

8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 361/2012 & CM Nos. 5495/2012 (stay), 6819/2012 (stay)

%

14th August, 2014

BIMLA

.....Petitioner

Through: Mr. L.B. Rai, Advocate

VERSUS

ANIL KUMAR ARORA

..... Respondent

Through: Mr. Rajendra Dutt, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition is filed under Article 227 of the Constitution of India, however, really the same had to be filed under Section 115 of the Code of Civil Procedure, 1908 (CPC). Since in law heading of the petition cannot make a difference, I am hence treating this petition filed under Article 227 of the Constitution of India as one under Section 115 CPC.

2. This petition impugns the judgment of the trial court dated 21.12.2011 by which the suit filed by the petitioner/plaintiff for recovery of possession under Section 6 of the Specific Relief Act, 1963 has been dismissed. Along

with the suit the petitioner/plaintiff had also claimed the reliefs of injunctions and damages along with the relief of possession, which reliefs have been rejected on the ground that such reliefs cannot be joined with the relief claimed for possession under Section 6 of the Specific Relief Act.

3. The facts of the case are that petitioner/plaintiff filed the subject suit for recovery of possession under Section 6 of the Specific Relief Act with respect to an area of 1 bigha and 1 biswas of land (1058 square yards) situated in Khasra no. 1, Village Saboli, Nand Nagari, Delhi. The petitioner/plaintiff pleaded that she purchased the suit property by means of usual documentation being an agreement to sell, general power of attorney etc; all dated 22.9.1980. The possession of the suit property was also handed over to the petitioner/plaintiff at the time of execution of the said documents. The suit property was purchased from Smt. Ramwati, the widow of Sh. Inder. Three brothers, Sh. Inder, Sh. Risal and Sh. Puran jointly owned 3 bighas and 3 biswas of the land. On the death of Sh. Inder, a family settlement took place between his widow Smt. Ramwati (predecessor-in-interest of the petitioner/plaintiff) and the other two brothers of Sh. Inder, namely, Sh. Risal and Sh. Puran whereby the property was equally divided within the three co-owners. Smt. Ramwati under the family settlement became the owner of 1 bigha and 1 biswa out of the 3 bighas and

3 biswas of the land situated in Khasra no. 1, Village Saboli, Nand Nagari, Delhi.

4. The case of the petitioner/plaintiff was that the respondent/defendant wrongfully and illegally took over the possession of the suit property on 1.6.2003. Possession was taken during the pendency of the earlier legal proceedings being a suit for injunction filed by the respondent herein/defendant. In that suit the respondent/defendant claimed to have purchased the suit property from one Sh. Ram Karan, and the respondent/defendant in that suit was successful in securing an interim order dated 30.10.2002 restraining the present petitioner/plaintiff from taking over the possession of the suit property, although, in reality the petitioner/plaintiff was in actual possession of the suit property and had constructed a superstructure of two rooms, kitchen, latrine, bathroom over the suit property. The injunction which was granted in favour of the respondent/defendant in his suit for injunction was vacated on an appeal being filed by the petitioner/plaintiff herein vide order dated 27.02.2003. The present respondent/defendant had filed a revision petition against the said order dated 27.02.2003 in the High Court of Delhi being civil revision no. 627/2003 and in which the High Court directed the parties to maintain status quo. Subsequently it transpires, and which position is not disputed

before me by the respondent/defendant, that, the suit for injunction filed by the respondent/defendant was not pursued and was therefore disposed of with the liberty to the respondent/defendant to raise all the pleas as raised in the revision petition in the suit filed by the respondent therein. The petitioner/plaintiff hence pleaded that she was illegally dispossessed by the respondent/defendant on 1.6.2003, and that the respondent/defendant has thereafter raised certain unauthorized construction over a portion in the suit property as shown in red colour in the site plan. Accordingly, the reliefs of possession, injunction and damages were claimed in the subject suit.

5. The respondent/defendant contested the suit and pleaded that petitioner/plaintiff was neither the owner and nor in possession of the suit property inasmuch as the suit property is owned and possessed by the respondent/defendant from 23.6.1999 by virtue of the documentation of this date being the agreement to sell, power of attorney etc. The respondent/defendant stated that he had purchased the suit property from one Sh. Ram Karan.

