

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

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Date of Judgment: 12.02.2015

CS(OS) 1306/2009

SMT. PRAMILLA DEVIPlaintiff

Through: Ms.Anjna Gosain and Mr. Pradeep
Desodya, Advs.

Versus

SH. BRAHM SINGHDefendant

Through: Mr. A.K. Sen, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

1 Present suit has been filed by the plaintiff Pramilla Devi through her attorney Manoj Kumar seeking permanent injunction against the defendant Brahm Singh restraining him/his representatives/his agents in interfering in the construction of the boundary at the periphery of the suit property and from in any manner interfering in the peaceful use and occupation of the suit property.

2 The case as set up by the plaintiff is that she is a widow aged 80 years. She is a permanent resident of Village and Post Nadiawan,

District Lakhisarai, Bihar and occasionally visits Delhi. This property measuring 1200 square yards was bought by her in the year 1999 through a registered sale deed dated 26.07.1999 from Beer Singh, Rame, Birbal and Jagmal Singh, all sons of Munshi of village Madanpur Khadar, Tehsil Mehrauli, Delhi. She has been in continuous and uninterrupted possession of the land since that date. The land has also been mutated in the revenue records. This land comprised of 1200 square yards in Khasra No. 731, village Madanpur Khadar. The land has also been mutated in the name of the plaintiff. Khatoni of the said land has been filed. The defendant is a resident of village Madanpur Khadar. He is a rogue element of the village and has been involved in various frivolous litigations. Manoj Kumar had been engaged as a caretaker of the plaintiff. The suit property was bound by a boundary wall which in due course, due to dilapidated condition, had fallen down. The plaintiff visited the suit property in April, 2009 where she noticed bricks having fallen from the boundary; she asked her caretaker Manoj Kumar to repair the boundary wall. When Manoj Kumar went to the said land for the purpose of re-raising the boundary wall, the defendant and his associates prevented him from doing so. He stated that he had purchased

this land and it belongs to him. Oral complaint was made to the police. The plaintiff has learnt that the defendant had filed a case before the District Judge seeking specific performance of the contract relating to the suit property. On 22.07.2002, this relief had been declined. RFA 538/2002 was filed by the defendant. It is yet pending. The defendant has no right in the suit property and in fact no such averment has also been made in RFA 538/2002; he does not have title to the suit property and he was also never in possession of the said property. He is trying to grab the land of the plaintiff.

3 The plaintiff had instructed her attorney Manoj Kumar to take preventive steps. Present suit has also been filed as no action has been taken on her police complaint.

4 The defendant filed his written statement. It was stated that the suit is not maintainable. The plaintiff has never been in possession of the said land and as such, the question of interference in the possession of the plaintiff does not arise. On merits, it was stated that although the sale deed dated 26.07.1999 reflects that the property stands mutated in the name of the plaintiff yet it is denied that the plaintiff was in possession of the suit property. It is stated that the defendant belongs to a

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respectable family. He is not involved in frivolous litigations as has been stated by the plaintiff. He has been in continuous possession, and is owner of the suit land since 1999. It is denied that Manoj Kumar was the caretaker of the plaintiff and he had gone to the site to repair the boundary wall of the plaintiff. The defendant had entered into an agreement with the bhumidar Gulshan Kumar Gulati who had purchased this land from Ravinder Singh and others sons of Nathu Singh. Ravinder Singh and others were the bhumidars of 3 bighas 7 biswas in khasra No. 731 in village Madanpur Khadar. The plaintiff has in fact never been in possession of the suit property. Suit is liable to be dismissed.

5 Replication was filed reiterating the averments made in the plaint and denying the averments made in the written statement.

6 From the pleadings of the parties, the following issues were framed on 17.09.2010:-

1. Whether the plaintiff is entitled to grant of injunction in respect of the suit property admeasuring 1200 square yards of khasra No. 731 (30-0) situated in village Madanpur Khadar, New Delhi being bhumidar of undivided share of the joint holding? OPP

2 Does the defendant establish that the plaintiff is not in physical possession of the suit land as alleged in the written statement? OPD

3. *Relief.*

7 The plaintiff in support of her case has examined two witnesses i.e. her attorney Manoj Kumar as PW-1 and Mr.Giri Raj Singh as PW-2. The defendant has also produced two witnesses.

