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

+ CS(OS) 1077/2008

% *Judgment dated 24th December, 2014*

MANISH JAIN

..... Plaintiff

Through : Mr.Mohit Chaudhary, Ms.Damini
Chawla, Mr.Imran Ali and Ms.Anubha
Surana, Advs.

versus

GOVT. BOYS HR. SEC. SCHOOL NO. 2 & ORS. Defendants

Through : Mr.V.K. Tandon and Mr.Kartik Jindal,
Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit for permanent injunction and damages.
2. Summons in the suit and notice in the application under Order XXXIX Rules 1 and 2, were issued on 20.08.2008. Counsel for defendants no.1 to 3 & 5 and counsel for defendant no.4 entered appearance on 03.12.2008 and sought time to file written statement. Written statement was filed on behalf of defendant no.1 to 3 & 5.
3. On 15.05.2009 counsel for defendant no.4/MCD submitted that he does not wish to file written statement, as the land in question does not belong to MCD. A status report alongwith layout plan with regard to the land in dispute was filed by MCD. Vide order dated 12.10.2009, defendant no.4/MCD was struck off from the array of parties as no relief has been sought against MCD.

4. Following issues were framed in this matter on 11.8.2010:

- “(1) Whether the suit as framed is liable to be rejected under Order 7 Rule 11 CPC? OPD-1
- (2) Whether the plaintiff is the owner of a plot of land measuring 800 sq. yds. bearing plot no.R-2, R-3, R-4, out of Khasra No.18/9, 9/7, and 21/7 situated in Village Dhirpur, known as Rishab Nagari (Model Town) Delhi, if so, to what effect? OPP
- (3) Whether the documents of ownership relied upon by the plaintiff are forged and fabricated, if so to what effect? OPD
- (4) Whether the suit property that is vacant plot measuring 800 sq. yds. Bearing plot no.R-2, R-3, R-4, out of Khasra No.18/9, 9/7, and 21/7 situated in Village Dhirpur, known as Rishab Nagari (Model Town) Delhi has been validly transferred to the defendant no.1 by Kishore Foundation being the owner, if so, to what effect? OPD
- (5) If answer to issue no.4 is in affirmative, whether the plaintiff is entitled to damages of Rs.20 lacs under different heads as prayed for by the plaintiff in the plaint? OPP
- (6) Whether the plaintiff is entitled to interest @18%, if so, on account amount and for what period? OPP
- (7) Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
- (8) Whether the suit as framed is liable to be rejected? OPD
- (9) Relief.”

5. By an order dated 11.08.2010, a local commissioner was appointed to record the evidence of the parties. The local commissioner has filed his report on 21.04.2012. As per the evidence recorded the plaintiff has examined six witnesses and has exhibited the original/certified copies of

the documents. The defendants have examined 2 witnesses who closed their evidence with the rider that they would file certified copies of documents on record.

6. The facts of the case in a nutshell and as per the plaint are that late Smt.Chandra Kala Jain was the original owner of a vacant land measuring about 800 sq. yards, bearing Plot No.R-2, R-3 and R-4 out of Khasra Nos.18/9, 9/7 and 21/7, situated in Village Dhirpur, known as Rishab Nagari (Model Town), Delhi (hereinafter referred to as 'suit property'). The said plot was adjoining the back side of a Government Boys Senior Secondary School, No.II, Model Town-III, Delhi. Smt.Chandra Kala Jain died on 3.8.2002 and by virtue of a registered Will dated 14.12.2001, the property devolved upon her son, Sh.Vijay Singh Jain.
7. As per the plaint Sh.Vijay Singh Jain executed an irrevocable Power of Attorney in favour of the plaintiff on 7.8.2004.
8. Property of the plaintiff was lying vacant since the year 1989 and was being used for parking cars by local persons without any interference from the school. In order to demarcate the suit property, on 21.12.2006, plaintiff constructed a pucca boundary wall of about 10 feet. It is alleged that after the wall was constructed the plaintiff was asked to pay money by the Vice-Principal of the school, Mr.Bhup Singh, failing which the boundary wall was threatened to be demolished by the students and the staff of the school.
9. On 03.01.2007, around 2:50 pm, the Vice Principal along with eight other persons and around 200 school students came to the suit property and they started breaking the boundary wall and attempted to dispossess the plaintiff. Plaintiff has also filed photographs covering the entire incident. The plaintiff made several complaints to the Education Department and to the Police, however, no action was taken by the Education Department.

