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Court : Delhi

Decided On : Sep-03-2004

Reported in : AIR2005Delhi90; 113(2004)DLT754; 2004(76)DRJ478

Judge : Mukundakam Sharma and; Gita Mittal, JJ.

Acts : Delhi Development Act - Sections 22

Appeal No. : R.F.A. No. 183 of 2004

Appellant : Surinder Singh and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Rajiv Bansal, Adv. for Respondent No.3 DDA

Advocate for Pet/Ap. : P.Chakraborty, Adv

Disposition : Appeal dismissed

Judgement :

Mukundakam Sharma, J.

1. This appeal is filed by the appellants who were plaintiffs in the main suit. The said suit, which was registered as Suit No. 153/1997, was filed by the plaintiffs against the defendants claiming that the appellants are tenants of Smt.Krishna Behl, defendant No.4, in respect of structures standing on Khasra No. 444/394/65-

66, village Jhilmil Tahirpur, Delhi. It is alleged that they are tenants in respect of the said property since 1968 onwards and that they have been carrying on business of Kabari from the said property. It is the further case of the plaintiffs that the defendant No.3-Delhi Development Authority demolished the structures raised by the plaintiffs without any notice for which a civil writ petition was filed in this court which was, however, dismissed vide order dated December 11, 1997 on the ground that the writ petition gave rise to the disputed questions of facts. A liberty was granted to the appellants-plaintiffs to take recourse to the civil court and hence the present suit was filed by the plaintiffs seeking for a decree of declaration that the action of the Delhi Development Authority dated October 4, 1997 is null and void as the plaintiffs are the lawful tenants of defendant No.4 and, also for a decree for damages of Rs.4.75 lakhs together with interest to be paid to the plaintiffs with a further direction to the DDA to reconstruct the shops of the plaintiffs.

2. The aforesaid suit was contested by the defendants 1, 2 and 3. It was stated in the written statements that the plaintiffs were not the recorded owners of the land in question which falls within Khasra No. 395/267 and not in Khasra No. 444/394/65-66 as alleged. It is also stated that the suit land which is part of Khasra No. 395/267 was duly acquired by Award No. 61/72-73 and the said land was placed at the disposal of the D.D.A. vide notification under section 22 of the Delhi Development Act dated January 29, 1973. It is also stated that since unauthorised constructions on the said Khasra including the suit property had taken place, the same were demolished on October 4, 1996 and the plaintiffs were divested from the possession of the suit property. It is also categorically stated that defendant No.4 is not the owner of the said land. The suit was contested by three defendants, namely, Union of India; Secretary, Land and Building, and the Delhi Development Authority, whereas the defendant No.4, namely, Smt. Krishna Behl, the alleged owner of the land, did not appear and support the case of the plaintiffs.

3. On the basis of the pleadings of the parties, five issues were framed. The plaintiff examined five witnesses in the trial, whereas the defendants 1 and 2 examined Shri Sukhpal Singh, Kanungo, as D1/W1 and defendant No.3 examined Shri S.N. Tripathi, Patwari, as D3/W1. The defendant No.4 did not file any written

statement and so was proceeded ex parte by order dated March 26, 1998. After receiving the evidence adduced by the parties, the learned trial court proceeded to hear the arguments in the suit and thereafter by judgment and decree dated February 28, 2004 dismissed the suit with no order as to costs.

4. The most vital and the relevant issue that arises for consideration in this appeal was framed in the suit to the following effect:-

' Whether the suit land falls in khasra No. 395/267 or 444/394/65-66 of village Jhilmil Tahirpur? If so, whether these khasra nos. were already acquired by the govt. vide notifications u/s 22 of L.A.Act ?'

5. The learned trial court after considering the evidence adduced on the aforesaid issue held that the evidence on record, both oral and documentary, including the award and the Aks Sizra prove that the suit property falls in khasra No. 395/267 which stood acquired by the government under award No. 61/72-73, and after acquisition the said land was placed at the disposal of the D.D.A. vide notification under section 22 of the D.D. Act dated January 29, 1973.