8 Oral and documentary evidence has been perused. Arguments have also been heard.

9 Issuewise findings read as under:-

Issue No. 1 & 2

10 Issues No. 1 & 2 will be decided by a common discussion. The onus to discharge issue No. 1 was upon the plaintiff and the onus to discharge issue No. 2 was upon the defendant.

11 The plaintiff has examined her attorney Manoj Kumar as PW-1. He has reiterated the averments made in the plaint. He has deposed that the plaintiff is a widow lady aged 80 years living permanently in Village and Post Nadiawan, Distt. Lakhisarai, Bihar and occasionally visits Delhi. She had purchased the suit property measuring 1200 square yards in khasra No 731, village Madanpur Khadar in 1999 by a registered sale deed dated 26.07.1990. The original khatoni of the khasra No. 731 along with its English translation have been proved as Ex.PW-1/1; the ask

sizra has been proved as Ex.PW-1/2. Further averment is that she is in physical possession of the suit land since then. Her attorney Manoj Kumar was looking after her property. The boundary wall which was constructed upon it, being in a dilapidated condition, had fallen down. The site plan of the suit property has been proved as Ex.PW-1/3. She requested Manoj Kumar to get the repairs of boundary wall done and when he went there, he was met with opposition from Brahm Singh (the defendant) who did not allow him to carry out the re-raising of the boundary wall. He stated that he is the owner of the suit property. Oral complaint was made to the police. It is further deposed that the plaintiff came to know that Brahm Singh (the defendant) had filed a suit before the District Judge which was a suit for specific performance, which relief was declined to him on 22.07.2002. He had filed RFA No.538/2002; record has been proved as Ex.PW-1/4. In this appeal, it has not been stated by the defendant that he was in possession of the suit land as is the vehement contention made in the written statement. Submission being that the defendant has filed a false suit and the plaintiff is all along in possession of the suit property. Police complaint made to the said effect has been proved as Ex.PW-1/5.

12 This witness was subjected to a lengthy cross-examination. He has stuck to his stand. He has reiterated that the plaintiff is the owner of the suit property vide registered sale deed dated 26.07.1999 (Ex.PW-1/1). This factum is not disputed. He denied the submission that the plaintiff has never visited the suit property since the date of the purchase and she is not in possession of the suit property. He denied the suggestion that he is deposing falsely.

13 PW-2 had brought the summoned record from the SDM Office, Kalkaji in respect of khasra No.731, village Madanpur Khadar. He admitted that Ex.PW-1/1 is the khatoni and Ex.PW-2/1 is the ask sizra. In his cross-examination, he admitted that khatoni Ex.PW-1/1 in respect of khasra No. 731 is another khata and Ex.PW-1/1 measures 30 bighas. It does not mention the other khata. The entire land in the khasra is a joint holding. There is no partition in this khasra. There is no mark or division in this entire holding. He could not say from the record as to which bhumidar is in possession of which particular portion in this khasra. He admitted that there is a difference between Ex.PW-1/1 and Ex.PW-2/1. The sizra is of 41 bighas 4 biswas comprising of drain as well.

14 This part of the cross-examination has been highlighted by the learned counsel for the defendant to make a proposition that the sale deed (Ex.PW-1/1) and ask sizra (Ex.PW-2/1) are distinct from one another. This submission of the learned counsel for the defendant is not quite correct. Ex.PW-1/1 refers to 30 bighas of land whereas Ex.PW-2/1 has a reference to 41 bighas and 4 biswas and this was obviously for the reason that the drain has been included in Ex.PW-2/1 as well. On no other count, is there any discrepancy in Ex.PW-1/1 and Ex.PW-2/1 and no such discrepancy has been pointed out by the learned counsel for the defendant.

