

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

+ **RFA No.144/2005**

% **26th March, 2012**

VIJAY SEHRAWAT Appellant

Through : Mr.Rajesh Yadav with
Ms. Ruchira V. Arora, Advs.
along with appellant in person.

versus

D.D.A Respondent

Through : Mr. Ajay Verma with
Mr. Amit Mehra, Advs.

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 the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 14.2.2005 dismissing the suit of the appellant/plaintiff as not maintainable.

2. The subject suit was filed by the appellant/plaintiff claiming perpetual injunction against the respondent/defendant with respect to

property situated in khasra no. 839/2, village Mahipalpur, Delhi. The area of the land in question is 2 bighas and 4 biswas. The appellant/plaintiff claimed that the land in question belongs to her father-in-law and whereafter it vested in her by virtue of relinquishment deed dated 20.9.1985, executed by her father-in-law.

3. The respondent/defendant contested the suit and pleaded that the suit property was situated not on khasra no. 839/2 but on khasra no. 839/1 which was an acquired Government land. It was also pleaded that earlier also the appellant/plaintiff had sought to encroach upon the khasra no.839/1 and the illegal construction of the appellant/plaintiff was demolished.

4. The Trial Court has dismissed the suit although the respective parties have not yet led their evidence, and the witnesses of the respective parties were yet to be cross-examined. The suit has been dismissed as not maintainable in terms of the existing pleadings of the appellant/plaintiff, and the documents relied upon, in support of her case by the appellant/plaintiff.

5. The Trial Court has dismissed the suit by observing as under:-

9. Defendant/D.D.A. in the Written Statement claimed that plaintiff had raised construction on Khasra No. 839/1 had belonged to it. The first Local Commissioner who had been appointed gave his

report that construction had been raised on Khasra No. 839/1 which belonged to D.D.A. The second Local Commissioner who had been appointed gave his report that the entire construction was in Khasra No. 839/2. But according to Revenue Records, 839/2 belonged to Gram Sabha. D.D.A in its Written Statement repeatedly submitted that 839/1 was acquired by it. Plaintiff had filed reply to objections filed by the defendant to the report of Local Commissioner. She herself admitted in para 11 that as per Revenue Records Khasra No. 839/2 was in the name of Gaon Sabha. Once She had admitted that in the Revenue Records the land stood in the name of Gram Sabha, it was her duty to take steps to correct Revenue Records. It has not been done till now. As per Schedule to Delhi Land Reforms Act 1954, this Court does not have jurisdiction to order for correction of Revenue Records.

10. In unreported case **Inder & Others Vs. Raghubir Singh CR No. 428 of 1982 Hon'ble Mr. Justice A.B. Rohtagi** in his order dated 18.08.82 held that until an application is made to the Revenue assistant and there is a declaration in his favour, no one can claim that he has become a Bhumidar Under Section 85. It was further held that plaintiffs, if they have any rights in the land must seek a declaration. No declaration has been claimed and a mere suit for injunction does not lie.

11. Moreover, as per **Section 30 of the D.D.A. Act**, the authority can direct removal by way of demolition of any development which has been carried out without permission. Appeal against the order can be filed before the Appellate Tribunal. As per **Section 31C of the Delhi Development Act 1957**, a person can prefer an appeal to the Appellate Tribunal against any order of the authority for removal of development. In the case in hand, admittedly demolition had been carried out by the D.D.A. in the year 1989. **Section 31 E** is very clear. It says that **no Court shall entertain any suit, application or other proceedings in respect of an order appealable Under Section 31-C.**

14. Hon'ble Court held that Civil Court should be a guardian of public property. Even notice was not required to be served regarding the land which have been acquired, It was so held by **My Lord Mr. Justice C.K. Mahajan in case titled as Kul Prakash Awana Vs. D.D.A in C.W.P . No. 2212 of 1998** that:

The land in question on which the construction stand has been subject to the proceedings under the Land Acquisition Act. In the circumstances it is not necessary that any further notice under the Delhi Development Act be issued to the petitioner. When notification was published under section 4 opportunity was given to the public to file objections Under Section 5 of the Act. After considering the objections notification under section 6 was issued. The award was thereafter made under the provisions of the Land Acquisition Act. The original claimant had adequate opportunity to object to the acquisition. The consequence of the land being acquired is that the Government gets absolute title to the property in question free from all encumbrances. There is thereafter no need for giving any notice for demolition of its own property.

