

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

% RSA 92 of 2003

+ Date of Decision: 4th May, 2012

GIANI RAM
(since dead & represented by LRs) ...Appellants
! Through: Mr. O.P. Gogne, Advocate

Versus

\$ DDA ...Respondent
^ Through: Mr. Rajiv Bansal, Advocate

CORAM:
*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

The appellant Giani Ram, who died after the filing of this appeal and now is being represented by his legal heirs, was the unsuccessful plaintiff in a suit for perpetual injunction filed by him against the respondent herein and reference to him shall now be made as ‘the deceased plaintiff’.

2. The deceased plaintiff had filed a suit for permanent injunction on 23.11.1979 against the respondent Delhi Development Authority(hereinafter to be referred as 'the DDA') for restraining it from recovering any amount of damages and dispossessing him from his house built on plot of land bearing khasra no. 23/23/1, measuring 11 biswas in village Najafgarh(hereinafter to be referred as 'the suit property'). It was pleaded in the plaint by the deceased plaintiff that he was the owner in possession of the suit property for over 30 years. Since by some mistake the plot of land, on which the suit property had been constructed, came to be vested in the Gaon Sabha when the Delhi Land Reforms Act came into force he had filed a civil suit for a declaration that the vesting of his land with the Gaon Sabha was illegal and without jurisdiction. That civil suit was decreed by the Court of Civil Judge in the year 1961 but subsequently on the application of the Union of India a fresh trial was held and once again the Civil Judge decreed the suit in favour of the plaintiff on 28.10.69 and while setting aside the order of vesting of the suit land in Gaon Sabha the learned Civil Judge had also ordered that the plaintiff shall be entitled to retain possession of the suit property. The appeal filed by the Gaon Sabha/Union of India was partly allowed by the appellate

Court on 26.04.1971 and while maintaining the judgment of the trial Court setting aside the vesting order the appellate Court set aside the direction that the plaintiff shall remain in possession of the suit property. The deceased plaintiff had, however, continued to occupy the suit property. However, in November, 1979 the DDA threatened to dispossess him from the suit property. The DDA also raised a demand of Rs.12,657.80 on account of damages for unauthorized use and occupation of the land in dispute by the deceased plaintiff. That demand was sought to be recovered under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Apprehending his dispossession from his property and recovery of the damages, the plaintiff filed the suit for permanent injunction out of which this second appeal has arisen.

3. The DDA had contested the suit by filing its written statement dated 08.04.1980. It was claimed by the DDA that in the year 1963 the land in dispute had ceased to be rural land by virtue of notification under Section 507 of The Delhi Municipal Corporation Act, 1957 and stood vested in the Union of India and in the year 1974 that land had been placed at the disposal of DDA by the Central Government under Section 22(1) of the

Delhi Development Act. It was further pleaded that the deceased plaintiff was a recent trespasser.

4. On the pleadings of the parties following issues were framed by the trial Court:-

“1. Whether the impugned action of the defendant relating to the suit property is illegal, ultra-virus and without jurisdiction? OPP.

2. Whether the plaintiff has any right, title or interest of the suit property? OPP.

3. Whether the Union of India is a necessary party? OPD.

4. Whether the jurisdiction of civil court is barred for declaring the Bhoomidari Rights? OPD.

5. Relief.”

5. The trial Court after examining the evidence adduced in the case during trial dismissed the suit vide judgment dated 19.02.1980 relying upon a judgment of the Supreme Court in **“Hatti vs. Sunder Singh”, AIR 1971 SC 2320** in which it had been held that the Civil Court had no jurisdiction to directly entertain a suit and declare bhumidari rights in favour of anyone and, therefore, the trial Court held that the judgment of the Civil Court being relied upon by the deceased plaintiff had no force having been passed by a court having no jurisdiction.

6. Feeling aggrieved by the dismissal of his suit, the deceased plaintiff had challenged the judgment of the trial Court by filing an appeal but the appellate Court dismissed his appeal also vide judgment dated 16.04.2003 and it was held that the Civil Court had not declared bhumidari in favour of the deceased plaintiff nor it could do that.

