

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

% **Date of decision: 18th September, 2018.**

+ **RSA 102/2018 & CM No.27089/2018 (u/O XLI R-5 CPC)**

**LAJJA WATI (DECEASED) THROUGH LRS
& ORS**

....Appellants

Through: Mr. Pradeep Kumar Arya & Mr.
Aditya Kumar Yadav, Adv.

Versus

DAYA NAND & ORS

..... Respondents

Through: Mr. N.S. Dalal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 28th April, 2018 in RCA No.61157/2016 of the Court of Additional District Judge-06, Central District] allowing the First Appeal of the respondents / defendants against the judgment and decree [dated 16th February, 2002 in Suit No.1067/95/76 of the Court of Civil Judge, Delhi] allowing the suit filed by the appellants / plaintiffs for recovery of possession of plot of land ad-measuring 65'x60' situated within the Lal Dora of village Alipur, Delhi.

2. The appeal came up first before this Court on 11th July, 2018, when the counsel for the respondents / defendants appeared on caveat. However, since the counsel for the appellants / plaintiffs was unable to inform the Court the substantial question of law entailed in this appeal, the hearing was adjourned to 11th September, 2018. On 11th September, 2018, after hearing the counsels, the following order was passed:

“3. A perusal of the record shows that while the Suit Court allowed the suit of the appellants/plaintiffs for recovery of possession, on First Appeal being preferred by the respondents/defendants, the judgment and decree in favour of the appellants/plaintiffs was set aside.

4. It is further disclosed that the ownership of the appellants/plaintiffs of the subject land was in issue in the suit. The appellants/plaintiffs sought to prove the said ownership and which was accepted by the Suit Court by relying on proceedings initiated by the Gram Sabha against the appellants/plaintiffs under Section 86A of the Delhi Land Reforms Act, 1954 before the Revenue Assistant and the appeal preferred thereagainst.

5. The First Appellate Court has however allowed the appeal of the respondents/defendants reasoning that there was a doubt of the identity of the subject property/land.

6. I have enquired from the counsel for the appellants/plaintiffs that if the proceedings for dispossession of the appellants/plaintiffs from the property/land were maintainable under the Land Reforms Act before the Revenue Assistant, how the appellants/plaintiffs, for dispossession of the respondents/defendants from the same property, can approach the Civil Court and whether it is the case of the appellants/plaintiff that in the interregnum the area has been urbanised.

7. It has further been enquired from the counsel for the appellants/plaintiffs that if it is the case of the appellants/plaintiffs that the proceedings before the Civil Court are maintainable, then it axiomatically follows that the property subject matter of proceedings by Gram Sabha against the appellants/plaintiffs and the property in possession of the respondents/defendants are different.

8. The counsel for the respondents/defendants states that the property in possession of the respondents/defendants is situated in Lal Dora and the provisions of the Delhi Land Reforms Act would not apply.

9. The counsel for the appellants/plaintiffs has also contended that no plea as to the jurisdiction of the Civil Court was taken by the respondents/defendants before any of the Courts. Even if no plea as to

jurisdiction is taken, once it come to light from the evidence of the appellants/plaintiffs themselves that Civil Court would not have jurisdiction, this Court cannot turn blind eye to the same.

10. Even if that be so, once the appellants/plaintiffs base their title to the property on the basis of the proceedings under the Land Reforms Act, unless the appellants/plaintiffs are able to satisfy that owing to developments in the interregnum, now the Civil Court has jurisdiction, the appellants/plaintiffs will have to invoke the remedy under the Land Reforms Act only.

11. On request of the counsel for the appellants/plaintiffs, the matter is passed over.

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12. No time left.

13. List on 18th September, 2018.

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3. The counsels for the parties have been heard further and the records perused.

4. The appellants / plaintiffs instituted the suit, from which this appeal arises, for recovery of possession of immovable property aforesaid, claiming to be the owners thereof by inheritance from forefathers, and pleadings that (i) the then Pardhan of the Gram Sabha, owing to animosity with the appellants / plaintiffs, initiated proceedings for ejectment of the appellants / plaintiffs from the suit property under Section 447 of the IPC as well as under Section 86A of the Delhi Land Reforms Act, 1954 (DLR Act); (ii) the appellants / plaintiffs successfully defended both the said proceedings; and,

(iii) during the pendency of the aforesaid proceedings, the respondents / defendants, in or about June / July, 1974, criminally trespassed over the property and took forcible possession thereof. Hence, the suit was instituted in or about October, 1976 for recovery of possession.

