

Samay Singh Vs. Shanti Devi

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Court : Delhi

Decided On : Feb-12-1997

Reported in : 1997IIAD(Delhi)284; 65(1997)DLT1050; 1997(41)DRJ142

Judge : Jaspal Singh, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1

Appeal No. : Civil Revision Appeal No. 452 of 1994

Appellant : Samay Singh

Respondent : Shanti Devi

Advocate for Pet/Ap. : B.S. Mor and; N.S. Dalal, Advs

Judgement :

Jaspal Singh, J.

(1) This revision petition has a chequered history. Respondent No. 1 Smt. Shanti Devi had purchased one bigha of land out of Khasra No. 814 from respondent No. 2 Rizak Ram. This was on July 16, 1987. Much before that the process of consolidation had started and it is not disputed that the proceedings are not yet complete. Khasra No. 814 comprised of ordinary 4 bighas and 15 biswas. In consolidation proceedings ordinary 2 bighas and 3 bids was became khasra No. 632. It is not disputed before me that the one bigha of land that Smt. Shanti Devi

had purchased from Rizak Ram now forms part of said khasra No. 632. It so happened that in a suit between the present petitioner and Rizak Ram orders were passed for delivery of possession in favor of the present petitioner. Admittedly in consequence of the warrants of possession so issued, proceedings were taken on 15th December, 1989. On that date Halka Patwari was present and so also a Sub Inspector from Police Station Alipur along with police force. After going through the exercise of carrying out measurements possession of whole of khasra No. 632 was handed over to the present petitioner. It appears that at the time of delivery of possession Jai crop was sown in the said khasra. The Daily Diary report, which has been placed on record and which was not challenged, shows that at the time of delivery of possession there was no interference and that before the proceedings Mushtari Munadi (proclamation by beat of drum) had taken place at the spot and in the surrounding area. The very next day, that is, 16th December, 1989 Shanti Devi instituted a suit for permanent injunction with regard to her one bigha of land. She alleged that she being the owner in possession of the same, the present petitioners were out to interfere with the same. Along with the suit was moved an application for ad interim injunction under Order 39 rules 1 and 2. The learned trial Judge refused to grant any relief on that application. Aggrieved by that Shanti Devi preferred an appeal and in appeal the learned Senior Subordinate Judge passed an ad interim injunction to the effect that Shanti Devi being in possession of the said one bigha of land her possession should not be interfered with. It was then the turn of the present petitioners to feel aggrieved Hence this civil revision.

(2) As would be borne out from a brief resume provided by me in the preceding paragraph, it is not disputed that on account of consolidation of holdings the entire khasra No. 814 comprising ordinary 4 bighas 15 bids was came to be divided into two khasras, namely, Khasra No. 631 and 632. It is also admitted case of the parties that ordinary 2 bighas and 3 his was out of original khasra No. 814 became khasra No. 632 and that the land in question, that is one bigha purchased by Shanti Devi, fell into the new khasra bearing No. 632. In short thus there is no dispute before me that the land purchased by Shanti Devi now forms part of khasra No. 632. The question which is to be seen and decided is as to whether respondent No. 1 Shanti Devi was, prima facie, in actual physical possession of the

land purchased by her from respondent No. 2, Rizak Ram.

(3) Unfortunately, the learned counsel for Shanti Devi has drawn my attention to no record, revenue or otherwise, in support of the pica that Shanti Devi is , actual physical possession of the land purchased by her from Rizak Ram. The only argument advanced is that since Shanti Devi had purchased one bigha of land from Rizak Ram and as that transaction is supported by a registered sale deed which' was executed some time in July, 1987, thereforee, she must be assumed to be in actual physical possession of that land. The second line of argument is that on 15th December, 1989 when possession of khasra No. 632 was reportedly delivered to the present petitioner there was sugarcane crop standing in khasra No. 632 and that the said crop was sown by none other but Shanti Devi. Unfortunately in support of this no revenue record has been brought to my notice.

(4) In short thus the position is that barring the registered sale deed executed in July, 1987 showing that Shanti devi had purchased one bigha out of 4 bighas 15 bids was of khasra No. 814 there is nothing on the record to show that on 15th December, 1989 she was in actual physical possession of that land or that she continues to remain in actual physical possession of the same.

(5) A perusal of the impugned order passed by the learned senior subordinate' Judge would go to show that he was persuaded to pass an order favourable to Shanti Devi only on two grounds. The first, that there was a registered sale deed of July, 1987 with regard to one bigha of land in her favor and the second, the existence of a photograph showing that sugarcane crop. I am afraid in the absence of any material on the record neither the photograph can be taken to be of Khasra No. 632, nor can it be taken to hold that the sugarcane crop, if at all it was there, had been sown by none other but Shanti Devi. Similarly the mere fact that on 15th July, 1987 she had purchased one bigha of land of which possession had been delivered to her cannot be taken to be sufficient in itself to hold that she was in possession of the same on 16th December, 1989 also when she had instituted the suit. More so because there is revenue record to show that the entire khasra No. 632 had come into actual physical possession of the petitioner on 15th December, 1989 without any interference from anybody. That thereafter the

petitioner had remained in possession of the entire khasra No. 632 is further borne out from the revenue record.

(6) The learned counsel for respondent No. 1 has submitted that this being a civil revision I should not interfere with the order passed by the learned Senior Subordinate Judge and in support has drawn my attention to a judgment of the Supreme Court in Pandurang Chogule and others v. Maruti Hari Jadhav and others, : [1966]1SCR102 . I do not think that judgment in any way helps the respondent. As I have noticed above the learned Senior Subordinate Judge passed the order in favor of the respondents on the basis of no material at all. He surely acted with material irregularity and this being the position the revisional jurisdiction of the court can be properly invoked.

(7) In view of my above discussions the impugned order is set aside. The civil revision is consequently accepted. No order is made as to costs. However, before concluding, I may add that nothing said in this order shall be 'read as an expression of opinion on the merits of the case.

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