

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

+ **RSA No.111/2016 and C.M. Nos. 15228-29/2016, 25214/2016**

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18th July, 2016

SH. VIJAY KUMAR SHARMA & ANR

..... Appellants

Through: Ms. Aishwarya Rao, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR

..... Respondents

Through: Mr. D.S. Mehandru, Advocate for R-1/NDMC.

Mr. Sushil Kumar Singh, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed against the concurrent Judgments of the courts below; of the Trial Court dated 19.2.2015 and the First Appellate Court dated 28.3.2016; by which the suit for declaration and permanent injunction, filed by the appellants/plaintiffs that they are the owners in possession of the suit property being plot nos. A-243 and A-244 (measuring 50 sq. yards each), Bhalaswa Diary Colony, Delhi-42, has been dismissed.

2. The original owner of the suit property was Smt. Gayatri Devi as per the case of the appellants/plaintiffs. The appellants/plaintiffs are the persons who are claiming their title from Smt. Gayatri Devi who had further sold the suit plots. Though, there is some issue with respect to Smt. Gayatri Devi being allotted the subject plot nos. A-243 and A-244 or other plots numbered as A-398 and A-399, as per the conclusions drawn by the courts below and with which I agree, this aspect as to which plots were allotted to Smt. Gayatri Devi would not make a difference for dismissing of the suit. The courts below have essentially dismissed the suit on the ground that predecessor-in-interest of the appellants/plaintiffs i.e, Smt. Gayatri Devi, through whom the title is traced, herself had no ownership interest in the suit plots and was only a licensee of the respondent no.1/North Delhi Municipal Corporation (NDMC), and therefore, appellants/plaintiffs cannot claim ownership interest in the suit plots. It has been observed by the courts below that essentially the plots in the Bhalaswa Dairy colony were allotted as an alternative allotment to such persons who were carrying on their dairy businesses within urban limits and since such businesses within urban limits had to be closed, such persons hence were given alternative plots in Bhalaswa Dairy colony to run their dairies. The courts below have held that as per the terms of allotment the suit plots cannot be constructed upon unauthorisedly, they could only be used for the purposes of dairy, they could not be sold nor the same could be transferred or mortgaged or leased and the title of the plots were to continue to vest in the NDMC till the NDMC decided to give any ownership interest to the allottees.

3. Trial court in paragraphs 16 to 18 of its judgment has exhaustively given the reasons for denying the reliefs to the plaintiffs of being declared as owners in possession by observing as under:-

“16. Even if, it is accepted for the sake of arguments that the suit plots had been allotted in favour of the predecessor-in-interest of the plaintiffs. It is pertinent to note that DW-1 has tendered the terms and conditions of allotment of dairy plots as Ex.DW-1/5. The plaintiffs have not challenged the said document. In the said terms and conditions, it has been stipulated that the title of land would vest in the MCD till such time, it was not decided otherwise by it (MCD). Further, the land/plot would not be used for any purpose other than for keeping the dairy animals and would not be sold, mortgaged or given on rent by the allottee. The above said two conditions prohibit the allottee to transfer his/her interest over the allotted plots/land to any other person by way of sale, mortgage or lease. It has been categorically mentioned in the terms and conditions that titles of land would vest in MCD. The plaintiffs have not produced any documents to show the title of the land had been transferred in the name of their any of predecessors-in-interest or to them (plaintiffs). In that manner, the plaintiffs, who are admittedly not original allottees of the suit plots, they can not be entitled to claim declaration as prayed by them, in contravention of the above said conditions. Furthermore, the plaintiffs have claimed transfer of ownership rights in their favour by way of execution of general power of attorney etc. by Smt. Gayatri Devi to other persons and finally in favour of the plaintiffs. But, it is trite law that said documents do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The precedent laid down by the Hon’ble Supreme Court in **Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr.**, in SLP (C) no. 13917/2009 decided on 11.10.2011, has been relied upon.

17. Further, the documents such as voter I-card, ration card, electricity bill and telephone bill showing the name of plaintiff and bearing address of the suit property, themselves, do not prove ownership of the plaintiffs over the suit property. Further, since the defendant no. 1 has stated that the plots no. A397-398 had been allotted to Smt. Gayatri Devi, then it was not required to prove that who was in the possession of the said plots at present. If the plaintiffs wished to prove any point from the aspect as to who is in possession of the said plots, then it was for them to prove the said aspect. Further, there was no dispute in respect of demarcation of the suit plots. Hence, defendant no. 1 was not supposed to do the same either

in respect of suit plots or of plots no. A397-398. In view of above aid observations, the other arguments advanced on behalf of plaintiffs on this issue do not make out any case in their favour. Hence, the plaintiffs are not entitled to declaration as prayed. Issue no. 1 is decided against the plaintiffs.

