

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

% **Date of decision: 26th September, 2018.**

+ **RSA 54/2018, CM No.12938/2018 (for condonation of 45 days delay in filing the appeal) & CM No.12939/2018 (for stay)**

MAI CHAND **Appellant**

Through: Mr. Shafiq Khan, Adv.

Versus

RAMPAL (DECEASED) THROUGH LRS **Respondent**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 30th October, 2017 in RCA No.1127/16 of the Court of the Senior Civil Judge (Central)] of dismissal of First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 5th February 2004 in Suit No.240/1992 of the Court of Civil Judge, Delhi] allowing the suit of the respondent/plaintiff and injuncting the appellant/defendant from interfering with the possession of the respondent/plaintiff of agricultural land *ad measuring 4 bighas* bearing Khasra No.27/15 min in Khata Khatoni No.680 min 527 min situated within the Revenue Estate of village Dichaun Kalan, Delhi and from dispossessing the respondent/plaintiff from the said land.

2. This appeal filed on 16th March, 2018 came up first before this Court on 9th April, 2018, when on request of the counsel for the appellant/defendant, it was adjourned to 25th September, 2018. On 25th

September, 2018 again, request for adjournment by six weeks was made by the counsel for the appellant/defendant. Observing, that the appellant/his counsel, if not ready to address arguments, ought not to have preferred this appeal, last opportunity was given to the appellant/defendant to address arguments on admissibility of the appeal today.

3. The counsel for the appellant/defendant has been heard and the copies of the Trial Court record annexed to the memorandum of appeal perused.

4. The respondent/plaintiff instituted the suit, from which this Second Appeal arises, pleading (i) that the respondent/plaintiff was allotted the subject land in the year 1976 under the Twenty Point Programme of the Government of India; (ii) that the respondent/plaintiff, since the year 1976, had been in cultivatory possession of the subject land; (iii) that the respondent/plaintiff applied under Section 74(4) of the Delhi Land Reforms Act, 1954 for getting himself declared *bhumidhar* of the subject land; (iv) the Revenue Assistant, vide order dated 21st October, 1987 in Case No.339/1985, declared the respondent/plaintiff as *bhumidhar* of the subject land; (v) that thereafter, mutation of the subject land was also carried out in the Revenue Records in the name of the respondent/plaintiff and the respondent/plaintiff was also issued a passbook by the Deputy Commissioner, Delhi in respect of the said land; (vi) that the Khasra *girdawari* dated 23rd April, 1992 issued by Girdawar Kanungo of the area for Rabi 1992, being the latest crop sown, also showed the cultivation thereof to be of the respondent/plaintiff; and, (vii) that after the respondent/plaintiff had cut the crop so sown, the appellant/defendant on 11th May, 1992 attempted to

dispossess the respondent/plaintiff from the subject land. Hence the suit, filed on or about 12th May, 1992.

5. The appellant/defendant contested the suit pleading, (i) that the suit was without cause of action as the respondent/plaintiff, in the garb of the suit for permanent injunction, was seeking to recover possession of the land from the appellant/defendant; (ii) that the suit was barred by the provisions of the Delhi Land Reforms Act; (iii) *Gaon Sabha* was a necessary party to the suit; (iv) that the appellant/defendant was allotted 4 *bighas* of land in Khasra No.27/15 and 27/6 in the year 1976 by the *Gaon Sabha* under Rule 47 of the Delhi Land Reforms Rules, 1954 and since then, the appellant/defendant was in cultivatory possession of the subject land; (v) that the appellant/defendant had also filed a suit for declaration of *bhumidhari* rights with respect to the subject land along with an application for correction of Khasra Girdawari in relation to the subject land and which proceedings were pending before the Sub Divisional Magistrate, Punjabi Bagh, Delhi; (vi) that the entries in the name of the respondent/plaintiff in the Khasra Girdawari were wrong and in fact the crop standing on the land was of the appellant/defendant; and, (vii) that the appellant/defendant was in possession of the land since 1976 and there was no need for him to attempt to dispossess the respondent/plaintiff who was never in possession thereof.

6. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 11th January, 1995:-

“Whether this court has no jurisdiction to try the present suit? O.P. Parties.

Whether the suit is bad for non-joinder of necessary parties as per preliminary objection No.4? OPD.

Whether the plaintiff is entitled for the decree of permanent injunction as asked for in the plaint? OPP.

Relief.”

7. The Suit Court allowed the suit, reasoning (i) that the respondent/plaintiff had proved, the passbook with respect to the subject land issued to him under Rule 69 of the Delhi Land Reforms Rules, the Khatoni and Khasra Girdawari, and all of which showed the respondent/plaintiff to be a *bhumidhar* and cultivator of the subject land; (ii) on the contrary the appellant/defendant had proved, the notice issued to him under Section 86A of the Delhi Land Reforms Act, original allotment letter and report of the Local Commissioner; (iii) that the suit was not barred by the Delhi Land Reforms Act as there was no provision therein for grant by the Revenue Court of the relief of injunction as sought in the suit; (iv) that the letter of allotment proved by the appellant/defendant was with respect to land measuring 4 *bighas* in Khasra No.27/15 and 27/6; (v) as per Khasra Girdawari, Khasra No.27/15 comprises of 4 *bighas* 16 *biswas* of land, out of which only 16 *biswas* belonged to the appellant/defendant; (vi) the letter of allotment proved by the appellant/defendant was doubtful inasmuch as the appellant/defendant had also proved the notice issued to him under Section 86 of the Delhi Land Reforms Act; if the Gaon Sabha had allotted any land to the appellant/defendant, the question of Gaon Sabha issuing notice of ejectment under Section 86 to the appellant/defendant would not have arisen; (vii) on the contrary the documents proved by the respondent/plaintiff

unequivocally proved the respondent/plaintiff to have been recognised by all authorities concerned as the *bhumidhar* and cultivator with respect to the subject land; the appellant/defendant had also not led any evidence of Gaon Sabha, to show allotment of the land to the appellant/defendant; and, (viii) the Kanungo also showed the respondent/plaintiff to be in possession of the subject land.

8. The First Appellate Court has dismissed the appeal of the appellant/defendant agreeing with the reasoning of the Suit Court.

9. The counsel for the appellant/defendant, before me, has argued (i) that the respondent/plaintiff, though claimed to have been allotted the subject land way back in the year 1976, instituted the suit only in the year 1992; if the respondent/plaintiff had been in possession of the land, why would he have waited till 1992 to institute the suit; (ii) that the suit was not maintainable because the respondent/plaintiff was not in possession of the land; and, (iii) no eye witness of the attempts alleged by the respondent/plaintiff, of dispossession, by the appellant/defendant of the respondent/plaintiff, was produced by the respondent/plaintiff.

10. No merit is found in any of the aforesaid contentions.

11. The first argument of the counsel for the appellant/defendant presupposes that the respondent/plaintiff, from 1976 to 1992, was not in possession of the land, when the finding of fact on the basis of evidence adduced is otherwise. Similarly, the second argument is again premised on the respondent/plaintiff being not in possession, when the finding of fact by the two Courts below, which are the final Courts of fact, is otherwise. Once the appellant/defendant also claims to be in possession of the land, of which

the respondent/plaintiff is the recorded *bhumidhar*, the threat by the appellant/defendant is writ large and there was no need for any eye witness.

