

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

+ **RFA No. 406/2018**

% **14th May, 2018**

IDOL SH CHHOTTE HANUMANJI MAHARAJ & ANR.

..... Appellants

Through: Mr. Satish Kumar, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 19814/2018 (for exemption)

1. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 19813/2018 and 19815/2018 (for delays)

2. For the reasons stated in the applications, the delays in filing and re-filing the appeal are condoned, subject to just exceptions.

C.Ms. stand disposed of.

RFA No. 406/2018

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit

impugning the judgment of the trial court dated 31.7.2017 by which the trial court has dismissed the suit filed by the appellants/plaintiffs for declaration, possession and injunction with respect to the suit land of 171.823 sq. yards plus 1105 sq. yards situated at Paharganj, New Delhi on the Paharganj Pachkuian Road. The appellants/plaintiffs are the Pujari of the temple and the Idol of Hanumanji Maharaj.

4. The facts of the case are that appellants/plaintiffs pleaded that an Idol of Hanumanji in around the year 1914 was installed over a plot of land admeasuring 1.28 acre in the suburbs of Jaisinghpura, Delhi and one Mahant Radha Kishan was its Pujari. This land was acquired by the Government of Delhi/Imperial Delhi Committee and consequently the appellant no.1/plaintiff no. 1 was allotted a new site on 0.25 acres being the suit land. This suit land is said to be allotted to Mahant Radha Kishan, the Pujari on 5.3.1914. It is pleaded in the plaint that on the death of Mahant Radha Kishan he has been succeeded by his sons who are the Pujaris, the appellant no.2 /plaintiff no. 2 being one of the legal heirs of the sons of Mahant Radha Kishna. The subject suit was filed on 9.9.1996 pleading that in April, 1983 some Government officials had threatened to interfere

with the possession of the appellants/plaintiffs and that the land was required for some other society and at that time the appellants/plaintiffs, with respondent nos. 4 to 10/defendant nos. 4 to 10, had filed a suit for perpetual injunction against Union of India. The Union of India in the earlier case had pleaded that the land which was allotted to the appellants/plaintiffs predecessor was misused i.e user of the land was in violation of the terms and conditions of allotment. The defendant no. 2 in the present suit being Sh. Rama Krishna Mission was also the defendant in the earlier suit, and which was impleaded subsequently in the earlier suit, pleaded that suit land out of a total area of 171.823 sq. yards was allotted to it. The earlier suit was dismissed in default on 27.9.1993 and the restoration application was also dismissed on 31.8.1995 and the matter rested there. The present suit is filed on more or less the same facts and cause of action as stated in the earlier suit, and it is pleaded that the vesting of land as alleged with Union of India/Delhi Development Authority is illegal and therefore consequently the appellants/plaintiffs seeks the relief of declaration, possession and injunction.

5. Respondent no. 1/defendant no. 1 is the Union of India. Union of India filed its written statement and denied that the temple was any longer at all situated on the suit land. It was pleaded that the suit land was found to be misused way back in the year 1959 and this was observed in the inspection dated 9.7.1959. On account of misuse the Mahant was *vide* letter dated 18.9.1959 directed to remove the unauthorised construction and in the absence of which land was taken over by the Union of India under the Public Premises (Eviction of Unauthorized Occupants) Act. Land measuring 171.823 sq. yards was thereafter allotted to the respondent no.2/defendant no. 2/Rama Krishna Mission and the remaining land was developed as a park. In the written statement of the respondent no.2/defendant no. 2/Rama Krishna Mission it was pleaded that it was allotted the land of 171.823 sq. yards on 15.11.1995 on payment of a sum of Rs.32,594 to the Land and Development Office.

6. After pleadings were complete the trial court framed the following issues:-

- “i. Whether the suit is under valued and the Court fee paid is insufficient as alleged in para 1 of the written statement (Preliminary Objections)?

