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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 376/2015, CM No.25651/2015 (for stay) & CM No.25822/2018
(u/S 151 CPC)
PHOOL SINGH Appellant
Through: Mr. Sunil Sirohi & Mr. J.P.S. Sirohi,
Adv.
Versus
DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Anuj Chaturvedi, Adv.
AND
+ RSA 380/2015 & CM No.25859/2015 (for stay)
PHOOL SINGH Appellant
Through: Mr. Sunil Sirohi & Mr. J.P.S. Sirohi,
Adv.
Versus
DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Anuj Chaturvedi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.10.2018

1. RSA No.376/2015 arises from a suit filed by the appellant on 7th January, 2003 for (i) declaration that the house as well as temple constructed, upon a piece of land measuring 9 biswas i.e. 450 sq.yds., by the appellant / plaintiff exists on land bearing Khasra No.1422/662/364/2 min of village Sidhora Khurd, Delhi and is not constructed over acquired land in Khasra No.723/665 of village Khampur Raya, Delhi; (ii) declaration that if the house and temple are found constructed over Khasra No.723/665 of village Khampur Raya, Delhi, the appellant / plaintiff has acquired ownership thereto by way of adverse possession; and, (iii) permanent injunction restraining the respondent / defendant Delhi Development

Authority (DDA) from dispossessing the appellant / plaintiff from the subject property or interfering with the possession of the appellant / plaintiff of the subject property.

2. RSA No.380/2015 arises from a suit filed by the appellant / plaintiff, on 26th March, 2001, for permanent injunction restraining the respondent / defendant DDA from forcibly demolishing the structure of the appellant / plaintiff in premises No.16/58-E, Bapanagar, Tank Road, Anandpuri, Karol Bagh, New Delhi forming part of Khasra No.1422/662/364 min 2, Khewat No.24 in village Sadhora Khurd, measuring about 9 biswas.

3. It is not in dispute that both the suits pertain to the same property.

4. The suit subject matter of RSA No.376/2015 being Suit No.24/2006 of the Court of Civil Judge (West) was dismissed vide judgment and decree dated 9th August, 2011 qua the relief of declaration but allowed qua the relief of injunction and the respondent / defendant DDA was restrained from dispossessing the appellant / plaintiff from the property and / or from interfering with the peaceful enjoyment and occupation of the appellant / plaintiff of the property, without due process of law.

5. The suit subject matter of RSA No.380/2015 being Suit No.111/2001 of the Court of Civil Judge (West) was also allowed vide judgment and decree dated 9th August, 2011, only to the extent that respondent / defendant DDA was restrained from demolishing the structure on the premises, without due process of law.

6. The appellant / plaintiff did not prefer any First Appeal against the part of the judgments in the suits denying the reliefs claimed in the suits. Only the respondent / defendant DDA preferred First Appeals against the judgments in the suits, to the extent against the respondent / defendant DDA.

However, the appellant / plaintiff filed cross-objections in the First Appeal filed by the respondent / defendant DDA subject matter of RSA No.376/2015.

7. Both the appeals of the respondent / defendant DDA being RCA No.2/2012, from which RSA No.376/2015 arises and RCA No.40/2013 from which RSA No.380/2015 arises, were allowed and the cross-objections of the appellant / plaintiff in First Appeal subject matter of RSA No.376/2015 were dismissed vide judgments dated 16th September, 2015 of Additional District Judge-05 (West)

8. Hence, these Regular Second Appeals.

9. No substantial question of law has been framed in these Second Appeals till now. However, interim order directing *status quo* qua possession has been made.

10. On 3rd May, 2016, vide common order in both these appeals, with the consent of respondent / defendant DDA, demarcation by Total Station Method was ordered, to determine the khasra number in which the subject property is situated i.e. whether in Khasra No.723/665 which has admittedly been acquired or in Khasra No.1422/662/364/2 min which has not been acquired.

11. The said demarcation has been carried out and the respondent / defendant DDA filed objection thereto but thereafter has been seeking time for filing fresh/further objections to the demarcation report.

12. No fresh/further objections have been filed as yet.

13. The counsel for the respondent / defendant DDA today states, that since demarcation has been carried out in Second Appeals, the matters be remanded to the Suit Court, for determining on the basis of said demarcation

reports and objections thereto, the Khasra number in which the property is situated.

14. It has been asked from the counsels for DDA in several such matters, and was also asked from the Chief Legal Advisor (CLA) of the DDA in an interaction pursuant to order dated 5th September, 2018 in these appeals, what purpose contesting such suits serves inasmuch as even after succeeding in the said suits, respondent / defendant DDA in any case will be required to take action in accordance with law, as applicable to it, for demolition and recovery of possession and whether not it is appropriate that all such questions are decided in the said proceedings rather than in the suits for injunction.

15. The appellant / plaintiff in the present case also has been granted injunction, only against any forcible action by the respondent / defendant DDA, leaving it open to the respondent / defendant DDA to act in accordance with law. However, the respondent / defendant DDA, instead of taking action in accordance with law, is choosing to keep these lis which are already nearly two decades old, pending.

16. Be that as it may, since the respondent / defendant DDA, inspite of interaction of this Court with its CLA, has opted so, these appeals are disposed of, remanding the suits from which these appeals arise, to the Suit Court, to on the basis of demarcation reports and the objections filed thereto, determine the khasra number in which the suit property is situated. It is clarified that it will be open to the Suit Court to take all others steps for determining the khasra number in which the property is situated, including on the basis of any other material and to also, if finds merit in the objections, set aside the demarcation report filed in this Court.

17. The parties to appear before the Court of Civil Judge (West), Tis Hazari Courts, Delhi, to which the suits are assigned, on 29th November, 2018.

18. A copy of this order be forwarded to the District Judge (West) to ensure that the suits files are before the Suit Court on 29th November, 2018.

19. Since the demarcation reports have been filed in these appeals, it is appropriate that the appeal files as well as the requisitioned files are also transmitted to the Suit Court and the same be done forthwith.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

OCTOBER 11, 2018

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