18. Issue no. 2:

The plaintiffs have claimed for decree of permanent injunction restraining the defendants from dispossessing them from the suit property and demolishing the same in any manner. It is reiterated that the plaintiffs have failed to prove their rights over the suit property as they have not been able to prove that the suit plots had been, in fact, allotted in the name of Smt. Gayatri Devi. They have failed to explain the correction in the allotment letter issued in her favour. In that manner, they would be termed as trespasser over the suit property. It has already been observed that the title of the impugned plots still vests in MCD. Furthermore, in the terms and conditions of allotment mentioned in Ex.DW-1/5, it has been stated that no unauthorized construction would be made on the plot. Further, allottee would not keep cattle less than the number for which land/plot had been allotted and if the number of cattle was found less for continuous two months, the land/plot would be received back without any compensation. PW-1, during his cross-examination, stated that he did not do any business of dairy. The suit property i.e. A-243 consisted of two rooms, latrine, bathroom on ground floor and one room and kitchen at first floor. Further, he had never done the business of dairy at the suit property. He was not aware as to whether the dairy plots could be sold or not. He admitted that as the plots were allotted to the dairy owners who were running the business in the urban area and only the dairy could be run in those plots. Similarly, PW-2, during his cross-examination, deposed that he had no concern with the dairies. The suit property i.e. A-244 consisted of two rooms, kitchen, latrine, bathroom at ground floor and at first floor, there was one room. He was not doing any business with regard to dairy. He had never done the business of dairy at the suit property. He also admitted the suggestion that as the plots were allotted to the dairy owners who were running the business in the urban area and only dairy could be run in those plots. In view of the above said version of plaintiffs vis-a-vis document Ex.DW-1/5, it is categorically made out that the plaintiffs had raised unauthorised construction in contravention of the terms and conditions of allotment of the suit plots. Further, they had not been using the plots for dairy purposes for which the said allotment had been done. PW-1 and PW-2 had deposed that they had not got any sanctioned building plan in respect of the construction. When the plaintiffs admittedly had not got any

sanctioned plan for raising construction over the suit property, then how the plaintiffs would be entitled to get permanent injunction against the action to be taken by a statutory body which supervises or take action against any unauthorised construction raised in area within its jurisdiction. Furthermore, the reply to the show cause notices issued by MCD to the plaintiffs i.e. Ex.DW-1/3 and DW-1/4 are contradictory to their (plaintiffs) deposition before the Court as PW-1 and PW-2 on relevant aspects.”

(underlining added)

4. From a reading of the aforesaid paragraphs of the judgment of the trial court, it is clear that allotment of plots was not with any ownership interest in the same which continued to vest in the NDMC till the NDMC decided otherwise. Plots were meant to be used for the purposes of running a dairy but the appellants/plaintiffs were not using the plot for a dairy. The plots should not have been unauthorisedly constructed upon but the appellants/plaintiffs have unauthorisedly constructed upon the suit plots without getting any sanctioned building plan. In sum and substance it has been held by the courts below that *nemo dat quod non habet* i.e, no one can give what he has not got and since predecessors-in-interest of the appellants/plaintiffs did not have ownership interest in the suit plots, (whatever be their number either A-243 and A-244 or A-398 and A-399), the same could not have been sold/transferred ahead for the appellants/plaintiffs to claim ownership rights and thus *locus standi* to file the subject suit.

5. Learned counsel for the appellants/plaintiffs sought to argue that there were no terms and conditions mentioned at the time of allotment, and attention of

this Court is invited to page 55 of the paper book of this appeal showing the allotment letter, however, it is clear that the appellants/plaintiffs have only filed the allotment letter which is actually Ex.DW-1/2 and they have not filed in this Court the terms and conditions Ex.DW-1/5 attached to the allotment letter and which terms and conditions Ex.DW-1/5 have been exhaustively referred to by the trial court in paragraphs 16 to 18 of its judgment, and therefore, I cannot agree with the counsel for the appellants/plaintiffs that there are no terms and conditions mentioned in the letter of allotment at page 55.

6. In fact, in my opinion, appellants/plaintiffs are being less than fair to the Court and it can be said that there is concealment of facts, inasmuch as, surely the document at page 55 is only a limited document being the allotment letter Ex.DW-1/2 without the terms and conditions document Ex.DW-1/5. Otherwise, both the courts below would not have referred to in the judgments the terms and conditions which are part of this document Ex.DW-1/5.

7. In view of the above, I do not find that any substantial question of law arises for this Court to entertain this appeal under Section 100 of CPC.

8. However, before parting with the case I would like to note the submission made on behalf of the appellants/plaintiffs which was made by referring to the photographs of the constructions made in the Bhalaswa Dairy colony and it is argued on this basis that most of the allottees have made illegal

constructions and in fact respondent no. 1/NDMC is acting illegally by arbitrarily and unfairly for ulterior purposes resorting to picking and choosing persons for taking action. It is argued that NDMC is therefore not acting legally because the fact of the matter is that today the colony is no longer a dairy colony but is a private residential colony with no dairies being run therein and thus action, if has to be taken, has to be taken against all in accordance with a policy as per the present circumstances prevailing and not selectively to prejudice some persons. This argument, taking the same to be correct hypothetically, the same will possibly show pick and choose action of the government authority/respondent no.1/ NDMC as to when the colony is no longer a dairy colony in which dairy business is to run and that why action is not taken against all the allottees but only appellants/plaintiffs. This would however be a matter for examination in case a proper writ petition is filed by the appellants/plaintiffs and this Court cannot in Regular Second Appeal under Section 100 CPC go into this aspect urged, inasmuch as, this Court has to decide, effectively the suit, as per the record as appearing in the suit.

9. The present appeal is accordingly dismissed.

10. At this stage, learned counsel for respondent no. 1 states that whatever are the goods which are lying of the appellants/plaintiffs in the suit property, the same can be removed by the appellants/plaintiffs within a period of two weeks from today and therefore the officers of respondent no. 1 are directed to remain

present at the suit property on 28th/29th July, 2016 at 11:30 a.m on both the dates so that the appellants/plaintiffs can remove their goods, fittings and fixtures etc from the suit property.

JULY 18, 2016

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VALMIKI J. MEHTA

