

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

+ **RFA No.595/2003**

Reserved on: 4th January, 2012

% **Pronounced on: 13th January, 2012**

SHRI VIRENDER SINGH Appellant
Through: Mr. R.C. Chopra, Advocate.

VERSUS

SHRI MANGAL SINGH & ORS. Respondents
Through: None.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 31.3.2003. By the impugned judgment, the trial Court has dismissed two suits, one for injunction and the second for possession, filed by late Sh. Tulsi Ram, the appellant/plaintiff No.1 being one of his legal heirs. The original plaintiff-Sh. Tulsi Ram, who expired during

the pendency of the suit, was substituted by his three legal heirs, namely, the appellant Sh. Virender Singh, Smt. Neelam Yadav and Smt. Kamini Yadav. Smt. Neelam Yadav and Smt. Kamini Yadav have preferred not to file the appeal and therefore have been impleaded as respondent Nos.12 and 13 in this appeal.

2. The suit for possession was suit No.958/93 in which the plaintiff-Sh. Tulsi Ram sued a total of 12 defendants. In the injunction suit, being suit No.117/2000 there were three defendants. The defendant Nos.1 and 2 in the suit for injunction were also the defendant Nos.1 and 2 in the suit for possession. The suit for injunction though has been disposed of by the impugned judgment alongwith the suit for possession, however, really the suit for injunction had become infructuous in view of the subsequent suit filed for possession. In the suit for injunction, the relief which was claimed was restraining the defendants from encroaching upon the suit land and from making any construction thereon. Admittedly, the subsequent suit for possession was filed claiming back possession of the suit land from the defendants, and therefore, the suit for injunction is infructuous and I am not required to pass any detailed judgment on the same.

3. So far as the suit for possession is concerned, the facts are that

the suit was filed claiming that the plaintiff-Sh. Tulsi Ram was the owner of the land comprised in khasra No.396/49, village Babarpur, Shahdara, Delhi. It was further pleaded that the plaintiff-Sh. Tulsi Ram was also the owner of land comprised in other khasra No.395/49, and khasra Nos.45 and 47. The total land was stated to be 10 bighas i.e. approximately 10,080 sq. yds. It was pleaded that defendant Nos.1 and 2 in collusion with the concerned police official, defendant No.3, had started digging a foundation on the suit land on 26.11.1989 and which was illegal because the plaintiffs were the owners of the suit land. It was pleaded that defendant Nos.4 to 7 as also defendant No.9 had filed the suits for injunction against the plaintiffs and which were dismissed in default. It was pleaded that 12 defendants in the suit were illegally occupying the suit land and therefore Sh. Tulsi Ram-plaintiff was entitled to recovery of possession and damages. A decree was prayed for possession of the suit land and for mandatory injunction for demolition of the alleged unauthorized constructions.

4. During the pendency of the suit, the suit was withdrawn against defendant Nos.3 and 13 on 28.8.2002. Defendant No.12 expired but his legal heirs were not brought on record. The other defendants failed to appear and hence were proceeded exparte.

5. The trial Court has dismissed the suit on various grounds including of the plaintiffs not being the owners of the suit land, the plaintiffs having concealed material facts and also because the plaintiffs had failed to give and prove details as to which defendant is in occupation of which portion of land, making the passing of the decree against the defendants impossible without there being demarcation and proof of which defendant is in possession of which land and how much area.

6. The trial Court has made the following pertinent observations for dismissing the suit:-

“22. Now coming to suit No.958/93 which has been treated as main case, there are two statements Mark-A and Mark-B. As the pltf. himself has filed these two statements which were got recorded before Sh. Asha Ram, S.E.M. (North East), Delhi on 28.12.90, the same being pltf.’s own documents can be considered by the Court to arrive at a right conclusion. The statement of Sh. Tulsi Ram is to the effect that when he visited his ‘Khet’ (field) he saw that Braham Singh etc are raising unauthorized construction in his field. When he objected, Braham Singh gave him beating with ‘Dandas’ and he reported the matter to the police. He has further stated that he apprehended fear to his life and they are encroaching his land. The statement of Sh. Virender Singh, who is P.W.3 before this Court and one of the legal heirs of late Sh. Tulsi Ram, before S.E.M. (North East), Delhi, is to the effect that Braham Singh etc entered into an agreement with them in respect of 7-1/2 bighas in the month of December at their house in the month of January. That agreement was got cancelled by sending a notice through Advocate and it was also published in the Newspaper because they took possession of the land which was more than as mentioned in the

agreement and due to that reason the deal was cancelled. When his father visited his land, he was beaten by some persons and matter was reported to the police. He was not present at that time and subsequently when he accompanied some persons to show the site, he was arrested and still he gets threats for false implication in some cases.

