

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

% **Date of decision: 21st August, 2018.**

+ **RSA 115/2018**

MURTI DEVI & ANR

..... Appellants

Through: Mr. Shekhar Prit Jha, Adv.

versus

NCT OF DELHI & ORS

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No. 33214/2018(for exemption)

1. Allowed subject to just exceptions.
2. The application stands disposed of.

RSA 115/2018 & CM Nos. 33213/2018 (for condonation of delay of 20 days in filing) & 33215/2018(for condonation of delay of 10 days in re-filing)

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 impugns the judgment and decree [dated 1st March, 2018 in RCA No. 60/2016 of the Court of Senior Civil Judge, North-West] allowing the First Appeal under Section 96 of the CPC preferred by the respondent No. 2 DDA against the judgment and decree [dated 4th June, 2016 in CS No. 510/2013 of the Court of the Civil Judge, North] allowing the suit filed by the two appellants for restraining the respondents/defendants, namely, (i) Government of NCT of Delhi, (ii) DDA, (iii) SHO P.S. Aman Vihar and (iii) Patwari Tehsil Kanjawala Delhi, from dispossessing the appellants/ plaintiffs from plot measuring 102 sq. yds. bearing No. 37 out of Khasra No. 33/16 situated in the area of village

Mubarakpur Dabas, Delhi.

4. The appeal came up first before this Court on 17th August, 2018, when on account of non-appearance of the counsel for the appellants, the appeal was posted for today. The counsel for the appellants has been heard and the copies of the relevant Trial Court record annexed to the memorandum of appeal perused.

5. The appeal is accompanied with applications for condonation of 20 days delay in filing and 10 days delay in re-filing thereof. However the question of consideration of the said aspect will arise only if the appeal were found to entail a substantial question of law, the *sine qua non* for entertaining an appeal under Section 100 of the CPC.

6. The appellants/plaintiffs instituted the suit, from which this appeal arises, pleading, (i) that the appellants/plaintiffs on 30th October, 2001 purchased the plot aforesaid situated in the *abadi* known as Vishal Enclave, Aggar Nagar, Delhi, from one Ashok Kumar, by way of Agreement to Sell, Power of Attorney, registered General Power of Attorney, Affidavit, Will, Receipt etc.; (ii) that the appellants/plaintiffs, in the year 2004 constructed a boundary wall around the aforesaid plot of land but the same was demolished by the respondents/defendants; (iii) that the appellants/plaintiffs again raised a boundary wall along with construction of two rooms which also were demolished by the respondents/ defendants; (iv) that again, in the year 2008, the appellants/ plaintiffs constructed two rooms along with kitchen, toilet etc. which also were demolished by the respondents/ defendants; (v) that appellant/plaintiff again raised some construction in 2009 which was wholly demolished by the respondent/defendant on 18th

December, 2009; (vi) that only the construction of the appellants/plaintiffs was being demolished and construction raised in the vicinity by others was not being demolished; (vii) that the appellants/plaintiffs also filed objections before the Land Acquisition Collector (North-West), Kanjhawala on 16th August, 2007 and the appellants/ plaintiffs have till date not withdrawn compensation for the aforesaid plot; (viii) that residents of Aggar Nagar, Prem Nagar-III, Village Mubarakpur, Delhi filed an application for regularization of the said unauthorized colony and a provisional regularization certificate of unauthorized colony in E-Block Aggar Nagar, Prem Nagar-III, Mubarkapur Delhi has been circulated; (ix) that the appellants/plaintiffs have, on 7th November, 2009 also installed an electricity connection on the aforesaid plot of land. Hence, the relief in the suit, of permanent injunction restraining the respondents/ defendants from taking any action including of demolition and dispossession of the appellants/ plaintiffs from the said plot of land.

7. The respondent/defendant No. 3 SHO P.S. Aman Vihar filed a written statement pleading that the demolition action was carried out either by the Revenue authorities or by the land owning agency and the local police only provided the police assistance sought.

8. The respondent/defendant No. 2 DDA filed a written statement *inter alia* pleading (i) that the land in dispute had been acquired by the Union of India vide Award No. 16/2005-06/DC(NW) and physical possession of the land was transferred to DDA by Union of India on 4th April, 2006 as per land papers submitted by DD (LM) Rohini, Delhi; (ii) that however the physical possession of the land was not transferred; (iii) that the

respondent/defendant No. 2 DDA had full right to take legal action of removal any encroachment or to remove any illegal occupant from its property; (iv) that the construction raised, without seeking requisite permission, is illegal and is liable to be demolished; (v) that the respondent / defendant No. 2 DDA was the lawful owner of the property and had full right to remove encroachment; and, (vi) that merely because the appellants/plaintiffs had taken electricity connection from a private agency, did not confer any right on the appellants/ plaintiffs.