6. In the present appeal mainly the aforesaid findings and conclusions were assailed by the learned counsel appearing for the appellants by submitting that as to whether or not the suit property falls within khasra No. 444/394/65-66 could have been actually proved and established only after carrying out the demarcation of the suit land and in the absence of the same the learned trial court was not justified and erred in law in dismissing the suit. The learned counsel relied on the evidence of PW-3 and PW-5, namely, the son of the alleged landlady and the Halka Patwari, respectively, and submitted that the suit property was purchased by his mother, namely, defendant No.4, and that she is the owner and the said land was never acquired by the defendants. The learned counsel also drew our attention to the award passed by the land acquisition officer in respect of the aforesaid land. It was pointed out from the aforesaid award that a bare perusal of the award would indicate that the suit property falls within khasra No. 444/394/65-66. Reliance was also placed on the documentary evidence indicating that the the land on its acquisition by the aforesaid award was classified into three blocks, namely, Blocks A, B and C, depending on the nature and quality of the land. It was

submitted that the land which is abutting on the G.T. Road was only 67 bighas 12 bids was and it does not include the land covered by khasra No. 395/267. It was also pointed out that the land under khasra No. 444/394/65-66 covers the land which is located just behind Block A.

Counsel appearing for the respondents also relied upon the copy of the award which is placed on record as Ext. DW1/A and also on the Aks Sizra which is proved as Ext. D3W1/A. Relying on the said evidence it was submitted that the evidence on record adduced by the parties clearly proved and established that the suit land falls within the khasra No. 395/267 which stood acquired and, thereforee, the said land belongs to the D.D.A. for all practical purposes. It was submitted that the appellants are rank trespassers in respect of the said property and accordingly they were evicted and their houses were demolished from the suit property.

7. In the light of the aforesaid submissions of the counsel appearing for the parties we have carefully perused the records. PW-1 is one of the appellants who has stated that he is occupying the suit property since 1991 and that the said land is situated at G.T. Shahdara Road near a Masjid. He was cross-examined by the counsel for the D.D.A. at length. During the aforesaid cross-examination he stated that he did not know the khasra number. He also stated that he did not get the suit land identified from the revenue authority as the land did not belong to the D.D.A. He also did not know whether the disputed land falls in khasra No. 395/267 of village Jhilmil Tahirpur. He stated that he purchased the land from Ramesh Behl, son of Krishna Behl. Shri Ramesh Behl was examined in the suit as PW-3. He also stated that Mr. Ramesh Behl, PW-3, had shown the title document of Smt. Krishna Behl which was a registered sale deed and that this document is in his possession. PW-2 Fasihuddin also claimed to be a tenant of Smt. Krishna Behl since 20-25 years. He clearly stated that the suit property is on G.T. Road and near the mosque and telephone exchange. He also stated that he is paying rent to Smt. Krishna Behl and that he can produce the rent receipts for payment of the rent for the site occupied by him. In his cross-examination he, however, could not say as to whether the property in question falls in Khasra No. 395/267. He also denied the suggestion that the property was demolished by the D.D.A. in 1995 and the possession was taken by the D.D.A. on the same day. Two of the plaintiffs,

who have been examined as PW-1 and PW-2 respectively, contradicted themselves inasmuch as PW-1 has stated that he had purchased the land from Ramesh Behl, whereas PW-2, the other plaintiff, stated that he is the tenant of Smt. Krishna Behl.

Counsel appearing for the appellants placed heavy reliance on the deposition of PW-3, son of Smt. Krishna Behl, who was alleged in the plaint to be the owner of the disputed land. He stated that the suit property was purchased by his mother in 1966 by registered sale deed. However, the said sale deed was not proved in accordance with law and the said document was marked only as mark 'A'. He also stated that there are ten tenants on the disputed land bearing Khasra No. 444/394/65-66. He also stated that the aforesaid sale deed was not executed in his presence. He also stated that he has some documents from the Patwari on the basis of which he had stated that the land in question is situated in Khasra No. 444/394/65-66. However, these documents were not produced and proved by him in evidence. He, however, categorically stated that the plaintiffs have no right on the land in question. Halka Patwari was examined as PW-5. He stated that he had not seen the disputed land, but in the next very sentence he stated that the land fell in the revenue estate of Jhilmil Tahirpur in khasra No. 444/394/65-66. He stated in his evidence that he had brought the Aks Sizra with him but he could not say whether khasra Nos. 444/394-65-66 444/394-65-66 and 395/267 are divided by road or not. He also stated that he had not visited the site and that he could not say whether the aforesaid khasras are divided by road without visiting the site.

