

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ **RSA 36/2009**

Reserved on: 23.05.2016
Date of decision: 14.07.2016

IIT Appellant
Through: Mr.Arjun Mitra, Adv.

versus

SHANTI AND ORS. Respondents
Through: Mr.Vipin Kr. Singh &
Mr.Narendra Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

1. The Indian Institute of Technology (for short 'IIT'), Hauz Khas, New Delhi, through its Director, lodged a suit number 258/06/1983 for possession, mesne profits and mandatory injunction against the respondents/defendants who are the LR's of late Gauri Shankar who is said to have encroached upon the land belonging to the appellant.
2. The aforesaid suit was dismissed vide judgment and decree dated 05.04.2008. The Lower Appellate Court vide judgment dated 15.10.2008 passed in RCA No.09/2008 affirmed and upheld the Trial Court judgment referred to above.
3. Hence, the present second appeal against the impugned judgments.

4. The case of the appellant is that the Government, after acquiring the land falling in the revenue estate of Village Jia Sarai (notification dated 18.08.1960 and award no.1095 dated 25.11.1960), put the appellant in possession of the said land. The predecessor of the respondents/defendants namely Late Gauri Shankar was alleged to have trespassed into the land and encroached upon 152 sq. yards, without seeking any permission of the appellant/plaintiff. Over the encroached land, a house was unauthorisedly built.

5. The aforesaid suit was contested on the grounds that it had not been instituted by the duly authorized persons; plaint did not disclose any cause of action and that the suit was barred by estoppel. The respondents/defendants claimed to have become the owners of the land by virtue of adverse possession. The assertion of the appellant/plaintiff about the encroachment over the acquired land was totally denied. The forefathers of late Gauri Shankar have been shown in the municipal records as the owners of the property. Thus, what was essentially relied upon by the respondents/defendants was, their continuous/uninterrupted possession over the land in dispute for the last more than 30 years. The respondents/defendants had also been, according to them, paying the house tax.

6. Based upon the pleadings of the parties, the following issues were framed:

- i. Whether the suit has been valued properly for the purposes of court fees and jurisdiction?*
- ii. Whether the plaint has been signed and verified and the suit instituted by a competent person?*

- iii. *Whether the plaintiff is estopped from bringing this suit as alleged in preliminary objection no. 4 of the written statement?*
- iv. *Whether the defendants are in wrongful possession of the land in suit as predecessors?*
- v. *If issue no. 4 is found in favour of the plaintiff, whether the defendants have perfected their title in respect of the suit claim by adverse possession extending over more than 12 years in respect of the land in dispute?*
- vi. *Whether the plaintiff is entitled to the relief of injunction prayed for?*
- vii. *Relief.*

7. The appellant/plaintiff examined four witnesses whereas five witnesses deposed before the Trial Court on behalf of the respondents/defendants. In order to appreciate the contentions of the parties, it would be necessary, first, to refer in brief to the deposition of the witnesses offered on behalf of the appellant/plaintiff.

8. Mr.S.N. Tiku, the Resident Engineer, IIT, Hauz Khas, New Delhi (PW.1) stated before the Court that he had joined IIT in the year 1975 as Assistant Resident Engineer and was aware of the award by which the land was acquired and the IIT was put in possession of the said land. However, with regard to the possession of the respondents/defendants, he has stated that they have been in possession of the premises since 1975 without any right, title or interest in the property. It was also averred that a house has been constructed by Gauri Shankar over a piece of land covering 152 sq. yards.

9. During cross examination, PW.1 could not state as to when the respondents/defendants had trespassed into the suit property.

However, according to him, the possession of the respondents/defendants was never taken back after 1975.

10. Mr.Jawahar Singh, Patwari from the Land Acquisition Branch (PW.2) has proved the award no.1095. He had brought Khasra Girdawari of the year 1959-60 but expressed his inability in either reading or writing Urdu language and therefore, stated the contents of the Khasra Girdawari was not known to him.