12. There is thus no merit in any of the contentions urged by the counsel for the appellant/defendant.

13. The counsel for the appellant/defendant, on enquiry, states that the subject land is agricultural and open.

14. With respect to open land, the presumption is that the possession is of the owner thereof. Reference in this regard may be made to *Anathula Sudhakar Vs. P. Buchi Reddy* (2008) 4 SCC 594, *Sarvasachi K. Sahai Vs. Union of India* (2017) SCC OnLine Del 8818 (DB), *Pankaj Bajaj Vs. Meenakshi Sharma* 2013 SCC OnLine Del 2303, *Institute of Human Behaviour & Allied Sciences Vs. Govt. of NCT of Delhi* (2012) ILR III Delhi 247, *S.S.P. Buildcon P. Ltd. Vs. M.C.D.* 2010 (119) DRJ 57, *Smt. Ishmali Devi Vs. Delhi Development Authority* 2009 SCC OnLine Del 2550 and *Navalram Laxmidas Deymurari Vs. Vijayben Jayvantbhai Chavda* AIR 1998 Guj. 17.

15. As per the documents proved in the suit, the respondent/plaintiff is the *bhumidhar* and cultivator of the land. The appellant/defendant has not been able to rebut the presumption of possession in favour of the owner/*bhumidhar* of the land.

16. I may add that the appellant/defendant, in the written statement in the suit, filed as far back as on 20th May, 1992, claimed that the proceedings initiated by him for declaration of himself as *bhumidhar* were pending. On the contrary, the respondent/plaintiff is the declared *bhumidhar*. The counsel for the appellant/defendant on enquiry as to the fate of the proceedings for

declaration of *bhumidhari* rights, states that the said proceedings are still pending.

17. The Revenue Authorities have provided for maintenance of record of crops sown on the land and the cultivator thereof, with a view to maintain a record of cultivator of the land inasmuch as it is else very difficult to determine the possession of the open land, on which, by its very nature, anyone can enter at any time. It is for this reason only that it has also been held that mere casual trespass of persons on the open land or even tethering cattle on the open land or otherwise temporary use of open land does not amount to possession thereof, as also held in *Institute of Human Behaviour & Allied Sciences, Savyasachi K. Sahai*, and *Navalram Laxmidas Devmurari* supra. Once all revenue records of *bhumidhari* rights with respect to the subject land and of cultivatory possession of the subject land show the respondent/plaintiff to be in control thereof, no error can be found in the consistent orders/judgments of the Suit Court and the First Appellate Court injuncting the appellant/defendant from disturbing the cultivatory possession of the respondent/plaintiff of the subject land.

18. I may in this regard also notice that the Supreme Court in *Hero Vinoth Vs. Sheshammal* (2006) 5 SCC 545 and *Damodar Lal Vs. Sohan Devi* (2016) 3 SCC 76 has held that the High Court, in exercise of jurisdiction under Section 100 of the CPC, cannot interfere with the findings of fact, of which the First Appellate Court is the final Court, not even in the name of the findings being perverse, unless finds the findings of fact to have been returned without any evidence whatsoever. It has further been held that as long as there is some evidence, even if very little, for the finding returned,

the Second Appellate Court cannot re-appreciate evidence and return a different finding of fact. In the present case, there was plenty of material/evidence on the basis of which the Suit Court and the First Appellate Court have found the respondent/plaintiff to be in possession of the land and the counsel for the appellant/defendant cannot be heard to contend otherwise.

19. As far as the reference by the counsel for the appellant/defendant during the hearing, to the report of the Local Commissioner is concerned, a perusal of the said report shows the commission to have been issued by the First Appellate Court and the Court Commissioner to have reached the spot along with the Advocate for the appellant/defendant and the appellant/defendant along with one person only having been found on the spot. From a reading of the report it is also clear that the commission was issued, without hearing the respondent/plaintiff and the Court Commissioner has also recorded that he had not served any notice of the commission on the respondent/plaintiff. The Court Commissioner reported the appellant/defendant to be in possession on the basis, merely of identification of the land by the appellant/defendant and the claim of the appellant/defendant of the crops standing on the land being of the appellant/defendant. Such a report of the Court Commissioner cannot be trusted vis-a-vis the Revenue Records, statutorily maintained, of the cultivator of the land and as per which the crop standing on the land immediately prior to the institution of the suit, was sown by the respondent/plaintiff.

20. There is thus no merit in the Second Appeal. The same does not raise any substantial question of law.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 26, 2018

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