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HIGH COURT OF DELHI AT NEW DELHI

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R.S.A. No.202/2008

Decided on : 13th May, 2016

BHAGMAL (DECEASED) THRU. LRS Appellant

Through: Mr. Anil Sapra, Senior Advocate with Dr. Harsh Pathak, Dr. Shailendra Sharma, Mr. Mohit Choubey & Mr. Siddhartha Shukla, Advocates.

Versus

UOI & ORS. Respondents

Through: Mr. Arun Kumar, Govt. pleader for R-1/UOI in RSA 202/2008.
Mr. Ajay Verma, Senior standing counsel for the DDA with Ms. Kirti Parmar, Mr. Vaibhav Mishra, Ms. Malvika Trivedi & Mr. Jitendra Tripathi, Advocates for NDMC/R-4.

WITH

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R.S.A. No. 203/2008

BHAGMAL (DECEASED) THRU. LRS Appellant

Through: Mr. Anil Sapra, Senior Advocate with Dr. Harsh Pathak, Dr. Shailendra Sharma, Mr. Mohit Choubey & Mr. Siddhartha Shukla, Advocates.

Versus

UOI & ORS. Respondents

Through: Mr. Arun Kumar, Govt. pleader for R-1/UOI in RSA 202/2008.

Mr. Ajay Verma, Senior standing counsel
for the DDA with Ms. Kirti Parmar,
Mr. Vaibhav Mishra, Ms. Malvika
Trivedi & Mr. Jitendra Tripathi,
Advocates for NDMC/R-4.

AND

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R.S.A. No. 205/2008

BHAGMAL (DECEASED) THRU. LRS Appellant

Through: Mr. Anil Sapra, Senior Advocate with Dr.
Harsh Pathak, Dr. Shailendra Sharma,
Mr. Mohit Choubey & Mr. Siddhartha
Shukla, Advocates.

Versus

UOI & ORS.

..... Respondents

Through: Mr. Arun Kumar, Govt. pleader for
R-1/UOI in RSA 202/2008.
Mr. Ajay Verma, Senior standing counsel
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Trivedi & Mr. Jitendra Tripathi,
Advocates for NDMC/R-4.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. These are regular second appeals filed by the LR's Pratap Singh, Prakash Singh and Pradeep Kumar of the appellant Bhagmal (since deceased) under Section 100 CPC against the order dated 30.5.2008 passed by the learned ADJ wherein the judgment dated 1.12.2005 in Suit

No.256/04/68 granting permanent injunction in favour of the appellant was set aside.

2. It would be pertinent here to mention that one more second appeal filed by the deceased appellant Bhagmal through another legal heir bearing No.219/2008 involving the same issue was dismissed by this court vide order dated 8.5.2013 while holding that the issues sought to be raised by the appellant before this court by way of the said appeal are essentially questions of facts which have already been adjudicated by the learned ADJ in the impugned order. Thereafter, an SLP was filed against the said order which is pending before the Hon'ble Apex Court. In the meantime, proceedings of these appeal were adjourned from time to time to await the decision in the said SLP. However, the said SLP was admitted and it was observed that the said SLP would be considered after the decision in the aforesaid three appeals is pronounced. It was also observed that the High Court should decide these appeals as expeditiously as possible. Therefore, the matter was heard. These are remaining three appeals filed by the other three legal heirs of Bhagmal.

3. The brief facts are that the deceased Bhagmal filed a suit for mandatory and permanent injunction claiming ownership of the agricultural land with a share in the Shamlat of Village Arakpur Bagh Mochi, Delhi. It was averred in the plaint that region Arakpur Bagh Mochi is a combined name of two villages, namely, Arakpur and Bagh Mochi which were shown at a distance of one mile from each other in the revenue records and as such they were two different villages. It was

further stated that the abadi land in Arakpur village was shown in Khasra Nos.85, 84, 90 and 92.

