

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

+ **RSA 119/2013**

Decided on : 29th August, 2013

SHANKAR LAL

..... Appellant

Through: Mr.P.Chakraborty, Advocate.

versus

JAI PAL & ANR.

..... Respondents

Through: Mr.Jagat Rana, Advocate for
R-2/Delhi Urban Shelter
Improvement Board.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI(ORAL)

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1. This is a regular second appeal filed by the appellant against the judgment dated 09.05.2013 passed by the learned ADJ dismissing the appeal and upholding the judgment and the decree dated 13.07.2005 passed by the trial court in a suit filed by one Sh. Jai Pal.

2. The learned counsel for the appellant has stated that he has raised substantial questions of law in the appeal, which need consideration by this court.

3. I have heard the learned counsel for the parties.

4. Before dealing with the submissions made by the learned counsel for the appellant, it will be worthwhile to give a brief background of the case. R-1/Jai Pal originally filed a Suit No.429/2008 (renumbered later on and given the new no.1036/1991) against Mr.Shankar Lal and Mr.Abdul Razaq. The case which was set up by him was that he had been allotted a parcel of land measuring 25 square yards bearing No.J-III/387, J.J.Colony, Wazirpur, Delhi by DDA vide allotment letter dated 08.03.1978. He took possession and raised a temporary construction. On 19.11.1978 when he came to the suit premises, he was sought to be forcibly dis-possessed. This forcible dispossession was resisted by Mr.Jai Pal and he lodged a report with the police. He also tried to protect his possession by filing the suit for permanent injunction against the present appellant Mr.Shankar Lal and one Mr.Abdul Razaq.

5. The present appellant/ Mr.Shankar Lal and Mr.Abdul Razaq (defendants in the suit) were served. Both the defendants filed their common written statement. After filing of the common written statement, Mr.Abdul Razaq absented himself and he was proceeded ex parte. However, so far as the present appellant, defendant No.1 in

the suit was concerned, he continued to appear. The defence taken by the appellant and Mr.Abdul Razaq in the written statement was that Mr.Jai Pal's allotment had, in fact, been cancelled and he was not in possession. It was also pointed out that the said parcel of land was initially allotted to one Sh.Puran, who happened to be the brother in law of the present appellant. On the basis of these facts, it was contended that Mr.Jai Pal was not in possession and consequently he was not entitled to a decree of permanent injunction. On the pleadings of the parties, the following issues were framed and evidence adduced.

“1. Whether the suit is maintainable as the plaintiff has no locus standi to file the suit? OPD

2. Whether the plaintiff is entitled to the relief claimed?

3. Relief.”

6. The learned trial court returned a finding to the effect that no doubt the said parcel of land was originally allotted to one Mr.Puran, however, it was cancelled and thereafter it was allotted to Mr.Jai Pal. It was also observed by the trial court that Mr.Jai Pal's allotment was admittedly cancelled by the DDA, but as the possession was not

taken, it continued with him and accordingly he was entitled to protect his possession qua the defendants namely the present appellant/ Mr.Shankar Lal and Mr.Abdul Razaq. This suit was decreed on 13.07.2005.

7. The present appellant, feeling aggrieved by the said judgment and decree, preferred the first appeal bearing No. RCA 37/2005 titled *Shankar Lal Versus Jai Pal and Anr.*

8. It may also be pertinent to mention here that Mr.Jai Pal had filed an independent suit seeking declaration to the effect that the cancellation letter dated 03.02.1997, which was purportedly issued by the allotting authority of the parcel of land in question namely DDA, (presently stands replaced by the Delhi Urban Improvement Development Board being the successor body) be declared null and void.

9. It may also be worthwhile to mention here that originally the parcel of land in question bearing no. J-III/387, J.J.Colony, Wazirpur, Delhi was allotted to Sh.Puran and this is an admitted fact, but this allotment was cancelled. It is also not in dispute that Mr.Jai Pal was also allotted another parcel of land originally in Nand Nagri being

Plot No.A/114/4. However, on his request for change, the present allotment i.e. J-III//387, J.J.Colony, Wazirpur, Delhi was made in lieu of the parcel of land allotted to him in Nand Nagri on the ostensible understanding that he shall surrender the same. It was the case of the DDA that its allotment of J-III/387, J.J.Colony, Wazirpur, Delhi was obtained by Mr.Jai Pal by fraud inasmuch as he did not surrender the parcel of land in Nand Nagri in lieu of which the present parcel of land was allotted and as a matter of fact, he had sold the same to some third party.

