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HIGH COURT OF DELHI AT NEW DELHI

R.S.A. No.188/2013 & R.S.A. No.158/2014

Decided on : 24th March, 2015

+ RSA 188/2013
RATAN SINGH VYAMSALA SAMITI Appellant
Through: Mr.Sudhir Nagar, Advocate.

versus

DDA Respondent
Through: Mr.Padam Kant Saxena and Mr.Deepak
R.Dahiya, Advocates.

+ RSA 158/2014
DELHI DEVELOPMENT AUTHORITY Appellant
Through: Mr.Padam Kant Saxena and Mr.Deepak
R.Dahiya, Advocates.

versus

RATAN SINGH VYAMSHALA SAMITI (REGD)..... Respondent
Through: Mr.Sudhir Nagar, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. These are two cross regular second appeals.
2. Before dealing with the appeals, it may be pertinent hereto give a brief background of the facts of the instant cases.

3. Ratan Singh Vyamsala Samiti filed a suit for declaration and permanent injunction against the DDA claiming that the Ratan Singh Vyamsala Samiti is a society registered under the Societies Registration Act on 16.01.1990 and Sh.Ratan Singh is the Chairman of the said society. The society is situated at Dhaka Johar near Bhai Paramanand Colony and it is owning a parcel of land falling in khasra No.737/45 where it is running an akhada for the benefit of the wrestlers. Apart from akhada, there are three rooms, one chabutra, one latrine, bathroom, handpump, mandir and mazar and the Central Government and the Govt. of NCT of Delhi had issued notification dated 21.03.1994 for regularization of the area, in which, the name of the plaintiff society had appeared at Serial No.241. The society had also obtained electricity connection from the then service provider DESU. It was alleged that the DDA was threatening to demolish the structure and dispossess them and, therefore, they filed a suit for declaration and permanent injunction.

4. The DDA filed its written statement and contested the claim of the Ratan Singh Vyamsala Samiti. It was alleged by them that the aforesaid akhara and the other premises fell in Khasra No.784/46 of the village which was actually an acquired land vide notification No.F.8 (40)/74-

L&B dated 20.03.1974 and thereafter the physical possession of the acquired land was also taken after removing the encroachment and the same was put at the disposal of the DDA under Section 22 of the DDA Act. It was alleged that the Ratan Singh Vyamsala Samiti has re-encroached the land and was a trespasser.

5. In replication, Ratan Singh Vyamsala Samiti has contested the same and on the pleadings of the parties, the following issues were framed:

“1. Whether the plaintiff is entitled for the relief of injunction as prayed for?
OPP.

2. Relief.

6. Both the parties adduced their respective evidence. A report of the Tehsildar regarding demarcation was also obtained and the learned Civil Judge though did not grant declaration to the Ratan Singh Vyamsala Samiti holding that they were not able to prove their ownership qua the land in question. However, it granted the injunction holding them to be in possession of the parcel of land situated in khasra No.737/45. It was also simultaneously observed that the Society shall not be dispossessed without due process of law. While returning this finding, the civil court

had analyzed the evidence of the parties and also observed that though the report of the Tehsildar was on record, however, that report was completely discarded as in the said report the tehsildar had stated that part of the land in question fell in khasra No.784/46 measuring around six bighas as claimed by the DDA. It was also observed that in addition to these two khasras, the land also fell in couple of other khasras also.

7. The DDA feeling aggrieved by the aforesaid grant of injunction in favour of the appellant preferred an appeal to the court of the learned ADJ bearing RCA No.30/13/11 titled DDA versus Ratan Singh Vyamsala Samiti.

8. No corresponding appeal was preferred by Ratan Singh Vyamsala Samiti against the rejection of their part of the relief with regard to declaration. The appeal filed by the DDA challenging the grant of injunction was heard and allowed by the learned ADJ on 14.03.2013 by observing that the injunction ought not to have been given for the simple reason that the civil court had fallen into an error in completely discarding the report of the Tehsildar wherein he had specifically stated that the land in question was not falling in one khasra alone as was claimed by Ratan Singh Vyamsala Samiti and it fell into different khasras

including the khasra in which the DDA claimed it to be falling. It had also observed that the entire case of the Ratan Singh Vyamsala Samiti was premised on the ground that they are the owners of the suit property and as they had failed to establish their ownership qua the suit property consequently there was no question of grant of any injunction in their favour.