The Police also failed to register a complaint with regard to the incident.

10. In the first week of May 2008, plaintiff found that on instructions of defendant no.3, defendant no.5 had put up some Kutchha structure over the property of the plaintiff and he asked the plaintiff for Rs.1 Lac to vacate the property.
11. Plaintiff has filed his affidavit by way of evidence and the same has been exhibited as **Ex.PW1/A**. Plaintiff has deposed on the lines of the plaint.
12. In their written statement defendants have taken a stand that the land, in question, was transferred to defendant no.1 by Late Sh.Kaushal Kishore Jain. In support of this averment defendants have relied upon a letter dated 26.06.1984 written to the Hon'ble Lieutenant Governor by Kishore Foundation. Defendants have also averred in their written statement that the ownership documents, relied upon by the plaintiff, are forged and fabricated documents.
13. Counsel for the defendants has submitted that perusal of the alleged will dated 14.12.2001 and the irrevocable power of attorney executed by Sh.Vijay Singh Jain in favour of the plaintiff, would indicate that there is no proper chain of transferring of documents; the address of Sh. Vijay Singh Jain is different in both the documents; parentage of Sh. Vijay Singh Jain is also different in both the documents; the area of the suit property also does not tally as per plaint and the aforesaid documents. It is thus submitted that the plaintiff is not the owner of the suit property and has no right, title or interest over the same. Accordingly, no cause of action has arisen in favour of the plaintiff.
14. Counsel for the defendants has next submitted that the land in question was conveyed to defendant no.1 by way of donation, which is evident from the letter dated 26.06.1984. Counsel has contended that a bare perusal of the said letter would show that after donating the land to the

said trust, Smt. Chandrakala Jain had no right or authority to further bequeath the same to any one and as such the alleged will dated 14.12.2001 is null and void ab initio.

15. Counsel for the defendants also submits that the land in question is under the possession and control of the school authorities and defendant no.5, being the chowkidar of the school, lives in the shelter provided by the school.
16. Defendants have filed the affidavit by way of evidence of Shalend Singh Parihar, Joint Director, (estate) Education Department, Govt. Of NCT of Delhi and same has been exhibited as **Ex.Dw1/A**. DW1 has deposed that the land in question was conveyed to defendant no.1 by way of a donation which is evident from the letter dated 26.06.1984. Copy of the letter dated 26.06.1984 has been exhibited **Mark-A**. The school is in use of the said land since the year 1968 as a play ground and other ancillary activities. Photographs in respect of the same have been exhibited as **Ex.Dw1/1**.
17. DW1 has also deposed that on 29.12.2006 the plaintiff, tried to grab the suit property and the matter was immediately reported to the higher authorities. A complaint in writing was also given to the SHO, Police Station Model Town on 29.12.2006. A copy of the complaint has been exhibited as **Ex.DW1/2**.
18. DW1 has next deposed that in the year 2008, since the Estate Department felt the need of expansion of the school premises, the department vide letter dated 29.08.2008, 05.02.2009 and 20.05.2009 requested the Land & Building Department, Govt of NCT of Delhi to acquire the disputed land. Copies of the letter dated 29.08.2008, 05.02.2009 and 20.05.2009 have been exhibited as **Ex.DW2/1 to DW2/4**.
19. DW1 has further deposed that on 14.09.2009, the officials of Land Acquisition Collector sought documents from the principal of the school.

Again on 29.09.2009 the officials sought documents as well as the status of the court case. A joint survey for the land in question was fixed for 19.02.2010 and 02.03.2010. Joint survey was carried out on 02.03.2010 wherein the entire land was found out to be 1040.86 sq. yds. A further date was given in order to fix the points over the disputed land as the requirement shown by the education department was of 1000 sq. yds. Survey report has been exhibited as **Ex.DW1/7**.

