

Kusum Lata and Ors Vs. Dda and Ors

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Court : Delhi

Decided On : Apr-28-2015

Judge : V.K.Shali

Appellant : Kusum Lata and Ors

Respondent : Dda and Ors

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + RSA No.226/2008 Decided on :

28. h April, 2015 RIAZUDDIN Appellant Through: Mr.Samrat Nigam, Advocate. Versus DDA & ORS Respondent Through: Mr.Rajiv Bansal, Advocate. + RSA No.235/2008 KUSUM LATA & ORS Through: Appellant Mr.S.K.Jain and Ms.Garima Jain, Advocates. Versus DDA & ORS Through: Respondent Mr.Rajiv Bansal, Advocate. CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

1. This order shall dispose of RSA No.226/2008 and RSA No.235/2008 filed against the judgment and decree dated 18.10.2008 (impugned judgment) passed by the first appellate court in RCA No.24/2007 and RCA No.27/2007.

2. I have heard Mr.Samrat Nigam, the learned counsel for the appellant in RSA No.226/2008 and learned counsel for the appellant in the connected appeal RSA No.235/2008. I have also heard Mr.Rajiv Bansal, the learned counsel for the respondent/DDA.

3. Before dealing with the submissions of Mr.Samrat Nigam, the learned counsel for the appellant, it would be pertinent to give a brief background of the cases.
4. Both the regular second appeals arise out of Civil Suit No.594/2006. The said suit was filed by one Sh. Manmohan Krishan against two persons namely Sh.Rajiv Chopra and Sh.Subhash C.Gogia (defendant Nos.1 and 2 respectively) in which the DDA was also impleaded as defendant No.3. This suit was instituted on 24.05.1988.
5. Manmohan Krishan had filed a suit for perpetual injunction in which Riazuddin the present appellant was added as plaintiff No.2, set up a case that he was residing in the premises in question namely K-16 and K-17, Hauz Khas in the capacity of a lawful tenant of defendant Nos.1 and 2 i.e. Sh.Rajiv Chopra and Sh.Subhash C.Gogia respectively who were threatening to dispossess him. So far as the DDA is concerned, it was alleged that they were threatening to demolish the structure.
6. DDA, the main contesting respondent, was opposing the prayer of the appellants/plaintiffs. The case of the DDA was that the suit land is a part of Khasra No.569/297 which originally belonged to one Sh.K.K.Chopra, father of Sh. Rajiv Chopra, defendant No.1. The said land was acquired and the possession of the said land was handed over to the DDA by the then Delhi Administration on 18.07.1961. Sh. K.K.Chopra had filed a writ petition in High Court of Delhi challenging the acquisition. The aforesaid writ petition was dismissed by the Single Judge. A letters patent appeal was filed by Sh.K.K.Chopra which was allowed and the notification of the acquisition of the land was quashed, UOI preferred an SLP before the Supreme Court and during the pendency of the said matter in Supreme Court, the DDA and Sh.K.K.Chopra arrived at a settlement. Honble Supreme Court directed that a land measuring 1,000 square yards be allotted to Sh.K.K.Chopra for construction of his own house and if done so, he shall give up the challenge to the validity of the acquisition proceedings.
7. It is the case of the DDA that this land measuring 1,000 square yards was given to Sh.K.K.Chopra and the same is not disputed in the instant appeal. So far as the other remaining parcel of land is concerned, the said land was having the status of

acquired land.

8. Mr.Riazuddin filed an application under Order 22 Rule 10 CPC before the Civil Judge for being impleaded as a party in the suit on the ground that he is purported to have purchased plot No.K-17 from the plaintiff/Sh.Manmohan Krishan. This application was allowed by the learned Trial Judge.

9. A similar application was also filed by Smt. Jasbir Kaur alleging that she had purchased plot No.K-16, Hauz Khas, New Delhi and, therefore, sought impleadment as a plaintiff. The said application was, however, dismissed and this led to the filing of RCA No.24/2007 by the said applicant/Smt.Jasbir Kaur. After preferring an appeal, Smt.Jasbir Kaur who had filed an application for being impleaded as a plaintiff in the suit, disappeared and three ladies by the names of Smt.Kusum Lata, Smt.Shalini Goel and Smt. Alka Goel filed a similar application for impleadment as a plaintiff in the suit on the ground that a registered sale deed had been executed in their favour on 23.06.2008 by one Sh.Tiger Singh who is having a power of attorney in his favour from one Sh.Riazuddin. It may be pertinent to mention that not even a single document had been placed on record in this regard showing that the original owner Sh.K.K.Chopra or the subsequent owner DDA transferred the suit property in favour of any person.

