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

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Judgment delivered on: 22.03.2018

+ RSA 198/2015, C.M.9221-22/2015

BABU & ORS

..... Appellants

Through: Mr. J.K. Jain, Adv.

versus

NAIN SINGH & ANR

..... Respondents

Through: Mr. R.K. Shukla, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This second appeal impugns the judgment and decree in Suit No. 30/2013 dated 11.12.2006 as well as the order of the First Appellate Court upholding the same on 22.04.2015. The respondents (plaintiffs) had sought permanent injunction against the appellants from being dispossessed by the appellants from Khasra no. 185 admeasuring 1 *bigha*, 1 *biswa* situated in revenue estate of village Sabhapur, Delhi. The suit was decreed vide judgment dated 22.04.2015.

2. The plaintiffs had claimed that the suit land occupied by them formed a part of Khasra no. 185. The defendants/appellants had contended that the suit property fell in Khasra no. 186.

3. The Trial Court had considered the site plan filed by the plaintiffs and had accepted it as sufficient evidence to conclude that the suit property fell

in Khasra no. 185. The judgment and decree was upheld by the first Appellate Court.

4. This Court on 19.10.2015 was of the view that essentially the identity of the suit land had to be ascertained and the impugned order was deficient in reaching certainty in this regard. The Court observed:

“The submission of Mr. Jain, learned counsel for the appellant is that the dispute between the parties is with regard to the demarcation of khasra Nos 185 and 186. It is not in dispute that land falling in khasra No. 185 is claimed by the plaintiff-respondents whereas land falling in khasra No. 186 is claimed by appellant-defendants. Before the trial court, both the parties led in evidence their respective site plans. The trial court and the first appellate court accepted the site plan led in evidence by the plaintiff on the premise that the plaintiff had stated in his evidence that the plaintiffs’ site plan (Ex.PW1/2) had been prepared by a Draftsman. However, the Draftsman himself was not produced. The site plan (Ex.PW1/2) is also not found to be containing any dimensions, though, it says, ‘SCALE: 40 FEET TO AN INCH’. However, in the absence of dimensions, the mere mention of the Scale is of no avail. The plan produced by the appellant-defendant (Ex.DW1/1) was rejected by the trial court on the premise that the appellants/defendants had merely tendered the site plan and had not stated that the same has been prepared by a Draftsmen. It had also been observed that the plan filed by the defendants did

not contain any dimensions. The position, however, appears to be to the contrary as some of the dimensions are indeed mentioned in Ex. DW1/1.

The quality of evidence led by the parties with regard to khasra numbers of the suit property is extremely wanting. In these circumstances, I am inclined to exercise my power under Order 41 Rule 27 CPC, since it is considered necessary by this Court to ascertain the actual khasra number of the suit property, to be able to pronounce judgment. The same is considered essential to do complete justice between the parties. Accordingly, the Deputy Commissioner (East), having jurisdiction over village Sabhapur, Shahdara, is directed to cause the demarcation of the suit property to be carried out by employing the Total Station Method. The entire expense to be incurred in this regard shall be borne by the appellant in the first instance. The Deputy Commissioner shall communicate the charges to be deposited by the appellant and after deposit of the same, within four weeks thereafter, the demarcation shall be got carried out. The demarcation report should also indicate the existing boundary walls; the location of the fruit bearing trees; and the location of the constructed portions, namely, the rooms and the water head-pumps.”

5. The demarcation exercise carried out through the office of the Tehsildar, Karawal Nagar, Delhi by employing the “Total Station Method”,

the report shows that the suit land is situated in bay gosha of Khasra no. 191, with part of the area falling in Khasra no. 186. In other words the report concludes that the suit property does not at all fall in Khasra no. 185, Village Sabhapur, Delhi as was pleaded by the respondents/plaintiffs. Therefore, the injunction which covered the suit property purportedly falling in Khara no. 185 would be redundant and not operational apropos the land occupied by the appellants.

6. The suit was structured on the basis of the suit property falling in Khasra no. 185, however, this edifice crumbles in view of the aforesaid demarcation report concluding that the suit property does not fall in Khasra no. 185.

7. The fundamental issue that ought to have determined first i.e. whether the suit fell in Khasra no. 185 or in Khasra no. 186 had not been determined. The error in the impugned order is apparent inasmuch as the injunction sought to cover lands/suit property purportedly falling in Khasra no. 185 whereas in reality the said land was not located in Khasra no. 185. The order erred.

8. In the circumstances, the impugned order is set aside. The appeal is allowed and the suit is dismissed. The pending applications stand disposed off.

NAJMI WAZIRI, J

MARCH 22, 2018/acm