15 DW-1 was the defendant himself. He has reiterated the averments made in the written statement. His submission is that he is in actual physical possession of 1 bigha of land in khasra No. 731, village Madanpur Khadar and he had purchased this 1 bigha from Gulshan Kumar Gulati who was the recorded bhumidar of 3 bighas and 7 biswas. However, since Gulshan Kumar Gulati had not executed the sale deed in his favour, he had filed a suit for specific performance i.e. suit No.72/2000 titled *Brahm Singh Vs. Gulshan Kumar Gaulati*. This suit had been disposed of on 22.07.2002. In this suit, it had been alleged by CS (OS) No.1306/2009

the defendant that he had entered into an agreement to sell with Gulshak Kumar Gulati dated 08.07.2000 wherein Gulshan Kumar Gulati had agreed to sell him one bigha of land in khasra No. 731 for which Brahm Singh had paid consideration of Rs.96,000/-. This suit was disposed of on 22.07.2010. The relief of specific performance had been denied to him. The money decree in the sum of Rs.76,000/- has been passed in his favour. Against this judgment, an appeal had been filed in the High Court i.e. RFA No.538/2002. This RFA was disposed of on 17.09.2013. Copy of that judgment has been placed on record. The RFA had been dismissed but the amount of Rs.76,000/- granted in favour of Brahm Singh had been enhanced to Rs.96,000/-. The High Court had noted that Brahm Singh had failed produce any revenue record of Gulshan Kumar Gulati from the revenue department to show that Gulshan Kumar Gulati was in fact the owner of the land which he had agreed to sell to Brahm Singh. The High Court had endorsed the finding of the District Judge that in the absence of a record of jamabandi or khatoni in favour of Gulshan Kumar Gulati, it would be wholly unsafe to grant a decree of specific performance as there was nothing on record to show that Gulshan Kumar Gulati was the owner of the subject matter of land

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which he had agreed to sell to Brahm Singh.

16 The suit record as also the record of the RFA has been proved. It is a part of the Court record. A perusal of this record substantiates the submission of the learned counsel for the plaintiff that in fact the defendant has nowhere averred that he was in physical possession of the suit property. This pleading is completely absent either in the suit or in his RFA. It was obviously for the reason that the defendant was never in possession of the suit land and that is why it did not find mention in his pleadings. Thus the plea set up by the defendant that he is in possession of the suit land has not been established. Besides the fact that in his pleadings for specific performance, he had never averred that he was in possession of the suit property, even before this Court, not a single piece of evidence, either oral or documentary, has been brought on record to substantiate the plea. There is nothing on record to show that he was or is in possession of the suit land.

17 Record thus establishes that it is the plaintiff who is the recorded owner of the suit land i.e. 1200 square yards in khasra No. 731 at village Madanpur Khadar. This is evident from Ex.PW-1/1 which has also been ratified by the SDM concerned examined as PW-2. The case set up by

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the defendant that he was in possession of the suit land which he had purchased from Gulshan Kumar Gulati, has been negated. This relief has been denied to him not only by the District Court but also by the High Court. The matter has been set at rest. What is most relevant to note is that the defendant, nowhere in his entire pleadings in his suit, pleaded that he was in physical possession of the suit land which is the vehement contention of the defendant before this Court. If this was the position, this fact would have found mention in his pleadings. PW-2, the official witness from the office of the SDM ratified the ownership of the plaintiff in the suit land; the possession of the defendant in the suit land could nowhere be inferred.

18 Thus it is established that the plaintiff being the owner of the suit land and the defendant failing to show that he is in physical possession of even 1 bigha of land in khasra No. 731 (as has been alleged), the plaintiff is entitled to the relief claimed for.

19 Both these issues are accordingly decided in favour of the plaintiff and against the defendant.

Relief

20 The plaintiff is entitled to a decree of permanent injunction
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restraining the defendant Braham Singh/representatives/agents in interfering in the construction of the boundary at the periphery of the suit property and from in any manner interfering in the peaceful use and occupation of the suit property. Costs of the suit are also awarded in favour of the plaintiff. Decree sheet be drawn. File be consigned to the record room.

21 Suit disposed of in the above terms.

INDERMEET KAUR, J

FEBRUARY 12, 2015

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