4. It was also averred that the agricultural land of village Arakpur Bagh Mochi was acquired by Government vide award No.28 of 9.12.1912 and 4.2.1913 wherein the abadi area falling in Khasra Nos.85, 84, 90 and 92 of which deceased Bhagmal claimed to be exclusive owner, was excluded from acquisition.

5. The appellant Bhagmal (since deceased) alleged in the plaint that the respondents interfered in his possession and built some structures on the land belonging to him and therefore, prayed for a decree of permanent injunction restraining the respondents from interfering with the possession of the appellant/plaintiff over 82 bighas and 5 biswas of land in Khasra No.85, 84, 90 and 92 and further for decree of mandatory injunction for removal of encroachments on 12 Bighas of land in portions of Khasra No.84 and 90.

6. The respondents filed their written statement and denied all the averments made in the plaint while stating that Arakpur Bagh Mochi is one revenue estate and that appellant Bhagmal is trying to usurp the land and trespass on to it. It was further stated that only abadi land which was acquired vide award No.28 was in Khasra No.224 which belongs to the Government.

7. The suit filed by the deceased Bhagmal was also stated to be barred by time as land in village Arakpur Bagh Mochi stood acquired and

owners were paid compensation and no objection was raised by any person including deceased appellant Bhagmal at any point of time. It was also averred that the suit land is not correctly identified by the appellant in the plaint. The respondent/DDA also filed its written statement reiterating that the deceased Bhagmal is trying to encroach upon the Government land in the garb of the present suit.

8. After pleadings of the parties, the learned Judge framed the following issues :-

- “1. Whether the plaintiff is the owner and in possession of the disputed property? If not to what effect? OPD*
- 2. If issue No.1 is proved has the land been validly acquired by the defendants? OPD*
- 3. Whether any valid notice under Section 80 CPC and Section 53-B of the DD Act, has been served upon the defendant. If so, to what effect? OPD*
- 4. Whether the defendants No.2 & 3 can be sued as such? OPP*
- 5. If issue No.4 is proved is the suit maintainable in the present form? OPD*
- 6. If the suit is not property valued for the purposes of court fee and jurisdiction? OPD*
- 7. Relief.”*

9. After framing of issues, evidence was led by both the deceased plaintiff Bhagmal as well as the respondents. On the basis of the evidence and the pleadings of the parties, the learned Civil Judge drew an

adverse inference against the respondents on the basis of testimony of DW A-1 and held that as the said witness avoided the questions regarding exclusion or inclusion of abadi area of village Arakpur Bagh Mochi, the land which was left out from acquisition comprised of land falling in Khasra No.84, 85, 90 and 92 of which the appellant claimed the ownership and also partly decreed the suit restraining the respondents from interfering in his possession over 22 bighas of the suit land and the respondent/NDMC was directed to remove its temporary godown situated in 15/16 bighas of the suit land within one month. However, relief with respect to the remaining suit land was denied.

10. On appeals being preferred by the respondent/UOI and L&DO, NDMC and DDA bearing R.C.A. Nos.17/2007, 18/2007 and 19/2007 respectively against the impugned judgment of the Civil Judge before the learned ADJ, the judgment and the decree passed by the learned Civil Judge was set aside by the impugned order dated 30.5.2008 running into 458 pages which is challenged in the present regular second appeals.

11. The learned ADJ in para 58 of the impugned judgment had summed up the findings as under after detailed examination of the evidence :-

“58. *To sum up :-*

- (1) *Plaintiff has failed to prove that he is owner of the disputed property.*
- (2) *Arakpur Bagh Mochi is name of the one village having one abadi.*

