

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

+ **RFA No. 995/2018**

% ***10th December, 2018***

RAGHUBIR SINGH Appellant

Through: Mr. Anand Yadav, Advocate
(M. No.9810126454).

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 51744/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. Nos. 51743/2018 & 511745/2018 (for condonation of delay in re-filing)

2. For the reasons stated in the applications, delay in re-filing the appeal is condoned subject to just exceptions.

C.M.s stand disposed of.

RFA No. 995/2018

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the trial court dated 30.05.2018 by which the trial court has dismissed the suit for declaration, injunction and damages filed by the appellant/plaintiff claiming the ownership against the respondent/defendant/DDA with respect to 190 sq. yds. of land situated in Khasra no. 532/2/2 in the revenue estate of village Wazirpur, Delhi- 110052. The case of the appellant/plaintiff, in sum and substance, was that as per various notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 and subsequent Awards passed thereunder, lands in Khasra no. 532 was acquired, except the land which is the suit land which falls in Khasra no. 532/2/2. The appellant/plaintiff claimed that his house bearing no. 437 was located in Khasra no. 532/2/2 and since this was not acquired land, the respondent/defendant/DDA on 04.09.2000 had illegally demolished the house of the appellant/plaintiff, and therefore, the appellant/plaintiff filed the subject suit claiming rights in the suit land by seeking the relief of declaration, injunction and damages.

4. The respondent/defendant/DDA filed its written statement and stated that the appellant/plaintiff was an encroacher on government land. The respondent/defendant/DDA pleaded that though originally the appellant/plaintiff had illegally encroached upon the suit land, however, now the appellant/plaintiff was no longer in possession and hence not entitled to the relief of injunction claimed in the suit. It was pleaded by the respondent/plaintiff that the land falling in Khasra no. 532 was acquired as per the separate Awards. Vide one Award No. 19/74-75, land in Khasra no. 532 was acquired and the same was numbered as 532/2/1. The acquired area was 20 *bighas* and 3 *biswas* of which physical possession was taken of 19 *bighas*. Physical possession of this land of 19 *bighas* and Khasra no. 532/2/1 was handed over to the respondent/defendant on 05.08.1978. The remaining area of 1 *bigha* and 3 *biswas* was left out for the reason that it was built up. The subject land and other land in Khasra no. 532/2/1 were being maintained as a green area and unauthorized structure of the appellant/plaintiff was removed on 04.09.2000. The acquired land was thereafter fenced with boundary wall and grill. The total area of Khasra no. 532 was 50 *bighas* and 15 *biswas*, of which 19 *bighas* and

4 *biswas* was *Gram Sabha* land which was placed at the disposal of the respondent/defendant vide notification dated 20.08.1974. The suit was therefore prayed to be dismissed.

5. The following issues were framed in the suit:-

“1. Whether the plaintiff has served a statutory notice under Section 53-B of the Delhi Development Act, 1958? If so, to what effect? OPP

2. Whether the suit is barred by limitation? OPD

3. Whether the suit has been properly valued for the purposes of court fee and jurisdiction and proper court fee has been paid? OPP

4. Whether plaintiff has any right or title with regard to the suit land? OPP

5. Whether the plaintiff has encroached upon the land in question after the same was acquired and possession thereof was handed over to the defendant? OPD

6. Whether the plaintiff is entitled to be declared as the owner of the suit land? OPP

7. Whether the structure on the suit land has been illegally demolished by the defendant? If so, whether plaintiff is entitled to any damages for the same and to what amount? OPP

8. Relief.”

6. Though issue of limitation being issue no. 2 and non-maintainability of the suit for non-serving of the statutory notice under Section 53-B of the Delhi Development Act, 1957 being issue no.3, were decided against the appellant/plaintiff, however, for the sake of the present judgment, it is taken that those issues are wrongly decided

and the suit is held to be within limitation and that the statutory notice was served.

