

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : October 27th, 2017

+ RFA 21/2007

DAYAWATI

..... Appellant

Through: Ms.Shabeena Anjum, Mr.Mohd.
Amanullah and Mr.Misbah Bin Tariq,
Advs.

versus

DDA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The appellant has filed the present appeal being aggrieved by the judgment and decree dated 04.09.2006 passed by the learned Additional District Judge, Delhi whereby the suit filed by the appellant/plaintiff stands dismissed.

2. The facts enumerating from the plaint filed before the Court below are that the plaintiff/appellant is the owner of free hold built up property bearing No. B 1757/27, Shastri Nagar, Delhi 110052 on area measuring 65 sq. yds comprised in Khasra No. 157, Village Nimiri vide registered sale deed dated 29.05.2003. The suit property was owned by Smt. Leelawati who sold off the suit property to Shri Sarup Singh vide GPA dated 24.08.1983, agreement dated 22.08.1983 and

receipt dated 22.08.1983 for a consideration of Rs.7,920/- and later on, Shri Sarup Singh sold off the suit property to Smt. Dayawati w/o Sarup Singh. The officials of defendant/ respondent came to the suit property in March 1998 along with police force and told that they had come to acquire Delhi Development Authority land. Shri Sarup Singh, the previous owner had enquired from them* and it was revealed that they had come to acquire khasra no. 152 and the property falls under same khasra Number. A letter dated 30.01.2003 from the defendant/ respondent states that the suit property bearing No. B- 1757/27 Shastri Nagar, Delhi was demarcated and is fallen in khasra no. 157 of Revenue Estate of Nimiri Village, Delhi. As per this letter Shri Sarup Singh was encroacher on khasra no. 158. It was further submitted by the plaintiff/appellant that the suit property falls in khasra No. 157. On 03.06.2003, plaintiff/ appellant filed suit for permanent injunction against the defendant/ respondent. During the pendency of injunction suit, on 06.06.2003 defendant/ respondent had demolished the built up property of plaintiff/appellant bearing no. 1757/27, Shastri Nagar, Delhi -110052.

3. In the written statement filed on behalf of the defendant/ respondent, different objections have been taken by the Delhi Development Authority contesting the suit on the grounds that the suit is not maintainable for want of notice u/s 53 B of the Delhi Development Act. This land was placed at the disposal of Delhi Development Authority for its development vide notification No: F8(49) 63 / L & H (ii) dated 27.05.1968 issued under the provisions of

Section 22(i) of the Delhi Development Authority Act, 1957. The area is being developed as parks/ green belt by the horticulture department of the defendant/respondent. The land in question is entirely under the control and management of the defendant. It has further been submitted that with the help of Local Police demolition programme was carried on in order to remove unauthorized structure raised on the Government land of khasra no. 158 Min. Defendant/respondent has also denied any demolition ever tried by them over the land of khasra no. 157. It has been submitted that boundary wall has been raised over the land of khasra no. 158 Min which is a Government land. Khasra no. 157 of village Nimiri had been acquired vide award no.2008 but possession of this land had not been handed over to the Delhi Development Authority by LAC/LAB.

4. Replications to the written statements were filed on behalf of the defendants. On the basis of pleadings of the parties, following issues were framed by the Court below :

(1)Whether the suit land form the part of Khasra no. 157, situated in the area of village Nimiri as alleged by the plaintiff in the plaint?

(2)Whether the act of demolition of the suit property on 06.06.2003 by the officials of defendant is illegal and unauthorized? (OPP)

(3)Whether the suit is not maintainable for want of notice u/s 53 B of Delhi Development Authority Act? (OPD)

(4)Whether the suit has been properly valued for the purposes of Court fees and jurisdiction? (OPP)

(5) Whether the plaintiff is entitled for the relief of restoration of possession of the suit property? (OPP)

(6) Whether the plaintiff is entitled for damages to the tune of Rs 4 lakhs? (OPP)

(7) Whether the plaintiff is entitled for future losses? (OPP)

(8) Relief

5. Vide impugned judgment, the issue nos.1, 2 and 5 to 7 were decided against the appellant/plaintiff and in favour of the defendant/respondent. Issue nos.3 and 4 were decided in favour of the appellant/plaintiff and against the defendant/respondent. The suit was ultimately dismissed by the Court below. Feeling aggrieved by dismissal of the suit, the present appeal has been preferred by the appellant/plaintiff.

6. Argument advanced by the counsel for the appellant were heard and I have gone through the evidence available on record.

7. Argument advanced by the counsel for the appellant is that earlier the suit property was sold by Smt.Leelawati Devi in favour of Sh.Sarup Singh Mudgal vide General Power of Attorney Ex.PW1/1. Further that the suit property was sold by Sh.Sarup Singh in favour of the appellant vide sale deed dated 29.05.2003 Ex.PW1/4. It was further submitted that as per report dated 11.06.1998 Ex.PW1/5, the Tehsildar had reported that the suit property fell in khasra no.157 and it was never the part of khasra no.158 which the DDA/respondent claimed to be the acquired land. It was submitted by the appellant that the officials of the defendant/ respondent came to the suit property in

March 1998 along with police force and told that they had come to acquire Delhi Development Authority land. On enquiring from them it was revealed that they had come to acquire Khasra No. 152 and the property falls under same Khasra Number. The main contention of the appellant is that there was no demolition order with regard to demolition of the suit property which falls in khasra no. 157. Delhi Development Authority after giving wrong and distorted facts obtained the order for demolition of the property which falls in Khasra no. 158 and in the garb of that order, the respondent/defendant demolished the suit property and took forcible possession of the suit property.

