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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RSA 47/2012

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Date of decision: December 7, 2012

AMAR SINGH @ UMAR SINGH DECD THR LRS Appellant
Through: Mr N.S. Dalal with Mr Devesh Pratap
Singh, Advs.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD ... Respondent
Through: None.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J

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1. Present is a second appeal filed under section 100 CPC against the impugned judgment dated 28.1.2012 passed by the learned ADJ, West Delhi in RCA No.15/11/10 by which the appeal filed by the appellants challenging the judgment/decreed dated 29.5.2010 passed by the court of Id.Civil Judge, has been dismissed.

2. Briefly the facts leading to the filing of the present appeal are as under:-

Appellants herein are the legal heirs of deceased Shri Amar Singh i.e. plaintiff before the Id. trial court. The plaintiff had filed a suit for

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permanent injunction against the respondent/defendant praying that respondent/defendant be restrained from demolishing structure existing on the land of the plaintiff as shown red in the site plan attached with the plaint forming part of property no.536, situated at Nangloi Jat, Main Rohtak Road, New Delhi and from interfering in peaceful possession of the same. The case set up by the plaintiff was that he along with his two brothers i.e., Shri Umed Singh and Sh. Azad Singh were the joint owners of suit property forming part of khasra no.32/12/2 measuring 15 biswas in revenue estate of Village Nangloi Jat. The said property was constructed by him as well as his father in the year 1958-59. Initially the said property was in the name of his father Shri Risal Singh S/o Sh. Gopal. The same was also assessed to house tax. After his death, the property had devolved upon plaintiff and his two brothers. The part of property no.536 was given to the plaintiff in lieu of his share in the property. Since 1958, plaintiff was in possession of the property as shown in the site plan as Bhoomidar/owner. In the year 1971, a criminal case was registered against the plaintiff by DDA vide FIR No.125/70 under section 447 IPC at P.S. Nangloi alleging therein that the plaintiff had encroached upon DDA land in Khasra no.32/8 which adjoins the property of the plaintiff situated in khasra no.32/12/2. The plaintiff was convicted for having encroached upon the DDA land and was sentenced to fine of Rs.200/- or S.I. of 15 days in default of payment of fine vide judgment dated 21.10.1975.

3. Further, case of the plaintiff was that admittedly he was in possession of land which he inherited from his father as well as the land on which he had encroached upon as alleged by DDA. His further stand was that as DDA had not taken any action against him and the alleged encroachment took place in 1958-59 when plaintiff and his father had constructed the house No. 536 along with boundary wall thereon as such he had become the owner of the suit property.

4. It was alleged that on 12.7.1990, some officials of DDA had visited the land in dispute and had asked the plaintiff to demolish the structure and deliver the vacant and peaceful possession to DDA. Plaintiff had shown them the documents but they were not satisfied and threatened to demolish the structure but with the intervention of respectable of village, they were forced to leave. In continuation of their threat, they had again come on 16.07.1990 with some labour and started demolishing the structure, as such the present suit was filed.

5. The suit was contested by respondent. The stand of the respondent was that the suit land did not form part of khasra no.32/12/2 and asserted that plaintiff had encroached upon the part of the land in khasra no.32/8 which is a government land and for that FIR No./125/70 under section 447 IPC was registered against plaintiff in P.S. Nangloi and he had been convicted for encroachment over Government land. Their further stand was that plaintiff had no right, title or interest in the suit property which

is part of khasra no.32/8 which belongs to Government. The unauthorized construction of plaintiff on suit land had already been demolished by DDA on 23.7.1990, as such suit was infructuous.

6. The replication was filed by the plaintiff denying the allegations made in the written statement. Thereafter the following issues were framed:-

1. Whether the plaintiff is owned in possession of land measuring 15 biswas in khasra no.32/12/2 Vill.Nangloi? OPP.
2. Whether the suit land falls in khasra no.32/8 Vill Nangloi which has been acquired and has been placed at the disposal of DDA? OPD
3. Whether the plaintiff is entitled to the relief claimed for? OPP.
4. Relief.