7. At this stage itself, it is required to be noted and it is held that the suit was liable to be dismissed as the suit sought only reliefs of declaration and injunction, although the appellant/plaintiff is not in possession of the suit land and therefore the relief of possession had to be prayed as per Sections 34 and 41 of the Specific Relief Act, 1963. The appellant/plaintiff has not proved his possession of suit land which is in the possession of the respondent/defendant who after demolishing the structure of the appellant/plaintiff, has fenced the suit land. Accordingly, this appeal for this in itself is liable to be dismissed as the suit itself is to be dismissed as not maintainable.

8. The main dispute is with respect to issue no.4 as to the claim of ownership of the suit land. This issue has been dealt with by the trial court in paras 13 to 17 of the impugned judgment and these paras read as under:-

“13. All these issues are taken together for decision as are inter-related. It is the case of the plaintiff that he is the owner of the suit land which falls in the Khasra no. 532/2/2 in the revenue Estate of village Wazirpur. On the other hand, it is the defence of the defendant that the suit land is in Khasra No. 532/2/1 village

Wazirpur and the land of this Khasra after acquisition was handed over to it at its disposal. The plaintiff is claiming his ownership to the land on the ground that the entire Khasra no. 532 was owned by Shamlat Pati, late Rang Sarabh Munshi etc. of whose plaintiff was one of the co-sharer. The plaintiff, to prove his claim has filed copy of Khatuani no.67 but he has not examined any witness from the revenue department. The plaintiff has also claimed that the defendant has not put any suggestion to the plaintiff in the cross-examination that he is not the owner of the suit land and that he has not acquired the ownership rights in the land being co-sharer. On the other hand, it is argued on behalf of the defendant that the plaintiff has to prove his case himself by leading evidence and he cannot take benefit of the weakness in the defence and that he himself has admitted that he does not have any document of ownership of the land except the Khasra Girdawari which is not a document of ownership. Reliance is placed on the case titled Satbir Singh vs Ghanshyam Dass & ors LPA 42/2017 decided on 25-10-2017 by the Hon'ble High Court of Delhi and Union of India vs Vasavi Co-op. Housing Society Ltd. and others Civil Appeal No. 4702 of 2004 decided on 07-01.2014 by the Hon'ble Supreme Court of India.

14. It is held by the Apex Court in the case cited above that '*it is trite law that, in a suit of declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set-up by the defendant would not be a ground to grant relief to the plaintiff*'. It is further held that '*The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited.*' It is settled principle of law that the revenue records does not confer title.

15. In the present case, the plaintiff has not filed any document of title of the suit in his favour. Further, the perusal of the orders passed in writ petitions as filed by the plaintiff with the application for exclusions of time reveal that the plaintiff in the writ petition no. 2850 has sought relief of quashing of the notification dated 20-08-1974 in terms whereof possession of the land measuring 19 bighas 4 biswas situated in village Wazirpur was stated to have

been delivered to DDA and for restoration of the possession to him. He has claimed himself as Bhumidar of the land. In writ petition no. 6840, he has mentioned that land in Khasra no. 532/2/1 measuring about 20 bighas was acquired under the provisions of the Land Acquisition Act and notifications under Section 4 and 6 were issued between 1961 and 1966 and the award in respect of the land was made in 1974-75. The plaintiff claimed in the writ petition that no award in respect of the land was made and possession thereof was not taken by the DDA and they at the stage could not take possession of the land. The acquisition of the land was found valid and the petitioner i.e. plaintiff was found not entitled to occupy the land and it was also held that he was not recorded owner of the land.

16. The copy of the award no. 1329 dated 18-06-1962 is filed by the plaintiff with the plaint which contains entry at serial no.53 qua the land in Khasra No. 532/1 measuring 11 bighas 8 biswas as Pond in the name of Gram Sabha owner Kallu asami. The award No. 19/74-75 was made and as per this award, land measuring 20 bighas 03 biswas in Khasra No. 532/2/1 was acquired and the entire land consisted of gairmumkin Johar. The plaintiff in the cross-examination has admitted the acquisition of the land vide these awards. He has not filed any claims in the award. The plaintiff has also filed copy of Jamabandi for the year 1985-86 which shows the land in Khasra No.532/2 measuring 19 bighas 04 biswas is under water and the Gram Sabha is shown in the column of Khatedar. In another Jamabandi for the same year, the land in Khasra No. 532/2 measuring 20 bighas is shown as Abadi and the Gram Sabha is Shown in the column of Khatedar. Thus, in the entire land measuring about 50 bighas in Khasra no. 532 village Wazirpur, the name of the plaintiff as occupier of any piece of land is not mentioned.