15. Herein case in hand, Khasra No. 839/1 was a Government property. The land vested in Government. D.D.A. wanted to remove the construction raised on 839/2. In Revenue Records, 839/2 belonged to Gram Sabha. As I have already observed above, this Court cannot pass any direction for correction of Revenue Record as on 08.09.2002 land stands in the name of Gaon Sabha and as such plaintiff has no right to seek any injunction regarding it.”

6. A reading of the aforesaid paragraphs shows that the Trial Court has ignored the written statement and has proceeded on the basis of the case of the appellant/plaintiff in terms of the pleadings and the documents as existing. Trial Court records the fact that there were two separate reports of the Local Commissioners, one of which was in favour of the appellant/plaintiff and the other one which was in favour of the respondent/defendant. The Trial Court refers to the fact that the

appellant/plaintiff herself admitted that the khasra no.839/2 was in the name of the Gram Sabha and therefore the subject suit without taking steps to correct the revenue records was not maintainable inasmuch as, under the Delhi Land Reforms Act, 1954, the Civil Court does not have the jurisdiction to correct the revenue records. Trial Court has also referred to the fact that Courts are guardians of public property and either the land is situated in khasra no. 839/1 which belongs to the Government and in case the suit property was situated in khasra no. 839/2, the same belongs to Gram Sabha and therefore suit was not maintainable as there cannot be direction for correction of the revenue records.

7. A civil suit can be disposed of under Order 14 Rule 2 CPC on a preliminary issue only if the preliminary issue is an issue of law, i.e. there is not required any trial to decide the disputed questions of fact. Issues of law which have their basis in facts, i.e. factual aspects have to be decided before deciding the issues of law, such issues cannot be decided as preliminary issues. That under Order 14 Rule 2 CPC a case cannot be decided once there are disputed questions of fact which required trial, is so held by the Supreme Court in the judgment reported as ***Ramesh B. Desai & Ors. vs.***

Bipin Vadilal Mehta & Ors., 2006 (5) SCC 638. The Supreme Court in this RFA No.144/2005

judgment of *Ramesh B.Desai (supra)* case made it clear that mixed questions of fact and law cannot be decided as an issue of law i.e. as a preliminary issue. The Supreme Court held that a decision under Order 14 Rule 2 (2) CPC is a decision on a demurrer, i.e. a Court decides an issue of Order 14 Rule 2 CPC only, when the facts are clear from the plaint itself or on admitted facts.

8. A reading of the facts of the present case shows that the only plea raised by the respondent/defendant was that the suit property was situated in khasra no.839/1 which was an acquired Government land. There were disputed questions of fact as to whether the suit property was located in khasra no.839/1 or 839/2 and two local commissioners appointed by the Court gave different reports. There was no case set up in the written statement of the suit, of the property being situated in khasra no.839/2, yet, the suit property could not be allegedly owned by the appellant/plaintiff inasmuch as the same was Gram Sabha land. There would also be an issue of validity and entitlement of possession of the appellant of the suit land once we assume that appellant's property was situated in khasra no.839/2 and not in 839/1 and the appellant would be entitled during trial to show it to establish her case. The fact that a plaintiff may have a weak case and thus

may not be entitled to interim injunction, is an issue which is wholly separate from the dismissal of a suit under Order 14 Rule 2 (2) CPC by deciding the suit on the basis of a preliminary issue of the suit not being maintainable on the facts as appearing on record. The appellant/plaintiff, arguendo, may not be able to show at the stage of pleadings the entitlement/ownership of the suit property situated in khasra no. 839/2 because at this stage she was not able to show that the property vested with her father-in-law, however, the same would only be a ground to vacate the interim injunction, but not to dismiss the suit itself inasmuch as the appellant/plaintiff can show, during the course of trial, that her father-in-law was the owner of the suit land if the land of Gaon Sabha was allotted to the father-in-law.

