

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

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Date of decision: 7th November, 2013.

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RFA 71/2010

HARENDER SINGH & ORS.

..... Appellants

Through: Mr. N.S.Dalal, Adv.

Versus

ADIVASI KALYAN SAMITTEE

..... Respondent

Through: Mr. Amresh Kumar, Adv.

AND

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RFA 77/2010

HARENDER SINGH

..... Appellant

Through: Mr. N.S.Dalal, Adv.

Versus

ADIVASI KALYAN SAMITTEE

..... Respondent

Through: Mr. Amresh Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. Both appeals impugn the common judgment and decree dated 22nd December, 2009 of the Court of Additional District Judge, Delhi, of dismissal of suit No.84/08/94 filed by the three appellants namely Shri Harender Singh, Ms. Kusum Lata Jain and Shri Kiran Singh against the

respondent Adivasi Kalyan Samitee and decreeing suit No. 85/08/95 filed by the said Samitee against the appellant Shri Harender Singh and three other persons, namely, Smt. Shyama Bansal, Shri Shashi Karan Garg and Shri Indraj Singh Jatav. Of the said three persons, Shri Shashi Karan Garg was deleted as defendant in the suit, during the pendency of the suit and the suit was decreed against the appellant Shri Harender Singh as well as against Smt. Shyama Bansal and Shri Indraj Singh Jatav. However, Smt. Shyama Bansal and Shri Indraj Singh Jatav have not challenged the decree against them. The counsels have been heard.

2. The factual position which emerges is that Smt. Shyama Bansal, wife of Late Shri T.R.Bansal and Shri Shashi Karan Garg, were the owners of land in Khasra No.101/28, admeasuring 10 bighas 4 biswas in the village of Khera Khurd, Delhi, out of which 5 bighas 2 biswas of land was owned by Smt. Shyama Bansal and the other 5 bighas and 2 biswas of land was owned by Shri Shashi Karan Garg.

3. Shri Shashi Karan Garg vide two separate sale deeds, both dated 30th March, 1988, out of his share of 5 bighas and 2 biswas, sold two plots of 2 bighas each to the Samiti and put the Samiti into possession thereof.

4. Smt. Shyama Bansal also, vide two registered sale deeds, both dated 30th March, 1988, out of her share of 5 bighas and 2 biswas sold two plots of 2 bighas each to the Samiti and put the Samiti into possession thereof.

5. Thus, vide the said four sale deeds, the Samiti became the owner of 8 bighas, out of the total of 10 bighas 4 biswas of land in Khasra No.101/28.

6. It is also not in dispute that Shri Shashi Karan Garg sold his remaining land admeasuring 1 bigha 2 biswas to one Shri Memon Chand Gupta who later on sold the same to the Samiti and the Samiti got possession of that 1 bigha 2 biswas of land. However, the documents of sale of the said 1 bigha and 2 biswas of land are not found on record and it is not clear whether it was sold vide registered sale deed or vide Agreement to Sell coupled with delivery of possession.

7. As far as the remaining 1 bigha and 2 biswas of land admeasuring approximately 1100 sq. yards of the share of Smt. Shyama Bansal, the three appellants i.e. Shri Harender Singh, Ms. Kusum Lata Jain and Shri Kiran Singh claim that Smt. Shyama Bansal vide Agreement to Sell dated 29th October, 1993 coupled with the delivery of possession and Power of Attorney and Will etc. agreed to sell the same to the three of them.

8. It is *inter alia* the case of the Samiti that the entire 10 bighas and 4 biswas of land was surrounded by a boundary wall and plots had been carved out by Shri T.R.Bansal, husband of Smt. Shyama Bansal, thereon; the sale deeds/other documents in favour of the Samiti were executed with respect to the 9 bighas and 2 biswas of land being the land underneath the plots so carved out and the remaining 1 bigha and 2 biswas of land was utilized for roads and other common facilities in the Colony so developed. It is yet further the case of the Samiti that in fact the Samiti had paid consideration other than that reflected in the sale deeds/documents, including for 1 bigha and 2 biswas used in roads and for common facilities and the possession of the entire land was delivered to the Samiti which has allotted the individual plots thereon to its members who are now settled thereon.

