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

+ **RSA 439/2015**

DELHI DEVELOPMENT AUTHORITYAppellant

Through: Ms. Manika Tripathy, Standing
Counsel with Mr. Barun Dey, Adv.

versus

SIS RAM DECEASED THR LRS & ORSRespondent

Through: Mr. Naresh Thanai and Ms.
Khushboo Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **10.12.2024**

1. The instant appeal has impugned the judgment dated 03.07.2015 passed in RCA No. 29/2015 upholding the judgment and decree dated 08.05.1984 passed by the Trial Court.
2. Respondents/plaintiffs instituted a suit for declaration of title and permanent injunction, stating that their forefathers had been in permanent occupation and possession of the land in question falling over Khasra No. 33/3.
3. It is the case of the appellant/defendant that the land in question falls over Khasra No. 33/10 of Village Vasant Nagar, and the same was duly acquired *vide* Award No. 1879, dated 29.11.1965 for planned development of Delhi. Therefore, according to the appellant/defendant, the suit property is



under the ownership of the Delhi Development Authority (DDA).

4. It also noted that the Trial Court, during the pendency of the proceedings, appointed a Local Commissioner, and accordingly, his report confirmed that the land falls over Khasra No. 33/3 and does not fall over Khasra No. 33/10.

5. However, during the pendency of this appeal on 20.04.2017, this Court *vide* an interim order directed for demarcation by the Total Station Method (TSM) at the cost of the appellant/defendant. Paragraph nos. 6 to 9 of the aforementioned order, read as under:

“6. I am surprised to say the least at the stand taken by the respondents/plaintiffs because if the respondents/plaintiffs were clear that they were not occupying any part of acquired land i.e. public land, they should have had no difficulty in agreeing to conduct of the demarcation proceedings. The fact that the respondents/plaintiffs are objecting to the demarcation proceedings, and which were to be conducted by the revenue officials in accordance with the latest lazer technology being the Total Station Method possibly and prima facie may show that the respondents/plaintiffs are less sure of their case. This Court is empowered under Order 41 Rule 27 CPC and Section 165 of the Evidence Act, 1872 to call for such evidence so as to remove any doubts or clear any confusion which appears in the record of the trial court. There is a salient issue as observed by the learned Single Judge in his order dated 11.12.2015 of the demarcation report being prepared without appellant/DDA being given notice of the specific date fixed for demarcation. Of course, the observations of the learned Single Judge were and are prima facie observations, but on the basis of such observations, and in order to get the requisite clarity this Court exercises its power under Section 165 of the Evidence Act read with Order 41 Rule 27 CPC to get demarcation conducted by the Total Station Method at the cost of the appellant/defendant. Demarcation be conducted of the total area shown in red in the site plan filed with the original plaint. I would like to add that originally there were four plaintiffs and now their only remains one plaintiff pursuing the suit, because the three other plaintiffs no longer claim any rights in the suit property. In any case, let the demarcation proceedings be conducted of the total land as per the site plan originally annexed with the plaint and this demarcation report will give a specific and categorical status report as to whether or not land which is the subject matter of site plan annexed with the plaint does or does not fall in



Khasra No. 33/10 Village Vasant Nagar, Delhi.

7. Let the appellant/defendant deposit the demarcation charges by Total Station Method with the competent authority within a period of three weeks from today and demarcation will be carried out thereafter within a period of four weeks. Demarcation proceedings will be carried out by the concerned Tehsildar of the area under the direct supervision of the Sub-Divisional Magistrate of the concerned area and demarcation will be done after giving notices to both the parties with respect to the date of conduct of demarcation proceedings and the timing as to when the demarcation proceedings will commence.

8. I may note that in this case it is found that the entire trial court record is not available because it was burnt in the fire which took place in the Tis Hazari Courts, and the court record was, I am told, reconstructed jointly by the parties.

9. List for compliance of the present order as also for further proceedings on 9th August, 2017.”

6. The aforementioned order came to be challenged by the respondents/plaintiffs before the Supreme Court and vide order dated 03.11.2017, the Supreme Court granted leave to appeal and set aside the order passed by this Court in the following terms:

“1)Leave granted.

2) Heard the learned Senior Counsel/Counsel appearing for the parties.

3) We have been taken through the papers and are satisfied that the Commissioner, who was appointed earlier after several rounds of litigation, has submitted a report and that additional evidence sought to be adduced by the respondent has already been declined by the High Court and Special Leave Petition dismissed by this Court.

4) In the circumstances, it was not correct for the learned Single Judge in Second Appeal in a suit of 1973 to go into this question again and appoint yet another commissioner

5) This being the case, we set-aside the impugned order passed by the High Court.

6) Accordingly, the appeal is allowed .”

7. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the findings of facts rendered by the Courts below, with respect to land in dispute situated over Khasra No. 33/3, is unassailable and the same does not require further reconsideration.



8. Learned counsel appearing for the appellant/defendant then contends that the land in question was of 'Shamlad Deh' i.e., community land in a revenue Estate and the same cannot be used for private purposes. The appellant/defendant has relied upon the decision of the Supreme Court in Civil Appeal No. 1132 of 2011, titled as **Jagpal Singh & Ors. v. The State of Punjab & Ors**, whereby, it was held that village community lands are generally treated as inalienable to preserve their status.

9. The first Appellate Court in its order dated 03.07.2015 in paragraph no. 26 has rendered the following pertinent findings:-

*“26. I may note that the appellant is now seeking to raise the question of the plaintiff Sh. Shish Ram, predecessor in interest of the respondents herein not being competent to maintain the suit after the other original plaintiffs had been dropped from the array of parties. **The order deleting the name of the other plaintiffs was never challenged by the DDA and even in the grounds of appeal the DDA had not raise the said question/issue. It is not disputed by the DDA that the plaintiff Sh. Shish Ram was a co-owner of the suit land and consequently it is trite to say that as a co-owner having right in every inch of the land, the plaintiff could maintain the present suit against the action of the defendant / DDA. The suit had been filed as DDA had threatened to demolish the structure therein and even during the pendency of the suit and despite stay orders DDA had demolished the structure for which separate action was initiated and the DDA had been penalized . Be that as it may, the arguments now sought to be addressed are without any merit and basis.**”*

10. It is, thus, seen that the order deleting the names of other plaintiffs was never challenged by the appellant/defendant. Even in the grounds of the appeal before the first Appellate Court, the appellant/defendant did not raise any question of such nature.

11. The first Appellate Court held that it is undisputed by the appellant/defendant that respondent No.1 /plaintiff No.1 namely, Sh. Shish Ram, was a co-owner of the suit land and a co-owner having rights in every



inch of the land would have the *locus* to institute a civil suit against an action of the appellant/defendant.

12. In light of the aforementioned concurrent findings by the Courts below, this Court finds that no substantial question of law has arisen for consideration in the instant appeal.

13. Accordingly, the appeal stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

DECEMBER 10, 2024

aks/mjo