

Bal Kishan Gupta and ors. Vs. Delhi Development Authority

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Court : Delhi

Decided On : Nov-29-2010

Judge : Mool Chand Garg

Appeal No. : FAO.No.170/2010

Appellant : Bal Kishan Gupta and ors.

Respondent : Delhi Development Authority

Advocate for Def. : Mr. P.K. Mittal, Adv.

Advocate for Pet/Ap. : Mr. H.C. Mittal; Mr. Manoj Mang, Adv.

Judgement :

1. Briefly stating the facts relevant for disposal of this appeal are that appellants filed a suit for mandatory injunction alleging that they are the owners of the land comprised in Khasrano.1756/2, Khewat No.195, situated in the revenue estate of Village Naraina, Delhi, measuring 1 Bigha,5 Biswas, which was their ancestral property. The suit property was devolved upon the appellants on the death of their father and husband of proforma defendant No.4 vide mutation No.3254 dated 21.09.1991. The adjoining piece of land of the suit property comprised in Khasra No.1756/1 was acquired by the Govt. and was handed over to Horticulture Deptt. of MCD for maintaining a park. In the year 1991, MCD made a fencing over the portion of the suit land pertaining to appellants which is about 250 sq.yds. as shown in red in the site plan. Appellants stated that they went pillar to post during

1992-1998 but the fencing was not removed.

2. Respondent filed their WS. It was alleged that suit was bad for non- service of notice u/s 477 and 478 of DMC Act; that suit is barred by limitation; that appellants are not owners of the land and they have no right, title, or interest in the suit land; that the entire suit land belongs to MCD which was handed over by DDA in the year 1998. In its WS DDA stated that suit land falls in Khasra No.1756/1 and not in Khasra FAO No.170 /2010 Page 1 of 4 No.1756/2 of Village Naraina. The suit land is lying vacant at site and is under the possession of DDA. It was further alleged that appellants want to grab the Govt. land. It was also stated in the preliminary objections that suit is bad for non-service of notice u/s 53B of DDA Act.

3. On the basis of pleadings and material on record, the following issues were framed by the Ld. Civil Judge:-

1. Whether the suit is barred for want of notice u/s 477/478 of DMC Act, OPD?
2. Whether suit is bad for want of notice u/s 53B of DD Act? OPD
3. Whether suit land falls in Khasra No.1756/1 of village Naraina which stands acquired and has been placed at the disposal of DDA? OPD
4. Whether land falls in Khasra No.1756/2, Khewat No.195 situated in the R/E of village Naraina measuring (1bigha 5 biswa) which is the ancestral property of plaintiff defendant No.4? OPP
5. Whether the plaintiff entitled for the relief of injunction? OPP
6. Relief

4. After considering the entire evidence, all the issues were decided by the Civil Judge in favour of the appellants vide judgment dated 31.01.2008 and the suit was decreed in favour of the appellants. Respondents were directed to remove the fencing from the suit land and to vacate the suit land for the peaceful enjoyment of the appellants as per the demarcation proceedings dated 29.05.1992.

5. Before the learned ADJ, it has been contended on behalf of the respondents that even as per the own case of the appellants, fencing was done in 1992. The alleged action was completed and therefore, the period of limitation starts from 1992 while the suit was instituted for the first time on 27.1.1999 before Senior Civil Judge. As per Article 113 of Limitation Act, the period of limitation was three years and thus, it was contended on behalf of respondent, that suit was barred by limitation and delay could not have been condoned as Section 5 is not applicable. Ld. Counsel for respondent contended that cause of action arose in 1992 and this fact was not disputed by DDA, no issue was required. Ld. Counsel for respondent further submitted that issue of limitation can be raised even at appellate FAO No.170 /2010 Page 2 of 4 stage. In support of his contentions Id. Counsel has relied on P.K. Ramchandran v. State of Kerala, AIR 1998 SC 2276.

6. Reference has been made by the appellate Court to an observation made by the appellants in para 10 of the plaint which was also taken note of by the learned Civil Judge whereby the appellants pleaded that cause of action arose in the year 1991/92 when the fencing was made by the respondents. The plea of limitation was taken in the W.S. of defendants No.1 and 2. In the WS of respondent herein the plea of limitation was not specifically taken. However, it was alleged in the WS that the appellants have no right, title or interest to claim the relief in the Suit. It was also stated by DDA in the WS that suit land does not fall in Khasra No.1756/2 as claimed by the plaintiff. Trial Court record also shows that no issue was framed on the question of limitation, though the plea of limitation was taken in the WS of defendants No.1 and 2. The judgment of the learned Civil Court has not dealt with the question of limitation. The First Appellate Court thus observed:-

"8. In these circumstances, taking into consideration non- framing of the issue of limitation which goes to the roots of the case, the learned ADJ observed that that question of limitation can be raised at any stage even though no specific issue has been framed. I also find force in the contention of Id.counsel for appellant/defendant that as it was admitted case of the plaintiffs/respondents themselves that cause of action arose in 1991/92 and the fact was not disputeb dy the defendants, there was no requirement of framing of issue and it could have been dealt by the Ld.Trial Court in its judgment. In view of the judgment cited by

Id. Counsel for appellant, the law of limitation has to be strictly followed. In my opinion, Id. Trial Court has committed an error, firstly, by not framing the issue on the question of limitation through a specific plea was taken in the WS of defendants No.1& 2 and secondly, not dealt with the question of limitation in its judgment. Generally the question of limitation is a mixed question of law and fact which should be decided after giving an opportunity of evidence to the parties."

7. Secondly, the learned ADJ also took note of the plea raised by the respondent that without deciding the title, the directions could not have been given in a suit for mandatory injunction to handover the possession of the property. The right, title or interest of the appellants was disputed by the respondent in the WS. Learned counsel for respondent relied on *Gurunath Manohar Pravaskar & Ors. v. Nagesh Siddappa Navalgund & Ors.*, AIR 2008 SC 901. The learned ADJ was thus convinced that there was a specific question in the suit in respect of the title of the suit property which could not have been decided in a simplicitor suit of injunction and also observed that the learned Civil Judge could give an opportunity to the plaintiffs to amend the suit suitably.

8. The first appellate Court also observed that the Civil Judge even erred in accepting the demarcation report which was not conducted by the competent officials in accordance with Section 6/101 Punjab Land Revenue Act relying upon the law laid down in *Surender Kumar & Anr. v. Madhubala & Ors.*, 151 (2008) DLT 521 DB.

9. It was, in these circumstances, the civil suit has been remanded back to the learned Civil Judge.

10. Taking into consideration, the legal issues which have been raised before the first appellate Court, decision whereof would go to the root of the case and may have a bearing on the final outcome of the proceedings, I am convinced that the order passed by the ADJ need not be disturbed. Parties to appear before the Civil Judge on 14.12.2010.

11. Accordingly, the appeal is dismissed with no order as to costs.

12. TCR, if any, be sent back.

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