20. DW1 has also deposed that on 20.03.2010, a joint survey was carried out by the LAC as the education department conveyed its request for acquisition of the entire land. In the said survey report, the khasra number of the disputed land is mentioned as Khasra no.31. The survey report dated 30.03.2010 has been exhibited as **Ex.DW1/5**.
21. Defendants have also filed affidavit by way of evidence of Sh.Rajpal Singh, principal of Govt Boys School no.2, Model Town and the same has been exhibited as **Ex.DW2/A**. DW2 has deposed on the lines of DW1.
22. In response to the submission of learned counsel for the defendants, counsel for the plaintiff has submitted that it is an admitted fact that Late Smt. Chandrakala Jain was the actual owner of the property which is evident from all the original title deeds, revenue records etc. therefore, the contention of counsel for the defendants that there is no proper chain of transferring of documents is factually incorrect.
23. In reply to the submission of counsel for the defendants that the address of Sh.Vijay Jain is different in the said documents, the counsel for plaintiff submits that in the year 2001, when Lt. Smt. Chandrakala Jain executed the will in favour of Sh.Vijay Jain, he was residing at K-31/1, Mohan Park, Model Town, Delhi and when the irrevocable power of attorney was executed by Sh.Vijay Jain, he shifted to KB Road, Rowrah, Jorhat-5, Assam.

24. Further, in response to the argument on difference in parentage of Sh.Vijay Jain in the will and power of attorney, counsel for the plaintiff submits that on 25.01.1945, Sh.Nawal Kishore Jain (biological father) gave his son, Sh.Vijay Singh Jain in adoption to his younger brother Sh.Kaushal Kishore Jain. This fact has also been recorded in the registered adoption deed dated 02.01.1989. Counsel for the plaintiff has also submitted that there is no dispute over the area of the property as submitted by the defendants.
25. Counsel for the plaintiff, Mr.Mohit Chaudhary, has also submitted that the only defence raised by the defendants is the ownership over the suit property by virtue of a letter dated 26.06.1984 written by Late Mr.Kaushal Kishore Jain to the Lt. Governor of Delhi. The defendants have contended that vide letter dated 26.06.1984 the husband of Late. Smt.Chandra Kala Jain, donated the suit property to defendant no.1. However, on bare perusal of the said letter, it is apparent that no right, title and/or interest accrued in favour of defendant no.1. Further, defendants have not placed any registered conveyance deed and/or registered gift deed to show their right/title in the suit property. Late. Mr.Kaushal Kishore Jain, at no point of time, was the owner of the suit property, therefore, he was not competent to donate or gift the suit property to the defendants nor he had any right over the suit property. Late. Smt.Chandrakala Jain was not a signatory to the letter dated 26.06.1984, nor any evidence has been led by the defendants which can suggest that the said property was ever been donated or bequeathed by her.
26. Counsel for the plaintiff has further submitted that the defendants have always tried to attain an unjust benefit by grabbing the property of the plaintiff. It has also been submitted that the defendants had sent a requisition to the government to acquire the property in question and

sending requisition would itself mean that the property does not belong to the defendants, otherwise there was no reason to acquire the same.

27. I have heard counsels for the parties and carefully perused the proceedings, evidence and documents placed on record.
28. Issues no.1 and 8 read as under:

Issue no.1: Whether the suit as framed is liable to be rejected under Order 7 Rule 11 CPC? OPD-1

Issue no.8: Whether the suit as framed is liable to be rejected? OPD

29. Onus to prove issues no.1 and 8 was on the defendants. Nothing has been brought to the notice of the Court by the defendants that the present suit, as framed, is liable to be rejected under the provisions of Order VII Rule 11 of the Code of Civil Procedure, nor any argument has been raised with respect to issue no.8. Accordingly, issues no.1 and 8 are decided against the defendants.
30. Issues no.2 and 7 read as under:

