

John Nagar Vs. Dr. Hans Nagar and Ors

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SooperKanoon Citation : sooperkanoon.com/38666

Court : Delhi

Decided On : Feb-04-2015

Judge : Indermeet Kaur

Appellant : John Nagar

Respondent : Dr. Hans Nagar and Ors

Judgement :

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

29. 01.2015. Judgment delivered on :

04. 02.2015 CS(OS) 666/2008 JOHN NAGAR Through Plaintiff Plaintiff with his counsel Mr. Ujjwal Jha, Adv. versus DR. HANS NAGAR & ORS. Through Defendants Defendant No.1 with his counsel Mr. Kishore M. Gajaria and Mr.Piyush Sachdeva, Adv. Defendant No.2 with his counsel Mr. Rajeev Jha, Adv. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

IA No.2530/2014 (under Section 24 of the CPC by defendant No.1) 1 This is an application filed by defendant No.1 Hans Nagar for transfer of the present proceedings to the Revenue Authorities for the purpose of demarcation/physical division of the lands which are the subject matter of the present proceedings i.e. of the Nagar Estate of Ghadaipur, Mehrauli. This application has been filed under Section 24 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC). Learned counsel for the applicant has placed reliance upon the provisions

of Section 54 read with Order 20 Rule 18(1) of the CPC. His submission is that where a partition decree has been passed qua agricultural land, the actual physical division can be effected only by the Collector/SDM. To support this submission, he has placed reliance upon numerous judgments including judgments reported as 183 (2011) DLT57Hanso Devi (deceased through LRs) Vs. Chandu (deceased) Through LRs., JT2009(11) 583 Shub Karan Bubna Vs. Sita Saran Bubna and Other, AIR (36) 1949 Oudh 37 Abdul Ali & Ors. Vs. Mirza Viqar Ali Beg and Others, AIR1983 Supreme Court 124 Khemchand Shankar Choudhary & Ors and AIR1985 Karnataka 82 Ramagouda Rudregouda Patil & Ors Vs. Smt. Lagmavva and Others. Submission being reiterated that the revenue authorities being conversant with matters relating to agricultural land are in fact the proper medium through which this agricultural land can be demarcated; matter be accordingly remanded back to the revenue authorities. Submission being reiterated that although a consent a decree had admittedly been passed by the Civil Court on 12.04.2014 in terms of the Memorandum of Understanding (MOU) executed inter-se the parties on 15.09.2011, the revenue authority being the only authority competent to demarcate and physical divide the agricultural land, the proceedings before this Court are not maintainable and as such all proceedings arising out of the present suit i.e. CS (OS) No.666/2008, TEST CAS No.40/2007 and CS(OS) No.2019/2007 be transferred to the SDM, Mehrauli to carry out the process of demarcation. 2 Reply has been filed opposing the application. The contention of the plaintiff is that beside the fact that the provisions of Section 24 of the CPC are not applicable to revenue courts, even otherwise on merits, since the land is identifiable and having houses and boundary walls built upon it and the parties having agreed in terms of the consent decree have already decided as to which part of the property has to fall upon which party, the question of demarcation/any further physical division of the property does not arise. This application is frivolous and is liable to be dismissed. 3 On the applicability of Section 24 of the CPC, learned counsel for the plaintiff submits that the High Court under this provision of law can transfer any suit, appeal or other proceedings pending before it to any Court subordinate to it and the Court subordinate to it includes the Civil Courts only which are subordinate to it and it does not include the revenue Court and for this proposition reliance has been placed upon Sections

3 & 5 of the CPC. This submission of the learned counsel for the plaintiff is correct. However this by itself may not be reason enough to defeat the application of defendant No.1 as a wrong nomenclature would not defeat the right of a person if otherwise he makes out any such right and in this context, reliance by the learned counsel for defendant No.1 upon JT2010(6) Supreme Court 506 Vijaya Bank Vs. Shyamal Kumar Lodh has been noted. Thus this Court while ignoring the nomenclature of the application proceeds to decide as to whether these proceedings pending before it are liable to be transferred to the Revenue Authorities at this stage or not. 4 Arguments have been heard. Record has been perused. 5 Record shows that the three brothers i.e. Ronald Nagar and John Nagar (on the one side) and Hans Nagar (on the other side) are fighting a long litigation. This was with regard to agricultural land i.e. farm houses located in the Nagar Estate at Ghadaipur, Mehrauli. There were nine farm houses and ultimately after a long battle, the parties had entered into a MOU on 15.09.2011. The two suits filed by the respective parties i.e. CS (OS) No.2019/2007 and CS(OS) No.666/2008 were decreed in terms of the MOU on 12.04.2012. The decree drawn on that date had made the memorandum of understanding an essential part of the decree. Relevant would it be to point out that it was the Civil Court i.e. this Court which had passed this decree and neither party at that stage had taken any objection about the jurisdiction of the Court to pass this consent decree. 6 The execution petition i.e. Ex. P. No.20/2013 was filed thereafter i.e. 08.01.2013. The present application (I.A. No.2530/2014) filed by defendant No.1 questioning the authority of this Court to deal with this execution was filed on 28.01.2014. It is on this application that for the first time defendant No.1 has raised the objection on the maintainability of these proceedings. 7 This Court notes that in the course of these proceedings on an objection about the demarcation of the land having being raised by defendant No.1 on an earlier occasion as well, a Local Commissioner had been appointed. This was vide order dated 22.08.2013. The relevant extract of the order reads herein as under:

