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

Date of decision: 13th March, 2020

+ LPA 753/2019

THE DHAKA GRAM VIKAS
SAMITI (REGD) & ORS

..... Appellants

Through: Mr. S. S. Khatri, Adv.

versus

NORTH DELHI MUNICIPAL
CORPORATION & ORS

..... Respondents

Through: Mr. Abhijat, Mr. Rakesh Saini and
Mr. Shaaswat Jindal, Advs. for
respondent no. 6

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

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13.03.2020

D.N. PATEL, CHIEF JUSTICE (ORAL)

LPA No. 753/2019

1. This Letters Patent Appeal has been preferred by the appellants (original petitioners), whose writ petition being WP(C) No. 11203/2019 was dismissed by the learned Single Judge vide judgment and order dated 21st October, 2019 (Annexure A to the memo of this writ petition), whereby prayer for cancelling the building plan of the respondent no. 2 was not accepted by the learned Single Judge.

2. It appears that the land in dispute is bearing Khasra No. 412/74 (min), admeasuring 67 bigha 15 biswas, ownership of the part whereof is claimed by the respondent no. 6 as plot no. 34, for which building plan was approved

by the Municipal Corporation of Delhi on 6th September, 2019. For cancellation of this building plan, a writ petition being WP(C) no. 11203/2019 was preferred by the appellant.

3. It further appears from the facts of the case that the ownership of the land in question is in dispute. Paragraph 7 of the counter affidavit filed by the respondent no. 6 in this Letters Patent Appeal reads as under:

“7. I say that the contents of Para 4 of the appeal are not admitted and are denied. The plot is in possession of the family of Respondent No.6 for more than 100 years and is being used as their residence. The true facts are as under:-

i) Sh. Nathu, father of Sh. Jodha Ram @ Jodha Singh was the absolute owner and in possession of properties bearing No.34 and 25 since prior to 1900. A mud house with thatched roof was there on the property. Sh. Jodha was employed as a chowkidar in All India Radio office at Kingsway Camp near village Dhakka, Kingsway Camp, Delhi.

ii) In 1957, Sh. Jodha constructed a pucca house in place of mud house with thatched roof. The bricks were ordered from one Yadav Bhatta Co., Badii Bawana Road, Delhi State. The bricks with Tadav' mark are still embedded in the "14" (fourteen) inch brick wall still erected at the suit property. The receipts dated 27.02.1957, 02.03.1957, 09.03.1957, 27.03.1957, 02/06/1957, 03/05/1957, 13.03.1957, 07.04.1957, 12.04.1957 are filed on record.

iii) The house was assessed to House Tax. The receipts of House Tax/Notices Application dated 04.11.1966, 27.11.1974, 07.03.1975, 01.04.1975, 26.07.1975, 10.10.1079, 15.09.1980

and 20.08.-1981 in the name of Jodha or his wife, Smt. Sammo Devi are filed on record. A water bill in the name of Sh. Jodha for the year 1973-74 issued by MCD is on record.

iv) Sh. Jodha Ram @ Jodha Singh died in 1973/1974 at 34, Village Dhakka, Delhi. From 26.03.1974, Smt. Sammo, widow of late Sh. Jodha Ram @ Jodha Singh started receiving pension of Rs.375/- per month from the Central Govt. on account of services of Sh. Jodha Ram.

v) On 5th July, 1975 Smt. Sammo Devi adopted one Jai Singh, son of Sh. Mange Ram (her brother) after the demise of her husband, Sh. Jodha Ram by a registered Adoption Deed. Later, the adopted son and his wife started harassing and ill treating Smt. Sammo Devi. Smt. Sammo Devi turned them out of the house. On 22nd September, 1995, Smt. Sammo Devi executed a Will bequeathing all her moveable and immoveable assets in favour of three sons of Defendant No.1.

vi) Smt. Sammo Devi died on 25th February, 1996. In 1994, Sh. Jai Singh, the adopted son filed a suit for perpetual injunction against Shri Sumer Singh, father of Respondent No.6 (Suit No.359/02) for restraining Defendant No.1 Shri Sumer Singh from causing obstruction in the peaceful possession and user of the properties acquired by him. On 31st May, 2005, the suit was withdrawn by Sh. Jai Singh on the ground that he has been allegedly dispossessed by Shri Sumer Singh, father of the Respondent No.6. On 20th August, 2004, Sh. Jai Singh filed a civil suit (Suit No. 109/2004) against Shri Sumer Singh and his three sons for recovery of possession of properties bearing

No.34 and 25, Village Dhakka, Kingsway Camp, Delhi and for mesne profits.

