

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

FAO 507/2018 & CM APPL. 45140/2018

Reserved on: 24.02.2023

Decided on: 02.05.2023

IN THE MATTER OF:

ASHISH BANSAL & ORS. Appellants

Through: Mr.Pankaj Gupta, Advocate.

versus

SUNIL GOEL & ANR. Respondents

Through: Mr.S.S. Jauhar, Advocate for
respondent No.1.

Mr.Syed Arsalan Abid, Mr.Prateek
Khaitan, Mr.Chatanya Sharma and
Mr.Shitij Chakravarty, Advocates for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of present appeal filed under Order XLIII Rule 1(r) CPC, the appellants have assailed the order dated 21.08.2018 passed by the learned Additional District Judge-05 (South), Saket Courts, New Delhi in Civil Suit bearing No.729/2017 whereby the application under Order 39 Rules 1 and 2 CPC filed on behalf of the appellants/plaintiffs was dismissed by the Trial Court.

2. The controversy in the present case relates to a parcel of land admeasuring 4 Bighas 16 Biswas situated in Khasra No.157, Village Rajpur Khurd, Tehsil Mehrauli, New Delhi. While the appellants claim to be joint owners of 600 sq.yds. of land by virtue of an Agreement to Sell dated 12.01.1992 executed in their favour, the respondents claim to be joint owners of 1 Bigha out of the aforesaid parcel of land by virtue of a registered Sale Deed dated 28.01.1991 executed in pursuance of an auction.

3. Learned counsel for the appellants would urge that 1 Bigha of land out of the said Khasra purchased by the respondents has not been demarcated and in the guise of the said purchase, the respondents have illegally occupied the appellants' land.

On the strength of interim order granted on 26.08.2009 by Debts Recovery Tribunal-III, Delhi as well as the order dated 01.10.2007 passed by the Division Bench of this Court in CM. APPL. No.13693/2007 in W.P.(C) 7205/2007, it was urged that the respondents be restrained from dealing with the 600 sq.yds. in the above parcel of land.

4. Learned counsel for the respondents, on the other hand, contended that instead of complying with the directions contained in the final order passed by the Division Bench and affirmed by the Supreme Court, the appellants, in the absence of any demarcation, have filed a suit for mandatory injunction seeking direction that the respondents remove themselves from the suit property.

5. Pithily put, the genesis of the dispute lies in the respective sale

documents of the parties wherein portions of land in the said Khasra have been sold without identifying the land. On one hand, the appellants claimed their title from Agreement to Sell dated 12.01.1992 whereby Pushpa Bansal, deceased wife of appellant No.1 had purchased 600 sq.yds of land in the said Khasra. The Agreement to Sell, as noted in the various orders, lacks clarity on the identification of the land.

On the other hand, the respondents' title flow from an auction-purchase carried out by respondent No.2 when one *Ms.Ranjana Kapoor* stood guarantee for credit given to M/s Polykap Industries and mortgaged 1 Bigha of land in the aforesaid Khasra. Unfortunately, the said transaction also lacked clarity on the identification of the land. Resultantly, the sale documents in favour of respondent No.1 also do not identify the boundary of 1 Bigha land.

6. Pertinently, the auction sale transaction occurring under the order of the DRT came to be challenged by way of a writ petition being W.P.(C) 4078/2015 before the Division Bench of this Court. The Division Bench, while noting the aforesaid anomalies in the identification of land in absence of any demarcation and with the consent of the parties, disposed of the petition by observing that the resolution would require demarcation which could not be carried out in a writ petition and the same needs to be agitated before the Civil Court. Subsequently, the appellants resiled from the consent and filed a Review Petition being Rev. Petition No. 199/2016 which came to be disposed of on 06.05.2016. While affirming the sale, it was directed that the Recovery Officer would serve the owners of land comprised in Khasra No. 157 and after hearing them, identify the boundaries of 1 Bigha land

owned by Ms.Ranjana Kapoor, which had been auctioned, which would subsume the identification of boundaries of 600 sq.yds of land purchased in the said Khasra by the deceased wife of the petitioner. Relevant extracts of the said order read as follows:

"8. Paragraphs 14 and 15 of the order dated March 30, 2016 shall read as under: -

"14. The sale is affirmed. Direction is issued to the Recovery Officer to serve owners of the land comprised in Khasra No. 157 and hear them and thereafter identify the boundaries of 1 bigha land owned by Ranjana Kapoor which had been auctioned, which would subsumed the identification of the boundaries of 600 sq.yards of land purchased in the same khasra No. 157 by the late wife of the petitioner.

15. The petition is accordingly disposed of declaring possessory title of the petitioner to 600 sq.yards land comprised in Khasra No. 157 ad-measuring 4 bigha and 16 biswa in the revenue estate of village Rajpur Khurd is sans the description of the boundaries of the land and the title of respondent No.2 to 1 bigha land comprised in Khasra No. 157 ad-measuring 4 bigha and 16 biswa in the revenue estate of village Khurd is also sans the description of the boundaries. Benefits of the sale proceeds would be retained by the respondent No.1."

The said order came to be challenged by way of an SLP Nos.19441-19442/2016, which was dismissed on 21.02.2022. Reportedly, no proceedings were held by the Recovery Officer and the lack of clarity on the boundaries of suit land or the mortgaged land continues to prevail.

7. In this background, the appellants, without there being any demarcation or the respective lands being identified, filed the underlying suit for mandatory injunction seeking direction that respondent No.1 be directed

to remove himself from the suit property. Alongwith the suit, an application under Order 39 Rules 1 and 2 CPC was also filed seeking a restraint order against respondent No.1 to deal with the suit property.

8. After going through the documents placed on record as well as orders passed by this Court and the Division Bench of this Court as noted above, it is evident neither of the parties have defined boundaries of land in their possession. In the considered opinion of this Court, till the appellants/plaintiffs *prima facie* establish through demarcation or otherwise, of which the onus lies squarely on them, the order passed by the Trial Court needs no interference.

9. The impugned order is upheld and the appeal is dismissed alongwith miscellaneous applications.

(MANOJ KUMAR OHRI)
JUDGE

MAY 02, 2023/v