- (3) *Arakpur Bagh Mochi is not combined name of two villages Arakpur and Bagh Mochi.*
- (4) *Award No.28 Ex. PW 5/1 mentions one village one abadi.*
- (5) *Village Arakpur Bagh Mochi except 8.69 acres under abadi was acquired vide Award No.28 Ex. PW 5/1.*
- (6) *Award No.28 mentions acquisition Notification under Section 6 and 7 of the Land Acquisition Act, 1894, i.e., Notification No.775 dated 21.12.1911 (Ex. DRR-16).*
- (7) *Award No.28 also mentions 795 acres of land which was notified and out of this area 8.69 acres was under the abadi of the village. It further mentions that 787.03 acres was acquired.*
- (8) *8.69 acres of abadi of village Arakpur Bagh Mochi was to be dealt with by a separate Award.*
- (9) *Admittedly, Khasra No.350 was having abadi land and it was acquired by separate Award.*
- (10) *Khasra No.350 had 8.69 acres area.*
- (11) *Khasra No.350 having 8.69 acres of area was the only left out area of 795 acres mentioned in Award No.28 Ex. PW 5/1 and it was acquired subsequently.*
- (12) *Khasra No.350 was the only left out area from Award No.28. It was the only abadi land and was acquired subsequently by Award No.29.*
- (13) *There was revenue settlement of the year 1908-09.*

- (14) *No area of land of village Arakpur Bagh Mochi was left from settlement of the year 1908-09.*
- (15) *There was departmental settlement of the year 1925-26.*
- (16) *Khasra numbers changed following departmental settlement of the year 1925-26.*
- (17) *Government can acquire any land if it feels necessary.*
- (18) *Word “now” has been used in Panchnama Ex. PW 3/1. It is not memorandum of already happened events.*
- (19) *In Panchnama the names of fifteen Panches have been mentioned but names of sellers/co-sharers have not been mentioned.*
- (20) *In Panchnama separate share of sellers has not been specified.*
- (21) *Panchnama also does not clarify regarding which particular part of Khasra No.90, 91 & 92 were subject matter of Panchnama. No site plan has been attached with Panchnama.*
- (22) *Panchnama nowhere clarifies as to whom a sum of Rs.775/- compensation was paid through Chaudhary Nathan Singh one of the Panches.*
- (23) *Panchnama nowhere clarified separate specified amount paid to individual sellers.*
- (24) *Not even a single disputant had been mentioned who had called the Panchayat.*

- (25) *Government was not party to the Panchayat despite settlement.*
- (26) *In cumulative effect Ex. PW 3/1 Panchnama does not inspire confidence. Rather it is surrounded with suspicion. Lease Deeds Ex. D-1 and Ex. D-2 of the year 1945 and 1954 were executed in favour of Sh. Bhagmal for grass cutting and grazing etc. These also mention changed Khasra numbers which are part of suit land.*
- (27) *Khasra No.84, 85, 90 & 92 are of the year 1908-09 and not of 1925-26.*
- (28) *After departmental settlement of 1925-26 Khasra No.350 was admittedly changed to Khasra No.224.*
- (29) *After departmental settlement of 1925-26 Khasra No.84, 85, 90 & 92 were also changed to Khasra No.212, 213, 214, 216, 237 and 238.*
- (30) *Masawi of mauza Arakpur Bagh Mochi for the year 1908-09 Ex. DW-A1 and Masawi for the year 1925-26 Ex. DW-A9 show abadi in Khasra No.350 of the year 1908-09 which was changed to Khasra No.224 of 1925-26.*
- (31) *Khasra No.85 shown in Masawi of the year 1925-26 Ex. DW-A9 mentions **purani abadi**. This purani abadi is not the abadi referred in Award No.28.*
- (32) *Abadi area of Award No.28, i.e., 8.69 acres is equivalent to area of Khasra No.350 (old) and Khasra No.224 (new) i.e. 41 bighas and 14 biswas.*
- (33) *Abadi land of Khasra No.350 (old) of 1908-09 and Khasra No.224 (new) of 1925-26 having area of 41 bighas and 14 biswas i.e. 8.69 acres was the abadi*

area referred in Award No.28 which was dealt with separately. This area was also notified by Notification No.775 dated 21.12.1911 Ex. DRR-16.

