

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

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Date of decision: 22nd July, 2013

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RFA 730/2003

**DELHI SIKH GURDWARA MANAGEMENT
COMMITTEE**

..... Appellant

Through: Mr. Jasmeet Singh with Mr.
Saurabh Tiwari, Advs.

Versus

UNION OF INDIA & ORS.

..... Defendants

Through: Mr. Jaswinder Singh, Adv. for R-
1&2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This appeal impugns the judgment dated 2nd June, 2003 of the learned Addl. District Judge in the suit No.170/1997 (old No.549/1993) filed by the appellant/plaintiff deciding the preliminary issue framed against the appellant/plaintiff and resultantly holding the said suit to be not maintainable and dismissing the same.

2. The appellant/plaintiff had filed the suit from which this appeal arises for perpetual injunction to require the respondents/defendants to give peaceful possession of ancient historical Basant Gurudwara along

with its residential quarters, lands and moveables to the appellant/plaintiffs.

3. The case of the appellant/plaintiff in the plaint was that under Section 24 of the Delhi Sikh Gurudwara Act, 1971 the control, direction and general superintendence over all the Gurudwaras and Gurudwara properties in Delhi vest in the plaintiff Committee; that the subject property is a Gurudwara and thus vests in the plaintiff Committee; that though the land underneath the Gurudwara was sought to be acquired under the Land Acquisition Act, 1894 but the acquisition was not completed in accordance with law and the respondents/defendants have illegally taken possession thereof.

4. The defendant/respondent UOI contested the suit, with one of the objections taken in the suit being as to the very maintainability of the suit; it was pleaded that the respondents / defendants no.1&2 were in occupation of the suit land since the year 1911 and the suit for injunction as filed was not maintainable.

5. The following preliminary issue was framed in the suit on 25th January, 2001;-

“Whether the suit is maintainable in its present form? OPP”

6. It was the contention of the defendant/respondent UOI that the relief of injunction claimed cannot be granted when the appellant/plaintiff was not in possession of the property; that a perusal of the averments in the plaint revealed that the appellant / plaintiff admitted possession of the property having been taken over at least in March, 1989, while the suit was filed in the year 1993.

7. The learned Addl. District Judge in the impugned order and judgment has held that the appellant/plaintiff was admittedly out of possession since March, 1989; that a suit for injunction is not maintainable when the appellant/plaintiff is not in possession; accordingly the preliminary issue framed was decided against the appellant/plaintiff and the suit dismissed as not maintainable.

8. Although the simplest remedy against the judgment aforesaid would have been to file a suit for possession, the present appeal was preferred and notice whereof issued and which has remained languishing

for the last ten years for the reason of successive demise of several of the original parties to the suit/appeal and time taken in service and substitution of legal heirs thereof.

9. The counsels have been heard.

10. The counsel for the appellant/plaintiff has not controverted the legal position that once the appellant/plaintiff in the plaint in the suit first instituted in 1993 admitted the appellant/plaintiff to be out of possession at least since 1989, the appropriate remedy was to sue for recovery of possession on the basis of title but contends that a substantial reading of the plaint in the present case shows the same to be indeed a suit for possession and not a suit for injunction, as wrongly titled. He thus contends that the learned Addl. District Judge erred in misreading the plaint and ought to have held the plaint to in fact be for the relief of recovery of possession of the subject property. It is further contended that even the valuation of the suit was as for a suit for possession.

11. I have perused the plaint. The same, from the Trial Court record appears to have been amended at least twice if not more. The appellant/plaintiff however stuck with the relief claimed in the plaint of

perpetual injunction instead of claiming the relief of recovery of possession, inspite of objection having been taken by the respondent/defendant UOI in this regard.

12. The valuation being most important test to determine whether the plaintiff in fact was treating the suit as for injunction or for the relief of recovery of possession, the plaint and the Trial Court record has been perused in this regard. The appellant/plaintiff valued the suit for the purpose of jurisdiction at Rs.1,00,001/- and for the purpose of Court Fees at Rs.200/-. The counsel for the appellant/plaintiff on the basis thereof has argued that the valuation of the suit is as of a suit for possession and not as a suit for injunction which could have been filed with a valuation of Rs.130/- only.

13. I am unable to agree. A plaintiff desiring to sue for the relief of injunction has a choice of filing the suit by paying a Court Fees of Rs.13/, in the Court of the Civil Judge, Delhi, by valuing the suit for the purposes of Court Fees and jurisdiction at the minimum pecuniary jurisdiction of the District Judge, in the Court of the District Judge, Delhi and at the minimum pecuniary jurisdiction of this Court, in this Court. It is thus not essential that the valuation for all suits for injunction has to be Rs.130/-

only and merely because the valuation in the present case was Rs.1 lac, the same cannot be treated as a suit for injunction.

14. The suit was originally instituted in the Court of the District Judge, Delhi whose minimum pecuniary jurisdiction then was Rs.1 lac and the valuation for the purpose of jurisdiction at Rs.1,00,001/- was thus with the intent of having the suit entertained by the Court of the District Judge, Delhi.

15. Moreover the said question is no longer open. A perusal of the Trial Court record shows that an objection was also taken by the respondents/defendants as to the valuation and which came to be decided vide order dated 27th September, 1993. As aforesaid the appellant/plaintiff had valued the suit for the purpose of jurisdiction at R.1,00,001/- and for the purpose of Court Fees at Rs.200/- and paid Court Fees of Rs.20/- only on the plaint. The said order dated 27th September, 1993 of the learned Addl. District Judge records the contention of the counsel for the appellant/plaintiff that the suit was a suit for injunction and the appellant/plaintiff was at liberty to put any valuation for the purpose of Court Fees. However it was held that the valuation, in the suits for injunction, for the purposes of jurisdiction and Court Fees has to be

the same and the appellant/plaintiff if desired the suit to be entertained by the Court of the District Judge had to value the same for the purpose of Court Fees also at Rs.1,00,001/- only and which had not been done. The plaint was accordingly ordered to be returned to be presented before a Court of competent jurisdiction.

16. The appellant/plaintiff preferred a Civil Revision No.698/1994 against the said order and during the pendency thereof offered to value the suit for the purpose of Court Fees also at Rs.1,00,001/- and to pay the deficient Court Fees and which was permitted and accordingly the suit remained before the Court of the Addl. District Judge.

17. The aforesaid would show that the suit as filed for injunction was intended by the appellant/plaintiff to be a suit for injunction only and not a suit for possession. There is thus no error in the impugned order and judgment.

18. The counsel for the appellant/plaintiff states that though the appellant/plaintiff would be entitled to even now file a suit for recovery of possession but may face an objection from the respondents/defendants as to limitation. He seeks permission to file the suit now.

19. The counsel for the respondent/defendant UOI has contended that the appellant/plaintiff will have to satisfy the Court before whom the suit is now filed as to the applicability of Section 14 of the Limitation Act, 1963 and that decision has to be taken by the said Court and not in this proceeding.

20. There is merit in the aforesaid contention of the counsel for the respondent/defendant UOI. This Court in this appeal cannot pronounce upon the limitation of a suit yet to be filed by the appellant/plaintiff. Moreover *prima facie* it appears that the claim for possession being against the State which is not expected to set-up a plea of adverse possession, the appellant/plaintiff may not really face any objection as to the limitation.

21. The appeal is accordingly dismissed; however no order as to costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

JULY22, 2013

‘pp’