

\$~J-4 (S.B.)

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

Judgement reserved on **22.02.2021**
Judgement pronounced on **05.07.2021**

+ **RSA 12/2021 & CM APPL. No. 3116/2021**

PAWAN KUMAR GUPTA

.....Appellant

Through: Mr. Ajay Kohli with Ms. Kirti
Mewar, Advs.

versus

RURAL MEDICARE SOCIETY

.....Respondent

Through: Mr. K.K. Rai, Sr. Adv. With Ms.
Maneesha Dhir, Mr. Abhishek Kumar and Mr.
Saransh Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

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RSA 12/2021

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Preface: -

1. This is a second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 [in short “CPC”]. The appeal is directed both, against, the judgement dated 09.11.2020, passed by the learned Additional District Judge at South District, South Delhi [in short “learned ADJ”] in appeal no. RCA DJ/88/18 as also the judgement and decree dated 21.03.2012, passed by the learned Civil Judge, Central, Tis Hazari Court, Delhi [in short “Trial Court”], in CS No. 409/11/04; the suit was instituted by the respondent/plaintiff for possession and damages. The learned ADJ, via her judgement, has confirmed the judgement and decree of the Trial Court, passed in an application instituted under Order XII Rule 6 of the CPC.

2. At this stage, it will be relevant to note that, while the matter was pending before the first appellate court, an application was moved by the appellant/defendant under Order XLI Rule 27 of the CPC to seek, leave to place on record additional evidence to prove that village Saidulajab, wherein the suit property is located, was an urban area. The application was accompanied by a notification dated 23.05.1963 [in short ‘1963 notification’] issued under Section 507(a) of the Delhi Municipal Corporation Act, 1957 [in short “DMC Act”].

2.1. The first appellate court, vide order dated 29.08.2012, dismissed the appellant’s/defendant’s application. Being aggrieved, the appellant/defendant assailed the decision before this court in CM (Main) No. 1224/2012. The Single judge allowed the petition vide order dated 07.05.2015. This order was further clarified on 10.02.2016. The appellant/defendant was, thus, allowed to

lead additional evidence before the Trial Court pursuant to the clarification issued by this Court vide order dated 10.02.2016, and followed by the learned ADJ's order dated 08.03.2016. Once additional evidence was recorded, the Trial Court, vide order dated 01.08.2018, had the matter placed before the learned ADJ. The learned ADJ, thereafter, took up the first appeal for hearing, and as indicated above, passed the impugned judgement dated 09.11.2020, which is assailed in the above-captioned appeal.

2.2. Therefore, when the instant appeal came up for hearing, on behalf of the appellant it was contended, that the only issue that arises for consideration in the appeal is: whether village Saidulajab, in which the suit property was located, was an urban area? Therefore, what is required to be examined is the status of the Saidulajab village, on the date, when the suit was instituted.

Backdrop: -

3. Before I proceed to adjudicate upon the issue set forth hereinabove, it would be relevant to etch out the broad contours of the case.

- i. The respondent/plaintiff, which is constituted as a society, and registered under the Societies Registration Act, 1860, since February 1977, was allotted, in 1993, a parcel of land admeasuring 1500 sq. yards, located at Saidulajab Village in Mehrauli, by the Delhi Administration. On this parcel of land, the respondent/plaintiff erected a modest charitable hospital with the object of providing medical facilities to persons lacking in financial wherewithal. Towards this end, the respondent/plaintiff, in October 1994, executed an agreement, having a duration of 11 months,

with the appellant/defendant, to set up and run a pharmacy [hereafter referred to as the “agreement”]. The area let out to the appellant/defendant admeasured about 15 ft. x 12ft.

- ii. With the agreement under his belt, the appellant/defendant commenced his pharmacy business under the name, K.R. Medicos. Initially, the appellant/defendant paid Rs. 1,500/- per month as rent, which was enhanced to Rs. 2,500/- in November 1997, w.e.f. December 1999. The agreement was renewed from time to time. The last renewal took place in December 2002. The last 11 months tenure expired on 31.10.2003.
- iii. The respondent/plaintiff, much before the expiry of the tenure of the agreement, served a notice dated 12.03.2003 seeking, *inter alia*, possession of the suit property. According to the respondent/plaintiff, the trigger for issuance of the notice was the receipt of several complaints from female customers and patients, as also, the female staff employed, with the hospital. It is alleged that the appellant/defendant misbehaved with the female customers/patients and resorted to indecent behaviour with female staff engaged by the hospital. These events, it is averred, spanned between June and September 2002. This led to the female staff of the hospital filing a complaint with the Station House Officer (‘SHO’), Madangir, which, ultimately, drove the respondent/plaintiff into issuing the notice dated 12.03.2003, terminating its agreement with the appellant/defendant. Being aggrieved by the said notice, the appellant/defendant filed a suit for a permanent injunction against the respondent/plaintiff [i.e. Suit No. 42/2003] before the Court of Senior