9. Per contra it is the case of the three appellants in RFA No.71/2010 that Smt. Shyama Bansal vide Agreement to Sell coupled with Delivery of Possession, Will, Power of Attorney etc. executed on 29th October, 1993 transferred the said 1 bigha 2 biswas of land to them and put them into possession thereof.

10. It is further not in dispute that the Samiti first filed a suit against Smt. Shyama Bansal to restrain her from selling the said 1 bigha two biswas of land, asserting their rights aforesaid therein. Smt. Shyama Bansal upon service of summons of the said suit appeared and informed of the sale on 29th October, 1993, as aforesaid, of the said land to the three appellants in RFA No.71/2010. The said suit was accordingly disposed of.

11. Thereafter, the three appellants filed the suit (from dismissal whereof RFA No.71/2010 has arisen) to restrain the Samiti from interfering with the possession of the three appellants in respect of the said 1 bigha and 2 biswas of land sold to them vide documents of 29th October, 1993.

12. It is thereafter that in or about May, 1995, the Samiti filed the suit, from decree of injunction wherein RFA 77/2010 has arisen, to restrain the appellant Shri Harender Singh, Smt. Shyama Bansal, Shri Shashi Karan Garg and Shri Indraaj Singh Jatav from dispossessing the Samiti and its members from the said 1100 sq. yards out of the total of 10 bighas 4 biswas of land in Khasra No.101/28.

13. It appears that the two suits were consolidated for trial and evidence recorded in suit No.84/1994 filed by the three appellants. Need is however

not felt to elaborate the pleadings, the issues framed and the evidence recorded, for the reasons hereinafter recorded.

14. The learned Additional District Judge has, vide the impugned judgment and decree dated 22nd December, 2009, dismissed the suit for injunction filed by the three appellants in RFA No.71/2010 and decreed the suit filed by the Samitee and restrained Smt. Shyama Bansal, Shri Shashi Karan Garg, Shri Indraaj Singh Jatav and the appellant Shri Harender Singh from interfering with the possession of the suit property otherwise than by due process of law, holding, observing and finding:-

A. Neither the three appellants nor the Samiti had proved ownership of 1100 sq. yards of land.

B. That the three appellants had failed to prove that they were, in pursuance to the sale documents of 29th October, 1993, put into vacant peaceful possession of 1 bigha 2 biswas of 1100 sq. yards of land.

C. The three appellants had failed to prove that the Samiti was not in possession of the entire 10 bighas 4 biswas of land since much prior to 29th October, 1993.

15. The suits, from which these appeals arise, as aforesaid, were only for the relief of injunction. The Supreme Court in **Anathula Sudhakar Vs. P. Buchi Reddy** (2008) 4 SCC 594 has held that in a suit, the only relief

claimed wherein is of mere injunction, the question of title is not to be ordinarily adjudicated.

16. The learned Additional District Judge, though has returned a finding that neither the three appellants nor the Samiti have proved their respective claims of ownership/rights of 1 bigha and 2 biswas i.e. 1100 sq. yards of land, has nevertheless, while granting injunction against the appellant Shri Harender Singh, restraining him from interfering in the possession of the Samiti, made the same subject to due process of law, meaning, that the appellant Shri Harender Singh is entitled to take recourse of law for recovering possession of the 1100 sq. yards of land he claims to have purchased or to have acquired vide documents of 29th October, 1993.

17. It is thus apparent that the finding of the learned Additional District Judge in the impugned judgment of neither the three appellants nor the Samiti having proved their rights, respectively claimed by them, in the 1100 sq. yards of land, is not meant to be a conclusive finding and not meant to bind them in a duly constituted proceeding with respect to the 1100 sq. yards of land.