- (34) After departmental settlement of 1925-26 as per Ex. DRR-7 separate estate under Section 3 of Punjab Land Revenue Act, 1887 was formed after merging of certain area/part thereof of seven different village, namely, Arakpur Bagh Mochi, Hasan Pur, Ali Pur Pijanji, Kusha Pur, Mohammad Pur, Malcha and Muzahir Pur.*
- (35) Name of Arakpur Bagh Mochi was given as it had larger area.*
- (36) The Khasra No.85 of 1925-26 claimed by plaintiff is not the same khasra of 1908-09 of village Arakpur Bagh Mochi because following departmental settlement of 1925-26 khasra numbers were changed.*
- (37) In village Arakpur Bagh Mochi there was only one abadi. That abadi was in khasra No.350 of 1908-09 and was acquired by subsequent award having area of 8.69 acres (41 bighas 14 biswas).*
- (38) Copy of Intqal Register i.e. Mutation No.38 & 39 for Award No.28 & 29 shows that Mutation No.39 is for 41 bighas and 14 biswas (8.69 acres) i.e. for Khasra No.350 (old) of land.*
- (39) Mutations are based on revenue record.*
- (40) Document Ex. PW 2/1 also exhibited as Ex. P 13 is certified copy of Aks Masawi mauza Arakpur Bagh Mochi. It is actually of the year 1925-26, even though the certified copy mentions "for the year*

1908-09". It has been compared with original Masawis.

- (41) Document Ex. PW 2/1 also exhibited as Ex. P 13 is same as Ex. PW 7/1 and is showing Khasra No.85 of 1925-26.
- (42) Even from revenue record for 1871, 1880, 1903 jamabandi, none of them ever show that there is abadi in Khasra No.84, 85, 90 & 92.
- (43) Khasra No.85 of the year 1925-26 is '**purani abadi**' of village Pijanji which was merged following departmental settlement of 1925-26.
- (44) No site plan has not been filed alongwith the plaint. The prayer clause mention different area and khasra numbers.
- (45) The prayer clause of the plaint do not mention even the name of village or the locality.
- (46) In the **original plaint** plaintiff has prayed for **permanent injunction** without mentioning area and khasra number and the name of village/location. However, in the **amended plaint** plaintiff has prayed for permanent injunction qua possession of plaintiff over 82 bighas and 5 biswas of land in khasra No.85, 84, 90 & 92. Name of village/locality has not been mentioned.
- (47) In **original plaint** plaintiff has prayed for **mandatory injunction** for removal of encroachment on **94 bighas** and **5 biswas** of land which was not acquired. Name of locality or village and details of khasra numbers etc. have not been mentioned. In the **amended plaint** plaintiff has prayed for mandatory injunction qua removal of encroachment

on 12 bighas of land in portion of khasra No.84 & 90. Name of locality or village has not been mentioned. It is also not mentioned in which particular portion of khasra No.84 & 90 there exists encroachment if any. No site plan in this regard has been filed.

- (48) *The plaint which was amended in the year 1980 nowhere clarifies regarding reduction in area of encroachment. Initially in original plaint it was 94 bighas and 5 biswas of land, however, in the amended plaint it is 12 bighas in portions of khasra No.84 & 90.*
- (49) *In original plaint the relief of mandatory injunction is for 94 bighas and 5 biswas of land and for permanent injunction no specific area has been mentioned. However, in amended plaint the area of 94 bighas and 5 biswas has been bifurcated, 82 bighas and 5 biswas has been mentioned for permanent injunction and 12 bighas for mandatory injunction.*
- (50) *The relief of mandatory injunction for removal of encroachment on 12 bighas of land in portions of khasra No.84 & 90 has not been pressed for and plaintiff reserved his right for filing suit for possession for the same. However, mandatory injunction was granted directing NDMC to remove their temporary godown situated at 15/16 bighas of suit land. Khasra No. of land on which temporary godowns were located has not been mentioned while directing NDMC to remove their temporary godowns.*
- (51) *There is no averment in the plaint with respect to temporary godown of NDMC and there was no prayer for its removal.*

