

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

% Date of judgment: 03.5.2011

+R.S.A.No. 275/2007 & CM Nos.14949/2007 & 14950/2007

SHASHI SAINI

.....Appellant

Through: Mr.Sandeep Sethi, Sr.Advocate
with Mr.Rajesh Gupta and
Mr.Harpreet Singh, Advocates.

Versus

RAJINDER SINGH & ORS.

.....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. (Oral)

CM No. 14950/2007 (exemption)

Allowed subject to just exceptions.

R.S.A.No. 275/2007 & CM Nos.14949/2007

1. This appeal has impugned the judgment and decree dated 19.07.2007 which had endorsed the finding of the trial judge dated 31.03.2005 whereby the suit filed by the plaintiff Rajinder Singh seeking permanent injunction restraining defendants from interfering in plot measuring 450 sw. yards falling in khasra no. 818/1, West Vinod Nagar, D-Block, Delhi-92 (hereinafter referred

to as 'suit property') had been dismissed.

2. The case of the plaintiff is that he is the recorded owner and in possession of the suit property. Defendants tried to take forcible possession of the suit property on 17.08.91; they could not succeed; threats continued. Suit was accordingly filed.

3. Defendant no. 1 was proceeded ex-parte. Defendant No.2 had contested the suit. It was stated that he is the owner of the property measuring about 385 sq. yards in the shape of 4 plots adjacent to each other and suit land falls in khasra no. 801, West Vinod Nagar, Mandawli, Fazalpur, Delhi and not in khasra no. 818/1 as been mentioned in the plaint. Defendant no. 2 had purchased this property from Sh. Kanti Pd. And Sh. Raghubar vide documents dated 09.08.1984, 28.07.1984 and 25.08.1984; the correctness of the site plan was also disputed. Contention of defendant no. 2 was that he was in the actual physical possession of the suit property.

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

- "1. Whether the disputed plot falls in khasra no. 818/1, West Vinod Nagar, Mandawali, Fazalpur, Delhi? If so, to what effect? OPP*
- 2. Whether the plaintiffs are entitled to the relief of permanent injunction? OPP*
- 3. Relief."*

5. Oral and documentary evidence was led.
6. Suit of the plaintiff was decreed."
7. This was affirmed in first appeal. The first appellate court was of the view that the defendant had failed to prove that the khasra number of the property in question is 808 and not 818/1. The appeal was dismissed.
8. This is a second appeal. It had been admitted and on 02.09.2008, the following substantial question of law was formulated:-

"Whether the suit land to which the respondents laid claim had been acquired vide Award No. 49-C/70-71 dated June 26,1986 and Award No. 28/75-76 dated April 17, 1996?"

9. On behalf of the appellant, it has been urged that the award no.70-71 dated 26.6.1986 clearly shows that 4 bighas out of Khasra No.818/2 had been acquired; award no. 75-76 dated 17.4.1996 shows that balance land in Khasra No.818/1 i.e. 5 bighs and 16 biswas stood acquired. This had not been considered by the two courts below. If the land had been acquired and the plaintiff had already received compensation in lieu thereof the question of the plaintiff having been granted a decree of injunction in his favour did not arise. The impugned judgment is a perversity.

10. None has appeared for the respondent.

11. Admittedly the documents on which the plaintiff is placing reliance i.e Award No.70-71 dated 26.6.1986 and Award No.75-76 dated 17.4.1996 had not seen the light of the day in the courts below. They cannot be looked into by a second appeal court. There is also no application under any provision of law seeking permission of this Court to place these documents on record. The contention of the learned counsel for the appellant is that on 02.9.2008 the appeal had been admitted the substantial question of law qua these two documents i.e. the Award No.70-71 dated 26.6.1986 and Award No.75-76 dated 17.4.1996 had been framed; it is implicit that cognizance of the said documents had been taken. This submission of the learned counsel for the appellant is to be noted only to be rejected. Record shows that the substantial question of law was formulated on the aforementioned two Awards. However, it is also an admitted fact that the said Awards are not a part of the court record. This order was passed on 02.9.2008. The RSA is of the year 2007. The appellant has not filed any application till date seeking permission of this Court to place these documents on record. Order 41 Rule 27 of the Code is the relevant provision under which additional evidence may be permitted but such a prayer can only be granted if the strict

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parameters contained therein are fulfilled. A party who is not able to adduce evidence for any reason in the court below must satisfy the appellate court that even after the exercise of due diligence he could not have produced the said documents before the concerned courts. This court cannot advert to this oral argument in the absence of such a plea; what was the reason which had prevented the appellant from filing these documents in the courts below; has been left totally to the Courts imagination. These documents cannot be read.

12. Learned counsel for the appellant has pointed out that in para 3 of the written statement the defendant had made a categorical statement that khasra no.818 has since been acquired and compensation has since been paid to the plaintiffs. This had been admitted by the plaintiff. This submission of the counsel for the appellant is nowhere borne out from the record. Para 3 of the replication of the plaintiff has been perused. It is stated that 6 bigha in khasra no.818 was proposed to be acquired; 5 bighas and 16 biswas was in abadi which could not be taken; plaintiff has taken compensation for 4 biswas of land. This submission does not in any manner amount to an admission as has been urged by the learned counsel for the appellant.

13. It has been further pointed out that by learned counsel for

the appellant that after the acquisition of this land possession thereof had been taken. Two local commissioners had been appointed under the orders of the court i.e. order dated 21.8.1991 and 18.11.1992. The first local commissioner was examined as PW-3; he had visited the site; he had verified the possession of the plaintiff on the spot. The second local commissioner Mr.Ashwni Kumar Mehta had been examined as PW-1; he had also deposed that the plaintiff was found present at the spot and in possession of the suit land on the date of his inspection; this was in the year 1992. This submission of the learned counsel for the appellant has little force.

14. On no count is interference is called for in the findings of fact arrived at by the two courts below. The court had categorically held that the defence of the defendant that the suit land is in Khasra No. 801 has not been established; he had failed to lead any evidence on this score. Defence of the defendant had not been substantiated. On the other hand, plaintiff had been able to establish that the suit land is located in khasra No.818; plaintiff was apprehending dispossession from the defendant. Decree of permanent injunction had rightly been granted in favour of the plaintiff.

15. The substantial question of law as already aforenoted is qua

the documents which have not been proved and do not form part of the record. They cannot be looked into. The substantial question of law is accordingly answered against the appellant and in favour of the respondent. There is no merit in the appeal. The appeal as also the pending application is dismissed.

INDERMEET KAUR, J.

MAY 03, 2011
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