

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

+ **RFA 742/2003**

% **24th January, 2012**

KARAN SINGH & ORS. Appellants

Through : Mr. Vibhor Garg, Advocate.

versus

UOI & ORS. Respondents

Through : Mr. Sujata Kashyap, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 29.8.2002 dismissing the suit of the appellants/plaintiffs by which recovery of Rs.4,91,205/- was sought on account of alleged illegal demolition of property of the appellants/plaintiffs.

2. The brief facts of the case are that plaintiffs claim to be the owners of construction situated at Khasra Nos. 832/3 (7 biswas i.e. 350 sq. yds.) and

833 (2 bighas and 7 biswas i.e. 2350 sq. yds), in village Dera Mandi, New Delhi-110 047. It was averred by the appellants/plaintiffs in the plaint that a suit for injunction was filed by the appellants/plaintiffs, and in which suit on 7.1.1994 the concerned Sub Judge passed an order directing the parties to maintain status quo. This status quo order was extended upto 10.2.1994 in terms of order dated 20.1.1994. It is further pleaded that in violation of the injunction order, the suit property was demolished on 2.2.1994. It was alleged that the illegal demolition which had taken place was part of the house, chajja and wall. The appellants/plaintiffs, thereafter, served a legal notice dated 19.3.1994 and on account of stated failure of the respondents to pay damages, the subject suit came to be filed.

3. The respondents/defendants contested the suit and their basic defence was that demolition which had taken place, took place not on Khasra Nos. 832/3 and 833, but on Khasra No. 250.

4. The relevant issue framed in this regard by the trial Court is issue No.6. The detailed discussion/findings/conclusions qua this issue is as per the discussion qua the issue No.5. While dealing with this issue, the trial Court had held that the onus was upon the appellants/plaintiffs to show that demolition which took place was on the property of the appellants/plaintiffs

and not on Khasra No. 250. The trial Court has held that the appellants/plaintiffs did not file any demarcation report of any Revenue Officer that the demolition which was carried out, was carried out of the construction on Khasra Nos. 833 and 832/3. In fact, the trial Court noticed that even during the trial of the suit, no application for appointment of Local Commissioner was filed by the appellants/plaintiffs for clarifying the fact that demolished portion was a part of plot of the appellants/plaintiffs and not of Khasra No. 250. The trial Court has also referred to the fact that the witness PW1, and who deposed as to the cost of reconstruction of demolished portion, could not tell whether the demolished portion is in Khasra Nos. 832/3 and 833 or in Khasra No. 250. This witness PW1, Mr. P.S. Verma had filed his report Ex.PW1/1 to show the quantum of loss suffered on account of demolition, and as already stated, this witness stated that he did not know whether the demolished portion for which he gave the report fell in Khasra Nos. 832/3 and 833 or in Khasra Nos. 250.

5. The trial Court has further noted that the witness of the defendant being DW2-Sh. Hari Prakash deposed that he was present in the demarcation proceedings with respect to Khasra No. 250, Ex.DW1/1, and after carrying out demarcation proceedings the demolition was carried out in Khasra No.

250. Even PW4, who is one of the plaintiffs, in his cross-examination stated that he does not know the length and breadth of Khasra Nos. 832/3 or 833 and that he never applied for demarcation of plot Nos. 832/3 and 833.

Some of the relevant observations of the trial Court read as under:-

“In consideration of the submissions made by both the counsels, I also perused the testimony of PW1 Sh. P.S. Veram and this witness has been examined only to prove the damages caused to the plaintiff and even in cross examination this witness has stated that he has no personal knowledge regarding the demolition in Khasra No. 832/3 or 833 and even no demarcation was done in his presence when he visited the site and he has further stated that he cannot tell whether the demolished house is house no. 250. He further stated that he has shown the demolition in Ex.PW1/2 and the same is shown in broken red lines. The demolished area is mentioned in his report as Ex.PW1/1 and A, B, C, D areas are specifically marked in PW1/2 in broken red lines. The total number of shops were 8 in the demolished property.

I have also perused the testimony of PW2 Sh. H.P. Bansal who is Asstt. Engineer, MCD, West Zone, Delhi and in his testimony he deposed that no demolition work was done by their Works Department, MCD and this witness is only on the point that demolition was not done by MCD. I also perused the cross examination of this witness and even in cross examination he has stated that there was bus stand before his posting in the village and the premises in dispute are adjacent to the bus stand. He does not know the number of khasra on which the bus stand is situated. He has have no knowledge that khasra no. 250 was handed over to MCD for construction of bus stand. He has not seen any record of the resolution of the gram panchyat of handing over khasra no. 250 to the MCD. Even he does not know the khasra no. 832/3 and 833 falls in disputed house. He

does not know whether the demolitions was made in khasra no. 250 by MCD and he cannot say whether the demolition conducted by MCD in khasra no. 250. He has further stated that it is correct that in which deptt, he was posted that department has no power of demolition. So, he has no knowledge of plaintiff and I do not understand as to why the plaintiff has produced this witness while he has no knowledge of the demolition because present suit of the plaintiff depends on demolition.