- (52) *The para 10 and 18 of affidavit Ex. PW-A of Pw-A1 Sh. Tarakeshwar Sharma were struck off vide order dated 4.12.2004 passed by Civil Judge being beyond pleadings.*
- (53) *Deposition in affidavit Ex. P-8/R of PW-8 Sh. Pratap Singh with regard to allegations against NDMC cannot be read in evidence being beyond pleadings.*
- (54) *The site plan Ex. D5/X2 has not been proved as per law and cannot be looked into.*
- (55) *Plaintiff is claiming injunction on the basis of ownership. Without proving ownership no relief can be granted in his favour.*
- (56) *Person can protect possession against everyone but not against true owner.*
- (57) *Plaintiff cannot shift his stand regarding possession that since he is in possession, he is entitled for relief, in view of the fact that in the suit plaintiff's claim is not on the basis of possessory title but on the basis of ownership.*
- (58) *During the course of arguments plaintiff claim of being Bhumidar in a suit for injunction is not tenable. He cannot be declared owner on the basis of bhumidari rights.*
- (59) *Provisions of Transfer of Property Act were applicable in the year 1944 in Delhi when Panchnama Ex. PW 5/1 was executed. Panchnama cannot be looked into even for consideration of long possession.*

- (60) *Entries in records of rights and annual records, revenue record, mutation No.38, 39 etc. are final and binding in view of provisions of Punjab Land Revenue Act, 1887.*
- (61) *Ex. PW-8/1 the alleged Survey Report of the year 1955 and Ex. PW 8/2 notice dated 6.5.1965 are not proof of ownership.*
- (62) *Award No.28, Notification of 1914, Revenue Record of 1925-26 clearly established that village in its entirety was acquired and government is the owner. Plaintiff is unauthorized occupant and not entitled for injunction against true owner.*
- (63) *Plaintiff has not disclosed material facts in the plaint including execution of lease Ex. D-1 of the year 1945 and Ex. D-2 of the year 1954.*
- (64) *Plaintiff has not disclosed properly cause of action and when it arose. He has only mentioned in para 8 of the plaint “That the cause of action lastly arose on 8.4.1968 when the defendants received notices.” This Notice is notice under Section 80 of the CPC dated 30.3.1968.*
- (65) *The property has not been properly described in order to identify the same. Even name of the village/locality has not been mentioned. It is not clear whether area of 82 bighas and 5 biswas of land claimed in permanent injunction is total area of khasra No.85, 84, 90 & 92 or part thereof. If it is part of these khasras then which particular part.*
- (66) *Plaintiff has failed to prove his legal rights.*

- (67) *Regarding relief of mandatory injunction, removal of encroachment on 12 bighas of land in portions of khasra No.84 & 90 has been claimed. Portions of these khasras is not clear from the plaint. No site plan has been filed even alongwith the amended plaint.*
- (68) *The site plan Ex. PW-4/1 was filed on 13.12.1974 which was prepared in August, 1972 as per the site existed at that time but not as per the site in existence in the year 1968 when the suit was instituted.*
- (69) *During the pendency of these appeals impugned order was partially executed for removal of temporary godown of NDMC.*
- (70) *Status quo order has been passed by the Hon'ble High Court in C.M. (Main) No.733/2007 on 21.5.2007 and 29.5.2007. Status quo as on 30.1.2008 was confirmed till disposal of the appeal. Vide order dated 30.1.2008 petition was disposed off by Hon'ble Mr. Justice Pradeep Nandrajog, Judge, Delhi High Court."*

12. A perusal of the aforesaid para clearly shows that the learned ADJ had dealt with all the contentions of the parties before setting aside the decree dated 1.12.2005 and laid down salient factors of the case. Therefore, the points which have been urged with regard to the absence of the award or one common award being passed in respect of the two villages are all essentially questions of fact and not substantial questions of law. A regular second appeal can only be entertained if a substantial question of law is involved in the matter.

