

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

% **Date of decision: 23rd May, 2018.**

+ **CS(OS) 138/2017 & IAs No.3752/2017 (u/O XXXIX R-1&2 CPC),
3753/2017 (u/O XXVI R-9&10A CPC) & 5687/2017 (of Om
Prakash u/O I R-10 CPC)**

SUMITRA DEVI

.... Plaintiff

Through: Mr. Pankaj Vivek, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS.

.....Defendants

Through: Mr. Devesh Singh and Ms. Neelam
Khotiya, Advs. with Mr. Mojpai
Singh, BDO.

Mr. Sunil Chauhan, Adv. for applicant
Om Prakash in IA No.5687/2017.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted the present suit for permanent injunction to restrain the defendants, i.e. Govt. of NCT of Delhi, Gaon Sabha, Dera Mandi and the Deputy Commissioner (South), from in any manner dispossessing the plaintiff or demolishing the property/house of the plaintiff built on Khasra Nos.60/8 & 9 of Village Dera Mandi, Tehsil Mehrauli, District South, New Delhi, pleading; (i) that the plaintiff, on 18th September, 2005, purchased a farm of approximately two acres in Village Mandi, Tehsil Mehrauli, built on Khasra Nos.60/8 & 9, in the revenue estate of Village Mandi; (ii) that the plaintiff entered into peaceful possession of the said property; (iii) that initially Khasra No.60/8 was owned by Ranjeet Singh son of Prem Raj and whose name is duly reflected in the Khatauni with respect

to the land and Khasra No.60/9 was owned by Om Prakash son of Chittar and whose name also is reflected in the Khatauni; (iv) that Ranjeet Singh, on 27th February, 1981, vide notarised General Power of Attorney (GPA), Agreement to Sell, Affidavit, Will and Receipt, sold Khasra No.60/8 to Braham Arneja son of N.K. Arneja; (v) that Om Prakash, on 27th February, 1981, by way of notarised GPA, Agreement to Sell, Affidavit, Will and Receipt also sold Khasra No.60/9 to Braham Arneja son of N.K. Arneja; (vi) that Khasra Nos.60/8 & 9 were, on 24th April, 1996 sold by Braham Arneja by way of notarised GPA, Agreement to Sell, Affidavit, Will, Receipt and Possession Letter in favour of Veenita Jain wife of A.K. Jain and Meenu Jain wife of Ashok Jain; (vii) that Veenita Jain and Meenu Jain, on 24th May, 2000 by way of notarised GPA, Agreement to Sell, Affidavit, Will, Receipt and Possession Letter, sold the said property to David Paul son of S.K. Paul; (viii) that David Paul, on 18th September, 2005, similarly sold the property to Mohd. Afzal Salmani son of Mohd. Fazal Salmani; (ix) that Mohd. Afzal Salmani, on 11th May, 2006, similarly sold the property to Prince Wilson son of J.I. Wilson; (x) that Prince Wilson, on 27th July, 2006 sold back the property to Mohd. Afzal Salmani; (xi) that Mohd. Afzal Salmani, on 8th August, 2007 similarly by way of notarised GPA, Agreement to Sell, Affidavit, Will, Receipt and Possession Letter sold the property aforesaid to the plaintiff; (xii) that the plaintiff has been in peaceful and lawful possession of the property by building a house thereon; (xiii) that the husband of the plaintiff, on or around 10th December, 2006, obtained electricity connection with respect to the said house; (xiv) that the property is bound by a boundary wall; (xv) that the property comprises of a house built on 300 sq. yds., a swimming pool, lawns, orchards, servant quarters, guard

room etc.; (xvi) that suddenly, on 17th March, 2017, the officials of the defendants came to the property with 50 armed police personnel and bulldozer and demolished a portion of the boundary wall, servant quarters, guard room etc., without any prior notice, order or proceeding claiming that the property belonged to Gaon Sabha, Dera Mandi; (xvii) that no demarcation was ever carried out by any official and no notice of any demarcation was given to the plaintiff; (xviii) that even if Gaon Sabha is claimed to be the owner of the land, it had lost title to the land as the possession of the plaintiff thereof is for a period of more than three years; (xix) that the possession of the plaintiff is lawful and protected by the provisions of the Delhi Land Reforms Act, 1954; and, (xx) that no proceedings under Section 84 or 86A of the said Act had been initiated by the defendants against the plaintiff.

2. The suit came up before this Court on 24th March, 2017 when on first call it was passed over awaiting the counsel for the defendants to whom advance notice had been given. The senior counsel for the plaintiff mentioned the matter at about 1240 hours stating that further demolition action was being threatened. The counsel for the defendants stated that the demolition action was taking place on Khasra Nos.60/4 & 60/7 which belonged to the Government and not on Khasra Nos.60/8 & 9 subject matter of the present suit. The senior counsel for the plaintiff then appearing, drew attention to the photographs at pages 185 & 186 of Part-III file; Mr. Yogendra Singh, Block Development Officer (BDO) (South) of the defendants present in the Court stated that though the construction as shown in the said photographs was still in existence but 80% of the possession had

already been taken. The senior counsel for the plaintiff, of course controverted.