9. On the pleadings of the parties, the following issues were framed in the suit on 13th August, 2013:-

- (i) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
- (ii) Whether the suit is bad for want of notice under Section 53B, of DDA Act? OPD
- (iii) Whether the land in dispute in Khasra No. 33/16, has been acquired by Union of India by award no. 16/2005/2006/DCNW and has been transferred to DDA? OPD2

10. The Suit Court, on the basis of the evidence led before it, found/ observed/ held (i) that the appellants/plaintiffs had proved purchase of the subject plot on 30th October, 2001 vide Agreement to Sell, GPA etc.; (ii) that the appellants/plaintiffs had further proved being in settled possession of the property; (iii) that the area where the property is situated, that is, Aggar Nagar, Mubarakpur had been given a provisional regularization certificate at Serial No. 47 in the list; (iv) that though the

appellants/ plaintiffs had been unable to prove their absolute ownership of the property, what was relevant for the purposes of this suit was only settled and lawful possession of the property and which the appellants/ plaintiffs had been able to prove; (v) that in *Thomas Cook (India) Ltd. Vs. Hotel Imperial* (2006) 127 DLT 431, it was held that a person in peaceful possession is entitled to retain possession; and, (vi) that the documents of taking over possession proved by DDA also showed that the possession of built up portions could not be taken. Accordingly, a decree was passed, in favour of the appellants/ plaintiffs and against the respondents/ defendants, restraining the respondents/ defendants from dispossessing the appellants/plaintiffs from subject plot without due process of law.

11. The respondent/ defendant No. 2 DDA preferred first appeal against the aforesaid judgment and decree, which has been allowed, reasoning: (i) that the General Power of Attorney, Agreement to Sell, etc. proved by the appellants/ plaintiffs did not constitute documents of title of the property; (ii) that there was nothing to show that the executants of the General Power of Attorney, Agreement to Sell etc. had any title to the property with respect to which the documents were executed; (iii) that on the contrary, it stood proved that the land stood acquired by the DDA and even the compensation with respect thereto paid to the rightful owner; (iv) that therefore, there could be no injunction against the true owner that is the respondent/ defendant No. 2 DDA; (v) that the relief of permanent injunction is a equitable relief and a person in unauthorized occupation/ trespasser was not entitled to any equity in his/ her favour; and, (vi) that the appellants/ plaintiffs had not sued for declaration of their title to the

property inspite of the said title being disputed by the respondents/ defendants.

12. The counsel for the appellants/ plaintiffs, before me also has argued that it is the settled position in law that a person, even if in unauthorized illegal occupation, cannot be dispossessed, save by due process of law; that the Suit Court had merely granted such injunction to the appellants/ plaintiffs and the First Appellate Court ought not to have interfered therewith.

13. On enquiry as to what is the due process of law, the counsel for the appellants/ plaintiffs states that the respondent/ defendant No. 2 DDA should file a suit for recovery of possession of the property from the appellants/ plaintiffs. On being asked, which law prescribes so, the counsel for the appellants/ plaintiffs has referred to paras 46 to 48 of *Meghmala Vs. Narasimha Reddy* (2010) 8 SCC 383 and to *Rame Gowda Vs. M. Varadappa Naidu* (2004) 1 SCC 769.

14. In *Meghmala* supra, it was held, that even a trespasser cannot be evicted forcibly; a person in illegal occupation of the land has to be evicted following the procedure prescribed under the law; even State authorities cannot dispossess a person by an executive order; the authorities cannot become a law unto themselves and the government can resume possession only in a manner known to or recognized by law and not otherwise.

15. On enquiry, what was the right claimed by the person in occupation in *Meghmala* supra, the counsel for the appellants/ plaintiffs generally states that Meghmala had been cultivating the land for years.

16. A perusal of *Meghmala* shows that the land, subject matter of that

proceeding and in possession of Meghmala, had vested in the State under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. In the said facts, it was held as aforesaid.

17. On the contrary, it is the claim of the appellants/ plaintiffs in the present case, in the plaint itself, that the appellants/ plaintiffs had entered into an agreement to purchase an open piece of land in the year 2001 and all attempts made by the appellants/ plaintiffs to raise construction thereon, without any sanctions, were foiled by the respondents/ defendants by repeatedly demolishing the unauthorised construction raised by the appellants/plaintiffs from time to time, with the last such demolition action pleaded having been carried out on 18th December, 2009. The plaint in the suit, from which this appeal arises, is dated 28th April, 2010. It is thus quite evident that the possession of the appellants/ plaintiffs could not be said to be settled or peaceful, when since right after acquisition of the said land in the year 2005-06, the respondents/ defendants have been zealously guarding the land by foiling all attempts of the appellants/ plaintiffs to raise unauthorized construction thereon. It follows from a bare reading of the plaint itself, that there was no construction on the land till date of institution of the suit.

