

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

+ **RSA No. 64/2017**

% **25th May, 2017**

M/S NEW FRIENDS COOP. HOUSE BUILDING SOCIETY PVT.
LTD. Appellant

Through: Mr. S.C. Singhal, Advocate.

versus

M/S FAIRDEAL ESTATE & ORS. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 7515/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RSA No. 64/2017

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the concurrent judgments of the courts below; of the Trial Court dated 26.7.2013 and the First Appellate Court dated 17.11.2016; by which the suit for possession, injunction and damages filed by the appellant/plaintiff was dismissed. The suit property is situated as per

the plaint in khasra no.3 of village Joga Bhai, Tehshil Mehrauli, New Delhi. The area of the subject khasra number which is in dispute is an area of 800 sq. yards.

2. Respondents/defendants filed their written statement pleading that appellant/plaintiff was not the owner of khasra no. 3 as khasra no. 3 was never allotted to the appellant/plaintiff. More importantly, it was pleaded by the respondents/defendants that the suit property was said to be situated in khasra no. 3 and of which the appellant/plaintiff claimed ownership, but the suit property was actually located in khasra no. 52. It was further pleaded that one Shankar, Tulla and Banwari were owners of khasra nos. 52, 48 and 55 who had mutually partitioned their lands. This fact was duly informed to the concerned Patwari and who made the necessary notation in the revenue record on 7.12.1954. In March, 1962 a part of the land was acquired and compensation was awarded to the aforesaid three co-sharers and their land stood mutated in favour of Union of India. Part of the land which was an independent land was thereafter re-numbered as 52/1/1. Shankar died leaving behind three sons and who became owners of the unacquired land.

3. The suit was accordingly prayed to be dismissed as the respondent no. 6/defendant no. 6 was pleaded to be the owner of the land in question.

4. After the pleadings were complete the trial court framed the following issues:-

- “1. Whether the suit is liable to be stayed under Order 10 CPC? OPD
2. Whether the suit is barred under Order II rule 2 CPC? OPD
3. Whether the suit is properly valued for the purpose of court fees & jurisdiction? OPP
4. Whether the plaint is signed & filed by duly authorised person? OPP
5. Whether the Defendants have occupied the land in dispute unauthorizedly? If so its effect? OPP
6. Whether the Plaintiff is lawful allottee of the land in dispute? OPP
7. Whether the Plaintiff is entitled to the damages. If so at what rate & for what period? OPP
8. Whether the Plaintiff is entitled to the relief of possession? OPP
9. Relief.”

5. Whereas appellant/plaintiff led evidence but the respondents/defendants failed to lead any evidence. As regards the relevant issue nos. 5, 7 and 8 these issues were decided in favour of the respondents/defendants by the trial court in terms of paras 25 to 34 of its judgment, and which paras read as under:-

- “25. Onus to prove all these issues was placed on the Plaintiff.
26. To prove its case, the Plaintiff society had produced Mr. M.L. Jaggi to depose in the witness-box as PW3. He stated in his examination-in-chief that he was the President of the Plaintiff society on the date of his deposition. He further deposed that the Plaintiff is a Co-operative Society registered under the Registrar of Co-operative Society, Delhi. The Certificate of Registration dated 01.02.1955 was produced as Ex.PW2/1.

The PW3 further deposed that the Plaintiff society was allotted land on lease-hold by the President of India, measuring 800 sq. yards, in the year 1963, in Khasra no. 3, village Jogabai, Tehsil Mehrauli, near 174, Sarai Julenna, Okhla Road. The certified copy of the lease deed dated 13.02.1963 is exhibited as Ex.PW3/3. It is further stated that the agreement bears the signatures of Sh. Ram Lal Jaggi, the then President of the plaintiff society and of Sh. Bal Mukund the then Secretary of the Plaintiff-society. The PW3 further goes on to depose that the Defendants have encroached and raised unauthorized construction over the 800 sq. yards of the land.