Civil Judge, Tis Hazari, Delhi. In the said suit action, the respondent/plaintiff moved an application under Section 151 of CPC praying for issuance of a restraint order against the appellant/defendant from personally running the pharmacy and from entering the defined compound/premises, including the nurse block, main hospital building and adjacent area. This suit, however, was disposed of based on statements made on behalf of the parties. The appellant/defendant made a statement that he would not enter the area located in the main hospital, which was designated as the “nurse block”. Likewise, on behalf of the respondent/plaintiff, a statement was made that the appellant/defendant would not be ousted from the suit property “without due process of law”. Thus, the suit was decreed as compromised on 24.03.2003.

- iv. It may be relevant to note that, thereafter, via communication dated 25.08.2003 addressed to the appellant/defendant, the respondent/plaintiff served a quit notice and sought possession of the suit property on or before 31.10.2003 [which was the date of expiry of the agreement], to which the appellant/defendant responded vide reply dated 28.08.2003. Besides this, being aggrieved by the letter dated 25.08.2003, the appellant/defendant instituted a suit [i.e. Suit no. 161/03] against the respondent/plaintiff, for declaration and permanent injunction along with an application praying for ad-interim temporary injunction. The learned ADJ dismissed the prayer made in the suit for a temporary injunction vide order dated 30.09.2003, and also, dismissed the review application preferred against the said order, vide order dated 31.10.2003. Being

aggrieved with the dismissal of the review, the appellant/defendant preferred F.A.O. 734/2003 before this Court, which was disposed on 18.01.2008.

- v. It is when the appellant/defendant did not hand over the possession of the suit property, after the expiry of the agreement, and subsequent non-renewal of the same, that the respondent/plaintiff instituted the suit for possession and damages; this is the suit from which the present appeal arises.
4. Given this backdrop, submissions on behalf of the appellant/defendant were advanced by Mr. Ajay Kohli while arguments on behalf of the respondent/plaintiff were made by Mr. K.K. Rai, Senior Advocate, assisted by Ms. Maneesha Dhir.

Submissions on behalf of the appellant: -

5. Mr. Kohli broadly made the following submissions.
 - i. The suit was barred under Section 50 of the Delhi Rent Control Act, 1958 [in short “DRC Act”]. In this context, it was contended that not only the rent of the property was below Rs. 3,500/- but also the suit property was located in an urban area.
 - ii. The fact that the suit property was located in an urban area was discernible on perusal of the 1963 notification [Exhibit –DW1/2] issued under Section 507(a) of the DMC Act. Furthermore, notification dated 25.03.1979 [Exhibit-DW1/1], issued under Section 1(2) of the DRC Act,

established that the Saidulajab village, where the suit property was located, was an area to which the provisions of the DRC Act applied.

- iii. The 1963 notification adverts to various areas, which were proposed to be urbanised including the revenue estate of Mehrauli. Saidulajab village fell within the revenue estate of Mehrauli. Therefore, the argument that Saidulajab village was not an urban area was both, in law and on facts, untenable.
- iv. A perusal of the testimony of Mr. Dharma Nand Patwari [DW-2], the revenue official of Saket Tehsil, would show that, before 1997, Saidulajab village fell within the Mehrauli tehsil, and thereafter, was included in the Saket tehsil.
- v. The reliance placed on behalf of the respondent/plaintiff on the notification dated 20.11.2019¹ [which, for the first time, was filed in this Court] to demonstrate that Saidulajab village was declared as an urban area only upon issuance of this notification cannot help the cause of the respondent/plaintiff unless parties are allowed to lead further evidence, *inter alia*, concerning the aspect as to why a second notification vis-a-vis Saidulajab village had to be issued under Section 507(a) of the DMC Act when the 1963 notification already covered the said village.
- vi. It is required to be borne in mind that revenue estates were given their names usually based on the name of the largest village that fell within the periphery of the estate, and since Mehrauli was the largest village, the

¹ In short '2019 notification'

estate was referred to as the "revenue estate of Mehrauli". A revenue estate has several contiguous villages and Saidulajab village was one such village.

vii. In support of his submissions, Mr. Kohli has relied upon the following judgements.

