

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.121 of 2008 & C.M. No.7737/2008**

+ **R.S.A. No.123 of 2008 & C.M. No.7746/2008**

+ **R.S.A. No.124 of 2008 & C.M. No.7750/2008**

+ **R.S.A. No.125 of 2008 & C.M. No.7752/2008**

Decided on : 11th November, 2013

KEWAL PARK WELFARE ASSOCIATION & ORS.

..... Appellants

Through: Mr. J.C. Mahindroo, Advocate.

Versus

SHRI CHANDER

..... Respondents

Through: Mr. Naveen Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. These are four regular second appeals filed by the appellants against the common order dated 1.3.2008 passed by the learned Additional District Judge dismissing the appeals of the appellants and upholding the judgment and the decree dated 31.5.2006 and rectified vide order dated 4.12.2006 passed by the learned Civil Judge.

2. Briefly stated the facts of the case are that the respondent/plaintiff filed four different suits for declaration and permanent injunction against the defendants bearing Nos.634/1993, 58/1995, 114/2000 and 306/2000 in respect of land measuring 500 square yards in Kewal Park, Azad Pur, Delhi-110033. All these suits were consolidated by virtue of an order dated 15.4.2004 read with order dated 27.10.2004. The case which was set up by the plaintiff/respondent was that the suit property measuring 10 biswas, that is, 500 square yards belonged to him and it was situated in khasra No.21 at Kewal Park, Azad Pur, Delhi. The aforesaid parcel of land was mutated in the name of his father, Ram Prasad, since 1964 till 1974. It was also pleaded by the respondent/plaintiff that appellant/defendant Nos.2 & 3 in collusion with appellant/defendant No.1 obtained a decree by compromising the suit which was filed by them amongst each other that the suit land was falling in khasra No.23 and not in khasra No.21. This decree was passed by the Civil Judge on 31.5.2006. It was also the case of the plaintiff/respondent that the compromise decree which was passed on 7.4.1993 in Suit No.336/1981 titled *Pratap vs. Kewal. Park Association & Ors.* was nullity and was not binding on the defendants who are the present appellants. The present

appellants filed their written statements and contested the suit. It was their case that out of 500 square yards of land, a portion of land measuring 300 square yards was actually falling in khasra No.21 and not in khasra No.23 and the said land was allotted to the appellants for the purpose of construction of a community centre. The respondent was trying to usurp that land and, therefore, the suit deserves to be dismissed.

3. On the pleadings of the parties, the learned trial court framed different issues in all the four suits but one core issue which was involved and on the basis of which the entire controversy was dependent was ‘whether the land in question falls in khasra No.21 or 32?’ Both, the respondent as well as the appellants adduced their respective evidence. The respondent herein proved khasra girdawari of the year 1973-74 which clearly showed that the suit land was falling in khasra No.21 in the revenue estate of village Azad Pur. The trial court had also got the demarcation of the suit land conducted twice, firstly, on 4.9.1987 by one Sh. Ganga Prasad, Naib Tehsildar/Local Commissioner as per the order of the SDM/Revenue Assistant dated 13.8.1987, Kingsway Camp, Delhi. The said demarcation report was accepted as exhibit PW 1/1 in Suit

No.114/2000 and exhibit PW 7/1 in Suit No.306/2000. This demarcation report was proved by the person who had actually conducted the demarcation. The second demarcation was conducted on 26.12.1989 by R.D.S. Chauhan, Tehsildar/Local Commissioner as per orders of Sh. A.K. Chaturvedi, the then Sub Judge in case titled *Pratap Singh vs. Chander*. This demarcation report was also exhibited as PW 2/1 in Suit No.114/2000, exhibit PW 5/4 in Suit No.306/2000 and exhibit PW 1/28 in Suit No.634/1993. It may also be pertinent here to mentioned that the aforesaid demarcation was done in the presence of Pratap Singh from whom the present appellants are purported to have derived their title. Both these demarcation reports show that the land in question falls in khasra No.21 and not in khasra No.23 as claimed by Pratap Singh or by the present appellants.

4. The respondent also proved that a compromise decree dated 7.4.1993 between legal heirs of Pratap Singh and Kewal Park Association is in respect of khasra No.23 and not khasra No.21 and thus, it was urged since the land in question was not falling in khasra No.23 but was actually falling in khasra No.21, therefore, the same was nullity and not

binding upon the answering respondent. Suit No.336/1981 which was filed by Pratap Singh against Kewal Park Association and was participated by his legal representative was also proved as exhibit PW 1/16 in Suit No.58/1995 and exhibit PW 10/14 in Suit No.306/2000.