vii) On 7th June, 2013, the suit was settled between the parties. The terms of settlement were that the parties shall have equal shares in the two properties No.25 and 34, Village Dhakka; (ii) House No.34, Village Dhakka shall come to the share of three sons of Shri Sumer Singh and property No.25, Village Dhakka shall fall to the share of Sh. Jai Singh. The parties shall be free to deal with their respective properties in the manner they wish. In view of the statement of the parties, the suit was decreed by Sh. Parveen Singh, learned SCJ/RC (Central), Delhi. The compromise statement was to form part of decree.

viii) Vide letter bearing No.Tax/CLZ/2013/1820 dated 20.09.2013, the property No.34, Village Dhakka, Delhi was mutated in favour of three sons of Defendant No.1, namely, Sh. Rajneesh, Sh. Anand Pal and Sh. Kailash in the records of M.C.D. Vide relinquishment deed dated 7th February, 2017 two sons of Shri Sumer Singh namely, Sh. Kailash Chander and Sh. Anand Pal Singh released all their rights, title and interest in the property No.34, Village Dhakka in favour of their brother (third co-owner) Sh. Rajneesh, Respondent No.6 herein. The electricity and water connection are installed in the name of Sh. Rajneesh in the suit property. On 29th April, 2019, Sh. Ranjeesh, Respondent No.6 being the absolute owner of the suit property applied to Bldg. Deptt., Civil Lines Zone, North Delhi Municipal Corporation for sanction of the building plan for

reconstructing the suit property. An amount of Rs. 1,05,374.00 (Rupees one lakh five thousand and three hundred seventy four only) was deposited online via transactions No.49221560 by the Respondent No.6.

x) The building plan was sanctioned by MCD. Respondent No.5 intends to raise construction on the suit property as per the sanctioned plan. The building plan is displayed at the property.”

4. In view of the aforesaid facts, a highly disputed question of fact is involved about the ownership of the property in question. As per the appellants (original petitioners), the land in question pertains to village and was used for the common area and/or common *baithak*; whereas respondent no. 6 is concerned, they are the owners of the property in question as narrated in detail in paragraph 7 of the aforesaid counter affidavit filed by respondent no. 6. In view of these facts, we see no reason to entertain this Letters Patent Appeal. This aspect of the matter and the disputed question of fact is properly appreciated by the learned Single Judge while deciding WP(C) No. 11203/2019 vide judgment and order dated 21st October, 2019.

5. It has been held by the Supreme Court in paragraphs 14, 15 and 19 of the judgment in *Roshina T. vs. Abdul Azeez K.T. and Others* (2019) 2 SCC 329, which read as under:

“14. It has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is

alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant. (See Mohan Pande vs. Usha Rani, 1992 (4) SCC 61 and Dwarka Prasad Agrawal vs BD Agrawal, (2003) 6 SCC 230).

15. In our view, the writ petition to claim such relief was not, therefore, legally permissible. It, therefore, deserved dismissal in limine on the ground of availability of an alternative remedy of filing a civil suit by respondent No.1 (writ petitioner) in the Civil Court.

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19. We do not agree with the submissions of learned counsel for respondent No.1 for the reasons that first there did exist a dispute between the appellant and respondent No. 1 as to who was in possession of the flat in question at the relevant time; Second, a dispute regarding possession of the said flat between the two private individuals could be decided only by the Civil Court in civil suit or by the Criminal Court in Section 145

Cr.P.C proceedings but not in the writ petition under Article 226 of the Constitution.”

6. In view of the decision, no error has been committed by the learned Single Judge while deciding WP(C) No. 11203/2019 vide judgment and order dated 21st October, 2019; hence, there is no substance in this Letters Patent Appeal and the same is dismissed. Moreover, a civil suit being CS No. 704/2019 is already pending in Rohini District Court, wherein few of the plaintiffs are the appellants before this Court in this Letters Patent Appeal, in which an application under Order XXXIX Rules 1 and 2 of the CPC is also pending with the learned trial court as stated by the counsel for the respondent no. 6. In view of these facts, we see no reason to entertain this Letters Patent Appeal and the same is dismissed. The amount of ₹ 1 lac, deposited by the appellants pursuant to the order dated 29th November, 2019 passed by the learned Single Judge, is ordered to be returned to the appellants. The amount shall be returned by the Registrar General of this Court by account payee cheque after following due process.

CM Appl. Nos. 51447/2019 & 54520/2019

In view of the order passed in the Letters Patent Appeal, these applications are disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J.

MARCH 13, 2020

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