- ii. Whether the suit is barred by limitation and laches as alleged in para 1 of the written statement of defendant no. 2?
- iii. Whether the suit is barred by principles of res judicata as alleged in para 1 of the written statement of defendant no. 2?
- iv. Whether the alleged allotment of land measuring 171.823 sq. yards to Ramakrishna Mission, i.e. defendant no. 2, is illegal and void for the reasons stated in para 19 of the plaint? If so, its effect?
- v. Whether the land measuring 0.25 acre has always been used by the temple and there is no misuser of the same as alleged in para 20 of the plaintiff? If so, its effect.
- vi. Whether the development of 1105 sq. yards shown by blue colour in plan annexed as a part is illegal and invalid and not binding on the plaintiff?
- vii.a. Whether there has been no resumption of the grant of any portion of the mandir land granted to the plaintiff No. 1 in 1920?
- vii.b. Whether the said resumption, if any, is illegal and void and not binding on the plaintiff?
- viii. To what relief, if any, the plaintiff are entitled?"

7(i). Trial court has by the impugned judgment dismissed the suit by returning two findings and conclusions. The first finding and conclusion is that the subject suit was filed on 9.9.1996 whereas the appellant no.2/plaintiff no.2 in his cross-examination conducted on 11.8.2008 admitted that the L&DO was in possession of the suit land around more than 30 years prior i.e 30 years before 11.8.2008, and which would take the parties to the year 1978 i.e appellant no.2/plaintiff no.2 was not in possession of the suit land since the year 1978. Admittedly the subject suit was filed on 9.9.1996 i.e well beyond the period of 12 years and hence the suit is rightly been held

to be barred by limitation. Trial court has also held that in fact even taking that the earlier suit was filed in the year 1983 which was dismissed in default on 27.9.1993 and restoration application was also dismissed on 31.8.1995, even then the period of 12 years also admittedly expired by the year 1995 as the earlier suit was filed in the year 1983. Accordingly the suit was dismissed as time barred

(ii) To the aforesaid reasoning of the trial court, this court would like to add in exercise of powers of this Court as a First Appellate Court under Order XLI Rule 24 CPC that besides the suit being barred by limitation, any rights of the appellant/plaintiff in the suit land also stands extinguished in view of Section 27 of the Limitation Act, 1963. Section 27 of the Limitation Act provides that where the period of limitation to take possession of the property has expired, the right in the property itself would stand extinguished. Section 27 of the Limitation Act reads as under:-

“27. Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. 27. Extinguishment of right to property”

(iii) Therefore in my opinion trial court was completely justified in dismissing the suit as time barred because appellants/plaintiffs

claimed the relief of possession by filing the suit in the year 1996 when admittedly at least since 1978 or in any case since 1983 the appellant no.2/plaintiff no.2 was not in possession of the suit land, and hence once the present suit was time barred, therefore in fact any right of the appellant no.2/plaintiff no.2 in the suit land also stood extinguished by virtue of Section 27 of the Limitation Act as stated above.

8. The second aspect on which the trial court has dismissed the suit, and rightly so, is by observing that the notice of misuse issued by the L&DO dated 18.9.1959 was proved as Ex.DW1/A, and therefore, since the admitted term and condition of allotment was that there should not be misuse, hence the Government was entitled to resume possession of the land, and to which aspect this Court would again like to add an additional aspect that the appellants/plaintiffs filed the subject suit claiming *inter alia* the relief of possession but in the suit plaint there is complete silence as to when the appellants/plaintiffs lost possession of the suit land. Obviously, this is so because the appellants/plaintiffs have not been in possession of the suit land since the same was resumed in around the year 1959 or

may be a year or two later, and therefore the appellants/plaintiffs deliberately did not make any statement in the plaint as to the date of dispossession. The fact of the matter therefore is that the suit land was partly allotted to the respondent no.2/defendant no.2/Rama Krishna Mission to the extent of 171.823 sq. yards and the balance land was being maintained by the Municipal Corporation of Delhi as a park.

9. In view of the above discussion I do not find any illegality whatsoever in the aforesaid findings and conclusions of the trial court, with which I concur, and also for the additional reasoning given by this Court.

10. There is no merit in the appeal. Dismissed.

MAY 14, 2018

AK/Ne

VALMIKI J. MEHTA, J