17. On the basis of the evidence adduced by the parties, it can be said that the plaintiff is not able to prove his ownership of the suit land rather he is out of possession of the land as per writ petitions and is not the recorded owner in the suit land accordingly, the action qua the demolition of the structure by the defendant is not illegal and the issues are decided against him.”

(Emphasis Supplied)

9. A reference to the aforesaid paras shows that the trial court has referred to the fact that the case of the appellant/plaintiff was

that his land falls in Khasra no. 532/2/2 whereas the case of the respondent/defendant was that the suit land falls in Khasra no. 532/2/1. I may note that though the trial court has not dealt with this aspect, it is clear that no evidence exists in the suit pertaining to demarcation done by the revenue authorities and it is not proved by the appellant/plaintiff that he was in possession of the land falling in Khasra no. 532/2/2 and not in Khasra no. 532/2/1. For this very reason, the suit of the appellant/plaintiff had to be dismissed because there was no evidence that the suit land fell in Khasra No. 532/2/2 as the appellant/plaintiff had claimed that the suit land actually fell in Khasra no. 532/2/2.

10. Further, the trial court has rightly noted that the appellant/plaintiff had filed two writ petitions, both of which were dismissed, and in these writ petitions acquisition proceedings were challenged, and that in these writ petitions there was no claim laid by the appellant/plaintiff to the suit land because in the first *writ petition bearing no. 2850*, the appellant/plaintiff challenged acquisition of 19 *bighas* and 4 *biswas* of land falling in Khasra no. 532 and the suit land does not admittedly form part of 19 *bighas* and 4 *biswas* of land

whereas in the second *writ petition bearing no. 6840*, the appellant/plaintiff had again mentioned only about Khasra no. 532/2/1 measuring 20 *bighas* i.e. the appellant/plaintiff laid no claim to land which he is presently claiming to the suit property and as falling in Khasra no. 532/2/2. This is observed by the trial court in para 15 of the impugned judgment.

11. Trial court has also rightly observed that appellant/plaintiff has failed to file any documents on record to show that the appellant/plaintiff was the owner of the suit land. On this aspect, I have considered the arguments of the appellant/plaintiff as regards some marked documents which are not proved, for showing if the appellant/plaintiff and his predecessor was a tenant in land comprising in Khasra no. 532/2/2 being *Jamabandi* of the year 1951, but it is seen that even if we look at this unproved document, this document only refers to the land being village common land, and the possession of the appellant/plaintiff and his successor way back in the year 1951 but thereafter there is no document whatsoever of the appellant/plaintiff ever being in possession of any part of Khasra no. 532, being Khasra no. 532/2/2 as is the case of the appellant/plaintiff.

12. The trial court has finally observed that land comprised in Khasra no. 532/1 acquired as per the first Award of an area of 11 *bighas* and 8 *biswas* is shown in the revenue record as the pond of *Gram Sabha* owner Kallu asami, and that the area of Khasra no. 532/2/1 measuring 20 *bighas* and 3 *biswas* is shown as *gairmumkin Johar*. The land in Khasra no. 532/2 so far as *Jamabandi* of the year 1985-86 is shown under water and the *Gram Sabha* is shown as the *Khatedar*. In another *Jamabandi* for the same year, the land in Khasra no. 532/2 measuring 20 *bighas* is shown as *abadi* with *Gram Sabha* being the *Khatedar* and this aspect has to be taken with the fact that suit land is not shown by any evidence led by the appellant/plaintiff to be falling in Khasra no. 532/2/2 and also that no possession is ever shown of the appellant/plaintiff of the suit land at any point after 1951 in terms of the unproved document being *Jamabandi* of the year 1951.

13. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed.

DECEMBER 10, 2018
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VALMIKI J. MEHTA, J