23. From this statement of Virender Singh, P.W.3 before this Court, it is clear that there was some agreement for sale of the agricultural land. What were the contents of that agreement, which part or portion was sold to whom, when the possession was handed over, how the deal was cancelled, have not been brought on record by the pltf. Even the notice vide which the deal was cancelled is not produced on record. It is also not even clear that this 7-1/2 bighas of land was part of which khasra number but one thing is established that agricultural land was sold by the owners of suit property which has been subsequently sold in plots to different plot holders who raised construction in their respective plots. The pltf. has suppressed the material facts from the Court regarding this agreement to sell of agricultural land to some person who further sold it in small sizes of plots to various other persons. A person who approaches the Court after suppressing the material fact is not entitled to any relief from this Court. Here in the given case so far as relief of possession is concerned, first of all pltf. has failed to prove that pltf. continued to remain owner of the suit property even after the year 1989. The statement dated 28.12.90 of Sh. Virender Singh, P.W.3 before Sh. Asha Ram, S.E.M. clearly shows that the owners entered into an agreement to sell with Braham Singh etc which was allegedly cancelled by them subsequently. In the plaint it is not even mentioned as to which portion was encroached by which deft. on which date. In para 15 of the plaint it has been pleaded that cause of action arose firstly on 26.11.89 when deft. No.1 and 2 started digging foundation and it also arose on subsequent date when defts. Encroached and illegally occupied the land of the pltf. and filed false cases. When the pltf. has not even mentioned on record as to which part area is in possession of which deft. and no site plan of the existing situation is placed and proved

on record, there is no question of passing any decree of possession or damages in favour of the pltf. The mere fact that part of the land has already vested in Gaon Sabha further shows that the remedy, if any, was available to the pltf. under Delhi Land Reforms Act as it is pltf.'s own case that it was an agricultural land. Further when the suit was filed, S.H.O., P.S. Shahdara and Sh. R.K. Mishra, S.D.M./R.A., Shahdara were made as party without complying with the requirements of Sec.80 CPC, subsequent prayer for deleting their names on 28.8.2002 is of no consequence because the suit as filed was not maintainable and the same was barred under Sec.80 CPC.” (underlining added)

7. I completely agree with the aforesaid observations of the trial Court because it is obvious that as on date, there is a colony comprising of many houses on the suit land, and, unless it is proved by a proper plan and through proper demarcation that which decree has to be passed against which of the defendant, and for which land of which area, no decree could have been passed for possession. A decree for possession is against a specific person for a specific portion of land, and since the appellant/plaintiff No.1 failed to prove that which defendant was in possession of which land, it was not possible to pass a decree for possession with respect to any of the defendants for any specific land. Further, admittedly there was an agreement entered into for sale of the land and which agreement was not filed on record so as to understand the terms thereof. Obviously, the plaintiffs were concealing facts that there were certain transactions with respect to the suit land. Also, the fact that the

agreement was cancelled, was not proved inasmuch as the notice by which the agreement was cancelled was not filed on record. I am therefore in complete agreement with the findings and conclusions of the trial Court for dismissal of the suit.

8. Learned counsel for the appellant argued that the appellant/plaintiff No.1 was entitled to the decree of the suit because the appellant was the owner of the suit land. Even if, I accept this argument that the appellant is the owner of the suit land, even then, in view of aforesaid findings and conclusions of the trial Court, the suit could not have been decreed for possession or mandatory injunction. I may note that the counsel for the appellant first sought to argue that Delhi Land Reforms Act, 1958 does not apply to the suit land, however, he gave up this argument when it was pointed out that reliance was being placed on behalf of the appellant to the revenue record maintained under the Delhi Land Reforms Act, 1958 in order to plead and prove the ownership of the appellant. Therefore admittedly, the suit land was governed by the Delhi Land Reforms Act, 1958 i.e. the land was an agricultural land. It has further to be noted that as per the revenue record filed by the appellant himself, the land was shown to have been vested in the Gaon Sabha. No further documentation was filed on behalf of the appellant to

show that the order vesting the land in Gaon Sabha was set aside by a competent Court/authority. I do not agree with the argument as raised on behalf of the appellant that Order 7 Rule 3 CPC applies for decreeing the suit for possession. In fact, this provision goes against the appellant because before a suit is decreed for possession, there has to be proper identification of the property, and the facts of the present case show that there is no identification of the property qua each of the defendants i.e. it is not proved on record as to which defendant is in the possession of which part of the huge land total of which was stated to be over 10,000 sq. yds. The ground reality in Delhi today is that many unauthorized colonies have come up on agricultural lands, and, disputes in the present case also pertain to an agricultural land on which illegal colony has come up and houses are in possession and occupation of different persons, including 12 defendants in the suit.

9. In view of the above, I do not find any merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

JANUARY 13, 2012

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