7. The plaintiff had examined eight witnesses to prove his case. On the other hand, respondent had examined only one witness, namely, Shri Gurudas Chand, Kanoongo as DW1. Thereafter, the plaintiff had examined Shri Ghanshyam Dass as PW9 in rebuttal evidence. During the pendency of the suit, plaintiff had died and his L.Rs were substituted in his place. After considering the pleadings of the parties and evidence on record, the trial court had held that the plaintiff was an encroacher on

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the government land falling in khasra no.32/8 measuring 15' x 12' adjoining his land in khasra no.32/12/2, as such, plaintiff was not entitled to any relief for permanent injunction against the government. The suit was dismissed with costs of Rs.3000/-.

8. Aggrieved with the said judgment, the LRs of deceased plaintiff i.e. appellants had filed RCA No.15/11/2010 before the learned ADJ. The learned ADJ had also dismissed the appeal by observing that the learned Civil Judge had rightly taken into consideration all the evidence and documents on record and also observed that the plaintiff had earlier been convicted for encroaching the suit land vide judgment Ex.PW 2/2 dated 21.10.1975 in FIR No.125/70 and was sentenced to fine of Rs.200/- or in default of payment of fine, SI for 15 days. The learned ADJ also observed that in the plaint, plaintiff had stated that he and his father had made constructions on the suit property in the year 1958-59 whereas in his evidence before the trial court recorded on 27.1.2000, he had deposed that he had constructed the house in the year 1986-87 which falsified his version that a pucca structure was constructed in the year 1958-59 and he was in possession since then. The Ld. ADJ also noted that khasra no.32/12/2 of plaintiff and khasra no.32/8 which is government land are adjacent to each other. The learned ADJ has also appreciated the evidence and came to the conclusion that appellants/plaintiff had encroached upon the land belonging to respondent and he had also been convicted in the criminal case of having encroached upon the suit

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property vide judgment dated 21.10.1975 Ex.PW 2/2, dismissed the appeal with costs of Rs.10000/-.

9. Aggrieved with the aforesaid two concurrent findings, the present appeal has been filed.

10. Learned counsel for the appellants has contended that dispute between the parties is with regard to whether suit property falls in khasra no.32/12/2 or a part of khasra no.32/8. It is contended that respondent ought to have placed on record the demarcation report on the basis of which matter could have been decided. Learned counsel further contended that both the courts below were not right in dismissing the suit of plaintiff on the basis of his conviction in a criminal case.

11. The evidence of both the parties have been appreciated by both the courts below while coming to conclusion that the suit land is a part of government land. The plaintiff had relied upon the report of the Local Commissioner to substantiate that he was in possession of the land measuring 15 Biswas in khasra no.32/12/2 Village Nangloi. Learned Civil Judge had observed that the Local Commissioner inspected the suit property identified by persons present at the site only on behalf of the appellants/plaintiff and the report was also not giving any necessary details, as such it was noted by Ld. Civil Judge that the same was not of any relevant. Ld. Civil Judge also observed that no original/revenue

record was provided to him. The other evidence produced by plaintiff was copy of khatauni for the year 1981/82 in respect of khasra no.32/12/2 and copy of Aks Sizra, marked 'B'. Copy of Khasra Girdwari for the year 1988-89, marked 'C'. The Halqa Patwari of Nangloi Jat was examined as PW4 who admitted in cross-examination that he had not brought original record of khatauni for the year 1981-82 or other revenue record. He also admitted that land in khasra no.32/12/2 is still agricultural land and was never converted to residential land by the Revenue Department. Even the house tax receipts Ex. PW3/1 and Ex. PW3/2 produced in the evidence did not give the details of property and the names of plaintiff or his brothers were not mentioned on it. Learned Civil Judge had observed that plaintiff in his evidence had stated that he had constructed the house on the said land about 13-14 years prior to recording of evidence. His evidence was recorded on 27.1.2000 meaning thereby that he had raised the construction on the said land in the year 1986-87. It was demolished around in the year 1990. On the other hand, the stand of the plaintiff in the plaint was that the house was constructed by him and his father in the year 1958-59 which belied his version that house was constructed by his father in the year 1958-59 and he was in possession since then. He had also admitted that khasra no.32/12/2 and khasra no.32/8 are adjacent to each other. Plaintiff was also convicted vide judgment Ex.PW2/2 for encroachment of suit land. During arguments, ld. counsel for the appellant has argued that appellant was not convicted for encroaching the suit land but he has failed to show for

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which other encroachment he was convicted.