9. Learned counsel for the appellant/plaintiff agrees that it is not the case of the appellant/plaintiff that the suit land is situated in khasra no. 839/1 and counsel for the appellant on instructions from the appellant, who is present in person, states that in case there is a fresh demarcation by the Revenue Authorities by the total station method which shows that the suit property in fact situated in khasra no.839/1, the appellant/plaintiff agrees to withdraw the suit and not claim any right inasmuch as the suit land would be

in khasra no.839/1 and not in khasra no.839/2, and the ownership claim is only on the land situated in khasra no.839/2. Of course, I may hasten to add that any genuine objection of the appellant/plaintiff to the demarcation report prepared on the basis of the total station method will be considered by the Court. The Revenue Authorities will give notice to both the parties through their counsel to appear in the demarcation proceedings to be conducted on the basis of total station method. The Trial Court will pass necessary orders directing demarcation in terms of the total station method and which demarcation will be carried out after notice to both the parties through their counsel. In case, the Trial Court thereafter finds that the suit property is situated in khasra no. 839/1 and not in khasra no.839/2, the suit shall stand dismissed.

10. Learned counsel for the respondent/defendant also states that in case the suit property is found to be located on khasra no.839/2, the respondent/defendant be allowed to amend the written statement to raise appropriate pleas of fact and law to plead the disentitlement of the appellant/plaintiff to the reliefs claimed in the suit. Obviously, there can be no objection to this, inasmuch as, it is always open to the respondent/defendant to amend its pleadings in accordance with law. If an

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amendment application is filed by the respondent/defendant to deny the claim of the appellant/plaintiff even if the suit property is situated in khasra no.839/2, then such application will be considered liberally by the Trial Court.

11. I note from the Trial Court record that the ex parte injunction granted way back on 31.7.1989, i.e. 22 years back is still continuing without disposing of the injunction application. The Trial Court after the demarcation report is filed by the total station method, will hear arguments on the injunction application being IA No.5375/1989 and will dispose of the same in accordance with law, as per the respective contentions of the parties. The application for injunction at the request of the respondent/defendant can also be taken up after the pleadings of the respondent/defendant are sought to be amended, in case the respondent/defendant so wants.

12. In view of the fact that the impugned judgment disposes of the suit on a preliminary issue, and which could not have been done in view of the disputed questions of fact and the judgment of the Supreme Court in the case of *Ramesh B.Desai (supra)*, the impugned judgment is set aside. Setting aside of the impugned judgment is no reflection on merits of the case

of either of the parties, and the Trial Court will dispose of the injunction
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application as also the suit in accordance with law.

13. Let the parties appear before the District and Sessions Judge, Delhi on 26.4.2012, and on which date, the District and Sessions Judge, Delhi will mark the suit to a competent Court for disposal in accordance with law.

14. Interim order dated 31.7.1989 will continue till the disposal of the injunction application of the appellant/plaintiff, and which, as already stated above, will be disposed of in accordance with law considering the rights of either of the parties to the suit, including the right of the respondent/defendant to seek amendment of its written statement as stated above.

15. It will not be necessary for District and Sessions Judge, Delhi, as also the competent Court, to issue fresh notices to the parties, and the competent Court can proceed in case any of the parties chooses not to ensure the representation on their behalf when the case is listed after remand.

16. Trial Court record be sent back so as to be available to the District and Sessions Judge, Delhi on 26.4.2012.

VALMIKI J. MEHTA, J.

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