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

+ **CM(M) 520/2022**

PARDEEP

..... Petitioner

Through: Mr. Sanjeev Kumar, Adv.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Shobhana Takiar, Standing
Counsel with Ms. Devika Mohan and Mr.
Kuljeet Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT (ORAL)

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18.10.2022

1. CS SCJ No.750/2021 was instituted by the petitioner against the Delhi Development Authority (DDA) alleging trespass by the DDA into the petitioner's property, stated to be admeasuring 1 bigha 3 biswas and situated in Khasra No. 150/3 and 150/4 of village Humayunpur, New Delhi. The provocation for filing the suit, according to the plaint, was the affixation/installation, by the DDA, of an iron board on the suit property claiming that the property belonged to the DDA. The petitioner disputed this assertion.

2. The DDA in its written statement filed by way of response to the plaint asserted, *per contra*, that the property forming subject matter of the suit as per site plan filed with the plaint, fell in Khasra No.144

and not in Khasra No.150/3 and 150/4 as claimed by the petitioner. The land situated in Khasra No.144 according to the written statement, stood acquired by the Land and Building Department of the Delhi Government on 4th July 1961, whereafter the land was stated to have been handed over to the DDA *vide* Notification dated 3rd November 1961. The DDA claims to have been in continuous possession and ownership of the suit property since 1961. The suit was also, therefore, alleged to be barred by time.

3 Clearly, therefore, one of the issues in controversy in the suit was the exact status of the suit property. The petitioner contended that the suit property was situated in Khasra No.150/3 and Khasra No.150/4 over which he claimed exclusive ownership. DDA contended, *per contra*, that the suit property, as indicated in the site plan filed with the plaint, fell in Khasra No.144 over which the DDA has possession and ownership since 1961.

4. In these circumstances, the petitioner moved an application before the learned Senior Civil Judge (SCJ) under Order XXVI Rule 9 of the CPC, seeking appointment of a Local Commissioner from the office of the Sub Divisional Magistrate/LA Office Hauz Khas New Delhi, to demarcate the land and ascertain the Khasra No, in which the suit property fell. The justification for the prayer, as was contained in Para 4 of the application, which reads thus:

“4. That thus the real dispute between the plaintiff and defendant/DDA is whether the' suit property falls in Khasra No.144 min of Village Humayunpur, New Delhi-110029 or in Khasra No.150/3 arid 150/4 of Village Humayunpur, New

Delhi-110029. Therefore, the present application is being moved for the appointment of a local commissioner from the revenue department i.e. from the office of the Sub-Divisional Magistrate/LA Office, Hauz Khas, New Delhi, to demarcate as to whether the suit property, the site plan of which is already on record, falls in Khasra No.150/3 and 150/4 of Village Humayunpur, New Delhi-110029 or in Khasra NO.144 min of Village Humayunpur, New Delhi-110029.”

5. The aforesaid application of the petitioner under Order XXVI Rule 9 CPC was dismissed by the learned SCJ, *vide* order dated 23rd May 2022, forming subject-matter of challenge in the present petition.

6. The learned SCJ has, in dismissing the petitioner’s application, proceeded on the premise that Order XXVI Rule 9 of the CPC could not be used as an avenue for the litigant to collect evidence. The onus to produce evidence to prove his case being on the petitioner himself, the learned SCJ was of the view that the application of the petitioner merited dismissal. The relevant paragraphs from the impugned order read thus:

“It has been argued by Ld Counsel for plaintiff that demarcation of suit property is essential for just and proper decision of this case as it has been claimed by defendant/DDA that suit property (as reflected in site plan) falls in Khasra no. 144 and not in Khasra no. 150/3 and 150/4. However, I do not find myself to be in agreement with his submissions. It is a settled principle of law that provisions of Order 26 Rule 9 CPC cannot be resorted to for aiding a party to collect evidence to prove his/her case. The onus is upon the plaintiff to collect and produce evidence so as to prove that suit property mentioned by him falls in Khasra no. 150/3 and 150/4 and not in Khasra no. 144. Under the garb of present application, plaintiff is resorting to using this court to collect evidence on his behalf, which is impermissible under the law. Also, there is no bar to plaintiff approaching the concerned

Revenue Department for demarcation proceedings in accordance with the rules. There is no reason as to why LC should be appointed by the court for the said purpose by utilizing its power under Order 26 Rule 9 CPC.