7. Then this second appeal came to be filed. While issuing notice of this appeal to the DDA this Court had observed that:-

“This appeal involves the question of interpretation of provisions of the Delhi Land Reforms Act and also consideration of the effect of various judgments and orders passed in various litigations between the petitioner and the respondent UOI.”

The appeal was subsequently admitted also for hearing on the said question of law.

8. It was contended by learned counsel for the legal heirs of the deceased plaintiff that this was not a case where the deceased plaintiff was claiming a declaration of bhumidari rights in his favour in the present suit since that relief he had already got when in the earlier round of litigation the Civil Court had declared the vesting of the suit land with the Gaon Sabha as illegal and subsequently when the Gaon Sabha had approached the Revenue Assistant under Section 86-A of the

Delhi Land Reforms Act, 1954 the Revenue Assistant had dismissed their application registered as case no.35/72 on 06.01.1973. In that proceedings the Gaon Sabha had claimed ejectment of the deceased plaintiff from the suit property but that prayer was rejected in view of the earlier decision in favour of the deceased plaintiff given by the Civil Court, referred to already. Learned counsel also contended that the DDA had, therefore, no right to take over its possession and the so called order of the Union of India transferring the land in question to the Delhi Development Authority had no effect on the right of the deceased plaintiff to retain possession and consequently a decree for permanent injunction should have been passed by the trial Court and having not done so its judgment as well as the affirming judgment of the first appellate Court are liable to be set aside. It was also contended that in the present litigation the Courts below could not have commented that the judgments in the earlier round of litigation had no effect since the same had attained finality and the deceased plaintiff's bhumidari rights stood confirmed.

9. On the other hand, learned counsel for the respondent-DDA while fully supporting the judgments of the Courts below contended that in the present case there no threat was ever given

by the DDA that the deceased plaintiff was to be dispossessed without following due process of law and, in fact, in the written statement itself it had been categorically pleaded that no such threat was given to the deceased plaintiff and so there was no cause of action for the filing the suit for injunction. Learned counsel further submitted that as far as the recovery of the damages from the deceased plaintiff is concerned, the DDA had initiated legal proceedings for its recovery under the Public Premises(Eviction of Unauthorised Occupants) Act, 1971 and Section 15 of the said Act bars a civil suit for challenging such recovery proceedings. Another submission was that the DDA had never intended to forcibly dispossess the deceased plaintiff from the suit property and that was evident from the fact that for the recovery of damages it had approached the competent Authority under the Public Premises(Eviction of Unauthorised Occupants) Act, 1971 instead of straightaway attaching his assets. It was also contended that in the earlier round of litigation the civil court had not given any declaration of bhumidari right in favour of the deceased plaintiff nor it had any jurisdiction to give such a declaration in view of the judgment of the Supreme Court in Hatti's case relied upon by the two Courts below while dismissing the present suit of the deceased plaintiff and further that in the garb of this suit for injunction the

deceased plaintiff was, in fact, seeking a declaration only of his bhumidari rights and the Courts below had rightly not fallen in his trap.

10. During the course of hearing of this appeal the learned counsel for the DDA, however, did not dispute that the deceased plaintiff was in possession of the suit property during his lifetime and now his legal heirs were in possession and it was also not claimed that if the legal heirs of the deceased plaintiff are to be dispossessed from the suit land that shall not be done without following due process of law which is to be followed for dispossessing any unauthorised occupants of some public land.

11. After having given my thoughtful consideration to the rival submissions I am of the view that the judgment of the Civil Court in the first round of litigation was rightly not relied upon by the Courts below since the Supreme Court has held in Hatti's case (supra) that no bhumidari rights can be calimed directly from a Civil Court and, therefore, that judgment was given by the Court having no jurisdiction and had no binding effect in the present litigation. So, this appeal also deserves to be dismissed and is hereby dismissed. However, considering the fact that the DDA had not taken any legal steps for all these years to take

over the possession of the suit land from the deceased plaintiff, it is clarified that this dismissal of the present appeal shall not entitle the DDA to forcibly dispossess the legal heirs of the deceased plaintiff and that can be done only after following due process of law.

P.K. BHASIN, J

MAY 4, 2012