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

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Date of Judgment: 03.3.2011

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RSA No.3/2009 & CM No.31/2009

BIRENDER SINGH & ANR. Appellants
Through: Mr.N.D. Pancholi, Advocate.

Versus

DELHI CEMETERIES COMMITTEE & ANR. 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)

1. This appeal has impugned the judgment and decree dated 22.11.2008 which had endorsed the finding of the trial dated 16.9.2005 whereby the suit filed by the plaintiff Delhi Cemeteries Committee through Mr.A.B.Goodwin its Chairman seeking possession of the suit property i.e. comprising of two rooms, a kitchen, bath room in a part of the cemetery located at 3, Prithvi Raj Road, New Delhi had been decreed in his favour.

2. The case of the plaintiff is that the plaintiff no.1 is the custodian of the suit property; plaintiff no.2 is the Chairman. Late Jordan Singh was acting as a Care- Taker and has been serving plaintiff no.1; he was permitted to use the suit property in the said capacity. Jordan Singh expired in 1991; thereafter the defendants have unauthorizedly and illegally occupied the suit property; in

spite of requests and legal notices dated 07.9.1992, 23.12.1992 and 22.3.1993 the suit property has not been vacated. Suit was accordingly filed.

3. Defence of the defendant was that defendant no.2 was a tenant qua the suit property at monthly rent of Rs.200/- excluding electricity and water charges. Preliminary objection on the valuation of the suit property; the suit not having been filed through a competent person had also been taken.

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

1. Whether the suit has not been filed by the duly authorized person? OPD

2. Whether this court has got no jurisdiction to try the suit? OPD

3. Whether the suit has not been valued properly for the purpose of court fee and jurisdiction? OPD

4. Whether the proper court fee has not been filed on the plaint? OPD

5. Whether the plaintiff is entitled to claim relief as prayed for? OPP

6. Relief.

5. Two witnesses had been examined on behalf of the plaintiff. They had been examined and discharged; pursuant thereto an application had been filed for recalling the said witnesses. PW-2 had been thereafter cross-examined and discharged but PW-1 could not cross-examined. The order permitting the recall of the said witness had been passed on 15.8.2003 which had categorically stated that only one opportunity would be granted to the defendant to cross-examine the witnesses. Perusal of the record shows otherwise. It evidences that on 8.3.2003 and again on 24.3.2004 counsel for the defendant had sought adjournment to cross-examine the witnesses of the plaintiff. Time had been granted for

02.6.2004. Meanwhile in the intervening period an application had been filed for early hearing on which date record shows that both the PWs were present but the said application had been dismissed. On 02.6.2004 PW-2 had been cross-examined and discharged. Nothing has been recorded in this order dated 2.6.2004 to support the submission now made before this court that PW-1 was not present on that day and that is why he was not cross-examined; no such objection has been recorded in the order sheet. Evidence of the plaintiff stood closed vide a separate statement; even at that point defendant did not urge or object that PW-1 yet remained to be cross-examined.

6. The trial judge vide judgment and decree dated 16.9.2005 has dismissed the suit of the plaintiff. It was primarily on the contention that the suit has not been verified and signed by duly authorized person; further the suit has not been properly valued for the purpose of court fee. Even up to this stage no objection was taken by the defendant that a valuable right had been lost to him of non cross-examination of PW-1. The only answer which can be gauged is that the defendant had given up his right to cross-examine PW-1.

7. The impugned judgment had decreed the suit. It had relied upon the version of PW-1 although admittedly as per the record PW-1 had not been cross-examined. Impugned judgment had noted that the fault for not cross-examining PW-1 was primarily upon the defendants. Record shows that PW-1 had, in fact, been discharged on 11.12.2001. On this day the defendants were ex parte. They had chosen not to appear. Thereafter on an application filed by them seeking recalling of the witnesses of the plaintiff; vide order

dated 15.8.2003 permission had been granted and one last opportunity had been granted to the defendants to cross-examine witnesses of the plaintiff. Record further shows that several opportunities had been granted to the defendant and he had been taking dates to cross-examine the witnesses of the plaintiff. Even on 02.6.2004 when the evidence of the plaintiff stood closed, there was no objection made by the defendant (although he was represented by his counsel) that PW-1 was yet to be cross-examined. Court in these circumstances had rightly adverted to the testimony of PW-1. In AIR 1955 Himachal Pradesh 57 Bijai Ram Kanshi Ram & Anr. Vs. Jai Ram Ganga Ram & Anr. where the statements of the witnesses of the plaintiff were recorded and the defendant in spite of notice did not appear either in person or through his pleader to cross-examine the witnesses; the result was that the evidence of these witnesses must be accepted unless there are some inherent probabilities in their versions.

8. The defence of the defendant that he is a tenant has been rejected by both the courts i.e. by the trial court as also by the first appeal court. These are two concurrent findings against the defendant. On a specific query put to the learned counsel for the appellant as to what is the status of the defendant as on date, the appellant has no answer. Admittedly, father of the appellant Jordan Singh had been appointed as a care-taker of the plaintiff. The case of the plaintiff is that the Jordan Singh was a licensee who had been permitted to use the suit property only in that capacity; the appellant who is the son of Jordan Singh had unauthorisedly occupied the suit property.