18. The injunction, denied to the appellants in RFA No.71/2010 and granted against the appellant Shri Harender Singh in RFA No.77/2010 is thus merely on the basis of the finding of the learned Addl. District Judge that the Samiti and not the appellants in RFA No.71/2010 being in possession of the land.

19. In that view of the matter, it has been enquired from the counsel for the appellants as to what is wrong with the said finding of the learned Addl. District Judge.

20. The counsel for the appellants has, of course, contended that the said finding is contrary to the admissions made by the witnesses of the Samiti and without any basis. However, considering the nature of the dispute, it has been enquired from the counsel for the appellants as to which is the 1100 sq. yards of land, qua which the appellants claim right/title; and whether the said 1100 sq. yards is identified by description in the documents dated 29th October, 1993 executed in favour of the three appellants or has been earmarked on any site plan.

21. The counsel for the appellants states that the boundaries of the said 1100 sq. yards lands have been described in the documents dated 29th

October, 1993 in favour of the appellants. It has, however, been enquired from the counsel as to what is the use of the boundaries without any site plan on record to show the location of the said 1100 sq. yards or of other identifying factors on the entire 10 bighas and 4 biswas of land.

22. The counsel for the appellants has sought to answer the aforesaid query by arguing that the 9 bighas 2 biswas of land purchased/acquired by the Samiti is also not so identified.

23. Even if it may be so, but the fact remains that the Samiti admittedly came into possession of at least 8 bighas if not 9 bighas 2 biswas out of 10 bighas 4 biswas of land nearly 5 years prior to the three appellants. In the absence of any demarcations/boundaries, the preponderance of probability is that the Samiti entered into the entire 10 bighas and 4 biswas of land even though the documents in their favour were of 9 bighas and two biswas of land only.

24. In the aforesaid state of affairs, it has further been enquired from the counsel for the appellants whether not the appropriate proceeding to be instituted by the appellants, is of demarcation/partition and claiming their 1100 sq. yards of land.

25. The counsel for the appellants though not averse to instituting such proceeding contends that the findings in the impugned judgment of the appellants having not proved their rights with respect to the 1100 sq. yards of land and not being in possession of the said land would still trouble the appellants.

26. As I have already observed above, the findings in the impugned judgment as to title, are not conclusive. The apprehension thus of the said finding coming in the way of a substantial proceeding to be filed by the appellants and which the impugned judgment also permits, causing any trouble to the appellant is misplaced. However, to remove any doubt, it is hereby expressly clarified so.

27. As far as the finding in the impugned judgment of the appellants being not in possession of the 1100 sq. yards of land is concerned, in the absence of any identifiable 1100 sq. yards of land, the possession even if delivered to the appellants in pursuance to the documents dated 29th October, 1993 can at best be constructive/joint possession only and not vacant peaceful physical possession of the land.

28. In that view of the matter, no error is found in the impugned judgment, though in view of above it is further clarified:-

(i) That the impugned judgment will not come in the way of the appellants instituting a fresh suit/appropriate proceeding for demarcating/partitioning and asserting their rights in the 1100 sq. yards of land which they claim to have acquired vide documents of 29th October, 1993;

(ii) Nothing contained in the impugned judgment will come in the way of the appellants pleading and proving having acquired right in the said 1100 sq. yards of land and being delivered joint/constructive possession thereof;

(iii) Nothing contained in the impugned judgment would come in the way of the Samiti either defending such suit/proceeding to be instituted by the appellants or instituting any other proceeding claiming rights in the entire 10 bighas 4 biswas of land;

(iv) Injunction granted vide the impugned judgment would be subject to the final outcome of any further proceedings to be instituted by either of the parties;

(v) The observations hereinabove would also not come in the way of adjudication on the aspects of possession in a fresh, properly constituted proceeding.

29. The appeals are disposed of in the terms above. The parties shall bear their respective costs. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 07, 2013
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