11. Mr.R.S. Randhawa, Executive Magistrate, Tis Hazari Courts, Delhi (PW.3) has also proved the original possession report dated 02.11.1960 as he was the Naib Tehsildar at the relevant time and was posted at Tis Hazari Courts. The possession of the land was given to the appellant/plaintiff in his presence. He expressed his complete ignorance about any structure being available at the site when the possession was acquired.

12. Mr.Jagtar Singh, Legal Assistant, IIT (PW.4) deposed that the appellant i.e. IIT, was situated over the land which was handed over by the Land Acquisition Collector after acquiring the same. Though PW.4 is stated to have joined the services of the IIT in the year 1980, meaning thereby that he was not in service when the land was acquired for the construction of the institute but has stated that the inspection of the official records especially the report of the Halka Girdawar and the Kanoongo reflected that the possession of the house was also delivered to the appellant/plaintiff/Institute.

13. Mr.K.K.Berman, (PW.5), an officer of the Property Tax Department, MCD, R.K. Puram, Delhi, has deposed that the house bearing no.28A, Jia Sarai village is recorded and assessed in the name

of one Naresh Gaur since 12.09.1988. Prior to it, the house was assessed in the name of Shri Gauri Shankar Gaur. The first assessment of the house was in the year 1970. During his cross examination, he has also confirmed the fact that the MCD had proposed to fix the value of the house at Rs.760/- per annum but the concerned form did not have upon it any inscription regarding khasra number.

14. On the contrary, Smt.Shanti Devi, respondent/defendant no.1 claims to have married Shri Gauri Shankar in the year 1958 and has been staying in the house in question since then. She has denied that the house was acquired by the Government along with the other lands and was given to the appellant/plaintiff/Institute. The possession of her husband over the suit property and the house dated long back to the acquisition and over the land to the Institute. Thus what was emphasized was that there could be no trespass over the said property in the year 1975. She has, however, stated that after the death of her husband, the old ancestral house was demolished and three and a half story structure was built over the plot of land in dispute. All the suggestions given to her regarding encroachment of the land in question were denied.

15. Sh.Naresh Sharma, respondent/defendant no.3 entered into witness box as DW.2 and supported the case of DW.1. He affirmed the fact that house tax was being paid to the corporation. He has also denied all suggestions regarding the land and the house in dispute to have been given to the appellant/plaintiff/Institute on its acquisition.

16. Another witness Devender Gaur, DW.3 who claims himself to be a neighbour of the defendant supported the contention of the respondent/defendant that the land in dispute was never acquired by the Government for the purposes of construction of IIT. He was aware of the existence of the house for the last 20 years. Though he had never seen the papers of khasra no.35 but categorically stated that the house in question falls in the aforesaid khasra.

17. Similarly, one Khazan Sharma, DW.4, a co-villager and a land owner of the Jia Sarai village has affirmed the fact that the respondent/defendant had built a house on Khasra no.35, falling in village Jia Sarai. The land was stated to be ancestral property of the respondent/defendant and that they were not the trespassers. His house was stated to be situated at a distance of 300 yards from the house in question.

18. The Trial Court overruled the objections of respondent/defendant with regard to the suit valuation and that the suit was not filed by the authorized person.

19. The preliminary objection of the respondent/defendant regarding the estoppel over the suit was also outrightly rejected as the respondent/defendant could not prove that they had perfected their title over the suit property by way of adverse possession for continuous 30 years.

20. On analysis of the evidence of PW.1, it becomes very clear that he has failed to prove the site plan Ex.PW.1/1. The site plan is undated and does not bear the name and signatures of the maker. The maker (not known) has not proved the aforesaid site plan. Ex.PW.1/1

does not even contain the khasra number or the village in which the property is stated to be situated. Thus there was no identification of the precise khasra number and therefore the location of the suit property over which the respondent/defendant are alleged to have trespassed was also not established.