12. Before the learned trial court, respondent has produced certified copy of award no.1612/1963 as DW1/1, gazette notification under section 22(1) of DDA Act 1857 as Ex.DW1/2, Aks Sizra as Ex.DW 1/3 which proved the stand of the respondent that khasra no.32/8 along with other lands were acquired and handed over by DDA to Slum & JJ Department on 3.12.1968. Learned Civil Judge has also observed that perusal of Aks Sizra Ex.DW 1/3 reveals that the suit land falls in khasra no.32/8 which is adjacent to khasra no.32/12/2. About criminal case, the observations of the learned Civil Judge are as under:-

“Even the perusal of judgment of conviction of plaintiff i.e., Ex.PW 2/2 (filed by plaintiff himself) reveals that the criminal case of encroachment of Government land measuring 15' x 12' in khasra no.32/8 Vill. Nangloi was hotly contested & plaintiff was finally convicted and sentenced to fine under section 448 IPC. The plaintiff during evidence in that criminal case, had denied that he had made any encroachment and constructed any boundary wall as alleged by DDA. But in the plaint of present suit, plaintiff himself alleged that boundary wall was constructed by his father and by himself and plaintiff is entitled to ownership by adverse possession since no action for eviction has yet been taken against plaintiff by the defendant.”

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13. Even the learned ADJ also appreciated the evidence and observed as under:-

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In his cross-examination, Plaintiff as PW 2 admitted that Khasra no.32/12/2 and khasra no.32/8 are adjacent to each other. Here, the averments made in the plaint to the effect that "part of the property no.536 abutted on the side of D.D.A Park known as Sanjay Park (on the Western Side of the property) has been given to the plaintiff in lieu of his share in the property in dispute" become important. As per the averments made in the plaint, the land adjacent to northern and eastern side of the suit property had been compulsorily acquired by the Government in the year 1965 and J.J. Colony-I was set up by DDA. Thus, who had given the land situated on the Western side of the property to the plaintiff/appellant and in lieu of which property has not been clarified in the plaint nor in the evidence of the plaintiff/appellant. Therefore, it becomes clear that the plaintiff/appellant had in fact encroach upon the suit land which is situated on the Western side of the property as shown in red colour in the site plan. Thus, it was proved before the Id. Trial Court that the plaintiff/appellant was a rank trespasser in the suit land and DDA had initiated necessary action against him in or about the year 1971 when criminal case vide FIR No.127/70 had been registered against him. It was contested by him and ultimately he was convicted and sentenced for having encroached upon the suit land vide judgment Ex.PW2/2.

17. Admission are best piece of evidence against the party making them. In view of the admission made by the plaintiff/appellant in the present case that he had encroached upon the suit land belonging to the respondent/defendant and he had been convicted in the criminal case u/s 447 IPC having encroached upon the suit land vide judgment Ex.PW 2/2 was best piece of evidence against him. The onus to prove to the contrary was thus on the plaintiff/appellant himself but he did not lead any evidence. Therefore, the appellant/plaintiff is also not entitled to any relief on this ground as well."

14. There is a concurrent finding of fact by both the courts below on the basis of evidence on record that the plaintiff had encroached upon the Government land and the suit property falls in khasra no.32/8 and respondent had been taking steps constantly to regain possession of the encroached land. The finding of fact has been arrived on the basis of oral and documentary evidence. In these circumstances there was no need for demarcation report. The contention raised by Id, counsel for respondent has no force.

15. No perversity is seen in judgments of both the courts below. No substantial question of law arises in the present case. The appeal is dismissed with costs of Rs. 15,000/-.

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CM No. 5044/2012 (stay)

As the second appeal has been dismissed, no orders are required on this application. The same stands disposed of accordingly.


VEENA BIRBAL, J

DECEMBER 07, 2012
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