

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

+ **RFA No.144/2011**

% **8th March, 2011**

SHRI NARESH KUMAR & ORS. Appellants
Through: Mr. Anil Panwar, Advocate with Mr.
K.K. Bose, Advocate.

VERSUS

D.D.A. & ANOTHER Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.4800/2011 (Condonation of delay) in RFA No.144/2011

For the reasons stated in the application, the delay of 75 days in refiling the appeal is condoned.

Application stands disposed of.

C.M. No.4799/2011 (Exemption) in RFA No.144/2011

Exemption allowed subject to just exceptions.

Application stands disposed of.

+ RFA No.144/2011

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 20.10.2010 whereby the suit of the three appellants who were the plaintiffs as also the respondent No.3 herein who was another plaintiff, was dismissed by holding that the suit was in fact a proxy endeavour by the defendant No.2/respondent No.2/alleged landlady for encroachment on public land.

2. The facts of the case are that four plaintiffs filed a suit for permanent injunction against the Delhi Development Authority(DDA)/defendant No.1/respondent No.1 claiming that the plaintiffs were tenants of the respondent No.2 with respect to shops situated on Khasra No.169/5/3 Min. of Mauza Kadam Sharif, Motia Khan, Delhi. It was pleaded that the respondent No.2 had earlier instituted a suit against the DDA with respect to Khasra No.169 and which suit was decreed in favour of the respondent No.2 and appeals thereagainst right to the Supreme Court of the DDA were dismissed. It was, therefore, prayed that the respondent No.1/DDA be restrained from in any manner demolishing or interfering with the possession of the plaintiffs with respect to the shops in question.

3. The respondent No.1/DDA contested the suit by stating that the shops in question fell not in Khasra No.169/5/3 but were in fact part of

Khasra No.196/8/1. It was claimed that the plaintiffs in connivance with landlord, defendant No.2 were trying to take wrong advantage of an earlier litigation with respect to other khasra number to encroach upon public property.

4. The trial Court, after the pleadings were complete, framed the following issues:-

“(i) Whether the suit property forms part of land in Khasra No.169/5/3 Min. Mauza Kadam Sharif? OPP

(ii) Whether the suit property forms part of land in Khasra No.196/8/1 Min. Mauza Kadam Sharif? OPD-1

(iii) Whether the plaintiff is entitled to decree of permanent injunction as prayed?

(iv) Relief.”

5. The main and the only issue which was argued before the trial Court, and which was also argued before me, is as to whether the suit shops are located in Khasra No.169/5/3 or in Khasra No.196/8/1. The trial Court has held that the suit shops fell in Khasra No.196/8/1 and not in Khasra No.169/5/3. The trial Court held that the burden was on the plaintiffs to prove their case, as they had come to the Court claiming that the suit shops fell in Khasra No.169/5/3 and not in Khasra No.196/8/1. Trial Court also noted the fact that out of the four plaintiffs, three plaintiffs did not even step into the witness box and so far as the fourth plaintiff is concerned, he only gave oral depositions to claim that the suit property was situated in Khasra No.169/5/3. The trial Court, has, thereafter arrived at finding of fact by referring to evidence led on behalf of the DDA that as per the Ak-shajra(map)

Ex.DW1/2 and also the Jamabandi (revenue record of rights) Ex.DW1/1 the suit shops were located not on Khasra No.169/5/3 but in Khasra No.196/8/1.

6. The following paragraphs of the impugned judgment and decree pithily give the necessary findings and conclusions and with which I agree:-

“19. In the present case the plaintiffs have not adduced any evidence whatsoever to show that the suit property forms part of Khasra No.169/5/3 Min. The plaintiffs have not adduced either documentary or oral evidence in support of their case. None of the witnesses of the plaintiff have been able to prove on record that the suit property forms part of khasra no.169/5/3 Min. of Mauza Kadam Sharif either by production of copy of Jamabandi or of Aksh Sizara or by proving Site Plan of the suit property on record with reference to the said Khasra numbers. Even the Site Plan Ex.PW1/6 produced on record does not bear the signatures of either of the plaintiffs, or even the date of preparation of the same or even dimensions of the shops in question shown in the same. The person who prepared the Site Plan has not been examined by the plaintiffs. None of the plaintiff's witnesses have at all proved on record any demarcation of the suit property as forming part of Khasra No.169/5/3 Min. of Mauza Kadam Sharif.