- a) *Indu Khorana vs. Gram Sabha & Ors.*; (2010) SCC OnLine Delhi, 1334.
- b) *Trikha Ram vs. Sahib Ram & Anr.*; 69 (1997) DLT 749.
- c) *Madho Prasad vs. Ram Krishan & Ors.*; 2001 (7) AD Delhi 72.
- d) *Sayada Begum vs. Qaisar Dad Khan*; 2018 SCC OnLine Del 7832.
- e) *Raj Kumar vs. Meer Singh*; RSA No.267 of 2015, High Court of Delhi.
- f) *Mitter Sen Jain vs. Shakuntala Devi*; 2000 (9) SCC 720.

Submissions on behalf of the respondent: -

6. On the other hand, Mr. Rai made the following submissions.
 - i. First, despite an opportunity being given, by this Court, in the first round, to prove that the Saidulajab village, wherein the suit property was located, fell in an urban area during the relevant period - the appellant/defendant had failed to do so.
 - ii. Second, the fact that the 1963 notification adverted to the revenue estate of Mehrauli did not necessarily imply that every village which fell within its sway was urbanised. This was demonstrable, apart from anything else,

by perusing the 2019 notification, which specifically referred to several villages located in various zones/districts in Delhi, which were notified as urban areas. The said notification alluded to Saidulajab village as an urban area.

- iii. In any event, since the appellant/defendant had taken the defence (in his written statement) that the Trial Court was not competent to try the suit because of the provisions of Section 50 of the DRC Act, the onus to prove that Saidulajab village, in which the suit property was located, was an urban area, during the relevant period, fell on the appellant/defendant. Since the appellant/defendant had failed to discharge the burden of proof, this issue would have to be decided against the appellant/defendant.
- iv. The issue before this Court concerns a fact qua which a finding has been returned by the Court below, and therefore, this Court ought not to disturb the impugned judgement as no question of law, much less a substantial question of law, arises for consideration, in the instant appeal.

Analysis and Reasons: -

7. Having heard the learned counsel for the parties and perused the record, as noted right at the outset, the only issue which arises for consideration in this appeal is: whether Saidulajab village was as an urban area on the date of institution of the suit?

7.1. By way of evidence, what has been placed before the Court is the 1963 notification. I am, for the moment, not relying upon the 2019 notification, although, the appellant/defendant has placed nothing before me to doubt the

veracity of the same. Going further, the relevant part of the 1963 notification, issued under Section 507(a) of the DRC Act reads as follows.

“DELHI GAZETTE
DELHI ADMINISTRATION
No.24 DELHI. THURSDAY, JUNE 13. 1963/JYAISTHA 23, 1885
PART IV
Notifications of Departments of the Delhi Administration other than notifications
included in Part I
DELHI ADMINISTRATION
(Municipal Corporation of Delhi)
NOTIFICATIONS
Delhi, the 23rd May, 1963

No.RNZ/526 - In exercise of the powers conferred by clause (a) of Section 507 of Delhi Municipal Corporation Act, 1957 (66 of 1957) the Corporation, with the previous approval of the Central Government, hereby declares that the following localities mentioned In the Schedule given below, hitherto forming part of the rural areas, shall cease to be rural areas:

Schedule

<i>S.No.</i>	<i>Name of Zone</i>	<i>Name of the Revenue Estate</i>	<i>Particulars of the Area proposed to be urbanized</i>
1.	xxx	xxx	The entire remaining area of the said revenue estate which has not so far been urbanized.
2.	xxx	xxx	xxx
3.	xxx	xxx	xxx
4.	xxx	xxx	xxx
5.	xxx	xxx	xxx
6.	xxx	xxx	xxx
7.	xxx	xxx	xxx
8.	xxx	xxx	xxx

9.	xxx	xxx	xxx
10.	xxx	xxx	xxx
11.	xxx	xxx	xxx
12.	xxx	xxx	xxx
13.	xxx	xxx	xxx
14.	xxx	xxx	xxx
15.	xxx	xxx	xxx
16.	xxx	xxx	xxx
17.	South Zone	Mehrauli	-do- [The entire remaining area of the said revenue estate which has not so far been urbanized.]
18.	xxx	xxx	xxx
19.	xxx	xxx	xxx

7.2. A plain reading of the aforesaid extract would show that the “revenue estates” falling in various zones were urbanised in a phased manner. This is clear when one reads the first entry in the last column of the 1963 notification, which is extracted hereunder.