8. On the other hand, the D.D.A.-defendant No.3, examined Shri S.N. Tripathi, Patwari, Land Management, East Zone, D.D.A., as D3W1 who categorically stated that Khasra No. 395/267 measuring 1 bigha 18 bids was was acquired through award No. 61/72-73 (Ext. DW1/A) and was placed at the disposal of the D.D.A. vide notification under section 22 of the Delhi Development Act dated January 29, 1973. He also stated that some persons encroached on the said land and the same was got vacated after demolition action by the D.D.A. staff on October 4, 1996. He categorically stated that the suit land does not fall in khasra No. 444/394/65-66. He has also proved the original Aks Sizra showing the location of the suit property and stated that the suit land is on G.T. Road and is located within

khasra No. 395/267, whereas khasra No. 444/394/65-66 is far away from G.T. Road. It was, thereforee, stated by him that question of suit land being situated in Khasra No. 444/394/65-66 did not arise.

9. It, thereforee, transpires from the evidence on record that the two of the appellants-plaintiffs who deposed had no knowledge as to whether or not the suit land falls within khasra No. 395/267 or in khasra No. 444/394/65-66. There is material contradiction in their statements as because PW-1 has stated that he had purchased the suit land whereas PW-2 has stated that he had taken the same on rent. Document marked 'A' has not been produced and proved in the trial in accordance with law. The same is stated to be a sale deed by which the land was purchased by Krishna Behl. Smt. Krishna Behl did not appear in the witness box in support of the plaintiffs. She also did not support the plaintiffs by filing a written statement in support of the suit. Her son, who had appeared as a witness of the plaintiffs, categorically stated that the plaintiffs have no right to the land.

10. As against the aforesaid evidence adduced, the defendants have led cogent evidence in support of their contention that the suit property falls within khasra No. 395/267. The award which is proved as Ext. DW1/A indicates that the land under khasra No. 395/267 stood acquired under award No. 61/72-73. The said land comprised an area of 1 bigha 18 bids was and is in the nature of a `Gair Mumkin Sarak'. Although a part of khasra No. 444/423-394-395 was acquired, but it is not disputed that the whole of khasra No. 444/395-65-66 444/395-65-66 has not been acquired by the government. It is also an admitted position of both the parties that the land is allegedly under occupation of the appellants-plaintiffs and the constructions made therein were demolished by the defendants on the ground that the suit land belongs to the D.D.A. and is situated on the G.T. Road. In the award the land under acquisition was classified in three blocks, namely, Blocks `A', `B' and `C'. Block `A' consists of those lands which abut the G.T. Road. It is contended by the counsel for the appellants that the said block does not describe the land covered by khasra No. 395/267. But at the same time, the land covered by Khasra No. 444/394/67/7 are land which lie just behind Block `A'. thereforee, the said land although was acquired is not located on the main road. It is an admitted position that khasra No. 444/394/65-66 was not acquired by the

government. It is, however, proved from the aforesaid award that Block `C', wherein falls the land covered by khasra No. 395/267, consists of those lands which are earmarked for roads and lanes. The Aks Sizra which is also placed on record clearly proves that khasra No. 395/267 is abutting the main G.T. Road. A conjoint reading of the documentary evidence with the oral evidence adduced, thereforee, clearly proves and establishes that the suit land falls within the land of the D.D.A. after it was acquired by the government and is covered by khasra No. 395/267.

11.The appellants-plaintiffs have also miserably failed to prove and establish that they are tenants in respect of the said land. If the defendant No.4 was the owner of the suit property, it was she who should have filed the present appeal as her title is under cloud after the aforesaid judgment and decree passed in the present case. However, she is not aggrieved by the judgment and decree. The same is crystal clear from her conduct as she has not filed any appeal as against the aforesaid judgment and decree.

12. It is the alleged tenants who are before this Court alleging different versions in their pleadings and oral statements regarding their status and title and ownership over the property. For this reason the contention of the counsel appearing for the petitioner that no decree could have been passed in the case without demarcation is also unacceptable for when clear and unimpeachable evidence is led by the defendant Nos. 1 to 3 to prove and establish their ownership rights over the property. In our view, thereforee, no such demarcation was necessary.

13. The plaintiffs were required to establish not only possession but also a legal right to remain in possession. Only such right could have the protection of a court injunction and decree.

14. In our view, the plaintiffs have miserably failed to establish their possession over the suit land and also any legal right to remain in possession. Their claimed status has not been established either by any oral or documentary evidence.

15. On consideration of the entire evidence on record and in the light of the evidence recorded hereinabove, we find no merit in this appeal and the same is

dismissed with costs.

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