18. The position with respect to open land is, that the possession thereof is presumed to be in the person having title thereto. Mere use of open land of another, also does not amount to dispossession of another. Reference in this regard may be made to (i) *Anathula Sudhakar Vs. P. Buchi Reddy* (2008) 4 SCC 594; (ii) *Savyasachi K. Sahai Vs. UOI* 2017 SCC OnLine Del 8818; (iii) *Institute of Human Behaviour & Allied Sciences Vs. Govt.*

of NCT of Delhi ILR (2012) 3 Del 247; (iv) *Pankaj Bajaj Vs. Meenakshi Sharma* 2013 SCC OnLine Del 2303; (v) *S.S.P Buildcon P. Ltd. Vs. MCD* 2010 (119) DRJ 57; (vi) *Ishmali Devi Vs. DDA* 2009 SCC OnLine Del 2550; and, (vii) *Navalram Laxmidas Devmurari Vs. Vijaya Ben Jayvantbhai Chavda* AIR 1998 Guj 17. The appellants/ plaintiffs, as per their plaint itself, did not have title to the land. Supreme Court in *Suraj Lamps & Industries Pvt. Ltd. Vs. State of Haryana* (2012) 1 SCC 656 and (2009) 7 SCC 363 overruled the dicta of this Court in *Asha M. Jain Vs. Canara Bank* (2001) 94 DLT 841 holding that documents such as Agreement to Sell, Power of Attorney, Will etc., should be accepted by courts also as documents of title. It was unequivocally held that the same do not constitute documents of title. Moreover, in the present case, there is a finding to the effect that no title in favour of the executant of the documents also was shown. In fact, the counsel for the appellants/ plaintiffs today also is unable to show that the claim of the appellants/ plaintiffs or of the person who executed Agreement to Sell etc. in favour of the appellants/ plaintiffs was recorded in the Revenue records with respect to the lands or in the Award made for acquisition of the land.

19. Merely because Supreme Court, in one set of facts, has made observations against the State taking law unto its own hands, reasoning that there was a semblance of a dispute which required adjudication in the manner prescribed by law and which the State could not decide in its executive power, it cannot be applied to a situation as the present one, where the appellants/ plaintiffs on their own pleas have no title whatsoever to a property with respect to which injunction is claimed and on the

contrary the title of the respondent / defendant No. 2 DDA to the subject land stands established.

20. It cannot also be lost sight of, that under the Land Acquisition Act, 1894, land owner was compulsorily and forcibly divested of title and possession thereto, it would not be fair to say that after the owner has been so divested of title and possession, an encroacher thereover has better right than the owner. If for removal of such encroachers, Civil Courts were to require to be approached, it would defeat the ends of justice with a non-title holder and encroacher having better rights than title holder.

21. It cannot also be lost sight of that compulsory acquisition of land under the Land Acquisition Act of 1894 was for public purposes and if the Courts keep on granting injunctions against forcible dispossession to such encroachers over acquired land, the public purpose for which the land was compulsorily acquired would never be fulfilled and would again amount to vesting the benefit in encroachers over the lawful owners of the property and which could never be the intent of law.

22. **Rame Gowda** supra, instead of supporting the appellants/plaintiffs, is against the appellants/plaintiffs. Though it also holds that a person in settled peaceful possession cannot be dispossessed by the owner of the property except by due recourse to law, but clarifies, (i) that mere stray and intermittent acts of trespass do not give such a right against the owner; (ii) the possession which a trespasser is entitled to defend against owner must have extended for a sufficiently long period of time; (iii) a casual act of possession would not have the effect of interrupting possession of owner; (iv) the owner may re-enter and reinstate himself without using more force

than is necessary; (v) for possession to be settled, it must be effective, undisturbed and to the knowledge of the owner.

23. The averments of appellants/plaintiffs in the plaint in the suit from which this appeal arises, negate the settled possession of appellants/plaintiffs. The appellants/plaintiffs were only stray trespassers.

24. The judgments cited of the Supreme Court otherwise also have to be read along with the dicta of the Supreme Court in *Mandal Revenue Officer Vs. Goundla Venkaiah* (2010) 2 SCC 461 holding that today the Courts are approached by land grabbers and encroachers and the time has come for the Courts to stop rendering their shoulder and assistance to such land grabbers and encroachers in the name of rule of law.

25. As far as the contention, of the colony being provisionally regularized, is concerned, admittedly there is nothing to show that the land aforesaid is within the boundaries of the colony which is stated to be provisionally regularized.

26. I am, therefore, unable to find the present Second Appeal to be raising any question of law, much less a substantial question of law.

27. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 21, 2018

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