“The entire remaining area of the said revenue estate which has not so far been urbanized.”

7.3. There is nothing placed on record on behalf of the appellant/defendant (by way of evidence) as to the villages which fell within the revenue estate of Mehrauli, despite an opportunity being given, in that regard, by this Court. The

appellant/defendant was only able to have the testimony of revenue official of Saket tehsil [DW-2] recorded, which reads as follows.

"I am working in Saket as Patwari for the last 2 months. The Saidulajab was in Mehrauli Tehsil before the year 1997. (Vol. As on[sic: of] today, it is in Saket, Sub-division of District South).

XXXXX By Sh. Abhishek Kumar, Ld. Counsel for plaintiff.

It is correct that the Saidulajab is a village. I do not know whether DRC Act is applicable in Saidulajab.

Court question :- Do you know when did Saidulajab get urbanized?

Ans :- I do not know. I also do not know whether Saidulajab falls in [an] urbanized area."

7.4. A perusal of the testimony of the aforementioned revenue official would show that it does not shed any light on the aspect as to whether Saidulajab village had been notified as an urban area on the date when the suit was instituted.

7.5. Thus, in our view, the appellant/defendant having asserted that Saidulajab village stood notified as an urban area on the date of the institution of the suit, he was required to place on record, relevant and cogent evidence, to discharge the burden of proof placed upon him. The observations of the Supreme Court in the case of *Neelakantan vs. Mallika Begum*², (2002) 2 SCC 440 highlighted the importance of this principle i.e. the obligation placed by law of discharging the burden of proof by a party who makes an assertion with regard to a particular fact. In the aforementioned case, the appellants before the Supreme Court, who were also the tenants, had, inter alia, resisted the eviction proceedings initiated by the respondent/landlady on the ground that since the subject property was located in a slum area as defined under the Tamil Nadu

² In short "*Neelakantan Case*"

Slum Areas (Improvement and Clearance) Act, 1971, no proceedings for eviction could be undertaken except with the prior permission of the authority prescribed under the said Act. As a matter of fact, the appellants/tenants had also filed suits in which a similar assertion had been made. It is in this context, the Supreme Court made the following apposite observations, on the requirement to discharge the burden of proof by the party making an assertion.

“8. The main contention of the learned counsel for the appellant is that the High Court could not take a different view on question of facts. As proposition of law, the submission made on behalf of the appellant tenants cannot be faulted with. It is well settled that the High Court while considering the matter in exercise of its jurisdiction in second appeal or civil revision would not reverse the finding of fact as recorded by the courts below. But it is not an absolute proposition. In a case where the finding is recorded without any legal evidence on the record, or on misreading of evidence or suffers from any legal infirmity, which materially prejudices the case of one of the parties or the finding is perverse, it would be open for the High Court to set aside such a finding and to take a different view. The fact which is to be kept in mind is that the civil proceedings were initiated by the appellant tenants as the plaintiffs praying for relief of declaration that they were the owners of the superstructure over Survey Plot No. 1303/1 which area had been declared as a slum area under Section 3 of the Act. On the same basis, relief of injunction was also claimed in view of protection provided under Section 29 of the Act. The landlady as the defendant had denied that the suit property was ever notified as a slum area under Section 3 of the Act. The landlady had further pleaded that the property in dispute lay in Survey No. 1303/13 in respect of which there was no notification under Section 3 of the Act. In view of the above position, the High Court rightly held that the burden lay upon the plaintiff tenants in their suits to establish that property in dispute lay in Survey No. 1303/1. On the other hand, it is observed by the High Court that the courts below held that it was for the defendant landlady to prove that the property was situated in Survey No. 1303/13. The High Court in our view was right in holding that so as to be entitled to relief of injunction as prayed, the plaintiff tenants were legally required to prove by legal and cogent evidence that the property was situated in Survey No. 1303/1 in respect of which a notification was issued under Section 3 of the Act. The case of the plaintiff tenants that they were the owners of the superstructure has been found to be incorrect and the same has been disbelieved and declaration to that effect has been refused. The High Court has observed that the document Exhibits A-13 and A-14 do not speak about the suit property. There was oral evidence of PW 2 only saying that the property viz. Survey No. 1303/1 was notified by

the Government as a slum area, as claimed by the plaintiffs. The High Court rightly found that the plaintiffs failed to discharge the burden to prove that any declaration was issued under Section 3 of the Act in respect of the property in suit, by reason of which protection could be claimed by the plaintiff tenants under Section 29 of the Act.