Issue no.2: Whether the plaintiff is the owner of a plot of land measuring 800 sq. yds. bearing plot no.R-2, R-3, R-4, out of Khasra No.18/9, 9/7, and 21/7 situated in Village Dhirpur, known as Rishab Nagari (Model Town) Delhi, if so, to what effect? OPP

Issue no.7: Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

31. Issues no.2 and 7 are being decided together.
32. Before the Local Commissioner, the plaintiff, Mr.Manish Jain (PW-1), has testified as under:

“PW-1

Manish Jain S/o.Sh.Kamlesh Jain, aged 35 years, occupation Private Service, R/o.House No.C-7, Flat No.6, Plot No.44, Vasundhara Apartment, Sector-7, Rohini, New Delhi -85, on oath stated that:

1. I have seen my original affidavit on the Court File Exh.PW-1/A which bears my signature on each page as well as on the verification. The contents of my affidavit are true. I have seen original documents on the court file.
2. Ex.PW-1/2 is the certified copy of the suit No.527/1989. I have also seen the certified copy of the written statement filed in the above suit which is Ex.PW-1/3.
3. Certified copy of the replication in the said suit is Exh.PW-1/4. Certified copy of the adoption deed is Ex.PW-1/5.

Certified copy of the Registered Will dated 14.12.2001 is Ex.PW-1/6.

Original voter card of Smt.Chandra Kala Jain is Exh.PW-1/7.

Exh. PW-1/8 is the original Pan Card of Smt.Chandra Kala Jain. Certified copy of the Revenue Record issued by the Patwari for the land in dispute is Exh.PW-1/9.

Certified copy of Power of Attorney Executed by Sh.Vijay Singh Jain in favour of the plaintiff obtained from the office of the Sub-Registrar is Exh.PW-1/10.

Certified copy of order passed by Ld. Civil Judge is Exh.PW-1/11.

Copy of the legal notice got issued by me through my counsel Shri Mohit Chaudhary is Exh.PW-1/12. Original Postal Receipts of sending the above legal notice is also part of Exh.PW-1/12.

Certified copy of DD entry recorded at P.S. Model Town obtained from the M.M. Court is Exh.PW-1/13.

Photographs of the disputed land i.e. 8 in numbers are collectively exhibited as Exh.PW-1/14.

Certified copy of the application moved u/s.156(3) Cr.P.C. before the Metropolitan Magistrate, is Exhibit PW-/15.

I have brought the original sale deed, a true coloured photocopy of which is exhibited as Exh.PW-1/1. I will again brought the original sale deed on the next date and thereafter will produce the same before the Hon'ble Court as and when so directed.

xx xx xxx xxxx

By Shri V.K. Tandon, counsel for all the defendants.
(As agreed by the learned counsels for the parties cross examination of the witness will be recorded on 10.1.2011 at 2:30 p.m.

RO&AC to be continued.....

(J.P. SHARMA)
Local Commissioner

Dated 15.12.2010”

33. PW-2, Sh.L.D. Sharma, Patwari, posted at District North-West, Office of SDM Model Town, Delhi, produced the original summoned record with Jamabandi for the year 1998-99. He has deposed that on the basis of the original Jamabandi his predecessors had issued certified copy of the jamabandi, Exhibit PW-1/9. He has also identified the signatures of Sh.Trilok Chand, Patwari, as he was serving under him even on the date

of recording of evidence as his Kanoongo.

