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Qamr-ud-dIn and anr. Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Nov-24-1986

Reported in : 31(1987)DLT220

Judge : N.N. Goswamy, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 100

Appeal No. : Regular Second Appeal No. 18 of 1973

Appellant : Qamr-ud-dIn and anr.

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : M. Ahmed and; P.N. Talwar, Advs

Judgement :

N.N. Goswamy, J.

(1) The short question that arises in this second appeal is whether the property in dispute is a part of graveyard and vested in the Union of India or whether the Wakf Board is the owner of the property. The Courts below have recorded a concurrent finding of fact that the property namely field No. 319 was never a graveyard though it was a part of khasra No. 386. Consequently the suit of the plaintiff-appellant stood dismissed with costs, and the appeal was also dismissed with costs.

(2) The brief facts leading to the second appeal are that the appellants had filed a suit in 1954 against Delhi Improvement Trust for permanent injunction restraining the Delhi Improvement Trust from disturbing and ousting the appellant from the disputed plot and from dismantling and demolishing the Dhobi Ghat and other structures existing on the disputed plot. At that time, the suit was instituted by appellant No. 2 and at a later stage Delhi Wakf Board was substituted and was transposed son being defendant No. 2 to plaintiff No. 1. The appellants had alleged that the disputed plot bearing municipal No. XIV/4365 situated in Mohalla Qasabpura, Delhi is a part of big plot and measures I bighas and 2 bids was was graveyard having been dedicated from the time immemorial for that purpose. According to the plaintiffs, this property was a part of khasra No. 472. of the settlement of 1864 which corresponded to khasra No. 386 of the settlement of 1880.

(3) The defendant in the suit were the Delhi Development Authority and the Union of India. The suit was contested and it was pleaded that the disputed plot was a part of Khasra No. 319 of the last settlement of 1925 which khasra was owned by the Union of India and the management of which had been entrusted by the Union of India to the Delhi Development Authority and that the plaintiffs have no locus standi and had no cause of action for filing the suit.

(4) On the pleadings of the parties, the following issues were framed : 1. Was a place in dispute a part of the graveyard and vested in defendant No. 2 2. If issue No. I is proved, does the place in dispute belong to Government

(5) Subsequently at two stages, three more issues were framed, which. are:

1. Whether plot of land in suit belongs to the Central Government and vests in the defendant as Nazool property 2. If issue No. 1is proved, whether the defendant is not entitled to demolish the structure on the plot of land in dispute 3. Whether the site in suit forms a part of the graveyard as claimed and is owned and possessed by the plaintiff?

(6) The two Courts below have concurrently held after referring to the entire oral and documentary evidence that the property in suit was a part of khasra No. 319

and this property was always owned by Union of India and it was not a part of any graveyard. Consequently the plaintiffs were found to be not interested in the property, the suit as also the first appeal were dismissed.

(7) The learned counsel, for the appellant has taken me through the various documents including the plaints in the earlier suits, the decrees, the lease deeds executed by the occupant of the property namely Mohd. Nazir in favor of Anjuman Muid-ul-lslam. I have gone through all these documents with the help of the learned counsel, but I am afraid, none of these documents can identify the property to be a part of khasra No. 319. None of these documents except the two jamabandis Ex. D. 4 and Ex. D. 5 mention the property to be khasra No. 319. Those two jamabandis described the Union of India as the owner of the property and Mohd. Nazir to be.

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