6. Trial court framed the following issues:

- “1. Whether the suit is bad for misjoinder and non joinder of parties?
OPD
2. Whether the suit is barred under Section 6 of the Specific Relief Act? OPD

3. Whether the suit is properly valued for the purpose of Court fees & for adjudication? OPD
4. Whether the suit is liable to be stayed under Section 10 of CPC? OPD
5. Whether the plaintiff is entitled for a decree of possession? OPP
6. Whether the plaintiff is entitled for a decree of recovery of Rs.10,000/- alongwith mense profit @ Rs.5000/- per month, if so, from which date and for what period? OPP
7. Whether the plaintiff is entitled for a decree of mandatory injunction? OPP
8. Whether the plaintiff is entitled for a decree of permanent injunction? OPP
9. Whether the plaintiff is entitled for any interest for the damages, if so upto what amount and for what period? OPP
10. Relief.”

7. So far as the issues pertaining to the reliefs of injunctions and damages are concerned, the trial court has rightly held the same against the petitioner/plaintiff because such reliefs and causes of action cannot be joined with summary proceedings suit under Section 6 of the Specific Reliefs Act. I agree with the findings of the trial court on these relevant issues and accordingly there can be no grievance of the petitioner/plaintiff with respect to declining of reliefs of injunctions and damages.

8. Actually, the real and main issue between the parties is and which has been urged before this Court viz with respect to the claim of possession.

9. In order to prove the aspect of possession, petitioner/plaintiff stepped into the witness box and proved the documents by which the suit property was purchased by her on 22.9.1980. These documents are the general power

of attorney Ex. PW-1/1, agreement to sell Ex. PW-1/2 and the payment of money receipt Ex. PW-1/3. Petitioner/plaintiff also deposed that she was handed over possession of the suit property in 1980 itself when these documents were executed and since then she remained in continuous possession till she was illegally dispossessed by the respondent/defendant on 1.6.2003. Petitioner/plaintiff also in the trial court filed the order passed by the SDM under the Section 145 Cr.P.C. proceedings against Sh. Risal Singh and his sons. The Section 145 Cr.P.C. proceedings were decided in favour of the petitioner/plaintiff holding that she was in possession of the suit property and restraining Sh. Risal Singh and his sons from interference in the said property. This order of Sh. R.P. Meena, SDM, Seema Puri, Delhi is dated 23.4.1999 and it is exhibited as Ex. PW-1/4. The revision filed against the order dated 23.4.1999 of the SDM by the respondents under the said Section 145 Cr. P.C. proceedings was dismissed by the Court of Sh. Chandra Gupta, Additional Sessions Judge, Karkardooma by the order dated 2.9.2003 and which has been proved and exhibited as Ex. PW-1/9. Petitioner/plaintiff had also filed and proved on record her ration card which showed her residence at village Saboli. This ration card is proved and exhibited as Ex. PW-1/5.

10. As against the aforesaid evidence led on behalf of the petitioner/plaintiff, the respondent/defendant led evidence only with respect to the documents of the alleged purchase of the suit property being the agreement to sell, power of attorney etc; all dated 23.6.1996; and which have been proved and exhibited as Ex. DW-1/1 to DW-1/3. These are documents which were executed by one Sh. Ram Karan in favour of the respondent/defendant. Though on record of the trial court there are documents which are filed and executed on 6.11.1996, by which Sh. Ram Karan alleged to have purchased rights in the suit property from Sh. Malkhan Singh son of Sh. Inder Singh, but, these documents are not proved and exhibited. These documents thus have not been relied upon by the respondent/defendant before the trial court and there is no reference to these documents in the impugned judgment of the trial court.

11. As per the impugned judgment, the trial court has rejected the ration card filed by the petitioner/plaintiff on the ground that the same only contains the address of village Saboli without any reference to the suit property. The orders passed by the SDM, as also the Court of the Additional Sessions Judge, have been rejected by the trial court on the ground that there is no adequate discussion in the SDM's order as to the aspect of possession

with the petitioner/plaintiff and the fact that the respondent/defendant was not a party to those proceedings.

12. In my opinion, the judgment of the trial court is clearly illegal and the trial court has acted most illegally and perversely in exercise of its jurisdiction and arrived at wholly illegal findings and conclusions. The judgment is hence liable to be set aside for the reasons given hereinafter.

13. In my opinion, though the ration card may not contain any specific address of a property, the trial court was unjustified in rejecting the same because it is well known that in the rural areas of Delhi for a very long time there were no municipal numbers of properties. This aspect is to be taken along with the fact that at least the petitioner/plaintiff had a ration card showing her residence in village Saboli where the suit property is located, and therefore, this evidence being the ration card could not be rejected because the respondent/defendant *per contra* and admittedly did not file any ration card showing his residence in the suit property in village Saboli. Also, the trial court was not justified in relying upon the memo of parties filed in an earlier suit for permanent injunction by the petitioner/plaintiff being suit no.40/04/00, titled as ***Smt. Bimla Devi Vs. Smt. Ramwati and Ors.*** in the court of Sh. Joginder Prakash Nahar, Civil Judge, Karkardooma, Shahdara, Delhi, which showed petitioner/plaintiff's residence at a different