9. I have heard the learned counsel for the Ratan Singh Vyamsala Samiti as well as the learned counsel for the DDA. The learned counsel for the Ratan Singh Vyamsala Samiti has not been able to make out any substantial question of law involved in the matter. The question as to whether the land of the appellant was falling in Khasra No.737/45 or not in its entirety or partially (though they were claiming that entire land falls in its entirety in the said khasra) is essentially a question of fact and not a question of law and this finding having been given by the court below that the Ratan Singh Vyamsala Samiti has not been able to prove its ownership in respect of the parcel of land in question where the akhara and the premises is situated apart from the fact that the entire land as claimed by them was not falling in khasra No. 737/45 clinched the issue and thus allowed the appeal of the DDA, which was partially decided in

their favour by the learned Civil Judge. This being a question of fact cannot be treated to be a question of law. It is admittedly not the case of the Ratan Singh Vyamsala Samiti that the finding returned by the first appellate court is suffering from any perversity inasmuch as there is no evidence on record. Therefore, the present appeal is totally misconceived and the same deserves to be dismissed.

10. The second appeal is an offshoot or a consequence of the appeal having been filed by the DDA before the first appellate court. In the second appeal, which is now preferred by the DDA before this court i.e. bearing No.158/2014 which was filed by Ratan Singh Vyamsala Samiti against the order of the learned Civil Judge dated 28.05.2011 refusing them the relief of declaration, the first appellate court vide order dated 09.05.2013 had set aside the finding returned by the learned Civil Judge while rejecting the claim of the Ratan Singh Vyamsala Samiti with regard to declaration and remanded the matter back to the trial court to be decided afresh after giving the parties an opportunity to adduce their evidence. This finding has been returned by the learned ADJ on the assumption that an opportunity to adduce evidence on the issue of declaration was not given to the Ratan Singh Vyamsala Samiti.

11. The contention of the learned counsel appearing for the DDA is that it was the same ADJ who vide order dated 14.03.2013 had taken note of the fact that Ratan Singh Vyamsala Samiti had not filed any appeal against rejection of their prayer of seeking declaration with regard to ownership of land in question and therefore the said finding returned by the Civil Judge had become final inasmuch as it was affirmed by the ADJ also as having not been challenged by Ratan Singh Vyamsala Samiti and the matter itself having been finally disposed of on 14.03.2013 had attained finality. The order dated 09.05.2013 passed by the learned ADJ after almost two months from the date of the earlier order passed in first appeal suffers from perversity because the same ADJ in the second appeal filed by Ratan Singh Vyamsala Samiti now remanded the matter back to the Civil Judge by directing them to give an opportunity to adduce evidence and decide the question of grant or non-grant of declaration afresh which cannot be permitted to be done and accordingly the aforesaid order is prayed to be set aside.

12. The learned counsel for Ratan Singh Vyamsala Samiti has contested the prayer of the learned counsel for the DDA by contending

that what has been done by the first appellate court is only to remand the matter back to the trial court and, therefore, the remand of the matter to the trial court does not constitute passing of a decree and, therefore, could not be subjected to second appeal.

13. I have carefully considered the submission made by the learned counsel for the parties and also gone through the appeal. Now, the remand of the matter by the first appellate court vide order dated 09.05.2013 would not constitute passing of a decree but nevertheless if it is seen in the context of the earlier order which had been passed on 14.03.2013 by the same ADJ which has taken note of the fact that refusal to grant declaration has not been assailed by the Ratan Singh Vyamsala Samiti and, therefore, the finding on that score had become final and it was not open to him to have remanded the matter back to the trial court for adjudication. In addition to this, the Ratan Singh Vyamsala Samiti had already preferred a second appeal and so has the DDA. Therefore, both these appeals are interconnected and are being decided together. Therefore, inasmuch as the second order of the judgment passed on 09.05.2013 becomes contrary to what learned ADJ has observed vide order dated 14.03.2013. This cannot be permitted to stand.

14. I find merit in the contention of the learned counsel for the respondent/DDA that the order dated 09.05.2013 cannot be permitted to stand.

15. I accordingly set aside that order and allow appeal of the DDA being RSA No.158/2014 and dismiss the appeal being RSA No.188/2013 holding that it does not involve any substantial question of law.

V.K. SHALI, J.

MARCH 24, 2015
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