13. My learned predecessor Hon'ble Ms. Justice Rekha Sharma had framed the following three questions on 1.9.2008 as substantial questions of law arising from the appeal :-

- “(i) Whether the land in question is said to have been validly acquired by the Government under the provisions of the Land Acquisition Act in the absence of the defendants/respondents having failed to prove taking up the possession of the same under Section 16 of the Act without placing on record a copy of the award and possession proceedings?”*
- (ii) Whether the appellants, who are admittedly in the settled possession of the suit land have a right to protect their possession against the respondents?*
- (iii) Whether the panchnama dated 4.8.1944 exhibit PW 3/1 requires compulsory registration under the provisions of the Indian Registration Act as well as the Transfer of Property Act?”*

14. A substantial question of law has been interpreted by the Supreme Court in *Sir Chunilal V. Mehta and Sons Limited vs. The Century Spinning and Manufacturing Company Limited*; AIR 1962 SC 1314 to mean as under :-

“The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by this court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of

applying those principles or that the plea raised is palpably absurd, the question would not be a substantial question of law.”

15. Elaborating issue/question No.1 further regarding acquisition of the land in question, Mr. Sapra has contended that Arakpur Bagh Mochi are two different villages and this is suggested by the revenue record also. Moreover Arakpur is now forming part of Sarojini Nagar colony while as Bagh Mochi is known as Nanakpura. It has been stated that the aforesaid land though allegedly acquired by award 28 of 9.12.1912 and 4.2.1913, this fact in itself makes it clear that there were two villages which were sought to be acquired.

16. This contention of the learned senior counsel for the appellant was contested by Mr. Verma, the learned senior standing counsel for the DDA. It was contended by Mr. Verma that the judgment which has been passed by the learned ADJ runs into 450 pages and each of the submission which has been urged before this court was also urged before the first appellate court. It has been stated that the first appellate court, after discussing all the submissions made before it by either of the parties, had summed up the conclusions arrived at. It has been stated that Arakpur Bagh Mochi is one village according to the stand of the respondent and that being the position, the contention of Mr. Sapra is stated to be untenable in law. It has also been stated that there is no question of validity of the acquisition proceedings being challenged now or denying the fact that the possession of the suit land was not taken by the appropriate authority in pursuance to the acquisition proceedings.

17. First of all the question whether the land has been validly acquired or not is of general public importance. The reason for this is that not only the land was acquired more than a century back but also the fact that most of the oustees did not challenge the acquisition at the time when it ought to have been challenged. The compensation amount has already been accepted by the oustees. Admittedly Bhagmal (since deceased) is a subsequent purchaser. He could not challenge the acquisition proceedings as they have already attained finality only because he has stepped into somebody else's shoes. Similar is the answer to the question of taking the possession of the land by the UOI. Once the land has vested in the Government, the possession must have been taken long back. If somebody has trespassed the land and is holding on to the same that does not mean that it has a right to retain the land. As a matter of fact, the Government of India after the acquisition of land in the latter part, that is, after independence has build quarters for the Government employees. Therefore, in my view, the first question is a question of fact which stands concluded long back and it, in my view, does not raise any substantial question of law.

18. I have carefully considered the submissions of the respective sides and have gone through the record. There is no dispute about the fact that the acquisition proceedings have been initiated in the year 1912, that is, more than a century ago. It is not in dispute also that the suit was filed by the appellants only in the year 1968. Assuming for a moment, the validity of acquisition proceedings are to be determined in a second appeal even then the suit becomes barred by time because what is being

sought to be challenged is the acquisition which had taken place almost a century ago. Not only the land has been acquired by the Government of India but also the fact that it has built residential quarters at both the places which are known as colonies of Sarojini Nagar and Nanakpura for the benefit of the Government servants. All these facts make him believe that the appellants by hook or crook want a parcel of land to be retained which will benefit them because the land, even if it is 100 square yards, is worth crores of rupees being in the heart of South Delhi.

