

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

% **Date of decision: 30th July, 2018.**

+ **RSA 277/2017 & CM No.44350/2017 (for stay)**

HARISH AGARWAL Appellant
Through: Mr. Sanjeev Mahajan, Advocate

Versus

GAON SABHA RAJOKRI & ORS Respondents
Through: Ms. Barnali Basak, Adv. for R1-R4

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This second appeal under Section 100 of the CPC impugns the judgment and decree [dated 25th October, 2017 in RCA DJ No.5306/2016 of the Court of Additional District Judge, New Delhi] allowing the first appeal under Section 96 of the CPC preferred by the respondents / defendants against the judgment and decree [dated 11th December, 2015 in Suit No.407/2015 (UID No. 02401C0384682002) of the Court of Civil Judge-14, Central] allowing the suit of the appellant / plaintiff against the respondents / defendants for permanent injunction restraining the respondents / defendants from interfering or demolishing any part of structure on the Farm House belonging to the appellant / plaintiff bearing No.7A and covered by khasra no.346M, 347M and 348M measuring 2 bigha and 16 biswas, as per sale deed dated 19th December, 1996, and remanding the suit for fresh adjudication after giving opportunity to the parties to lead additional evidence.

2. The appeal came up first before this Court on 6th December, 2017, when, without indicating as to what substantial question of law arises, notice thereof was ordered to be issued and trial court record requisitioned and operation of the impugned order stayed.
3. The counsel for the respondents / defendants appears.
4. The counsel for the appellant / plaintiff has argued:
 - (i) that the appellant / plaintiff had purchased Farm House No.7A aforesaid vide registered sale deed;
 - (ii) that the appellant / plaintiff received a notice under Section 86A of the Delhi Land Reforms Act, 1954;
 - (iii) that the appellant / plaintiff also received a notice under Section 133 of the Cr.P.C., English translation of which is at page 77A of the paper book;
 - (iv) that the respondents / defendants were threatening to demolish the structure of the Farm House of the appellant / plaintiff;
 - (v) that the land which the respondents / defendants were claiming in the notice aforesaid to be public land, was in some other khasra number and not the khasra number as per the sale deed in favour of the appellant / plaintiff and which the appellant / plaintiff had purchased.
5. I, on starting to read the impugned judgment, found that one of the reasons for remand is the cursory manner in which the Suit Court had disposed of the issue as to the bar to the suit under Section 185 of the Delhi Land Reforms Act.

6. I have enquired from the counsel for the appellant / plaintiff as to why the suit was not barred.
7. The counsel for the appellant / plaintiff states that the appellant / plaintiff was not seeking any declaration of his *bhumidari* rights in the suit and was only seeking to restrain the respondents / defendants from demolishing the structure of the Farm House of the appellant / plaintiff.
8. I have enquired from the counsel for the appellant / plaintiff, whether a civil court can grant a decree for permanent injunction restraining the revenue authorities under the Delhi Land Reforms Act from exercising their powers under the said Act and/or in this case, under Section 86A.
9. The counsel for the appellant / plaintiff seeks adjournment to find out what steps were taken by the appellant / plaintiff pursuant to notice under Section 86A aforesaid and/or the outcome of the said proceedings.
10. As far as the contention of the counsel for the appellant / plaintiff, of the land which is claimed to be public land, being not the land purchased by the appellant / plaintiff is concerned, merely because in the sale deed in favour of the appellant / plaintiff a particular khasra number has been mentioned of the land sold thereunder is not conclusive of the land in possession of appellant/plaintiff being in that khasra number and if at all there is a dispute with respect thereto, the remedy of the appellant / plaintiff thereagainst is to apply to the revenue authorities for demarcation and the Civil Court, in my opinion, cannot still be approached.
11. The counsel for the appellant / plaintiff seeks adjournment to address on the said aspect also.

12. It has further been enquired from the counsel for the appellant / plaintiff as to how the appellant / plaintiff can have a Farm House over land admeasuring 2 bigha and 16 biswas when as per the policy of the Delhi Government, there can be no farm house in less than 2 acres of land. It thus appears that the structure which is sought to be protected by the decree of permanent injunction sought from the civil court is *per se* illegal.

13. The appellant / plaintiff present in Court states that there is no construction of farm house and there is only a wall.

14. The counsel for the respondent / defendant states that the wall has been constructed over the land of *nala*.

15. It thus appears that there is no need for remand also and the decree of the Suit Court cannot be sustained on the aforesaid grounds alone.

16. Be that as it may, the appellant / plaintiff is restrained from dealing with the subject land in any manner whatsoever and/or from making any changes thereto.

17. The counsel for the appellant / plaintiff at this stage states that the appellant / plaintiff withdraws the suit from which this appeal arises because the wall, for restraining demolition of which the suit was filed, has already been demolished and further states that the appellant / plaintiff will take remedial actions under the Delhi Land Reforms Act.

18. Though the judgment of the First Appellate Court, insofar as setting aside the judgment and decree in the suit, is sustained, but the judgment and decree insofar as remanding the suit for further trial, is set aside in view of

the appellant / plaintiff having unconditionally withdrawn the suit with liberty aforesaid.

19. The appeal is disposed of.

20. It is clarified that the remedies open to the appellant / plaintiff before the revenue authorities shall not be prejudiced by this judgment and it shall be open to the appellant to apply for demarcation and assert *bhumidari* rights in the land.

21. No costs.

Trial court record be returned.

RAJIV SAHAI ENDLAW, J.

JULY 30, 2018
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