10. It may also be mentioned here that although a compromise was arrived at between the DDA and Sh.K.K.Chopra before the Supreme Court, neither Smt. Jasbir Kaur nor Sh.Riazuddin were joined as parties nor it was brought to the notice of the court before 05.08.1988 i.e. the date of compromise, that interest has been created in favour of either of them in respect of the acquired land. Thus the stand of the DDA was that as the acquisition proceedings had attained finality right up to the Supreme Court, therefore, any transfer of right, title or interest in any parcel of land by Sh.K.K.Chopra was a nullity and void ab initio. This aspect was also dealt with by the first appellate court in Para 27 of the judgment as under:

27. In the civil appeal 2024/1970; neither the appellant Ms.Jasbir Kaur nor Mr.Riazuddin etc. joined as parties. The decision rendered on 05.08.1988 covered the suit plots. It rendered the whole bunch of documents above referred a nullity and inoperative in law. Consequently, the sale deeds were invalid being void-

abinitio.

11. Smt. Jasbir Kaur had based her claim upon three sets of general power of attorney and special power of attorney executed by Sh.Riazuddin and Sh.Mohammed Arshad in favour of her husband Sh.Tiger Singh. These GPAs/SPAs in favour of Smt. Jasbir Kaur were for a parcel of land measuring 400 square yards while as the apex court had directed for release of the land of only 1,000 square yards and if calculated at the rate of 400 for each of the transactions, it would come to 1200 square yards of land. It may also be pertinent here to reproduce para 29 of the impugned judgment.

12. The GPA very basis of the case of Mr.Riazuddin allegedly executed by Sh.K.K.Chopra in favour of Mirazuddin and Riazuddin was neither referred to or placed on record. No satisfactory explanation was rendered.

The application of Smt.Kusum Lata, Smt.Shalini Goel and Smt. Alka Goel was rejected as they were not impleaded as parties in the trial court and certainly as they have not been impleaded as parties, either in the suit or in the first appeal, their second appeal deserves to be dismissed on this short ground itself that they do not have the locus standi to challenge the judgment of the first appellate court. Therefore, they have absolutely no locus to challenge the judgment of the first appellate court much less raise a substantial question of law.

13. So far as Riazuddin is concerned, the trial court had decreed the suit of Riazuddin and granted an injunction. The DDA, feeling aggrieved by the said judgment and decree in favour of Sh.Riazuddin, had preferred an appeal and the first appellate court by a detailed speaking order had allowed the appeal of the DDA holding that Riazuddin was not able to show that it had any right, title or interest in respect of the suit land as claimed by him. In addition to this, it was observed that the compromise having been arrived at much earlier than the documents purported to have been executed in favour of Sh.Riazuddin, therefore, the said subsequent documents could not be deemed to have created any right, title or interest. It is on account of passing of the impugned judgment that the appellants in both the appeals herein were ordered to be evicted.

14. Sh.Riazuddin feeling aggrieved by the said judgment has preferred the present second appeal contending that the impugned judgment and the decree passed by the first appellate court raises a substantial question of law.

15. The only substantial question of law raised by Mr.Samrat Nigam, the learned counsel for the appellant, before this court, is that the appellant is in settled possession of the suit property since 1970 and, therefore, he cannot be dispossessed from the suit property, except in accordance with due process of law which means that for the recovery of possession, either the DDA should file a suit for possession or initiate proceedings under Public Premises Act. The learned counsel for the appellant has placed reliance on case titled A.P.Jain and Ors. v. Union of India and Ors; 189 (2012) DLT789 and Sh. Ramesh Chand v. Suresh Chand and Anr. in RFA No.358/2000 decided on 09.04.2012. The learned counsel for the appellant/Riazuddin has also relied upon Rame Gowda (Dead) by LRs v. M.Varadappa Naidu (Dead) by LRs; (2004) 1 SCC769 16. The learned counsel for the respondent/DDA has contested this claim of the appellant. It has been contended by him that the apex court in Mahadeo Savlaram Shelke and Ors v. Puna Municipal Corporation and Anr.; (1995) 3 SCC33 has observed that it is not necessary to resort to processes of law afresh for the purpose of retrieval of possession. It has been contended by him that since the appellant has already been given the right of hearing including the right of representation by filing the suit not only before the trial court, but also taken out an appeal before the first appellate court and the said matters having been decided against him, this tantamount to due compliance with the due process of law.

17. I have carefully considered the submissions made by the learned counsel for the appellants and the respondent and I have also gone through the record. There is no dispute about the fact that so far as the appellants in RSA No.235/2008 are concerned, these three ladies namely Smt.Kusum Lata, Smt.Shalini Goel and Smt. Alka Goel who are basing their claim on the power of attorney and agreement to sell purported to have been executed by one Sh.Tiger Singh who had GPA in his favour from Riazuddin. On the basis of these power of attorneys, the said appellants cannot be protected on the assumption of being in possession because admittedly the land in question stands acquired and that acquisition proceedings

having been challenged in the competent court and the same having attained finality right up to the Supreme Court, it is not open for this court to injunct the lawful owner seeking retrieval of possession of the premises against the respondent herein. Moreover, these three ladies i.e. Smt.Kusum Lata, Smt.Shalini Goel and Smt. Alka Goel were not parties in the court below and, therefore, cannot be permitted to become parties in the second appeal for the first time to get their rights adjudicated. For that to be done, they ought to have disclosed their interest either before the Supreme Court or ought to have been impleaded as parties in the trial court itself. Hence, on this short ground alone, their appeal bearing RSA No.235/2008 titled Kusum Lata & Others vs. DDA is dismissed.