19. So far as the injunction which is sought to be claimed by the petitioners and the allegation made by them that they are in settled possession and therefore, they cannot be ejected, the Supreme Court in number of cases has held that even if a trespasser who is in occupation of a land, he is to be protected against all the persons except the actual owner. Since the actual owner is the Union of India, therefore, the appellants cannot set the settled possession as a defence to perpetuate their illegal possession against the true owner, that is, UOI. Necessary evidence by production of award has been discharged by the respondents before the trial court. Therefore, it is the trial court and the first appellant court which has recorded the finding of fact that the land has been validly acquired. Therefore, this contention on the part of the appellant that the land in question was not acquired validly inasmuch as the award was not proved, does not essentially form a question of law, it is only a question of fact.

20. The appellant himself has admitted that they became owner after having purchased the same after independence. As against this, the acquisition proceedings were started in the year 1912. If that be so, then the question of limitation would also come into play as the suit for possession, injunction etc. has to be filed within a period of three years from the date of acquisition of cause of action while as in the instant case, it has been filed after more than 50-60 years. Thus, the suit itself was hopelessly barred by time. So far as the taking of possession of the suit premises is concerned, it is stated that the possession of the premises was already taken by the respondent and in any case this is a question of fact and not a question of law. It is also stated that according to the record of the land in question, it has been found that though the possession of the land in question has already been taken; however, some unauthorized structures/houses have been built by the appellant and thereby claiming the possession of all.

21. The second issue/question which has been raised by my learned predecessor is whether the appellants who are claiming to be in settled possession of the suit land have a right to protect their possession. So far as the settled possession of the appellants is concerned, no doubt they have been denied the injunction by the trial court and the appellate court. The very fact that the appellants are claiming themselves to be in possession of a suit land and have stated that they have a right to protect their land against the respondents, I feel that this is an unreasonable restriction which has been put on the activities of the appellants. It is stated that whether the possession of a parcel of land is taken pursuant to

the acquisition proceedings or not, is only a question of fact and not a question of law much less substantial question of law. In the light of this discussion, issue No.2 is also decided against the appellants.

22. The last question which has been framed by my learned predecessor is whether *panchnama* dated 4.8.1944 exhibit PW 3/1 requires compulsory registration under the provisions of the Indian Registration Act as well as the Transfer of Property Act. It is stated that so far as the appellants are concerned, they have placed reliance on *panchnama* exhibit PW 3/1. This *panchnama* has been rejected by the learned first appellate court by observing that in cumulative effect exhibit PW 3/1 does not inspire confidence rather it is surrounded with suspicion. The lease deed exhibit D-1 and D-2 of the year 1945 and 1954 were executed in favour of Bhagmal for grass cutting and grazing. This information also mentions the changed khasra numbers. In the light of the aforesaid observation passed by the learned first appellate court, it has been observed that this *panchnama* is not signed by the purchasers nor is it got registered despite the fact that Section 17 (1) (b) of the Registration Act clearly requires that a document which creates right, title or interest in an immovable property, the value of which is more than Rs.100/- deserves to be compulsorily registered while as in the instant case, the document has not been registered. In any case, the question as to whether the document is registered or not that is a consequence of non-registration of a document that it becomes inadmissible in evidence. Therefore, so far as issue No.3 is concerned, that also takes care of the third question of law purported to be arising in the instant case.

23. In view of the aforesaid facts of the case, as a matter of fact three questions which have been framed by the learned court are essentially questions of fact and are not questions of law. A perusal of the conclusion arrived at by the learned trial judge will clearly show as recorded in para 58 that all these points which have been raised by the appellant are questions of fact and not questions of law.

24. For the aforesaid reasons, I find that the judgments which have been relied upon by the appellant are not of much help and therefore, I do not feel the necessity of referring to these judgments because no question of law is involved in the matter. Since no question of law arises in the appeals, therefore, all the three appeals are dismissed.

MAY 13, 2016
‘AA’

V.K. SHALI, J.