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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No. 146/2013

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29th August, 2016

DELHI URBAN SHELTER IMPROVEMENT BOARD

.....Appellant

Through: Mr. Parvinder Chauhan and Mr. Nitin Jain, Advocates.

versus

KANWAR SINGH & ORS.

..... Respondents

Through: Mr. Rampal Tokas, and Mr. Adan Ahmed, Advocates for R-1 with R-1 in person.
Mr. Rakesh Mittal, Advocate for D-3/DDA.
Mr. Anuj Aggarwal and Mr. Shubhanshu Gupta, Advocate for UOI

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The issue in the present second appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) is crystallized in the Order of this Court dated 13.2.2014 as to whether respondent no.1/plaintiff as per his case is situated in land in Khasra no. 78/16/2 and 25 of Mauja Palam, now known as Mahavir Vihar, New Delhi or respondent no.1/plaintiff is located in land in

Khasra no. 27/17 in village Mirzapur as is the case of the appellant/defendant no.1.

2. By the Order dated 13.2.2014 demarcation was directed to be made by total station method so as to determine the exact location of the land claimed by respondent no.1/plaintiff.

3. Demarcation report has been filed in this Court pursuant to the said Order dated 13.2.2014. The relevant portion of the demarcation report reads as under:-

“After superimposing the demarcation survey over sizra map. The following results appeared

- i) Disputed land falls in Khasra No. 78/16/1 Palam village and Kh. No. 27/15/1 Village Mirjapur. These has been shown in the drawing as dark green colour for village-Palam and pink colour for village-Mirjapur.
- ii) The dispute area of Kh. No. 27/15/1 in village-mirjapur is 45.3 Sq. yd. & the disputed area of Kh. No. 78/16/1 village-Palam is 47.1 Sq. yd.
- iii) The disputed land is a vacant land.”

4. A reading of the aforesaid portion of the demarcation report shows that the disputed land falls not in Khasra no. 78/16/2 and 25 of village Palam as was the case of respondent no.1/plaintiff, but the same falls in Khasra no. 78/16/1 of village Palam. Part of the disputed land also falls in Khasra no. 27/15/1 of village Mirzapur. The land area in village Mirzapur is 45.3 sq. yds. whereas the land area in village Palam is 47.1 sq. yds.

5. In the present case, therefore, it is seen that parties have not gone to trial with respect to the land in question falling in Khasra no. 78/16/1 of village Palam (because as per the plaintiff/respondent no.1 he claims rights in Khasra no. 78/16/2 and 25 of village Palam) or Khasra no. 27/15/1 of village Mirzapur (as stated in the demarcation report), of areas of 47.1 sq. yds. and 45.3 sq. yds. respectively. Really, therefore, the present case is a case of land which is not the land in dispute as per the pleadings of the parties.

6. The issue will still however remain as to whether the land on which respondent no.1/plaintiff is located, i.e 40 sq. yds. of land, falls or does not fall in acquired land of land otherwise owned by the appellant/defendant no.1 or its predecessor-in-interest. The right of the appellant/defendant no.1 would only be if the land on which respondent no.1/plaintiff is in any manner owned by the appellant/defendant no.1 or conversely if respondent no.1/plaintiff proves that, as against the appellant/defendant no.1, he has a better entitlement to the land in which he claims rights.

7. Since the respondent no.1/plaintiff had filed a suit with respect to the suit property claiming to be situated in Khasra no. 78/16/2 and 25 of village Palam, and the suit land is however not situated on this khasra number but on a totally different khasra number of village Palam and also on land in village Mirzapur, hence there is no defence of the appellant/defendant no.1 as regards

the non-ownership and non-entitlement of the respondent no.1/plaintiff to the land which respondent no. 1/plaintiff claims in terms of the demarcation report filed in this Court.

8. Accordingly, it is found that the judgments of the courts below do not dwell on the issue of entitlement of the respondent no.1/plaintiff of the land where respondent no.1/plaintiff is actually located as per the demarcation report and which is in different areas in Khasra no. 27/15/1 of village Mirzapur and Khasra no. 78/16/1 of village Palam. As regards this land, therefore, respondent no.1/plaintiff will have to file an appropriate suit with appropriate pleadings and in which suit the appellant/defendant no.1 herein will have all rights to contest the same for denying the entitlement/rights which respondent no.1/plaintiff may claim in the land in which respondent no.1/plaintiff is actually located upon either in village Palam or in village Mirzapur.

9. This second appeal and the suit itself is accordingly disposed of in terms of the aforesaid observations by setting aside the judgments of the courts below and giving liberty to respondent no.1/plaintiff to file a suit with respect to the land on which respondent no.1/plaintiff is found to be located and in which rights including ownership rights are claimed by respondent no.1/plaintiff, and in such a suit when filed it will be open to the appellant/defendant no.1 in this

second appeal/suit to take all appropriate defences as permissible in facts and law.

10. Reference in this judgment to the appellant/defendant no.1 and respondent no.1/plaintiff will include their respective predecessor-in-interest.

11. The Regular Second Appeal is disposed of in the aforesaid terms.

AUGUST 29, 2016

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VALMIKI J. MEHTA, J