3. In the aforesaid state of affairs, summons of the suit were issued and it was directed that till the next date of hearing, subject to the condition that the plaintiff or anyone else did not enter upon the land which the plaintiff claimed to be hers and not occupy any part of the property as shown in the photographs at pages 183 to 186 of Part-III file, further demolition was stayed. From the controversy as emerged on 24th March, 2017, it also appeared that the dispute was of demarcation. Accordingly, the personal presence of the defendant No.3 along with all the records relating to demarcation was also directed for the next date i.e. 27th March, 2017.

4. On the next date i.e. 27th March, 2017, the following order was passed:

“1. This order is in continuation of the earlier order dated 24th March, 2017.

2. Mr. Amzad Tak, Deputy Commissioner, South District along with Mr. Satish Chandra, Field Kanoongo, Mr. S. D. Sharma, Block Development Officer (South) and Mr. M. Pal Singh, Extension Officer are present in the Court with the records and have handed over in Court a compilation of papers which is taken on record. A copy thereof has also been handed over to the counsel for the plaintiff.

3. The learned Deputy Commissioner has explained (i) that the Khasra No.60/8 and 60/9 are the private land and Khasra No.60/4 and 60/7 are the Gram Sabha land, with each of the said four khasras measuring 4 bighas and 12 biswas; in the compilation of papers there is a shijra on which, for identification mark Exhibit P-1 has been put and in which the four khasras are shown; (ii) that the plaintiff who claims to be the owner of the private land 60/8 and 60/9 is infact in occupation of Gram Sabha land 60/4 and 60/7; (iii) that the

village is a chakbandi village and there is no possibility of any confusion and there is no need for demarcation by total station method as is sought by the senior counsel for the plaintiff; (iv) that the papers handed over today are comprised of all the demarcation papers; and, (v) that notices of demarcation were given to the recorded owner of the property and no representation was filed.

4. *The senior counsel for the plaintiff on enquiry states that the plaintiff claims to be in possession of 9 bighas and 4 biswas (total of two khasras of 4 bighas 12 biswas each) of land that is slightly less than two acres land only and not of the entire land including the other two khasras also.*

5. *Without prejudice to the plea of the defendants of there being no need for any further demarcation and the owners of the private land 60/8 and 60/9 having not availed of any opportunity being not entitled thereto, it is deemed appropriate to grant an opportunity to the plaintiff to file objections before the Deputy Commissioner on 29th March, 2017 at 1600 hours and to appear before the Deputy Commissioner for hearing on 30th March, 2017.*

6. *The Deputy Commissioner to present a report on the objections of the plaintiff on 3rd April, 2017.*

7. *List on 10th April, 2017.*

8. *Interim arrangement to continue till then."*

5. Thereafter, on 10th April, 2017, the following order was passed:

"1. The counsel for the plaintiff states that pursuant to the order dated 27th March, 2017 the Deputy Commissioner has on 6th April, 2017 ordered a fresh demarcation within ten days though no written order to the said effect has been received as yet.

2. None appears for the defendants.

3. *List on 4th May, 2017.*
4. *Interim arrangement to continue.”*

and on 4th May, 2017, the following order was passed:

“1. Though the counsel for the defendants states that demarcation as directed has been carried out and has handed over in the Court a one page Status Report and an attempt was being made to resolve the controversy but the counsel for the plaintiff complains that the plaintiff was not involved in the demarcation.

2. Such attitude of the plaintiff, when the Court is attempting to resolve the controversy, appears to be dilatory. Since the plaintiff is enjoying interim order, the counsel for the plaintiff was asked to address arguments on the application under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 (CPC). However after he has concluded his arguments the counsel for the defendants states that before he addresses arguments on the application, written statement / reply be permitted to be filed.

