

Balli Vs. Kallo Devi and anr

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Court : Delhi

Decided On : Nov-07-2014

Judge : Manmohan Singh

Appellant : Balli

Respondent : Kallo Devi and anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

26. h September, 2014 Judgment pronounced on:

7. h November, 2014 % + I.A. No.13520/2014 in CS(OS) 2196/2014 BALLI Through Plaintiff Mr.Anuj Kumar Garg, Adv. versus KALLO DEVI & ANR Through Defendants Mr.S.N.Kalra, Adv. for D-1. Ms.R.S.Bobde, Adv. with Ms.Mrinalini Sen Gupta, Adv. for D-2/DDA. CORAM: HON'BLE MR.JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The present suit for permanent injunction has been filed by the plaintiff in respect of the suit property i.e. F-268, Kot Kumhar Basti, Hauz Rani, Malviya Nagar, New Delhi- 110017 against the defendants i.e. Smt. Kallo Devi, defendant No.1 and DDA, defendant No.2.

2. It is the case of the plaintiff that he being a bonafide purchaser of the suit property has been staying in the suit property for last more than 30 years along

with his family. The suit property being old, needed repair work, which was initiated by the plaintiff. However, defendant No.1, a property dealer, filed a suit against the plaintiff as well as DDA, being Civil Suit No.268 of 2013 in the Court of a Civil Judge, Saket Court, claiming to be the owner of the suit property. The suit prayed for an injunction against the plaintiff from making any new structure on the suit property and for a direction to demolish the said construction. The Civil Judge dismissed the application for interim relief filed by defendant No.1 vide order dated 5th December, 2013. An appeal against the said order filed by defendant No.1 was also dismissed vide order dated 20th February, 2014. The said suit is still pending before the Civil Judge, Saket Court.

3. It is the case of the plaintiff that when defendant No.1 failed to any get any relief in her favour from the Civil Court, she approached DDA and using her influence, she got demolition action done over the suit property without giving any notice to the plaintiff. Though the plaintiff approached the officials of DDA, however, since they were under the influence of defendant no.1, the plaintiff was not even given an opportunity of being heard. Aggrieved thereof the plaintiff filed the present suit.

4. After service, when the matter was listed on 25th July, 2014, a statement was made on behalf of DDA that the present suit is not maintainable. It was stated that this is a collusive suit between plaintiff and defendant No.1 and neither of them has a legal title over the suit property. The suit property had already been partially demolished by DDA. On the said date, a status quo order was passed by this Court in respect of the suit property. DDA was directed to file a short affidavit in regard of the statements so made on that date.

5. An affidavit on behalf of DDA has been filed. It has been submitted by DDA that the suit property is not a part of any regularized unauthorised colony. The suit property forms a part of the land admeasuring 14 bighas and 9 biswas namely khasra nos. 203/1, 203/2 and 203/3 acquired by DDA pursuant to award dated 31st October, 1962. Possession of the suit property was handed over to DDA pursuant to the said award and is placed at disposal of DDA under Section 22(1) of the DD Act vide notification dated 3rd January, 1968. Neither plaintiff nor defendant No.1 has any right, title or interest in the suit property.

6. It is averred that the present proceedings are an attempt to prevent DDA from completing the demolition process which was initiated by it in December, 2013 on various complaint being received with regard to the unauthorised occupation and construction being carried out upon the suit property.

7. In the suit Civil Suit No.268 of 2013 filed by the defendant No.1 against the plaintiff as well as DDA in November, 2013, claiming to be the owner of the suit property and seeking an injunction against the plaintiff from making any new structure on the suit property and for a direction to demolish the said construction, the application for interim relief filed by defendant No.1 was dismissed vide order dated 5th December, 2013. An appeal against the said order filed by defendant No.1 was also dismissed vide order dated 20th February, 2014. The said suit is still pending before the Civil Judge, Saket Court.

8. In the meanwhile, vide letters dated 9th December, 2013 and 17th December, 2013, issued by Land Management Department, DDA to SHO, Malviya Nagar Police Station, complaints were made that the plaintiff has trespassed the suit property and is carrying out unauthorised construction thereupon. However, since no action was taken, DDA wrote a letter dated 20th December, 2013 to DCP, South Zone, Hauz Khas complaining about the said unauthorised construction by the plaintiff upon the suit property.

9. DDA organised a demolition programme with respect to the unauthorised construction carried upon the suit property, however, could only partly demolish the said construction on that day since the boundary wall erected by DMRC was coming in the way of demolishing the remainder of the unauthorised construction.

10. Subsequently, a complaint was received by Executive Engineer, SDMC from one Mr. Shukra Mohammad regarding unauthorised construction on khasra No.203, village Begumpur near Malviya Nagar metro station. The said complaint was forwarded to DDA on 13th January, 2014.

11. Plaintiff resumed the unauthorised construction and this led DDA to write to SHO, Malviya Nagar Police Station on 31st January, 2014, 4th February, 2014 and 11th February, 2014 requesting to take action against the said unauthorised

construction.

12. DMRC granted permission vide letter dated 29th April, 2014 to DDA to demolish part of the boundary wall as requested. Demolition in part was carried out on 26th June, 2014.

13. Yet again the unauthorised construction was resumed by the plaintiff. DDA wrote to SHO, Malviya Nagar for police assistance for further demolition to be carried out on 24th July, 2014. However, in response, DDA was informed that police force was not available and the request was made asking the demolition programme to be postponed to after the Eid festival.

14. Subsequently on 24th July, 2014, the present suit was filed. The plaintiff filed large number of documents to only establish that the plaintiff was/is in possession of the suit property. However, the plaintiff or defendant no.1 have failed to establish their legal titles and ownership of the suit property. The alleged agreement to sell/purchase the suit property filed by the plaintiff alongwith other documents available on record from page 85-138, are unregistered/unstamped documents and do not prove that the plaintiff is the owner of the suit property. On the contrary, it appears to the Court prima facie that the stand taken by DDA seems to be correct, who claims to be the owner of the suit property, as it is a Government land. Thus, no case for interim order is made out for grant of interim orders in view of abovementioned facts.

15. The plaintiffs application under Order 39 Rule 1 and 2 CPC i.e. I.A.No.13520/2014 is dismissed. Interim order is vacated.

16. No costs. CS(OS) 2196/2014 List before Joint Registrar for admission/denial of documents on 4th February, 2015. (MANMOHAN SINGH) JUDGE NOVEMBER07 2014

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