18. So far as the appeal of Riazuddin (RSA No.226/2008) is concerned, merely because his claim is that he was in possession of the suit property for the last 45 years, does not insulate him from ejection. Before the appellant/Mr.Riazuddin shows that he deserves to be protected against alleged unlawful action or ejection or demolition, he must establish before the court his right to the property which is under his occupation. The learned first appellate court has already observed that no such documents of ownership have been placed on record by the appellant/Sh.Riazuddin and even if these documents are stated to have serving in nature and cannot be taken into consideration. Even if for the sake of arguments, it is assumed that the appellant is in possession, that possession is of no consequence because the matter had gone up to the Supreme Court and it was settled and the rights of the appellant/Sh.Riazuddin flow from the documents after the settlement had been arrived before the Apex court. If at all on the basis of the documents the documents he had drawn any right title or interest in the property before the date of compromise before the Apex court, then they ought to have been impleaded as parties before the Apex court either of their own or at the instance of Sh.K.K.Chopra who was the owner of the suit property. This having not been done, does not permit the appellant/Sh.Riazuddin to contend now that his possession be protected. Even if the appellant is deemed to be in possession, it would be in the capacity of a trespasser and a trespasser cannot be granted injunction against a lawful owner which admittedly in the instant case happens to be the UOI through DDA.

19. That being the position, the appellant has already been ordered to be ejected by the first appellate court. The said order does not suffer from any illegality, impropriety nor does the present appeal raises any substantial question of law.

20. So far as the contention of the learned counsel for the appellant is concerned that he is not opposing dispossession, but this dispossession must be in accordance with law, is absolutely correct. In accordance with law or due process of law, does not necessarily mean that the DDA ought to file a suit for recovery of possession. The very concept of due process of law is that the appellant must be given a right of hearing and a right of representation and if the same is done, it is a sufficient compliance with the due process of law. Reliance in this regard is placed on *Maria Margarida Sequeria Fernandes and Ors. vs. Erasmo Jack de Sequeria (Dead) through L.Rs.* AIR 2012 SC1727 wherein it has been held by the Apex Court that:

81. Due process means an opportunity for the Defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated by a competent Court.

21. So far as the judgments relied upon by the appellant is concerned they are distinguishable from the facts of the case. In *A.P Jains case (supra)* the court has said that possession can be taken by due process of law. That does not necessarily mean that possession can be taken by filing suit for possession or through recourse to Public Premises Act when the Apex Court has held that possession can be taken by due process of law which means that right of hearing or representation given must be considered. In the instant case hearing has already been given right up to the Supreme Court to the predecessor-in-interest of the appellant. Since the interest has been acquired by appellant/Riazuddin after acquisition having attained finality it cannot be deemed to have created an interest in him.

22. In *Rame Gowda (supra)*, appellant/plaintiff was claiming title to the property whereas in the instant case no such title is being claimed by the appellant. He is basing his claim on possession which according to him has admittedly come into

existence post-acquisition of which cognizance cannot be taken. Simultaneously, the other two cases are also distinguishable and the judgments cannot be applied blindly without correlation of facts.

23. Therefore, for the reasons mentioned above, I feel that the appeal of the appellant/Sh.Riazuddin is totally misconceived as it does not involve any question of law much less a substantial question of law. The appellant/Sh.Riazuddin has already been directed to be ejected from the suit premises.

24. Since the appellant is allegedly claiming to be in possession from 1970, therefore, I deem it just and proper that the appellant should be given four weeks time for the purpose of vacating the premises which means that he must vacate the premises in question on or before 31.05.2015 failing which the DDA shall be free to get the appellant ejected from the suit premises. For the purpose of ejection of the appellant from the suit property, the DCP concerned on being approached by the DDA shall render all necessary assistance for the ejection of the appellant/Sh.Riazuddin from the suit premises. This order of police assistance has been passed only on account of the fact that the acquisition proceedings have already attained finality right till the Supreme Court and by permitting the retrieval of possession of the suit premises in ordinary course by filing the suit for possession or under Public Premises Act will not only make a mockery of the process of law but also show disrespect to the orders of the Apex Court which had upheld the legality of acquisition proceedings, as it will take years for the respondent/DDA to retrieve the possession.

25. With these directions, the appeals are dismissed. A copy of the order be given dasti to the parties and a copy be also sent to the concerned DCP for information and compliance. V.K. SHALI, J APRIL28 2015/dm

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