10. The respondent No.1/Jai Pal did not prefer any appeal against dismissal of the suit and thus that finding became final qua Mr.Jai Pal meaning thereby that the validity of the cancellation of the allotment to Mr.Jai Pal by the DDA or its successor body was not questionable. But nevertheless the fact remains that in the suit for permanent injunction, the trial court had come to a finding that dehors this cancellation of the parcel of land in question, Mr.Jai Pal continued to be in possession and he was entitled to protect his possession qua the present appellant and Mr.Abdul Razaq. So far as the appeal filed by the present appellant before the learned ADJ is concerned, that was

also dismissed confirming the judgment and decree of the trial court with regard to protection against dispossession of Mr.Jai Pal by the appellant and his co-defendant Mr.Abdul Razaq from the property in question being J-III/387, J.J.Colony, Wazirpur, Delhi meaning thereby that Mr.Jai Pal could not be dispossessed by any person except in accordance with due process of law.

11. Mr.Shankar Lal, feeling aggrieved by the dismissal of his appeal and upholding of the judgment of the trial court, has preferred the present appeal and raised the following questions:

“I) Whether the suit abated in the year 1987 when the allotment of the plaintiff/respondent was cancelled by DDA and suit no.191/1990 filed by the plaintiff, Jai Pal for declaration against cancellation was dismissed on 04.08.1997 by Ld.Single Judge, A.K.Mehandiratta thereby ousting the jurisdiction of the civil court in as much as plot no.J-III/387 allotted to the respondent/plaintiff was a grant under the government grants act which overrides any other law and the order of cancellation became absolute under Section 2 & 3 of the Government Grants Act, 1895.

II) Whether the respondent/plaintiff was not entitled to any relief because of the fraud committed by him relating to allotment of plot no.J-III/387, Wazirpur, J.J.Colony and the fact that he filed suit no.191/1990 in the court of Sh.A.K.Mehandiratta for declaration that the cancellation of his allotment in the year 1987 was null and void but the suit was dismissed on 04.08.1997 and this fact was suppressed by the respondent/plaintiff in the

proceedings in suit no.52/92 before the trial court of Sh.Sunil Chaudhary, civil judge and in suit no.191/90 before Sh.A.K.Mehandiratta. The suppression of this material facts is a fraud which is a nullity in the eye of the law.

III) Whether an order of cancellation of the allotment of the respondent/plaintiff by a higher authority could be set aside on the evidence of a subordinate without examination of the authority which cancelled the allotment.

IV) Whether the respondent/plaintiff abandoned the plot no. J-III/387 after sometimes of its allotment in the year 1978 and starting living in plot no.F-7/32-33, Sultantpuri. Therefore, in terms of the allotment, he deemed to have been forfeited his right to plot no.J-III/387, Wazirpur, J.J.Colony.

V) Whether the decree obtained by him in suit no.52/92 is executable for not interfering with his possession as on his own admission he was not in occupation of plot no. J-III/387, J.J.Colony, Wazirpur on 13.07.2005 when the decree was obtained by him and was living in property no.F-7/32-33, Sultanpuri, Delhi.”

12. The first question, which has been raised by the learned counsel for the appellant, is regarding abatement of the suit filed by the appellant in the year 1987 on account of cancellation of his allotment. On enquiry, Mr. Chakraborty, the learned counsel for the appellant has contended that there is a judgment of the Supreme Court to the effect that in case the person who has filed the suit on the basis of title

to the property and that allotment stands cancelled, then the suit abates. There is no provision in CPC envisaging such a contingency that the suit will abate on account of cancellation of the allotment. Order 22 only envisages the contingency when a party whether he is the plaintiff or a defendant dies and the right to sue survives but no steps are taken by the concerned party to bring on record the legal heirs of the deceased party, the proceedings against him abate.

13. I do not agree with the contention of the learned counsel for the appellant that the suit in the instant case which was filed by the appellant only for permanent injunction would abate on account of cancellation of the parcel of the land allotted to him because in the suit the only relief which he was claiming against the present appellant and Mr.Abdul Razaq was that he should be permitted to protect his possession or conversely that the two above named persons should not interfere with his possession.

14. Therefore, this in my view, does not raise any question of law much less any substantial question of law.

15. The remaining questions which have been formulated by the

learned counsel for the appellant are essentially questions of facts which have been taken note of by the courts below, e.g. fraud. The appellant states that if fraud has been committed then not only this must be averred but also be proved on record. Nothing of this sort has been done. The factual questions raised by the appellant have been adjudicated by the two courts below. No substantial question in terms of Section 100 CPC has been raised.

16. Incidentally the counsel for the Delhi Urban Shelter Improvement Board which is the successor of the erstwhile Slum and JJ Department of the DDA and the MCD has made a statement at the bar that so far as the possession of the aforesaid parcel of land bearing no.J-III/387, J.J.Colony, Wazirpur, Delhi is concerned, the possession has already been taken over by them, and therefore, the appeal itself is not maintainable.

17. I find some force in the contention of the learned counsel representing the Delhi Urban Shelter Improvement Board. Notwithstanding the fact that the said body is not a party, the present appeal is not maintainable in the light of the statement itself.

18. I do not find any merit in the appeal with regard to the formulation of any substantial question of law and accordingly the same is dismissed.

V.K. SHALI, J

AUGUST 29, 2013/dm