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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 12.04.2021

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CM(M) 398/2020

VIJAY SINGH

..... Petitioner

Through: Mr. L B Rai, Adv.

versus

SH. JAMSHED ALI & ORS.

..... Respondents

Through: Mr. Yogesh Gaur, Adv. for R-1.
Mr. Tushar Sannu, Standing
Counsel for EDMC with
Ms. Ankita Bhadouriya,
Mr. Subham Jain &
Mr. Himanshu Gera, Advs..
Mr. Jamal Akhtar, Panel
Counsel for GNCTD/R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

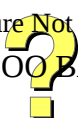
NAVIN CHAWLA, J. (Oral)

This petition has been heard through video conferencing.

1. This petition has been filed challenging the order dated 04.02.2020 passed by the learned Additional District Judge-01, North West, Karkardooma Courts, New Delhi in Suit, being CS No. 167/2016, dismissing the application of the petitioner/plaintiff in the Suit filed under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'Code'), wherein the petitioner had prayed for a direction to the Revenue Officials to demarcate the suit property and file a report with respect thereto in relation to the questions framed and stated in paragraph 6 of the said application.

Signature Not Verified

SHALOO BATRA



2. The petitioner herein has filed the above-mentioned suit claiming ownership to a plot of land admeasuring 135 Sq. Yards out of Khasra No. 187, Village Ghonda Gujran Khaddar, Delhi. The petitioner further states that the respondent is a tenant in a building built on 60 Sq. Yards of the said land numbered as House No. A-100, Gali No.21, South Gamri Ext. Ghonda Delhi-110053. The respondent no. 1 filed his written statement *inter alia* contending therein that the suit property in his possession is situated in Khasra No. 85, 86 and 87 of Village Gamri, Delhi situated in abadi of Gamri Extn., Delhi and that the petitioner has no concern with the same.

3. In the suit, the learned Trial Court has framed the following issues on 26.05.2016:-

- “1. Whether the plaintiff is entitled for decree of possession as prayed in the suit? OPP*
- 2. Whether the plaintiff is entitled for decree of declaration as prayed in the suit? OPP*
- 3. Whether the plaintiff is entitled for decree of permanent injunction as prayed in the suit. OPP*
- 4. Relief.”*

4. Thereafter the petitioner filed an application under Order XIV Rule 5 of the Code praying for the framing of an additional issue with respect to the location of the property as also for seeking demarcation of the property through the revenue officials. The said application was dismissed by the learned Trial Court vide its order dated 11.04.2017 observing as under:-

“No doubt there is a dispute between the parties about the exact Khasra number but there is no dispute regarding identity of the property. It is for the parties to lead evidence and to show in which exact Khasra number, property is situated and in case of a need, they can examine the revenue officials also to prove the land record and to get the property demarcated, if need arises but at this stage, there exists no ground to reframe the issue or to frame any additional issue as prayed for when there is no dispute regarding the identity because plaintiff is describing that the suit property is in possession of the defendant as a tenant in respect of part of the property and as an unauthorised occupant in respect of the another part whereas defendant is claiming its ownership. Plaintiff himself is sure regarding location, situation and identity of the property allegedly belonging to him and it becomes immaterial fact at this stage whether it is falling within a particular khasra number or another. I find no ground to allow this application and there is no requirement to demarcate the property from any revenue official at this stage. Same is hereby dismissed with costs of Rs.1,000/- payable by the plaintiff to the defendant no. 1.”

5. The petitioner then filed the aforesaid application under Order XXVI Rule 9 of the Code, which has been dismissed by the learned Trial Court vide its Impugned Order dated 04.02.2020, primarily relying upon its earlier order dated 11.04.2017.

6. The learned counsel for the petitioner submits that for a proper and complete adjudication of disputes between the parties, the exact

location of the suit property as to whether it falls within Khasra No. 187, Village Ghonda Gujran Khaddar, Delhi, as claimed by the petitioner, or in Khasra No. 85, 86 and 87 of Village Gamri, Delhi situated in abadi of Gamri Ext., Delhi, as claimed by the respondent no. 1, needs to be determined by the learned Trial Court. He submits that in the order dated 11.04.2017, the learned Trial Court had stated that that was not the stage for a direction to the Revenue Authorities to carry out the demarcation, therefore, the subsequent application filed by the petitioner could not be said to be barred by principles of *res judicata*.

7. On the other hand, the learned counsel for the respondent no. 1 submits that the Impugned Order has rightly rejected the application of the petitioner as the said issue could not have been re-agitated by the petitioner after the dismissal of the first application vide order dated 11.04.2017 of the learned Trial Court. He further submits that the evidence of the petitioner has been closed by the learned Trial Court vide its order dated 18.02.2019 and it is only thereafter that the present application had been filed by the petitioner before the learned Trial Court.

8. I have considered the submissions made by the learned counsels for the parties. Admittedly, the issues that have been framed by the learned Trial Court vide its order dated 26.05.2016 are general in nature. They would encompass within themselves the dispute as to whether the suit property falls within Khasra No. 187, Village Ghonda Gujran Khaddar, Delhi, as claimed by the petitioner, or in Khasra No.

85, 86 and 87 of Village Gamri situated in abadi of Gamri Ext., Delhi, as claimed by the respondent no. 1. One of the proper method for ensuring a complete and just adjudication of the said dispute will be by way of demarcation of the property.

9. The order dated 11.04.2017 of the learned Trial Court had dismissed the earlier application filed by the petitioner for the said purpose on the ground that the identity of the suit property is not disputed. Though no grievance can be found with such observation and indeed there is no such dispute, as the respective parties are also claiming ownership of the suit property contending it to be a part of different Khasra numbers, this being one of the issues also needs to be determined by the learned Trial Court.

10. The learned Trial Court in its order dated 11.04.2017 had also stated that the application could not be allowed at that stage and the parties can examine the Revenue Officials to prove the land records. Again, no grievance can be found with the said observation of the learned Trial Court, however, for this reason the application of the petitioner could also not have been said to be totally frivolous or vexatious.

11. The closure of the petitioner's evidence has been challenged by the petitioner before the learned Trial Court by way of an application. It cannot, therefore, be said that the application in question had been filed by the petitioner merely to fill up the lacuna, if any, that were left in his evidence.

12. As noted hereinabove, one of the issues to be determined by the learned Trial Court would be as to in which Khasra the suit property falls. For purposes of ensuring a full and complete adjudication of the dispute, it would therefore be necessary to have a report of the Revenue Authorities on the said issue.

13. Accordingly, the Impugned Order dated 04.02.2020 is set aside. The concerned SDM, Seelampur, Delhi is directed to file a report before the learned Trial Court on the Khasra number where the suit property is located. Such report be filed by the SDM within eight weeks of the communication of the present order. The parties shall be at liberty to prove/challenge the said report in the trial of the suit in accordance with law. In case any costs are to be incurred for the purposes of the said report, the petitioner shall bear the same exclusively.

14. The petition is disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

APRIL 12, 2021/rv/g