3. *Written statement be filed by 24th May, 2017 as sought.*
4. *List on 29th May, 2017 for further hearing.”*

6. The defendants, in their written statement have pleaded (a) that the plaintiff has no right, title or interest in Khasra Nos.60/4 & 60/7 admeasuring 9 bighas 4 biswas (approximately 9272 sq. yds.) and passage way 944 & 945 in Village Dera Mandi, Mehrauli; (b) that the said Khasra Nos.60/4 & 60/7 in terms of revenue record, is Gaon Sabha land and has been encroached by the plaintiff herein; (c) that by way of instant suit, the plaintiff is claiming relief in respect of Khasra Nos.60/8 & 60/9.; (d) that as per the revenue

record, Khasra No.60/8 is mutated in the name of Ranjit Singh son of Prem Raj and Khasra No.60/9 is mutated in the name of Om Prakash son of Chittar and the plaintiff has no right with respect to Khasra Nos.60/8 & 60/9 either; (e) that on receipt of complaint dated 17th August, 2015, recording encroachment of Gaon Sabha land comprised in Khasra Nos.60/4 & 60/7 and passage way 944 & 945 in Village Dera Mandi, the BDO (South) issued directions to the Tehsildar Mehrauli to undertake a fresh demarcation; (f) that on 27th August, 2015, the Revenue Department undertook a fresh demarcation of the said Khasra numbers which revealed that there was rampant encroachment on the said Khasra numbers which were Gaon Sabha land; (g) that vide notice dated 3rd February, 2016, the husband of the plaintiff namely Mahender Singh son of Chandagi Ram was called upon to remove the construction on Khasra Nos.60/4 & 60/7 and was informed that otherwise the construction raised by him thereon would be demolished; (h) that inspite of notice, encroachment on Khasra Nos.60/4 & 60/7 was not removed; (i) that consequently the BDO (South) referred the matter to District Magistrate (South) for carrying out demolition activity on 17th March, 2017 and after receipt of permission, demolition activity was undertaken on 17th March, 2017 to reclaim the Gaon Sabha land which had been encroached by the plaintiff; (j) that Supreme Court, vide **Jagpal Singh Vs. State of Punjab** AIR 2011 SC 1123 has taken a very serious view of the rampant encroachment of Gaon Sabha/Gram Panchayat/Poramboke/Shamlat land and has directed all State Governments to prepare schemes for speedy eviction of illegal and unauthorized occupants of such lands; (k) that the action of demolition aforesaid was in terms of direction of the Supreme Court; (l) that the plaintiff is not in possession and occupation of Khasra

Nos.60/8 & 60/9; (m) that in pursuance to the order dated 27th March, 2017 supra in this suit, the District Magistrate (South), vide order dated 6th April, 2017 ordered fresh demarcation and such demarcation was carried out on 3rd May, 2017 by the Total Station Method (TSM) which is the most scientific and technically sound method of demarcation currently in use; (n) that as per the report dated 4th May, 2017 of such fresh demarcation, the demarcation undertaken in the year 2015 was absolutely correct; (o) that there is no protection for the plaintiff under the provisions of the Delhi Land Reforms Act since the plaintiff is in unauthorized possession of Gaon Sabha land; (p) that there is no mention of the plaintiff in the revenue records of Khasra Nos.60/4 & 60/7.

7. IA No.5687/2017 has been filed by Om Prakash son of Chittar for impleadment in the present suit, pleading (i) that the suit has been filed by the plaintiff on false and fabricated documents; (ii) that Khasra No.60/9 measuring 4 bighas 16 biswas was initially recorded in the name of Smt. Chhoto wife of Gudan who on 11th January, 1989 sold the land to the applicant Om Prakash through registered conveyance documents such as GPA, Agreement to Sell, Receipt, Will etc. and on the basis of the registered Will of Chhoto, the mutation of the said Khasra No.60/9 was ordered in the name of the applicant Om Prakash and which remains in the revenue records of the said Khasra; and, (iii) that the applicant Om Prakash is in occupation of Khasra No.60/9.

8. The aforesaid application came up before the Joint Registrar on 8th May, 2017 when the same was also ordered to be listed on 29th May, 2017.

9. The counsel for the plaintiff, the counsel for the applicant Om Prakash and the counsel for the defendants were heard on 29th May, 2017 and though the file was sent to the Chamber for dictating orders but went on a back burner and hence the suit has now been listed for pronouncement of this judgment.

10. It was enquired from the counsel for the plaintiff on 29th May, 2017, that since the plaintiff in the plaint only seeks restraint against the defendants from taking action with respect to Khasra Nos.60/8 & 60/9 and since the defendants were not claiming any right in the said Khasras and had also filed a written statement to the said effect, what was the need for any further proceeding in the suit and the suit could be disposed of by binding the defendants to their statement.

11. The counsel for the plaintiff however wants this Court to protect the property, with construction of which photographs are filed, by contending that the same in fact is in Khasra Nos.60/8 & 60/9 as claimed by the plaintiff and not in Khasra Nos.60/4 & 60/7 as claimed by the defendants and by further contending that the demarcation done by the defendants is wrong. It was further argued that since the plaintiff is in possession of the property as depicted in the photographs, since the year 2005, the defendants are not entitled to disturb the possession of the plaintiff, save by instituting proceedings against the plaintiff under the Delhi Land Reforms Act. Reliance was placed on *Rame Gowda Vs. M. Varadappa Naidu* (2004) 1 SCC 769, *Swaraj Kishore Arora Vs. Indian Bank* (2016) 230 DLT 269 (DB), *Partap Singh Vs. Om Prakash* (2006) 127 DLT 213, *Om Parkash Vs. Govt. of NCT of Delhi*, 2014 SCC OnLine Del 4724, *Babu Ram Vs. Govt.*

of NCT of Delhi 2014 SCC OnLine Del 3890 and on *Jugal Vs. Dy. Commissioner* 2003 (70) DRJ 256.