Accordingly, I appoint Mr. D.S. Pawaria, retd. ADJ (Mobile No.9999621110) as the Local Commissioner who shall visit the Nagar Estate. All parties shall be entitled to remain present at the time of conduct of the commission and the parties are directed to cooperate with the Local Commissioner by providing access to him to

the farm houses which are situated in the estate. The farm house(s) which are in occupation of outsiders, shall be inspected, and measurements taken from outside. In case the Local Commissioner requires any documents, whichever party is in possession thereof, shall provide the same. The Local Commissioner shall take the assistance of a Draftsman to draw up the boundaries of the farm houses and to measure the length and breadth of the boundary walls. He shall also be entitled to take photographs. The report of the Local Commissioner should indicate in the plan(s), the existing position with regard to the boundary walls and their dimensions within the estate, as also the width of passages. The numbers given to the farm houses and the names of the occupants shall also be indicated on the plan(s). The parties shall maintain status quo, till the report of the Local Commissioner is received, with regard to the boundaries of the farm houses in the entire Nagar Estate. The fee of the Local Commissioner is fixed at Rs.3 lacs which shall be shared between John Nagar, Ronald Nagar and Hans U Nagar in equal share i.e. Rs.One lakh each, apart from all other out of pocket expenses incurred by the Local Commissioner - including the expenses of the Draftsman. The said three parties should make the deposit with the Local Commissioner in advance. The Local Commissioner is expected to file the report positively within the next four weeks. The parties shall appear before the Local Commissioner on 26.08.2013 at 4:30 p.m., when he shall fix up further programme for the conduct of the commission.

8 The Local Commissioner had submitted his report on 23.09.2013. Attention has been drawn to the said report wherein the site plan has also been annexed. The Local Commissioner had also taken the help of a draftsman. Photographs were taken of the site; all measurements of all the farm house (nine in number) were taken in the presence of the respective Advocates and their parties and the dimensions of the properties were recorded in length and width; proceeding-sheets were drawn up. 9 At this stage, relevant would it be to point out that in terms of the consent decree dated 12.04.2012, farm houses No.2 & 5 had fallen to the share of Ronald Nagar. John Nagar was in possession of farm house Nos. 6 & 8. Hans Nagar and his successor in interest were in possession of farm houses Nos. 1, 3, 4 & 9. Possession of farm house No.4 was symbolic as M/s Civicon Engineering (intervener) had brought to the notice of the Court that farm house

No.4 had fallen to his share in terms of the Award dated 25.03.2013. This Court has been informed that this Award has subsequently been set aside by an order of HMJ Murlidhar. 10 Coming back to the report of the Local Commissioner and the plan annexed along with his report, it is clear that the boundary walls/sides of the dimensions of each farm house had been prepared; each farm house had a distinct number. It definitely was not a barren land. 11 The Division Bench of this Court in 184 (2011) DLT454Rajender Mohan Rana & Ors. Vs. Prem Prakash Chaudhary & Ors. had an occasion to examine a family settlement arrived at between the family members of Rana family relating to agricultural land. After the family settlement had been arrived at, the parties again re-agitated the matter before the Court. One of the questions answered by the Division Bench related to the jurisdiction of the civil Court to deal with the agricultural land. Section 55 of the Delhi Land Reforms Act and the use of the word may as appearing in Section 55 (1) had come for interpretation. The Division Bench had noted that the word may is discretionary and the latter word shall is of a mandatory nature and although the words are not synonymous, they may be used interchangeably if the context requires such an interpretation. In this context, the Court affirmed the family settlement arrived at between the parties holding that the provisions of the Delhi Land Reforms Act do not expressly or impliedly prohibit or bar joint bhoomidars from entering into a family settlement to divide their holdings. In this case also, compromise decree had been arrived at between the parties which had been recorded by the civil Court on their application under Order XXIII Rule 3 of the CPC and a decree was passed. The contention of one of the parties that the matter should be remitted to the Tehsildar in view of an objection that it is the revenue Courts alone which can effect the partition (in terms of Section 55 of the Delhi Land Reforms Act) had been repelled. The Division Bench had noted that where the parties themselves had entered into the settlement and pursuant to their settlement, their statements under Order 23 Rule 3 of the CPC had been recorded before the civil Court; they were bound by the terms of the said settlement/partition which was contained therein. Order 20 Rule 18(1) reads as under:

18. Decree in Suit for partition of property or separate possession of a share therein.- Where the court passes a decree for the partition of property or for the separate possession of a share therein, then,- (1) if and in so far as the decree

relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

1. Accordingly, while applying the ratio of Rajender Mohan Rana (supra), the word shall as appearing in Order 20 Rule 18 (1) may be toned down to read as may and in the context and factual matrix of the present case where the partition and separation by actual physical division of each farm house already stands effected, there would be absolutely no purpose in remitting the matter back to the Collector in terms of the aforementioned provisions. 13 Admittedly, the parties had entered into an MOU on 15.09.2011. The terms and conditions of the MOU have spelt out the manner and mode in which each farm house is to be possessed by each of the brothers. Physical demarcation of numbers had been effected. There are boundary walls in each farm house making each farm house devisable and identifiable. This has also been noted by the Local Commissioner in his report dated 23.09.2013. The photographs filed along with the report of the Local Commissioner also substantiate this stand. The properties stand divided by metes and bounds. The jamabandi/title documents of farm houses (on record) also reflect that even in the revenue record the farm houses have been clearly demarcated and each of them are identifiable. Since that all these properties i.e. farm houses No.1, 2, 3, 4, 5, 6, 8 & 9 can be identified by boundaries/numbers, the question of remitting the matter back to Revenue Court does not arise. 14 Application of defendant No.1 is without any merit. Dismissed with costs quantified at Rs.25,000/-. INDERMEET KAUR, J FEBRUARY04 2014 A

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