place inasmuch as the aspect of possession is an aspect of independent residence and merely because residence of the petitioner/plaintiff was subsequently shifted to the suit plot, cannot mean that a memo of parties filed in an earlier suit for injunction should be held against the petitioner/plaintiff. In fact the memo of parties pertain to the suit for permanent injunction filed by the petitioner/plaintiff against Smt. Ramwati, her son Sh. Malkhan Singh and Ors. which has been decided by the judgment dated 25.8.2004 which is proved and exhibited as Ex. PW-1/7 and as per this judgment of a civil court which is in favour of the petitioner/plaintiff and against Smt. Ramwati and others, Smt. Ramwati and others were restrained from dispossessing the petitioner/plaintiff from the suit property i.e the petitioner/plaintiff has been held to be in possession of the suit property. The trial court therefore could not conveniently only look at the memo of parties of the suit but avoid the bindingness of the judgment Ex. PW-1/7 and also ignore the findings arrived at in the same and the relief granted thereby to the petitioner/plaintiff of injuncting Smt. Ramwati; Sh. Malkhan Singh and others from dispossessing the petitioner/plaintiff from the suit property. Since the predecessor-in-interest of the respondent/defendant is allegedly Sh. Malkhan Singh, this judgment

operates as *res judicata* against respondent/defendant both qua possession and title.

14. It is also relevant to note that possession follows title. Once, petitioner/plaintiff is shown to have purchased rights in the suit property from Smt. Ramwati and taken possession of the suit property under the documentation of 1980, the respondent/defendant should have been held to have illegally dispossessed the petitioner/plaintiff from the suit property.

15. The trial court was not justified in rejecting the orders under the Section 145 Cr.P.C. proceedings as these orders were relevant in terms of Section 13 of the Evidence Act, 1872 and the judgments of the Supreme Court in the cases of *Sital Das Vs. Sant Ram and Ors, AIR 1954 SC 606* and *Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Ors, AIR 1954 SC 379*. In fact the orders under the Section 145 Cr.P.C. proceedings will bind the respondent/defendant as the predecessor-in-interest of the respondent/defendant was a party to those proceedings.

16. It is also required to be noted that whereas petitioner/plaintiff filed various documents being the orders under the Section 145 Cr.P.C. proceedings, civil suit for injunction against Smt. Ramwati and others as also the ration card, the respondent/defendant filed no documents to establish his possession of the suit property except the alleged title

documents of purchase dated 23.6.1999. These documents dated 23.6.1999 Ex. DW-1/1 to Exh. DW-1/3 cannot merely because of their execution be proof of the fact that the respondent/defendant received possession under the same. It is relevant to note that these documents of 1999 were executed in favour of the respondent/defendant by one Sh. Ram Karan and who claimed to have purchased the suit property from Sh. Malkhan Singh son of Sh. Inder and Smt. Ramwati and which could not be because the petitioner/plaintiff had already earlier purchased rights in the suit property from Smt. Ramwati more than 19 years back in 1980 and had taken possession of the suit property. It is clear that actually respondent/defendant has been defrauded by Sh. Malkhan Singh S/o Smt. Ramwati and Sh. Inder Singh and against whom not only proceedings were decided under Section 145 Cr.P.C. but they were restrained as per the judgment dated 25.8.2004 Ex. PW-1/7 filed by petitioner/plaintiff against Smt. Ramwati and others or the defendant/respondent is in collusion with Smt. Ramwati & Sh. Malkhan Singh. I have already stated above that the alleged documents which were executed by Sh. Malkhan Singh in favour of Sh. Ram Karan have not been proved and exhibited and I am referring to these documents executed by Sh. Malkhan Singh dated 6.11.1996 only as a matter of abundant caution to show that these documents of 1996 could not have created title and

transferred possession of the suit property to Smt. Ramwati in the year 1996 when by the documents Ex. PW-1 to PW-1/3 dated 22.9.1980, Smt. Ramwati sold and transferred the rights in the suit property to the petitioner/plaintiff and to whom the possession of the suit property was also simultaneously given.

17. In view of the above, this petition is allowed. Respondent/defendant is directed to hand over possession of the suit property of the area of 1 bigha and 1 biswa out of Khasra no. 1, Village Saboli, Nand Nagari, Delhi in possession of respondent/defendant to the petitioner/plaintiff and which suit property is more appropriately described in red colour in the site plan Ex. PW-1/6. Parties are left to bear their own costs.

AUGUST 14, 2014
godara

VALMIKI J. MEHTA, J