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I also perused the testimony of another witness DW2- Shri Hari Prakash and he has deposed that he was halqa Patwari on 18.1.94 and he was present in the demarcation proceedings of khasra no. 250. The demarcation was carried out as per record and the encroachment portion of kh. No. 250 was identified and marked at the spot. I also perused his cross examination and he has stated that he does not know whether village does not falls in the jurisdiction of MCD and they have not made any demolition and even he denied the suggestion of the plaintiff counsel that there was no encroachment on kh. No. 250 at that time. I also perused the testimony of DW3 who was Tehsildar on 18.1.94 in Tehsil Mehrauli and demarcation was carried out in his presence in regard to khasra no. 250, village Deramandi and he has stated that demarcation was carried out in the presence of SDM, himself and Sh. R.S. Bansal, Z.E. MCD and resident of village and the plaintiff as per record and in the said demarcation some of the portion of kh. No. 250 was found encroached and thereafter on 2.2.94 the encroached portion of kh. No. 250 was removed by the MCD. I have also perused his cross examination and this witness had deposed in cross examination that they have done demolition in khasra no. 250 again said it was not done by them, it was done by the MCD.

I have also perused the testimony of PW4 who is one of

the plaintiff and even in his cross examination he has stated that he cannot tell the length of plot no. 833 and he cannot tell the length and breadth of plot no. 832/3. He never applied for demarcation of the plot no. 832/3 and 833 vol. his father applied for the same but he has not filed any demarcation report that his father has done so. He further deposed that he does not remember that when his father had got the demarcation and his brothers had also not carried out the demarcation. He has further deposed that he know the location of plot no. 250 but he cannot tell the name of owner of plot no. 250 and he does not know the area and tell the area of plot no. 250 and even he denied that the DTC depts. has installed the shed on plot no. 250. Even he denied that the demarcation conducted on plot no. 250 on 18.1.94. So, I am of the opinion that when the plaintiff does not know about the area of his own plot no. 833 & 832/3 or even the disputed khasra no. 250, it was best course for the plaintiff to conduct the demarcation of their plots as well as to come out with truth of khasra no. 250 also. Even I also perused the report of the Local Commissioner filed in the Lower Court and in the last para of the report of the Local Commissioner, he clearly stated that 'However' it may be mentioned that the Patwari and Panchayat Secretary namely Hari Parkash and Rakesh Gupta told him that the seven shops, Verandah and two rooms on the front side as marked ABCD falls in khasra no. 250 and vest in Gaon Sabha, whereas the plaintiffs claimed to be their own as the same are part of khasra no. 832/3 and 833. He could not ascertain whether the said portion stands on Gaon Sabha land or that of the plaintiff and lease it to the Hon'ble Court to adjudicate upon. It seems that at the time of inspection conducted by the Local Commissioner, he was not certain as to whether the demolished portion falls in khasra no. 833 or 832/3 or 250 and even in the entire testimony of PW4 he has not proved that the demolition portion was not of kh. No. 250. I am of the opinion that the plaintiff has failed to prove that demolished portion that the plaintiff has failed to prove that demolished portion falls in their property i.e. khasra no. 833 and 832/3. While on perusal of the testimony of DW1 to DW3, they

have clearly mentioned that on demarcation they found encroachment on khasra no. 250. So, in view of this, I am of the opinion that when the demolished part does not fall in the property of the plaintiffs, the plaintiffs have no cause of action to file the present suit against the defendants. Issue no. 5 is disposed off accordingly in favour of the defendants and against the plaintiff.”

(Underlining added)

6. I completely agree with the aforesaid findings and conclusions of the trial Court inasmuch as the appellants/plaintiffs failed to file any documentary proof from the Revenue Authority that the demolition which was carried out, was in fact carried out on Khasra Nos. 832/3 and 833 and not in Khasra No. 250. Further, the demarcation report Ex.DW1/1 dated 18.1.1994 clearly showed that after demarcation with respect to Khasra No. 250, only thereafter the demolition was carried out. It was surprising that plaintiff No. 1 who appeared in the witness box as PW4, did not even know the length and size of his own plot, on which demolition was alleged to have taken place. Therefore, once the appellants/plaintiffs failed to discharge their onus of proof that the demolition which was carried out was carried out not in Khasra No. 250, but as per the plaintiffs in Khasra Nos. 832/3 and 833, the appellants/plaintiffs rightly were held not entitled to succeed. The suit was, therefore, rightly dismissed by the impugned judgment.

7. I am, during the course of hearing, informed by the appellants' counsel that the suit in which the injunction order dated 7.1.1994 was passed by the Sub Judge was ultimately dismissed and an appeal against that judgment is pending disposal. This also shows that the appellants really had no case on merits when they obtained the injunction order dated 7.1.1994, with respect to the construction situated at Khasra Nos. 832/3 and 833.

8. A civil case is decided on balance of probabilities. The balance of probabilities in this cases shows that the respondents rightly demolished the construction which existed on Khasra No. 250 and this has been duly proved from the demarcation report Ex. DW1/1. It makes no difference whether demolition is done by MCD or by the Union of India, through its representatives. I am noting this aspect on the issue of who demolished the property, i.e. MCD or Union of India through its representatives, inasmuch as, learned counsel for the appellants/plaintiffs argued that the appeal can be allowed on this basis itself. I, however, fail to understand this argument inasmuch as it is not the issue as to who demolished the property, but whether the construction which was demolished was situated in Khasra No. 250 or in Khasra Nos. 832/3 and 833 as was the case of the appellants/plaintiffs.

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. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

JANUARY 24, 2012

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