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23. D1W1 Sh. Dheer Singh Patwari of DDA has tendered his affidavit Ex.DW1/A and in the same he has relied upon copy of 'sakan jamabandi mauza kadam sharif as Ex.DW1/1 and Aksh Sizara Ex.DW1/2 of part of Mauza Kadam Sharif. By way of 'sakani jamabandi mauza kadam sharif' as Ex.DW1/1 this witness has proved that land situated in khasra no.196/8/1 Min. is owned and possessed by the government and by way of Aksh Sizara of part of Mauza Kadam Sharif Ex.DW1/2 this witness has not shown the position of the suit property as situated in khasra no.196/8/1 Min. of Mauza Kadam Sharif. During his cross examination he has testified that he had measured dimensions of the said khasra number as mentioned. He has, however, denied the suggestion that the plaintiffs are tenant of defendant no.2 and that defendant no.1/DDA has nothing to do with the suit property.

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24. D2W1 Sh. Ajay Verma has in his examination in chief tendered his affidavit Ex.D2W1/A in support of his case which is on lines so as to support the plaintiff's case. He has in his said affidavit relied upon GPA Ex.D2W1/1 executed by his defendant No.2 mother in his favour. He has denied the suggestion of Ld. counsel for the plaintiff that in collusion with defendant No.1/DDA he wants to dispossess the plaintiffs. He admitted his not having brought on record Jamabandi and Khasra Girdhawari with regard to situation of the suit property. During his cross examination he admitted that there is no construction over the disputed property and the same is lying vacant. In respect of rent receipts Ex.PW1/1 to PW1/3 he has testified that the same were not issued by his defendant no.2 mother but the same were issued by him. He has admitted his ignorance in respect of the disputed land not having been mutated in the name of his defendant no.2 mother in revenue records."

7. Learned counsel for the appellant sought to place reliance upon a judgment given in an earlier case whereby the DDA was restrained, however, in my opinion, the said judgment is irrelevant because what is the relevant issue in this case is whether the suit shops are located in Khasra No.169/5/3 or actually on public lands of the DDA in Khasra No.196/8/1.

8. Due to fast urbanization and urban land becoming valuable, there is a marked tendency in the metropolitan cities to encroach upon valuable public lands by unscrupulous persons. This trend has in fact now become a plague and has been adversely commented upon by various Courts including the Supreme Court. The present case is one clear cut case of gross abuse of the process of law and an endeavour to occupy public land by showing the land as belonging to an alleged landlord /respondent No.2 in the suit. In fact, at this stage, I must note that the trial Court has referred to the deposition of the plaintiff No.1 wherein he admitted that he filed a suit in

consultation with and hence in collusion with the alleged landlord/defendant No.2/respondent No.2.

9. In view of the above, I do not find that there is any need to summon the trial Court record because there is no need to refer to any part of the same for disposal of this appeal. The appeal, being an abuse of process of law, deserves to be dismissed with exemplary costs. The appeal is therefore dismissed with costs of Rs.50,000/- payable to the Registrar General of this Court for being utilized towards juvenile justice. Costs shall be deposited within a period of two weeks from today.

With the aforesaid observations, the appeal stands disposed of.

C.M. No.4798/2011 (stay) in RFA No.144/2011

Since the main appeal is dismissed, no orders are required to be passed in this application which is disposed of as such.

MARCH 08, 2011
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VALMIKI J. MEHTA, J.