

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

+ **RSA No.62/2014**

% **09th May, 2014**

RAMJAS FOUNDATION Appellant
Through: Mr. Mayank Aggarwal, Advocate.

Versus

ARUN KUMAR PRUTHI Respondent
Through: Mr. G.D. Chopra, Advocate.

+ **RSA No.64/2014**

RAMJAS FOUNDATION Appellant
Through: Mr. Mayank Aggarwal, Advocate.

Versus

ARUN KUMAR PRUTHI Respondent
Through: Mr. G.D. Chopra, Advocate.

RSA No.65/2014

RAMJAS FOUNDATION Appellant
Through: Mr. Mayank Aggarwal, Advocate.

Versus

BHAIRAV DUTT JOSHI Respondent
Through: Mr. G.D. Chopra, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

+ RSA No.62/2014

1. This Regular Second Appeal is filed by the appellant/plaintiff against the impugned judgment of the first appellate court dated 01.11.2013 by which the first appellate court dismissed the appeal filed by the appellant/plaintiff against the judgment of the trial court dated 01.03.2012. The trial court by its judgment dated 01.03.2012 had dismissed the suit of the appellant/plaintiff/Ramjas Foundation (society registered under the Societies Registration Act, 1860) for recovery of arrears of license fee.

2. Both the courts below have dismissed the suit on the ground that since the appellant/plaintiff by its letter dated 29.05.1998, Exh.PW1/9, stated that the suit property is “under acquisition”, therefore, the provisions of Sections 3 and 4 of the Delhi Land (Restriction on Transfer) Act, 1972 come into play, and since the appellant/plaintiff had not taken permission of the competent authorities for creating the license in this case in favour of the respondent/defendant, the transaction in question is illegal. Since the transaction is illegal, it is held that the appellant cannot recover arrears of license fee from the respondent/defendant. The conclusions of the first appellate court are contained in paras 5 to 9 of the impugned judgment and which read as under:-

“5. While dismissing the suit, Id. Trial court in its finding on issue No.3 had held that the plaintiff is not the owner of the suit property, as vide letter dated 29.05.1998 Ex.PW-1/9, plaintiff himself declared that the suit property is under acquisition and it is well settled law that, if any land has been acquired by Government than no person/institution has privilege to transfer the same by way of sale, mortgage, gift, lease or otherwise any such land or part thereof.

6. The main ground taken by the appellant in his appeal is that, Id. Trial court had erred in holding that the suit of the appellant is barred under the provisions of Delhi Land (Restriction of Transfer) Act, 1972.

7. Section 3 of the Delhi Lands (Restrictions on Transfer) Act, 1972, provides for prohibition on transfer of lands acquired by Central Government provides that:

3. “No person shall purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union Territory of Delhi, which has been acquired by the Central Government under the Land Acquisition act, 1984 or under any other law providing for acquisition of land for a public purpose”.

Section 4 of the Delhi Lands (Restrictions on Transfer) Act, 1972, also provides that:

4. “No person shall, except with the previous permission on writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union Territory of Delhi, Which is proposed to be acquired in connection with the Scheme and in relation to which a declaration to the effect that such land or part thereof is needed for a public purpose having been made by the Central Government under Section 6 of the Land Acquisition Act, 1894, (1 of 1894) the Central Government has not withdrawn for the acquisition under Section 48 of the Act.”

8. In the present matter, the Id. Trial court has held that the plaintiff, Ramajas Foundation had no authority to create the licence with respect to the suit premises.

9. By virtue of said section 3 and 4 of the Delhi Lands (Restrictions of Transfer) Act, 1972 and land or part thereof situated in the Union Territory of Delhi, which has been acquired by the Central Government under the Land Acquisition Act, 1984, shall not be the subject of transfer by sale, mortgage, gift, lease or otherwise. The expression, “otherwise” is inclusive under Section 3 & 4 of the said Act. The said expression shall include the creation of license. Admittedly, in the present matter, there is relationship of licensor and licensee on behalf of Ramjas firm with the defendant. Since, the creation of licence falls within the expression, “otherwise” the appellant/plaintiff was not within his right to create the said relationship with the defendant/respondent. The expression, “otherwise” IS INCLUSIVE UNDER Section 3 of the Delhi Lands (Restrictions on Transfer) Act, 1972. Since the appellant was not competent to create or vest the title in the respondent by way of licence, the appellant is having no right to claim the relief of damages as prayed for, in his suit, before Id. Trial court.”

3. A reading of the aforesaid paras shows that the Courts below have included in the expression “otherwise” as found in Sections 3 and 4 of the Delhi Land (Restriction on Transfer) Act, 1972 creation of license and accordingly by applying these provisions held the creation of licence as illegal.

4. For the purpose of disposal of this second appeal, the following substantial questions of law are framed:-

“(i) Whether the courts below have committed a perversity in applying Sections 3 and 4 of Delhi Lands (Restriction on

Transfer) Act, 1972, although, there is no evidence on record filed by the respondent/defendant of any notification being issued under Sections 4 and 6 of the Land Acquisition Act, 1894 with respect to the suit property?

(ii) Whether the courts below have committed a gross illegality and perversity in holding that appellant/plaintiff is not the owner qua the respondent/defendant in spite of the statutory mandate of Section 116 of the Evidence Act, and which section prohibits a licensee or a lessee from disputing/denying the ownership/title of a landlord/licensor?