34. PW-3, Sh.Sunil Kumar, UDC in the office of Sub-Registrar-I, Kashmere Gate, Delhi, has deposed that he has brought the office copy of Declaration of Adoption, certified copy of which has been exhibited as PW-1/5. He has also brought to the Court Original Volume no.705, containing Additional Book No.3 at pages 9 to 14. He has further testified that as per the record this document was registered on 6.3.1989. He has also deposed that he has compared the contents of the certified copy with the office copy of the Declaration of Adoption and found the same to be true and correct.
35. PW-4, Sh.Jyoti Prakash, LDC, in the Office of Sub-Registrar VI, Pitam Pura, Delhi, has testified that he had brought the duly signed and thumb marked photocopy of original Will made by Smt.Chander Kala, wife of late Sh.Kaushal Kishore Jain. Office copy of this Will is part of Additional Book no.1, Volume No.1786 on pages 44 to 46. He has further testified that true certified copy of the document, Exhibit PW-1/6, was compared with the contents of certified copy of the Will and was found to be true and correct.
36. PW-5, Sh.Krishan Kumar, LDC in the Office of Sub-Registrar-II, Janakpuri, New Delhi, has deposed that he had brought the original office copy of the irrevocable General Power of Attorney, true copy of which has been exhibited as PW-1/10. This witness has thereafter testified that the General Power of Attorney forms part of Additional Book No.4, Volume No.10112 at pages 5 to 7 bearing registration no.43903 registered on 7.8.2004.
37. PW-6, Satya Pal, Record Attendant in the Department of Delhi Archives, has deposed that he had brought the original register forming part of Volume No.2798 containing entries on pages 67 to 71. True copies of

these entries are exhibit PW-6/A. He has also deposed that these entries used to be made in the office on the basis of contents of the original document.

38. It has been admitted by both the parties that Late Smt.Chandra Kala Jain was the original owner of the suit property. **Ex.PW1/1** is the original sale deed dated 09.01.1954 in respect of the suit property executed in favour of Late Smt.Chandrakala Jain. Sh.Vijay Singh Jain was adopted by Smt.Chandrakala and same is proved from the registered adoption deed dated 02.01.1989 (**Ex.PW1/5**). Smt.Chandrakala executed a registered will dated 14.12.2001 (**Ex.PW1/6**) thereby bequeathing the suit property in favour of Sh.Vijay Singh Jain. Plaintiff has also filed certified copy of revenue record issued by patwari (**PW2**) showing Sh.Vijay Singh Jain as the owner of the suit property and the same has been exhibited as **ExPW1/9**. Further, Sh.Vjay Singh Jain executed an irrevocable power of attorney dated 07.08.2004 in favour of the plaintiff and same has been exhibited as **Ex.PW1/10**. L.D.C., office of the sub-registrar-II, janakpuri, New Delhi proved the said irrevocable power of attorney. On the basis of the documents placed on record, the plaintiff has been able to prove that Smt.Chandra Kala Jain, wife of late Sh.Kaushal Kishore Jain, was the owner of the suit property. She had bequeathed the suit property to Sh.Vijay Singh Jain, whom she had adopted in terms of Registered Adoption deed dated 02.01.1989 (Exhibit PW-1/5). Smt.Chandrakala executed a registered will dated 14.12.2001, Ex.PW1/6, and bequeathed the suit property to Sh.Vijay Singh Jain. Copies of revenue records have also been filed and exhibited. Sh.Vjay Singh Jain executed an irrevocable Power of Attorney dated 07.08.2004 in favour of the plaintiff, exhibit Ex.PW1/10. Accordingly, the plaintiff has been able to prove the ownership with respect to the suit property. Therefore issue no.2 is decided in favour of the plaintiff.

39. As far as issue no.7 is concerned, in view of the fact that issue no.2 has been decided in favour of the plaintiff, consequently plaintiff is entitled to a decree of permanent injunction.

40. Issue no.3 reads as under:

Issue no.3: Whether the documents of ownership relied upon by the plaintiff are forged and fabricated, if so to what effect? OPD

41. It is the case of the defendants that the documents of ownership, relied upon by the plaintiff, are forged and fabricated documents and further the suit property has been transferred to defendant no.1 by Kishore Foundation, who is the owner of the plot.

42. The onus to prove issue no.3 was on the defendants. Defendant no.1 has filed the affidavit of Sh.Raj Pal Singh, Principal of the School. No evidence has been led by the defendants to support issue no.2. Even during the course of arguments, nothing has been brought to the notice of the Court to show that the documents of ownership, relied upon by the plaintiff, are forged and fabricated documents. To the contrary, the plaintiff has been able to prove the documents, as detailed in paragraphs foregoing. Resultantly, issue no.3 is decided against the defendants.