In view of the above discussion, application under Order 26 Rule 9 CPC moved by plaintiff hereby dismissed. Application stands disposed off accordingly”

7. Ms. Shobhana Takiar along with Ms. Devika Mohan, learned counsel for the DDA submits that there is no error, whatsoever, in the impugned order, as would justify interference by this Court. She submits that it is a well settled principle that Order XXVI Rule 9 of the CPC could not be used as a means to collect evidence. She echoes the finding of the learned SCJ, that the petitioner could easily have applied to the concerned revenue authorities who would have had the area land in question demarcated. It was not open to the petitioner, according to her to bypass the normal channels and use Order XXVI Rule 9 to procure evidence in his favour.

8. In the opinion of this Court, the view adopted by the learned SCJ is a trifle too narrow to pass muster. Order XXVI Rule 9 is in fact a provision which is intended to expedite matters and ascertain facts which are in dispute. It reads as under:

“9. Commissions to make local investigations.—

In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report

thereon to the Court: Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

9. Among the avowed purposes of Order XXVI Rule 9, even as per the provision, is “elucidating” any matter in dispute. That the exact Khasra number in which the suit property fell was in fact the main issue in controversy in the Suit 750/21 cannot be gainsaid. If, therefore, the petitioner invoked Order XXVI Rule 9 for a direction to the revenue authorities to appoint a suitable officer as a Local Commissioner to demarcate the land and identify the Khasra number in which the suit property fell, there was no justifiable reason for the learned Civil Judge to have rejected the request. In observing that, the petitioner was thus, abdicating the duty which was cast on the petitioner to marshal evidence in his favour, I am of the opinion that the learned Civil Judge has adopted an unjustifiably narrow approach.

10. It cannot be forgotten that, technicalities apart, the ultimate aim and object of litigation is expeditious trial and resolution of the issue in controversy. Provisions which are intended to aid and assist the Court by expediting the process of identification of the exact issue in controversy, and delineation of the peripheries of the controversy before the Court, are, therefore, required to be expansively interpreted. If, by appointing a Local Commissioner, as prayed, any contentious aspect of the controversy could be resolved, it would be appropriate for the Court to do so, rather than adopt a stance that, by doing so, it would be assisting either side in collecting evidence in its favour. It

is time we realized that the CPC is a statute intended to aid and assist speedy resolution of disputes, and not to bog down the parties to needless paperwork.

11. In my view, the facts of the case eminently merited appointment of a competent Revenue Officer as a Local Commissioner, as that would possibly lay to rest the controversy regarding the Khasra number in which the suit property was situated. It would also assist, considerably, expeditious disposal of the case.

12. Accordingly, the impugned order dated 23rd May 2022 passed by the learned SCJ in Suit 750/21 is quashed and set aside. The application under Order XXVI Rule 9 CPC preferred by the petitioner would stand allowed.

13. Directions are issued, accordingly, to the office of the concerned Sub Divisional Magistrate (SDM) to appoint a suitable officer as Local Commissioner to demarcate the suit property and clarify whether the suit property falls within Khasra No.150/3 and Khasra No. 150/4, as contended by the petitioner or within the Khasra No.144 as contended by the DDA. Let the exercise be completed within a period of two weeks of presentation before the office of the concerned SDM of the copy of this order. Both sides would be at liberty to be present when the exercise of demarcation of the land is conducted, to avoid further controversy on that score.

14. Let a copy of the report in that regard be filed before the learned SCJ in CS SCJ 750/2021 within a week thereof.

15. This petition stands allowed in the aforesaid terms with no orders at its costs.

C. HARI SHANKAR, J

OCTOBER 18, 2022

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