9. Ex.PW-1/7 proved through PW-1 is the minutes of the

emergent meeting of the Delhi Cemeteries Committee dated 28.4.1994 wherein it was resolved that Mr.A.B.Goodwin, the Chairman was authorized to sign and verify the plaint and all pleadings on behalf of the committee qua the ejectment of Mr.Jordan Singh, Mr. Birender Singh and his family from a portion of the suit property comprised in the cemetery on Prithvi Raj Road, New Delhi. Plaint had been signed and verified by plaintiff no.2 namely A.B. Goodwin described as Chairman of the Delhi Cemeteries Committee.

10. PW-2 was the Honorary Secretary of the Delhi Cemetery Committee. He had on oath deposed that the defendant is in illegal occupation of the suit property. The order of the Rent Controller Sh. R.K.Gauba dated 24.4.1995 (Ex.PW-2/1) had been proved through him which had evidenced that the status of the defendant in the suit property was only that of a trespasser; he had not been recognized as a tenant. The suit property which is in unauthorized occupation of the defendant has been demarcated in the site plan in the red portion in Ex. PW-2/2. Admittedly the defendant had no documents to support his submission that he was a tenant. Letter Ex.PW-2/6 was written to the plaintiff no.2 by defendant no.1 (widow of Jordan Singh) wherein she had stated that her son Birender Singh is looking after the duties of care taker in the Cemetery and since they had sentimental attachment to the house and since her son was carrying out the duties of the Care-Taker the house allotted to them should be allowed to be retained by them. This letter of defendant no.1 clearly evidences that after the death of her husband she along with her son and daughter-in-law were unauthorizedly occupying the suit premises; admittedly her

deceased husband was working as a Care-Taker; she along with her son and daughter in law wished to retain the suit property only because of sentimental attachment. Even in this letter she was not able to give any legal status to herself in the suit property. DW-1 in his cross-examination had admitted that the plaintiff had been asked by the government to run the cemetery; he admitted that he has not paid rent since the death of his father; he admitted that he has no proof to show that he had paid rent. Court below had thus rightly arrived at the finding that the defendants are nothing but unauthorized occupants in the suit property.

11. The first court i.e. the trial judge had dismissed the suit of the plaintiff primarily on the ground that the suit had not been signed, verified and filed through an authorized person and was under-valued. The substantial questions of law urged before this Court are also bordered on these submissions. They are, however, negatived. Ex.PW-2/3 is the letter by the Government of India, Ministry of Defence, through its Deputy Secretary to the Counselor of the High Commission of the United Kingdom informing them that it is primarily the concern of the U.K. Government to maintain and manage Cemeteries in Delhi and it was open for them to enter into any working arrangement with the Indian Church Trustees or any other Association in India to the said effect. Ex.PW-2/4 is a letter by the British High Commission giving information that all necessary authority and cooperation would be given to the Delhi Cemeteries Committee. It is endorsed to Rev.R Smyth, the Chairman of the Delhi Cemetery Committee. These documents show that there was an internal arrangement between the British High Commission and the Delhi Cemeteries Committee which in

fact had been authorized to carry out the maintenance and to look after these cemeteries. PW-1 had identified the signatures of plaintiff no.2 on the plaint.

12. Reliance has been placed upon AIR 1965 SC 1506 *Brahma Nand Puri Vs. Neki Puri* as also AIR 1931 Cal 76 *John Boisogomoff Vs. Manmatha Nath Mullick* to support the submission that the plaintiff in a suit for ejectment must establish his title; this is undisputed proposition of law.

13. Issue no.3 had been specifically framed as to whether the suit has been properly valued for the purpose of court fee and jurisdiction. The impugned judgment had noted that the suit property is a part of the cemetery on a protected land. Premises had been occupied by the deceased Care-Taker only as a part of his service and employment. The cemetery itself could not be assigned any market value; it had no market value. These are admitted pleadings. These fact findings call for no interference. Reliance by the learned counsel for the appellant in the judgment reported in AIR 1962 Punjab 479 *Kucha Chellan Panchayat Vs. Nandu Mal Mool Chand* is misplaced; it has no application.

14. Learned counsel for the appellant has also placed reliance upon a judgment of the Apex Court reported in JT 2001 (10) SC 83 *Maneklal Mansukhbhai Cooperative Housing Society Ltd. Vs. Rajendra Kumar Maneklal Shah* to support his submission that a society which is unregistered cannot file a suit. Averments in the plaint have been perused. Respondent/plaintiff has nowhere described itself as a society. It is a committee. This judgment is inapplicable.

15. The substantial questions of law have been embodied in the

para 4; they read as follows:

- i. Whether the suit filed by the plaintiff can be decreed on the weakness of the defendant?
 - ii. Whether a suit for possession is maintainable without proving the title of the property when the same has not been filed on the basis of prior possession?
 - iii. Whether a suit for possession of immovable property is maintainable without filing the proper court fee?
 - iv. Whether the "Appeal" is equivalent to the word "Pleading"?
 - v. Whether the testimony of a witness who did not come forward for his cross-examination could be relied upon?
 - vi. Whether an unregistered society can file a suit for possession?
OPP
 - vii. Whether an appeal can be filed by the unregistered society without any resolution?
 - viii. Whether the photostate copy of a demni official letter is admissible in evidence?
 - ix. Whether the title of an immovable property can be proved by a certificate issued on the behest of a party?
 - x. Whether the learned Add. Distt Judge has erred in not noticing and considering the points of arguments raised and submitted by way of written submissions/arguments during the course of arguments before him?"
16. No such substantial question of law has arisen. Appeal as also pending application is dismissed in limine.

INDERMEET KAUR, J.

MARCH 03, 2011
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