

\$~9

\*       **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+                               **RSA 22/2016**

**Date of Decision: 22.01.2016**

SURAJ SINGH (DECEASED) THR HIS LRS ..... Appellant  
Through:   Mr.A.K. Singh, Adv.

versus

DELHI ADMINISTRATION & ANR ..... Respondents  
Through:   Mr. Peeyoosh Kalra, Addl.  
              Standing Counsel with Ms.  
              Sona Babbar, Adv. for R-1.  
              Mr. Roshan Lal Goel, Adv. for  
              UOI/R-2

**CORAM:**  
**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**ASHUTOSH KUMAR, J. (ORAL)**

**CM Appln. No.2322/2016**

Exemption allowed subject to all just exceptions.

Application is allowed.

**CM Appln. No.2321/2016**

For the reasons stated in the application, the delay of 17 days in re-filing the appeal is condoned.

The application is allowed and disposed of accordingly.

**RSA No.22/2016**

1.    The present second appeal is directed against the judgment dated 28.04.2015 passed by JSCC-cum-ASCJ, Rohini Courts, Delhi,

in RCA No.5/2013 whereby the judgment and order dated 21.09.2013 passed by the learned Civil Judge, Central, Tis Hazari Courts, Delhi in Suit No.859/10/94 (Suraj Singh vs. Delhi Administration and Another) dismissing the aforesaid suit, has been affirmed.

2. The appellant/plaintiff sought restraining orders against the defendant Nos.1 & 2 from dispossessing him from the suit property. He claimed himself to be the owner and possessor of a plot measuring 86 sq.yards falling near bus stand, Village Old Lal Dora of Village Badli, Delhi since 1961-62. On the aforesaid land, the appellant kept his cattle. The ownership was claimed by way of adverse possession over the aforesaid property. Some construction was carried out over the said land in the year 1980 and electric and water connections were obtained in the name of his son and himself respectively. The cause of action arose when, on 14.07.1994, the officials of defendant No.1 came for demolishing the structure over the suit premises.

3. The defendant No.1 contested the suit on the ground that neither the ration card nor the electricity and water bills referred to or contained the address of the appellant as being resident of the suit property. It was contended that the suit property was obtained by the defendant No.1 from Gram Sabha way back in the year 1970 and since then, the defendant has been in possession of the same. A veterinary hospital is slated to be constructed over the said property.

4. While contesting the suit, the defendant No.1 reiterated that from the “Fard” in the record of the Tehsildar, the possession of the

defendant over the suit property is apparent and if the appellant plaintiff is in possession of the property, the same is illegal and cannot be perpetuated.

5. The respondent no.2/defendant no.2 never appeared and the suit proceeded ex-parte as against respondent no.2/defendant no.2.

6. The following issues were raised by the Trial Court:-

- i. *Whether the plaintiff is in possession of the suit premises? OPP*
- ii. *Whether the plaintiff is entitled to the relief of permanent injunction as sought for? OPP*

7. The Trial Court, on finding categorical statement in para 13 of the written statement of respondent/defendant No.1 that the appellant plaintiff was in illegal possession of the suit land, decreed the suit with regard to the first issue in favour of the appellant/plaintiff by holding that Section 58 of the Indian Evidence Act mandates that the facts admitted need not be proved. The aforesaid finding of the Trial Court was concurred to by the appellate Court as well.

8. During trial, the appellant/plaintiff who examined himself as PW-3 could not prove the site plan and did not file any document to show his ownership over the suit property.

9. Trikha Ram (PW-4) in cross examination deposed that he was not aware of any documentary evidence, showing the ownership of the suit property by the appellant and no police complaint was also lodged by the appellant with regard to any forcible dispossession from the suit

property.

10. Similarly, PW-5 also did not support the assertion of the appellant that he was the owner of the suit property. In fact PW-5 stated that the appellant plaintiff resided about 500 to 600 yards away from the suit property.

11. PW-6, a Patwari, testified in his cross examination that the suit land was owned by the Government (Sarkar Daulat Madaar).

12. The Trial Court, finding that no revenue document in the nature of Khasra Girdawari/Khatauni reflecting the suit land to be of the appellant, was filed by him, dismissed the suit with regard to the second issue namely relief of permanent injunction.

13. The First Appellate Court, on perusal of the documents (Exhibits PW-2/1 and PW-2/2) and deposition of PW-2 who proved that the suit property belonged to the Government and that the appellant did not have any title, right or interest therein, affirmed the finding of the Trial Court.

14. A person in wrongful possession of suit property is definitely not entitled to an injunction. He cannot even be permitted to perfect his title by way of adverse possession.

15. Where a person seeking permanent injunction is in possession of a property but his title to the property is in dispute or under a cloud or where the defendant asserts his title thereto, per force, such person will have to sue for declaration of title and the relief of injunction

could only be consequential.

16. Thus, both the Courts have rightly rejected the prayer of the appellant for grant of permanent injunction against defendant No.1.

17. No question of law, much less any substantial question of law arise in the present case, justifying admission of the second appeal.

18. The appeal is dismissed.

**ASHUTOSH KUMAR, J**

**JANUARY 22, 2016**

k