21. The appellant/plaintiff has heavily relied upon the report of Patwari and Kanoongo dated 30.08.1979 which indicated that Gauri Shankar, the predecessor of the respondent/defendant, had trespassed into the property. The aforesaid report was not accepted by the Trial Court on the ground that the site plan of the property was prepared in the year 1975 but there was no reference of encroachment or trespass. Since all the witnesses offered on behalf of the appellant/plaintiff were hearsay and the site plan, the sheet anchor of the plaintiff, could not be proved, the case of the appellant/plaintiff completely failed. In the absence of any specific sources of information regarding the names of the trespassers, in the report dated 30.08.1979, the report also loses its significance and relevance for the purpose of determining the cause for filing the suit. Assuming that the list prepared by the Patwari and Kanoongo dated 30.08.1979 included in it the name of late Gauri Shankar, the predecessor of respondent/defendant, but in the absence of any further information as to which portion or area of the land was encroached by which of the trespassers, makes the report absolutely unacceptable. That apart, the report dated 30.08.1979 has not been proved in accordance with law.

22. The Trial Court rightly took exception to the fact that the plaint describes the encroachment of 152 sq. yards falling in khasra numbers

236/35/1, 234/32/2/1, 235/34/2/1 and 74/1. It is difficult to conceive that 152 sq. yards would fall in all the above khasra numbers.

23. The First Appellate Court also discarded Ex.PW.1/1 as it did not have any signature of either the maker or the witnesses offered on behalf of the appellant/plaintiff and was absolutely lacking in particulars as to khasra number of suit property or presence/indication of any construction. The First Appellate Court concurred with the findings of the Trial Court that no reliance could be placed on the aforesaid documents. Similarly, the First Appellate Court also refused to attach any credence to the list of trespassers (Mark C) on the ground that it was not proved nor did it contain exact particulars of the area trespassed by which of the persons in the list.

24. The First Appellate Court also rejected the contention of the appellant/plaintiff that the certified copy of the demarcation report, being a public document, was acceptable and admissible even in the event of same not having been proved. The First Appellate Court, therefore, concurred with the findings of the Trial Court.

25. The contention of the appellant/plaintiff that both the courts below did not properly appreciate the facts of this case including the documentary evidence and wrongly discarded the admissible evidence, does not have any force.

26. On the contrary, this Court finds force in the submission of the counsel for the respondent/defendant that the scope of the interference with the concurrent findings of the facts while exercising jurisdiction under Section 100 CPC by this Court, is very limited and re-appreciation of evidence is neither permissible nor called for in the

facts of the present case. This Court is of the considered view that courts below have not misdirected themselves in appreciating the question of law and facts and there does not remain any scope of any interference as no substantial question of law has been raised.

27. The substantial question of law on which this second appeal was admitted is whether the site plan and the documents as well as the report of the Kanoongo (mark B) and the certified copy of the list of unauthorized occupants (mark C) are admissible in evidence without the maker of said documents being produced in evidence. The answer of the poser is in the negative. The aforesaid documents are not public documents and no presumption of correctness is attached with these documents. The documents are only an expression of the impressions of the Tehsildar, Patwari or Kanoongo and for it to be admissible, it requires to be proved.

28. Public documents have been defined under Section 74 of the Indian Evidence Act.

“74. Public documents.—*The following documents are public documents:—*

- (1) Documents forming the acts, or records of the acts—*
 - (i) of the sovereign authority,*
 - (ii) of official bodies and tribunals, and*
 - (iii) of public officers, legislative, judicial and executive, 1[of any part of India or of the Commonwealth], or of a foreign country; 1[of any part of India or of the Commonwealth], or of”*

29. All other documents are private documents.

30. The documents which have been relied upon by the appellant/plaintiff do not have a corresponding entry in any public or

official register or book and therefore the contents of the same cannot be taken in evidence without proper proof. All the aforesaid documents are in the nature of the perceptions of a Tehsildar or Kanoongo and they have not been examined to prove the aforesaid reports.

31. Thus this Court is of the considered opinion that both the courts below were justified in dismissing the suit of the appellant/plaintiff.

32. The second appeal is dismissed but without costs.

CM Appln.3277/2009

1. In view of the appeal having been dismissed, the application has become infructuous.

2. The application is disposed of accordingly.

ASHUTOSH KUMAR, J

JULY 14, 2016

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