPD
2. Whether the plff. is entitled for the relief claimed? OPP
3. Relief."

6. Three witnesses were examined on behalf of the plaintiff and one DW was examined.

7. Plaintiff was claiming his tenancy under Rattan Singh; Rattan Singh was arrayed as defendant no.2; he had not come into witness box; whether Rattan Singh himself had any legal title in the suit property whereby he could lease out this property to the plaintiff had not been established. Plaintiff had not filed any agreement to show that he had taken this land from Rattan Singh. DW-1 on the other hand had proved Ex.DW1/2 showing that the land is under the control of the DDA being Nazul land. Jamabandi has been

proved as Ex.DW-1/3 showing that this land is in occupation of the government. Aks Jira was proved as Ex.DW-1/1.

8. Contention of the plaintiff that Rattan Singh had in fact purchased this land from Harpal Singh and Umrao Singh and he has claimed his ownership through them was also dealt with by the trial court. The trial judge had noted that the plaintiff has failed to lead any evidence to prove this fact that the suit property was a part of the land which was allegedly owned by Harpal Singh and Umrao Singh as such the judgment of the High Court (Ex.PW-1/11 and Ex.PW-1/12) showing ownership of Harpal Singh and Umrao Singh in land measuring 30593 sq. yards in a part of Khara No.169/5/3 did not in any manner advance the claim of the plaintiff. Plaintiff had failed to show that the suit property was a part of this suit land. The impugned judgment had affirmed this finding. The finding returned is as follows:

“10. As per deposition of DW1, the suit property falls in Khasra No.169/5/3 of Kadam Sharif, Revenue Estate. He proved aks sizra is Ex.DW-1/1 and the disputed site is shown at Mark A which is in blue colour. This land belongs to Government and is under the management and control of DDA transferred by nazul agreement of 1937, copy of which is Ex.DW-1/2. The jamabandi for the year 1064-65 in respect of Khasra No.169/5/3 min is Ex.DW-1/2 wherein the land is shown in the ownership of Government. Its occupation is deemed with the owner. The property Municipal No.110037, Motia Khan, Delhi is not in occupation of suit land falling and forming part of Khasra No.169/5/3 min. According to Sikni girdawari for the year 1959, one Sh. Mohan S/o Sh. Chottey was in occupation of Municipal No.11037 and not the plaintiff. The said sikni girdawri is Ex. DW1/4.

11. The deposition of DW-1 could hardly be discredited in his cross examination. Rahimudin; the appellant examined himself PW-1 and testified that he was tenant of a plot measuring 70 Sq. yds out of property bearing no.11037, Motia Khan, New Delhi. That this property no.11037 was owned by Sh. Rattan Singh to which he was paying rent. He testified that he has raised the super structure thereon. he

referred to the rent receipt Ex. PW1/1 to PW1/6 allegedly issued by Sh. Rattan Singh. He explained that the originally land belonged to Umrao Singh and some part of the land including the land in question was purchased by respondent no.2 and from him he had got on rent 70 sq yds plot of land. He made reference to Ex. PW1/11, PW1/12 and PW1/13 to establish the ownership of Mr. Rattan Singh over the suit property. PW-2 and PW-3 merely testified being neighbourers about the possession of the appellants over the suit property.

12. In the judgment referred by the appellant name of Umrao Singh and Harpal Singh is not mentioned who were declared owner of the land measuring .30593 sq. yds comprising in and forming part of Khasra No.169/5/3 in Mauja Kadam Sharif, Motia Khan, Delhi. In these judgments, there is no mention of the respondent no.2. There is no documents to substantiate the claim of the appellant that Sh. Rattan Singh purchased any parcel of land from Sh. Umrao Singh. The appellant has not filed any rent agreement to prove his tenancy whereas the alleged rent receipts hardly inspire any confidence. The respondent no.2/Sh. Rattan Singh has not been examined. He remained ex-parte in the appeal. Appellant as PW-1 just made self serving statement that the suit property formed part of premises no.11037; whereas DW-I testified that the suit property forms of part of Khasra NO.169/5/3 of Kadam Sharif, revenue estate. It was owned by Government of India. Under the Nazul Land Act, it was transferred to and vested in respondent/DDA Ex. DW1/1 to DW1/4 support the plea set up by the respondent/DDA. The deposition of DW1 coupled with documents Ex.DW1/1 to DW1/4 outweighed the oral deposition of PW-1 to PW3. It clearly established that the suit property formed part of Khasra No.169/5/; which as above was transferred to respondent no.1/DDA.

From my above discussion, it is established on record that the suit property was not owned by Sh. Rattan Singh, the respondent No.2. Thus it was misconceived to plead that the appellant was tenant therein of respondent no.2. Accordingly, the finding rendered by the Ld. Trial Court that the suit property was transferred to and vested in DDA/Respondent No.1 is upheld. As a consequence thereon, the plea set up by the appellant that he was tenant in 70 sq. yds of the suit property is held to be not sustainable. In fact his initial case set up by him in the plaint was that he was tenant of the premises no.11037 which measured 320 sq.

yds. It is further pertinent to mention on record that the appellant set up a contrary plea herein alleging that he was tenant of Mr. Rattan Singh/respondent no.2 and as such the respondent no.1 be restrained from interfering in his possession or demolishing the super structure raised by him. While going through the judgments referred by the appellants; I find that the appellant had given fake premises no.11037, Motia Khan, Delhi to the suit property just to mislead the court. In fact the suit property is near the land of premises bearing no.11037 and the respondent no.2 has nothing to do with the same as it was transferred to and vested in respondent no.1/DDA. Amazingly the owner of the land was not coming forward to claim his rights in the suit property. Appellant, thus, was simply a rank tress-passer. As laid by Hon'ble High Court of Delhi in AIR 1978, Page 174; tress passer has no legal and justiciable right and is liable to be thrown away with the permissible self help. Secondly, for equitable relief of decree of permanent injunction mere possession is not enough. A person in unlawful possession of the property; that too of the government; has no legal and justiciable right to be protected against the lawful owner. Reliance placed: Apex Court Judgment in Premjee Rathansay Shah Vs. UOI AIR 1994 (6) SC 585.

13. In the light of the above discussion; no merit is found in the grounds of appeal to interfere with the finding of Ld. Trial Court on issue no.2 as well."

There is no perversity in these findings. They call for no interference.

9. The substantial questions of law are embodied in page 3 of the appeal. No such substantial question has arisen. Appeal as also pending application is dismissed in limine.

INDERMEET KAUR, J.

MARCH 30, 2011
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