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

+ **Date of Decision: 13.10.2015**

% **RSA 102/2015**

TEK CHAND (SINCE DECEASED)

THR LEGAL HEIRS & ORS

..... Appellants

Through: Mr. A.K. Singla, Senior Advocate
along with Mr. Abhimanyu Singh
Khatri, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through: Mr. Dhanesh Relan, Standing
Counsel for respondent/ DDA.

Mr. D. Rajeshwar Rao and Mr.
Charanjeet Singh for R-2/Gaon Sabha

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment and decree dated 30.08.2014 passed in RCA No.34/13/09, whereby the First Appellate Court, namely, ADJ (W), Tis Hazari Courts dismissed the first appeal preferred by the appellants/LRs of the original plaintiff. The said appeal had been preferred to assail the judgment and decree dated 08.09.2009 passed in Suit No.969/2006 preferred by the original plaintiff Sh. Tek Chand (since deceased), whereby the suit for permanent and mandatory injunction had

been dismissed by the Trial Court, namely, the Civil Judge (W), Tis Hazari Courts, Delhi.

2. The original plaintiff had preferred the said suit on the premise that he was in possession of a plot admeasuring 1200 sq. yds out of Khasra No.27/17/1667 shown in red in the site plan annexed with the plaint. The plaintiff claimed to be in possession for over 50 years. He claimed to have constructed a house on the plot, and had claimed to be in peaceful enjoyment of the same with his family. He claimed that he had been paying the house tax in respect of the suit property.

3. The plaintiff claimed that he apprehended demolition of the built up structure on the suit property by the defendants and, consequently, he preferred the suit to claim the relief of permanent injunction against the defendants so as to restrain the defendants from interfering in his peaceful possession of the suit property. He also sought a decree of mandatory injunction thereby *“restraining the defendant from reconstructing and repairing the suit property to its original habitable position”*. The plaintiff impleaded the Delhi Development Authority (DDA) as defendant no.1 and the Gaon Sabha as defendant no.2 in the suit.

4. Defendant no.1 filed its written statement, inter alia, stating that the suit property falls in Khasra No.1668 min, village Mehrauli, which is Gaon Sabha land and has been transferred to the DDA vide notification SO 2190 dated 20.08.1974. The DDA claimed that the plaintiff had no right, title or interest in the suit property. The plaintiffs claim of being in possession for over 50 years was also disputed. It was stated that the plaintiff is a fresh encroacher and has recently constructed a boundary wall.

5. Defendant no.2, Gaon Sabha also filed its written statement. Defendant no.2 stated that as per the revenue record, the land in question bearing Khasra No.27/17/1667/4, Village Mehrauli belongs to the Gaon Sabha, Mehrauli, which was handed over to the DDA. It was stated that the plaintiff had illegally encroached upon the land in question and that the plaintiff is a trespasser having no right, title or interest in the suit property.

6. On the pleadings of the parties, the Trial Court framed the following issues:

- i) Whether the suit is bad for mis-joinder of parties?
- ii) Whether the suit is bad for want of notice under section 80 CPC?
- iii) Whether the suit is bad for want of notice under section 53-B of DD Act?
- iv) Whether the suit land forms part of khasra no.1668 min of village Mehrauli which is Gaon Sabha land and has been transferred to DDA?
- v) Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for?
- vi) Whether the suit is bad for mis-joinder of parties?
- vii) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
- viii) Relief.

7. The plaintiff examined himself as PW-1 and produced documents PW1/1 to PW1/4. The defendant no.1 examined the patwari Ram Mahesh as D1W1. Defendant no.2 examined patwari Harinder Mohan as D2W1.

8. The Trial Court discussed the main issues in the suit, namely, issue nos.4, 5 and 6 together. The Trial Court observed that, whereas the plaintiff claimed that the suit land falls in Khasra No.27/17/1667/4 of village Kishan Garh, Mehrauli, the DDA had proved that the suit land formed part of the land falling in Khasra no.1668. Khasra no.1668 and Khasra No.27/17/1667/4 are adjacent to each other. The Trial Court held that the DDA had further proved that the whole of village Mehrauli (Kishan Garh) had been placed at the disposal of DDA vide notification dated 20.08.1974. Consequently, the Trial Court held that irrespective of whether the suit property fell in Khasra No.27/17/1667/4 in village Kishan Gargh, Mehrauli—as claimed by the plaintiff/appellant, or in Khasra no.1668 – as claimed by the defendant/DDA, in either case the suit property had been placed at the disposal of DDA vide notification dated 20.08.1974, and the suit for injunction simplicitor was not maintainable against the true owner. In this respect, reliance was placed on the judgment of the Supreme Court in ***Premji Ratansey Shah & Ors. v. Union of India***, JT 1994 (6) SC 585.

9. The First Appellate Court in the impugned judgment has again appreciated the evidence led by the parties. Ex D1W1 is the notification showing that the land in question had been placed at the disposal of respondent no.1/DDA for its management and control. Ex. D1W1/3 is the demolition entry showing that the encroachment on the land in question had been removed on 19.02.1999 by the DDA. The First Appellate Court has

also scrutinized the testimonies of the witnesses. The plaintiff Tek Chand did not dispute the khasra girdwari pertaining to the year 2003 showed that the Gaon Sabha was in occupation of the suit property. He also admitted that on 19.02.1999, construction of the suit property was demolished. He also feigned ignorance when asked whether Khasra no.1668 belonged to the Gaon Sabha and the same was transferred to the DDA vide notification no.2190. From his testimony, it has come out that he was not aware whether the suit land fell in Khasra no.1668, or Khasra No.27/17/1667/4 as alleged by him. He had himself not placed any document on record to show that the suit land falls in Khasra No.27/17/1667/4.