8. The main issue to be decided in the present appeal is whether the suit property is a part of khasra no.157 as alleged by the plaintiff/appellant. The onus to prove the issue was on the appellant/plaintiff. The basis of claiming ownership on the suit property by the appellant is GPA which was marked as Ex.PW1/1 which was executed by Smt.Leelawati Devi in favour of Sh.Sarup Singh Mudgal. In the said GPA, Smt.Leelawati Devi claimed herself to be the actual owner and in possession of the suit property measuring 65 sq. yards out of khasra no.157. There is a doubt about the execution of this Attorney for the reasons that firstly it was not a registered document as it was only notarized. Secondly, no date of execution of said GPA was mentioned in it and thirdly, no purpose for execution of said GPA has been mentioned. In the absence of it being registered, it was hit by Section 54 of the Transfer of Property Act, 1882.

9. The plaintiff/appellant has relied upon lease agreement dated 22.08.1983 Ex.PW1/2. This agreement was made by Smt.Leelawati Devi in favour of the plaintiff/appellant. This lease agreement was made in respect of suit property and it was notarized on 24.08.1983. As per this agreement, the suit property was leased out to the appellant/ plaintiff for a period of 99 years. This document is also of no help to the appellant/plaintiff for the reasons that as per the case of the appellant the suit property was sold by Smt.Leelawati Devi to Sh.Sarup Singh Mudgal, husband of the appellant/plaintiff vide GPA Ex.PW1/1 (notarized on 24.08.1983) and the lease agreement for the same property was executed by Smt.Leelawati Devi in favour of the appellant/plaintiff on 24.08.1983 itself which has not been explained on record by the plaintiff/appellant. Secondly, the said lease agreement was not a registered document which is also hit by Section 17(1) and 49 of the Registration Act, 1908 and Section 107 of the Transfer of Property Act, 1882.

10. The next contention of the appellant/plaintiff is that a sale deed dated 29.05.2003 Ex.PW1/4 was executed by Sh.Sarup Singh in favour of the appellant/plaintiff vide which the suit property was sold to the appellant/plaintiff and thereby she became the owner of the suit property. In the said sale deed, it was mentioned that Sh.Sarup Singh was appointed General Power of Attorney of Smt.Leelawati Devi. Smt. Leelawati Devi claimed herself to be the absolute owner of the suit property, but no documentary evidence had been produced on record to show her ownership on the suit property. It was also

mentioned in the said sale deed that Sh.Sarup Singh had handed over previous title deed and other relevant papers to the appellant/plaintiff, but the same had not been produced on record by the appellant to substantiate her claim. There are material inconsistencies in the case of the appellant/plaintiff. Firstly, she claimed that the suit property came in possession of her husband Sh.Sarup Singh vide General Power of Attorney notarized on 24.08.1983, Ex.PW1/1, but on the other hand it has come on record that the lease agreement dated 24.08.1983 Ex.PW1/2 was executed in favour of the appellant/plaintiff. The said lease was allegedly for a period of 99 years and a sum of Rs.7920/- was paid by the appellant/plaintiff to Smt.Leelawati Devi vide receipt dated 22.08.1983 Ex.PW1/3. The sale deed Ex.PW1/4 with regard to sale of suit property was executed for a consideration of Rs.1 lakh but no receipt for the same had been produced on record.

11. Next contention of the appellant/plaintiff is that the suit property fell in khasra no.157 and the same has been proved from the report dated 11.06.1998 Ex.PW1/5 of Tehsildar. The case of the respondent-DDA was that the said report was false. To prove its case, the appellant/plaintiff had examined PW4 Sh.Subhash Chand Malhotra. He had deposed that he had signed the report Ex.PW1/5. During the course of his cross-examination, PW4 had stated that demarcation was not done by him and the documents submitted by the parties like General Power of Attorney etc. were made the basis that the suit property fell in khasa no.157 of Village Nimiri. He also stated

that sale deed was not produced by the party and only GPA was produced. He further stated that the land in question was acquired by the government but its possession was not taken. DW1 Sh.Raj Kumar, Patwari had stated that in his presence no demarcation had taken place between Khasra no.157 and 158. He further stated that in 1998 demarcation was done from one side which was not accepted by DDA. He further stated that the report was not accepted by DDA. He denied that the suit property fell in khasra no.157 and not in 158 or that it was illegally demolished by the DDA. It was also stated by this witness that no demolition was done on the land of khasra no.157, but a boundary wall was constructed over the government land of khasra no.158. It was also stated that khasra no.157 was acquired by the DDA but its possession was never taken being built up.

12. In the sale deed Ex.PW1/4 it is mentioned that the land/khasra number in which the suit property was situated was not acquired, but the demarcation report Ex.PW1/5 clearly shows that khasra no.157 was acquired vide Award No.2008 but its possession was not taken by the DDA.

13. In view of the above discussion, the appellant/plaintiff has failed to make out any ground in support of her case that the suit property forms part of khasra no.157.

14. So far the other issue regarding demolition done on the suit property in question is concerned, it has come on record that no demolition was done by the DDA over khasra no.157 and the

appropriate remedy before the appellant/plaintiff to question the said demolition is Tribunal and the not the civil court.

15. As discussed above, this Court does not find any merit in the present appeal. The appellant/plaintiff has failed to make out any error in the impugned judgment and decree passed by the Court below. Consequently, the present appeal is dismissed.

16. No order as to costs.

(P.S.TEJI)
JUDGE

OCTOBER 27, 2017
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