5. The respondents / defendants contested the suit denying title of the appellants / plaintiffs and denying trespass.

6. On the pleadings of the parties, the Suit Court on 7th April, 1977 framed the following issues:

- “1. Whether the Plaintiff is the owner of the suit land? OPP.
2. Whether the Plaint is properly valued for the purpose of court fee and jurisdiction as per prayer in the plaint? OPP.
3. Whether the suit is not maintainable?
4. Whether the Plaintiff is entitled to the relief as claimed.
5. Relief.”

7. The Suit Court, on the basis of evidence led, found / observed/ reasoned / held, that (i) in the proceedings instituted by the Gram Sabha under Section 86-A of the DLR Act, the appellants / plaintiffs were held to be the owners of the property subject matter thereof; (ii) the respondents / defendants have nowhere disclosed their title to the suit land; (iii) the respondent / defendant no.1 had admitted that Gaon Sabha had instituted proceedings in the year 1966 against the suit land; (iii) another respondent / defendant appearing as a witness however denied that Gaon Sabha had instituted the proceedings with respect to the land subject matter of the suit; (iv) in view of preponderance of probabilities, the suit property was the same

as the land with respect to which Gaon Saha had initiated proceedings against the appellants / plaintiffs under Section 86A of the DLR Act and in which proceedings, the appellants / plaintiffs had been held to be owners thereof; and, (v) though there was a dispute as to the identity of the property with different witnesses giving different statements but again on preponderance of probabilities, the suit land was the same land with respect to which Section 86A proceedings aforesaid were initiated. Accordingly, the suit was allowed.

8. The First Appellate Court, on appeal by the respondents / defendants, set aside the judgment of the Suit Court allowing the suit and dismissed the suit filed by the appellants / plaintiffs, finding / observing / holding / reasoning that (i) there was no conclusive evidence that the suit land was the same land with respect to which proceedings under Section 86A of the DLR Act were instituted; (ii) the appellants / plaintiffs thus failed to prove ownership or prior possession of the suit land; and, (iii) no revenue records also with respect to the suit land were produced to show that the appellant / plaintiff was the owner thereof or in possession thereof.

9. The counsel for the appellants / plaintiffs, on enquiry has fairly admitted that save for the findings in the Section 86A proceedings, there is no other evidence of ownership of the appellants / plaintiffs of the suit land.

10. As would be evident from the above, different outcomes of the Suit Court and the First Appellate Court are on appreciation of oral evidence led with respect to the question, whether the Section 86A proceedings were with respect to the same property with respect to which the suit was filed.

11. I have enquired from the counsel for the appellants / plaintiffs, whether the appellants / plaintiffs examined any witness from the office of the Tehsildar or Gram Sabha or Sub Divisional Magistrate, to prove that the Section 86A DLR Act proceedings were with respect to the same land which was in possession of the respondents/defendants and whether any demarcation was got carried out.

12. The counsel for the appellants / plaintiffs again states that no such evidence was led, though PW3 Ram Pat examined was earlier the Up-Pardhan but who, at the time of deposition, described himself as an agriculturist.

13. I have perused the testimony of PW3 Ram Pat and do not find him to have in his examination-in-chief at the instance of the appellants / plaintiffs stated that the land subject matter of the suit was the same as the land with respect to which Section 86A DLR Act proceedings were taken, though he deposed extensively about the Section 86A DLR Act proceedings. However, in cross-examination by the counsel for the respondents / defendants, the said PW3 Ram Pat unequivocally admitted that Section 86A DLR Act proceedings was not relating to plot which was subject matter of the suit but were with respect to some other plot. The said PW3 Ram Pat also deposed that there was a *Balmiki* mandir inside the plot with respect to which the suit was filed. No such *Balmiki* mandir was admittedly mentioned in the proceedings under Section 86A of the DLR Act.

14. The counsel for the appellants / plaintiffs today draws attention to Ex.PW1/4, being a plan of the land subject matter of Section 86A DLR Act proceedings and stated to have been part of Section 86A DLR Act

proceedings. However, from a perusal thereof also, it cannot be said that the land subject matter of the suit and the land subject matter of Section 86A DLR Act proceedings are the same.