5. So far as the present appellants are concerned, they failed to show any document of title in respect of the suit property, that is, khasra No.21, Kewal Park, Azar Pur, Delhi-33. The resolution which was purportedly filed by them bearing No.580, exhibit DW 1/1 was also not proved. The lay out plan of the town planner exhibit DW 2/1 also did not mention the name of the appellants society. On the basis of the respective evidence, the trial court took a view that the respondent was unable to prove his case while as the appellants were able to show by preponderance of probabilities that they were entitled to declaration by being declared owner in respect of suit land which was situated in khasra No.21 measuring 500 square yards of land. Accordingly, the issue was decided in affirmative in favour of the respondent.

6. Feeling aggrieved, the appellants preferred four difference appeals before the appellate court being R.C.A. Nos.73/2006, 74/2006, 77/2006

and 83/2006. All these appeals were heard together and dismissed vide a common and detailed order dated 1.3.2008 by the learned Additional District Judge. Still not feeling satisfied, the appellants have preferred the present regular second appeals.

7. I have heard Mr. Mahindroo, the learned counsel for the appellants. During the course of submission, the main contention urged by the learned counsel for the appellants is with regard to the identity of the land in question as to whether it falls in khasra No.21 or 23. The contention of the learned counsel for the appellants is that the entire dispute is with regard to the placement of the land allotted to the appellant No.1 as to whether it falls in khasra No.23 or 21 and their case is that it falls in khasra No.23. If that be so, the concurrent finding returned by the court below that it falls in khasra No.21 is to be set aside as it is not borne out from the record. On the basis of this submission, the learned counsel for the appellants had contended that the court, even at the stage of second appeal, could appoint a revenue assistant as a Local Commissioner for the purpose of conducting a demarcation afresh and finding out where the land in question falls. In this regard, the learned counsel for the

appellants has relied upon the judgment of the Apex Court in case titled *Shreepat vs. Rajendra Prasad & Ors.*; JT 2000 (7) SC 379.

8. I have considered the submissions made by the learned counsel for the appellants and have also gone through the said judgment. There is no dispute about the fact that in *Shreepat's* case (*supra*), the Hon'ble Supreme Court had directed the demarcation to be conducted even at the stage of second appeal but the facts of that case were totally different. The question in that case was with regard to the land which was in occupation of the appellant and it was stated that it does not fall in khasra No.257/3. There was no demarcation report which was proved before the courts below and that is the reason why the Hon'ble Supreme Court directed demarcation of the land in question in the said case.

9. In the present case, there are two demarcation reports which have been duly proved before the trial court and in one of the demarcation report, one Pratap Singh, who is admittedly the predecessor in interest of the appellant Nos.2 and 3 was present, wherein it has been proved that the land in question falls in khasra No.21. Therefore, once the demarcation report has already been carried out not once but twice and both these

reports have been duly proved before the court through the concerned officials, a fresh demarcation of the suit land is not at all warranted. As a matter of fact, such an exercise would only add to the confusion with regard to the placement of the land in question. Once the demarcation report is proved before the court below, the learned counsel for the appellants had to show that the witness, who has proved the demarcation report has given such a testimony or has conducted the demarcation without reference to the fixed points in such a manner that the report furnished by him cannot be treated as credible and authentic. Incidentally, both the witnesses who have proved the demarcation report have been cross-examined by the appellants and nothing has been brought about in their testimony which can discredit the testimony of either of them.

10. In the light of these facts, it is totally inappropriate to accept the contention of the learned counsel for the appellants for fresh demarcation and create confusion in the matter. Moreover, by a concurrent finding, the trial court has upheld the said demarcation. In any case, demarcation of a suit property as to whether it falls in khasra A or khasra B, is

essentially a question of fact and not a question of law and it is admittedly not the case of the appellants that the finding which has been returned by the two courts below with regard to the falling of the land in question in khasra No.21 is not supported by the demarcation reports, howsoever insufficient they may be, is not borne out from the record.

11. I, therefore, feel that this case does not raise any question of law much less any substantial question of law. No other question of law is arising from the appeal although a vain attempt has been made by the appellants to raise questions with regard to appreciation of evidence. Accordingly, I feel all these four appeals are without any merit as they do not involve any substantial question of law and are, therefore, dismissed.

V.K. SHALI, J.

NOVEMBER 11, 2013
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