12. The counsel for the applicant Om Prakash contended that the claim of the plaintiff is false and it is the applicant Om Prakash, who is the recorded owner and *Bhumidar* of Khasra No.60/9.

13. Per contra, the counsel for the defendants contended that the action of the defendants sought to be interdicted with by filing this suit is in compliance with directions of the Supreme Court in *Jagpal Singh* supra and the suit is thus misconceived.

14. I have considered the controversy.

15. As far as the claim of the applicant Om Prakash is concerned, all that can be observed is that the plaintiff has filed this suit only for injunction simplicitor and not for the relief of declaration of her title to Khasra Nos.60/8 & 60/9 and as per the dicta of the Supreme Court in *Anathula Sudhakar Vs. P. Buchi Reddy* (2008) 4 SCC 594, there is no need for this Court, in this suit for injunction, to adjudicate title claimed by the plaintiff to Khasra Nos.60/8 & 60/9. Thus, the applicant Om Prakash is neither a necessary nor a proper party to the present suit.

16. IA No.5687/2017 is dismissed and applicant Om Prakash is at liberty to take such proceedings which he may be entitled to.

17. As far as the arguments of the counsel for the plaintiff are concerned, the plaintiff has not approached this Court with a challenge to the report of demarcation which indeed could not have been a subject matter of challenge in Civil Court. It is also not the plea of the plaintiff in the plaint that though

she is in possession of Khasra Nos.60/8 & 60/9 but the defendants are wrongly treating her as in possession of Khasra Nos.60/4 & 60/7. In fact, Khasra Nos.60/4 & 60/7 do not even find any mention in the plaint. The plaintiff, without making any pleadings, cannot expect this Court to adjudicate on a case for which no pleadings have been made.

18. It is also not as if the plaintiff has approached this Court to protect her possession. The plaintiff has approached this Court claiming title to Khasra Nos.60/8 & 60/9 and seeking to restrain the defendants with respect to the said Khasra numbers. Once the defendants have made a statement and reiterated the same in the written statement that they are not taking any action with respect to Khasra Nos.60/8 & 60/9, there is no need for this court to put this suit through the process of framing of issues and trial, as provided for in the CPC. If the relief, which the plaintiff is seeking, can be granted on the first date itself, the Courts are not to mechanically and blindly put the suit through the process of completion of pleadings, admission/denial of documents, framing of issues and trial, just to keep themselves and the Advocates busy.

19. I may also record, that as far as the challenge of the plaintiff to demarcation report is concerned, the plaintiff though claims lawful title to Khasra Nos.60/8 & 60/9, neither has a mutation in the revenue records in her favour nor has any registered document of title with respect thereto in her favour. What is filed before this Court are photocopies of documents in the nature of GPA, Agreement to Sell, Will, Receipt, Affidavit and Possession Letter with respect to Khasra Nos.60/8 & 60/9 as described in the plaint. Such documents, in *Suraj Lamp & Industries Pvt. Ltd. Vs. State of*

Haryana (2009) 7 SCC 363 and (2012) 1 SCC 656, have been held to not confer any title. Thus, the plaintiff, on her own pleadings, has been unable to make out a case of lawful title to Khasra Nos.60/8 & 60/9 as claimed.

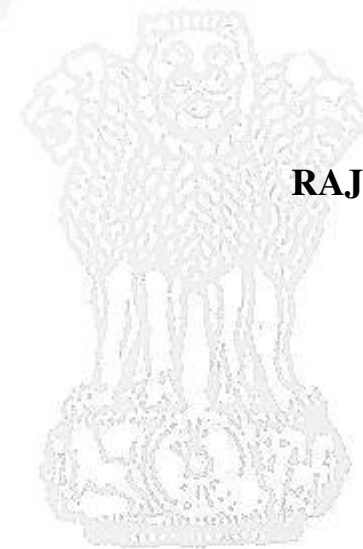
20. The suit is thus disposed of, by binding the defendants to their statements that they are not taking any action with respect to Khasra Nos.60/8 & 60/9 of Village Dera Mandi, Tehsil Mehrauli, District South, New Delhi and leaving the parties to bear their own costs.

Decree sheet be drawn up.

MAY 23, 2018

‘bs’..

RAJIV SAHAI ENDLAW, J.



न्यायमेव जयते