27. The PW3 has further deposed that the Defendants have unauthorizedly constructed basement ground floor and first floor which are shown in red colour in the site plan Ex.PW3/4. The PW3 has stated that such construction is unauthorized and has been done without the permission of the Plaintiff-society. The PW3 further goes on the depose that the Defendants have no right, title or interest in the suit property as the same was granted as sub-lease to the Plaintiff society vide agreement which is Ex.PW3/3.

28. The Defendants have led no evidence, but had filed their written statement and the averments made therein are not repeated here for sake of brevity. In a crux, the Defendants stand was that the land in question is part of Khasra no. 52, village Bahapur and not of Khasra no. 3 of village Jogabai, as claimed by the Plaintiff.

29. **Since the Plaintiff has failed to clarify the dimensions and the location of the suit property, hence a demarcation report of the concerned revenue authority was called by the court. The Halka Patwari filed the certified copy of the demarcation report on 11.11.2009.**

30. As per the demarcation report, if the MCD office is taken as a reference point, then on the North of such MCD office lies the Khasra no. 52 of village Bahapur. On the North-Eastern portion falls the Khasra no. 3 of village Jogabai. Now if the demarcation report of the Patwari is read with the site plan Ex.PW3/4, then it reveals that the Plaintiff has alleged that the disputed portion falls in North of the MCD office. However, in the demarcation report, the area falling to the North of the MCD office is Khasra no. 52, which the Defendants specifically allege belongs to them. It is the specific stand of the Defendants taken up in their written statement that the disputed area falls in khasra no. 52 of village Bahpur. This stand of the Defendants is led credence by the demarcation report filed by the Halka Patwari.

31. Apart from the testimony of the PW1, the Plaintiff has not produced any evidence that the Defendants have raised unauthorized construction in the Plaintiff's land. Indeed, during his cross-examination, the PW1 had admitted that he had nothing to show that the suit property falls in Khasra no. 3 of village Jogabai. Also, as discussed, the demarcation report fortifies the stand taken up by the Defendants.

32. Hence, not only the Plaintiff has failed to specify the suit property clearly, but even the demarcation report of the Patwari negates the case of the Plaintiff.

33. Hence the Plaintiff has failed to show that the Defendants have occupied the land in dispute unauthorizedly. Accordingly, issue no. 5 is decided against the Plaintiff.

34. As the Plaintiff has failed to prove the issue no. 5, hence issue no. 7 and 8 are decided against the Plaintiff.” (emphasis added)

6. A reading of the aforesaid paras show that in order to determine the situation of the land, and since the appellant/plaintiff had failed to clarify the dimensions and location of the suit property, a demarcation report of the concerned revenue authority was called for by the Court. This demarcation report was filed by the Halka Patwari and which report is dated 11.11.2009. As per this demarcation report, it was seen that the suit property does not fall in khasra no. 3 which was claimed to be in the ownership of the appellant/plaintiff, but the suit land was found to be situated in khasra no. 52. Accordingly, on the basis of demarcation report, the subject suit which was with respect to khasra no. 3 was dismissed.

7. The first appellate court by its impugned judgment has upheld the findings and conclusions of the trial court.

8. The fact that there is a demarcation report filed by the revenue officials pertaining to the demarcation of the land in question is not disputed on behalf of the appellant/plaintiff. Also, it cannot be disputed that as per the contents of the demarcation report the suit property was found not to be falling in khasra no. 3 but was found to

be falling in khasra no. 52. Therefore, once the suit property of which ownership is claimed by the appellant/plaintiff being on khasra no. 3 is not found to be the suit property, and the suit property is found actually to be in a different khasra no. 52, the courts below have rightly therefore denied any relief of possession, injunction and has provided with respect to the suit property which was not situated in khasra no. 3 but was situated in khasra no. 52.

9. No substantial question of law arises. Dismissed.

MAY 25, 2017/AK

VALMIKI J. MEHTA, J