9. The High Court observed that the case of the defendant landlady was that the property is identified by a door number which has been indicated as Door No. 40 and the old Door No. 15. Survey numbers may not always be the same (and they change). According to her initially it was Survey No. 1303/1 but on sale to different persons in smaller areas the property in question was renumbered as 1303/13. Door No. 40 and old Door No. 15 correctly bear Survey No. 1303/13 and not 1303/1. The High Court has also taken into consideration a communication received from the Chairman, Tamil Nadu Slum Clearance Board, No. MM No. 21756/87/No. 1 dated 2-9-1987 indicating that the area situated in Door No. 40 (old Door No. 15) bears Survey No. 1303/13 which has not been declared as a slum area. Evidence was adduced by the landlady in her RCOP. The property purchased by the landlady corresponded to new Door No. 40 and old Door No. 15. In the face of such a rebuttal of the plaintiffs' case on the part of the defendant the onus was upon the plaintiffs to prove their case identifying the property enuring benefit under Section 29 of the Act."

7.6. Therefore, in our opinion, Mr. Rai is right in contending that the burden of proof rested on the appellant/defendant who has failed to discharge the same.

7.7. Furthermore, in my view, since the appellant/defendant has failed to establish that Saidulajab village was covered under the 1963 notification, issued under Section 507(a) of the DMC Act, the 1979 notification, issued under Section 1(2) of the DRC Act, would not help its cause as it relates to "localities referred to in the 1963 notification". This is evident from the following extract from the 1979 notification.

*"GOVERNMENT OF INDIA
(BHARAT SARKAR)
MINISTRY OF WORKS AND HOUSING
(NIRMAN AUR AWAS MANTRALAYA)*

NEW DELHI, DATED THE 25 MARCH, 1979.

NOTIFICATION

S.O. 1236 in exercise of the powers conferred by the proviso to sub-section (2) of section 1 of the Delhi Rent Control Act, 1958 (No. 59 of 1958), the Central Government hereby extends all the provisions of the Delhi Rent Control Act, 1958.

(a).....

(b) *To the localities mentioned in the Schedule to Notification of Municipal Corporation of Delhi No;RNZ/526 dated 23.05.1963 (Copy enclosed as Annexure-B) published in Part-IV of Delhi Gazette, dated the 13th June 1963, and which by virtue of that notification have formed part of the urban areas within the limits of Municipal Corporation of Delhi, and*

(c)..... "

Conclusion: -

8. Thus, for the aforesaid reasons, I am not inclined to interfere with the impugned judgements. In my view, no substantial question of law arises for consideration in the instant appeal, and therefore, the appeal is dismissed at the stage of admission [See *Kirpa Ram vs. Surendra Deo Gaur*³, 2020 SCC OnLine SC 935].

³ “23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of Section 100 of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or reformulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court.

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xxx

xxx

9. Consequently, pending application shall also stand closed.
10. Parties are, however, left to bear their own costs.

RAJIV SHAKDHER, J

JULY 05, 2021

[Click here to check the corrigendum, if any](#)



25. In a judgment reported as *Ashok Rangnath Magar v. Shrikant Govindrao Sangvikar*⁵, this Court held that the second appeal can be dismissed without even formulating the substantial question of law. The Court held as under:

“18. In the light of the provision contained in Section 100 CPC and the ratio decided by this Court, we come to the following conclusion:

- (i) On the day when the second appeal is listed for hearing on admission if the High Court is satisfied that no substantial question of law is involved, it shall dismiss the second appeal without even formulating the substantial question of law;
- (ii) In cases where the High Court after hearing the appeal is satisfied that the substantial question of law is involved, it shall formulate that question and then the appeal shall be heard on those substantial question of law, after giving notice and opportunity of hearing to the respondent;
- (iii) In no circumstances the High Court can reverse the judgment of the trial court and the first appellate court without formulating the substantial question of law and complying with the mandatory requirements of Section 100 CPC.”