43. Issue no.4 reads as under:

Issue no.4: Whether the suit property that is vacant plot measuring 800 sq. yds. Bearing plot no.R-2, R-3, R-4, out of Khasra No.18/9, 9/7, and 21/7 situated in Village Dhirpur, known as Rishab Nagari (Model Town) Delhi has been validly transferred to the defendant no.1 by Kishore Foundation being the owner, if so, to what effect? OPD

44. In order to prove issue no.4, the only document relied upon by the defendants is the photocopy of a letter dated 26.06.1984 written by Late Mr.Kaushal Kishore Jain to Lt.Governor of Delhi. Defendants have

claimed that the suit property was conveyed in favour of defendant no.1 by virtue of the said letter in the form of donation. However, on perusal of the said letter, it can be seen that no right, title or interest in the suit property has accrued in favour of defendant no.1. Also, defendants have not placed on record any document to show that the suit property was ever transferred by Smt.Chandrakala Jain, either in favour of her husband or the trust as claimed by the defendants. Defendants have also failed to place on record any conveyance deed or gift deed or any document to show their ownership or title over the suit property. Defendants in their evidence have deposed that various surveys of the suit property has been carried out by the department of Revenue, Land Acquisition Collector and Land & Building, Govt. Of NCT of Delhi as there is proposal for acquisition of the suit property for the defendant school. This shows that the defendant school does not have any title over the suit property, otherwise there was no question of acquisition. Therefore, this issue is decided against the defendants.

45. Issue no.5 and 6 read as under:

Issue no.5: If answer to issue no.4 is in affirmative, whether the plaintiff is entitled to damages of Rs.20 lacs under different heads as prayed for by the plaintiff in the plaint? OPPs

Issue no.6: Whether the plaintiff is entitled to interest @18%, if so, on account amount and for what period? OPP

46. The onus to prove issues no.5 and 6 is fixed on the plaintiff.

47. PARA 16 of evidence by way of affidavit of Mr.Manish Jain, reads as under:

“16. That despite the fact that the defendants have no locus to come over the property of the plaintiff, they have illegally damaged the 10 ft. wall constructed over the suit property and have

criminally trespassed over the property in question, thus causing the loss to the tune of Rs.10 Lacs towards the cost of building and construction material.

Further, due to the interruption of the defendants the plaintiff is unable to use his property and even taking the conservative view the defendants are entitled to reimburse the damages to the plaintiff to the extent of Rs.5 lacs towards non-availability of user.

That despite the defendants having no claim and legal case, they have resorted to ask for bribe in lieu of letting the plaintiff use his own property, due to which the plaintiff has been harassed by running from pillar to post. Further it is because of deaf ears of the defendants the plaintiff has to approach this Hon'ble Court wasting his time, resources, energy and incurring legal expenses, therefore in view of the said facts and circumstances the plaintiff is entitled to recover cost towards harassment and litigation fee to the extent of Rs.5 lacs from the defendants.”

48. In the absence of any document on record, the plaintiff has not been able to discharge the onus of proving the actual damages suffered by the plaintiff. Consequently, issues no.5 and 6 are decided against the plaintiff.

49. Issue no.9 reads as under:

Issue no.9: Relief.

50. In view of the submissions made, documents filed on record and the evidence produced, the present suit is decreed in favour of the plaintiff and against the defendants with costs, thereby directing the defendants, their agents, servants, friends, relatives, associates and anyone else acting for and on their behalf, to restrain themselves from interfering with the peaceful possession of the plaintiff over the suit property i.e. Vacant land admeasuring about 800 sq. yards, bearing Plot No.R-2, R-3 and R-4, out of Khasra No.18/9, 9/7 and 21/7, situated in Village Dhirpur, known as Rishab Nagari (Model Town), Delhi. Let a decree sheet be drawn up accordingly.

I.A. NO. 13311/2012, I.A. NO. 19017/2013 & CrI.M.A 5978/2013

51. Present applications stand dismissed in view of the order passed.

December 24th, 2015
msr

G.S.SISTANI, J