(iii) Whether even if the appellant plaintiff stated that the land is “under acquisition”, this itself is enough for the courts below to hold that the appellant/plaintiff is not the owner in view of the fact that there is no evidence on record that the acquiring authority has taken possession of the land under Section 16 of the Land Acquisition Act, 1894, and only thereafter ownership of a person whose land is acquired is lost?”

5. All the aforesaid questions of law have to be answered in favour of the appellant/plaintiff and against the respondent/defendant. The reasons are contained hereinafter.

6. Section 116 of the Evidence Act, 1872 is categorical that a licensee cannot dispute the title/ownership of the licensor. Section 116 of the Evidence Act reads as under:-

“Estoppel of tenant; and of licensee of person in possession.- No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the

licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

7. Even a plain reading of this provision of Section 116 makes it clear that the courts below ought not to have allowed the respondent/defendant to succeed in the defence of denying the title of the appellant/plaintiff inasmuch as it is an admitted fact on record that the respondent/defendant took the suit premises on license from the appellant/plaintiff. Section 116 therefore clearly comes into play and the courts below have erred in dismissing the suit on the ground that the appellant/plaintiff is not the owner of the suit property, much less on the ground that the same is “under acquisition”, and as discussed in detail below.

8. The courts below have also committed the gross perversity and illegality in interpreting the expression “under acquisition” used by the appellant/plaintiff in the letter dated 29.05.1998, Exh. PW1/9, as equivalent to extinguishing of an ownership right under Section 16 of the Land Acquisition Act, 1894. There is absolutely no evidence on record led by the respondent/defendant that the possession of the lands in question have been taken over by the acquiring authority under Section 16 of the Land Acquisition Act, and once that is the position, the appellant/plaintiff cannot be said to have lost its ownership rights in the suit land. The expression

“under acquisition” is neither here nor there unless this expression is found as a matter of fact to have caused loss of ownership to the appellant/plaintiff of the suit land under Section 16 of the Land Acquisition Act. Accordingly, this finding of the courts below that the appellant/plaintiff is not the owner because lands have been acquired, is clearly perverse and set aside.

9. So far as finding and conclusion of the courts below of placing reliance upon Sections 3 and 4 of the Delhi Land (Restriction on Transfer) Act, 1972 is concerned, the reliance is clearly misplaced. In this case, the notification under Section 4, which is said to have been issued, is way back of late 1950s. Till date acquisition proceedings are not completed and there is nothing on record even with respect to the passing of the Award by the acquiring authority of the suit lands under the Land Acquisition Act. Once there is no Award, then, the question of Section 16 coming into play does not arise for taking possession. In the facts of the present case it was open to the respondent/defendant to have filed documents to show that the acquisition proceedings were completed but they have failed to do so. Once acquisition proceedings are not finalized inasmuch as no Award for acquisition of lands has been filed on record, actually the acquisition proceedings would stand abandoned. Once the acquisition proceedings stand abandoned, the provisions of Sections 3 and 4 of Delhi Land (Restriction on

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Transfer) Act, 1972 cannot come into play. I may also state that the provisions of Sections 3 and 4 of the Delhi Land (Restriction on Transfer) Act, 1972 were made so as to stop speculation with respect to the lands which were in the process of acquisition under the Land Acquisition Act. If there was a Section 4 notification under the Land Acquisition Act then lands could be transferred subject to taking permission of the competent authority as per Section 3. After the Section 4 notification under the Land Acquisition Act all transfers made were void. In this case once acquisition proceedings have been abandoned, the spirit of the provisions of Sections 3 and 4 of the Delhi Land (Restriction on transfer) Act also would stand abandoned, and therefore, no purpose is served by applying Sections 3 and 4 of the Delhi Lands (Restriction on Transfer) Act, 1972.

10 In view of the above, this regular second appeal is allowed and the suit of the appellant/plaintiff for recovery of arrears of license fee as per the suit plaint will stand decreed. The appellant/plaintiff is entitled to an amount of Rs. 45,600/- as arrears of license fee alongwith pendente lite future interest @ 6% per annum simple till the date of payment. Parties are left to bear their own costs.

This appeal is also allowed in view of the discussion given while deciding RSA No.62/2014. The suit of the appellant/plaintiff is decreed for the sum of Rs.21,600/- alongwith pendente lite future interest @ 6% per annum. Parties are left to bear their own costs.

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This appeal is also allowed in view of the discussion given while deciding RSA No.62/2014 and the suit of appellant/plaintiff is decreed for the sum of Rs.4080/- alongwith pendente lite and future interest @ 6% per annum. Parties are left to bear their own costs.

I note that counsel for respondent/defendant sought to argue that the suit property is not the property of the appellant/plaintiff in view of the demarcation report filed before the trial court, but, the trial court has not relied upon this demarcation report and accordingly held against the appellant/plaintiff and in favour of the respondent/defendant that the suit property is not the suit property of the appellant/plaintiff. Respondent/defendant has not filed any appeal against the judgment of the trial court rejecting this defence that the appellant/plaintiff is not the owner as per the demarcation report. Once respondent/defendant has not filed an appeal against the judgment of the trial court and which does not held on the basis of the demarcation report relied upon by the respondent/defendant that

the appellant/plaintiff is not the owner of the suit property, the respondent cannot, now, argue in the second appeal, for holding in his favour that the appellant is not the owner of the suit property rightly allegedly on account of a demarcation report filed by the respondent/defendant.

MAY 09, 2014
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VALMIKI J. MEHTA, J.