15. The counsel for the appellants / plaintiffs also draws attention to Ex.PW3/1 to contend that Section 86A DLR Act proceedings were with respect to land situated within the Lal Dora. It is his stand today also that the Revenue Assistant does not have exclusive jurisdiction to entertain proceedings for recovery of possession of the suit land because the land is not held or occupied for purposes connected with agriculture within the meaning of Section 3(13) of the DLR Act and the jurisdiction of the Civil Court was rightly invoked. On enquiry as to how the proceedings under Section 86A of the DLR Act were invoked with respect to the suit land, it is merely stated that the appellants / plaintiffs never defended Section 86A DLR Act proceedings on the said ground. It is otherwise admitted that Section 86A DLR Act proceedings could not be with respect to land situated in Lal Dora or which was not land within the meaning of Section 3(13) of the DLR Act supra. Reference if any required can also be made to *Nilima Gupta Vs. Yogesh Saroha* 2009 (107) DRJ 566 (SLP(CC) No.8987-8990/2009 preferred whereagainst was dismissed on 20th July, 2009), *Anand J. Datwani Vs. Geeti Bhagat Datwani* 2013 (137) DRJ 146 (RFA(OS) No.117/2014 preferred whereagainst was dismissed on 5th August, 2014) and *Harpal Singh Vs. Ashok Kumar* (2018) 11 SCC 113.

16. Once, it is so, then there can be no manner of doubt that the suit land and the land subject matter of Section 86A of the DLR Act were two different lands.

17. The counsel for the appellants / plaintiffs also draws attention to the testimony recorded in the suit of DW1 Daya Anand, where he has deposed that he did not know how his forefathers came in possession of the land, whether by purchase or by allotment and has admitted that in the year 1966, “the suit property” came under Gaon Sabha and that “suits may have been filed or proceedings may have been taken against unauthorized occupier of the land in the year 1966 or thereafter”, to contend that there is an admission of the suit land being the same as land with respect to which Section 86A proceedings were taken. Attention in this regard is also drawn to the following passage in the examination-in-chief of DW1 Daya Anand:

“The defts. had no connection whatsoever with Badlu pradhan in any connection with the panchayat. I have no knowledge regarding any litigation with Gaon Sabha or the plaintiff. None of the defts. was ever a party to any proceedings with Gaon Sabha regarding his property. There was any litigation between the Gaon Sabha or the plaintiff regarding the suit land.”

18. I am however unable to read the aforesaid evidence as an admission by DW1 also as to the identity of the suit land being the same as land with respect to which Section 86A DLR Act proceedings were undertaken. Rather, the said witness in his cross-examination has admitted that at the time of litigation initiated by Gram Sabha, the respondents / defendants were in occupation of the suit property but the Gram Sabha did not institute any proceedings against the respondents / defendants.

19. The counsel for the appellants / defendants also draws my attention to the passages in the orders in Section 86A of the DLR Act proceedings but the same, I am afraid, also do not establish in any manner that the identity of the property subject matter of the two proceedings was/is the same.

20. On the contrary, the counsel for the respondents / defendants draws attention to the description of the suit land in the plaint in the suit from which this appeal arises and in Ex.PW1/4 supra to contend that the two lands are separate.

21. The counsel for the respondents / defendants also draws attention to the statement of witness of the appellants / plaintiffs Dharam Singh, examined as PW6, in cross-examination admitting the use of the suit plot by *Balmiki* community for worshipping.

22. As aforesaid, the Suit Court also though decided in favour of the respondent / plaintiff, but only on the basis of preponderance of probabilities and not on the basis of conclusive evidence. The First Appellate Court however, upon appreciation of the same evidence, held that in the absence of conclusive evidence as to the identity, the suit for possession could not have been allowed.

23. Interference therewith in jurisdiction under Section 100 of the CPC is not permissible.

24. The appeal thus does not raise any substantial question of law.

25. I must also record that the counsel for the appellants / plaintiffs, at the fag end of the proceedings has contended that the appellants / plaintiffs be granted a chance to lead evidence of the revenue officials to prove the identity of the two properties subject matter of the two proceedings to be the same.

26. Just because during the hearing of the Second Appeal, lacunae in the evidence led have been shown, cannot be a ground for fresh evidence to be

permitted or the suit to be remanded. If it were to be so, no lis will ever attain finality and will also always remain at large. These proceedings have been pending since the year 1976 and the appellants / plaintiffs having failed to lead evidence in support of their claim, are now not entitled to a second chance.

27. The question of identity becomes further clear from Section 86A of the DLR Act proceedings being admittedly maintainable against land falling in Section 3(13) and the appellants / plaintiffs' stand that the property subject matter of the suit does not fall within the definition of Section 3(13) of the DLR Act.

Dismissed.

No costs.

SEPTEMBER 18, 2018

'gsr'

RAJIV SAHAI ENDLAW, J.