10. D1W1 Ram Mahesh had stated that the suit land falls in Khasra no.1668 min, village Mehrauli. He denied the suggestion that 1668 min does not exist in village Mehrauli. He deposed that after demolition, no boundary wall had been raised by the DDA and the debris/malba was still lying at the site. D2W1 Harinder Mohan had exhibited khatoni paymaish and khasra girdwari as Ex D2W1/1 and Ex. D2W1/2. He had deposed that the land in question had been transferred to the DDA on 19.09.1998 as per the record, and the entry was available in the khatoni paymaish.

11. The First Appellate Court, therefore, held that the suit land falls in khasa no.1668, which was acquired by respondent no.1/DDA, and no evidence had been led by the appellant/plaintiff to show that the suit land falls in Khasra No.27/17/1667/4. Reliance placed by the appellant on the statement of Halka Patwari recorded in earlier proceedings was rejected, since certified copy of the same had not been produced and it was a marked document. Moreover, the said document pertained to the year 1967,

whereas the land had been acquired in the year 1974. For the said reason also, it was not relevant.

12. The submission of Mr. Singla, learned senior counsel for the appellant is that the courts below have not correctly appreciated the evidence. Mr. Singla submits that there is discrepancy in the stand taken by the DDA on the one hand, and the Gaon Sabha on the other hand. While the DDA claimed that the land falls under khasra no.1668 min, the Gaon Sabha claimed that it falls under Khasra No.27/17/1667/4. Mr. Singla submits that the courts below have failed to appreciate the evidence brought on record, namely, the order dated 27.09.1967 passed in proceedings under section 86A of the Delhi Land Reforms Act in Case No.659/1967, wherein it had been ruled that the correct field number of the land in question was Khasra No.27/17/1667 and not Khasra no.2717/1668. He submits that the First Appellate Court has erred in returning the finding that the suit property falls in khasra no.2717/1668 and on that basis had denied relief to the appellant, who is in settled possession of the suit property.

13. On the other hand, learned counsel for the respondents submits that the suit itself was not maintainable to seek the relief of injunction simplicitor, particularly when the plaintiff/appellant did not plead his title to the property; the plaintiffs title to the property was in serious dispute by both the defendants, and; the plaintiff did not seek a declaration of his title either in the suit as originally filed, or by amending the suit. In support of his submission, he has placed reliance on *Ananthula Sudhakar v. P. Buchi Reddy (D) By LRs & Ors.*, (2008) 4 SCC 594 and in particular, para 21 of the said decision.

14. Learned counsel for the respondents has also submitted that the order dated 27.09.1967 relied upon by the appellant was of no avail, since the same was of the year 1967, whereafter the land was acquired in the year 1974 and the entire land had been acquired. It made no difference whether the land of the appellant fell in khasra no.2717/1667 or 2717/1668.

15. Learned counsel for the respondent has further submitted that since the two courts below have arrived at a consistent findings of fact against the appellant – to hold that the land in question has been vested in the DDA, this Court, in second appeal, would not interfere with the said findings of fact as it has not been shown that the same is either perverse or not founded upon evidence.

16. Having heard learned counsels for the parties and perused the record as well as the decision relied upon by the respondent, I am of the view that there is no merit in the present second appeal and it does not raise any substantial question of law requiring admission. The plaintiff did not claim title to the suit property. Though he claimed that the suit property fell in Khasra No.27/17/1667/4, he did not lead any evidence to establish the said fact. Even if it were to be accepted that the suit property fell in khasra no.2717/1667, the evidence brought on record by the defendants militated against the claim of the plaintiff of his being in possession of the suit property. The defendants had established that the suit property was recorded in the khasra girdwari in the year 2003 in the name of the Gaon Sabha as the owner of the land and the same had admittedly been demolished on 19.02.1999. The notification no.2190 established that the entire land had been vested in the DDA. D2W1 had also exhibited khatoni paymaish in

respect of the suit land, which too falsified the claim of the plaintiff/appellant.

17. In *Ananthula Sudhakar* (supra), the Supreme Court, inter alia, observed in para 21:

“21. the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

.... ..

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction”.

18. Pertinently, the appellant/defendant did not seek declaration of his title and the suit was premised only on a plea of settled possession. This plea itself was not established and was successfully defended by the

respondents/defendants as already taken note of herein above. The relief of mandatory injunction sought by the appellant betrays the fact that he was not even in possession of the suit property. The suit property after demolition was an open parcel and it was essential for the plaintiff to plead and establish his title to be able to claim the relief of injunction, as such a relief was not available against the recorded owner, i.e. the DDA, who derived title from the Gaon Sabha. Thus, it cannot be said that the dismissal of the petitioners suit and the first appeal was not justified. Consequently, I find no merit in the present second appeal and dismiss the same leaving the parties to bear their respective costs.

VIPIN SANGHI, J

OCTOBER 13, 2015

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