

Satwant Singh Devgan Vs. Delhi Development Authority and anr.

Satwant Singh Devgan Vs. Delhi Development Authority and anr.

SooperKanoon Citation : sooperkanoon.com/907670

Court : Delhi

Decided On : Dec-20-2010

Judge : V.K. Jain, J.

Acts : Code of Civil Procedure (CPC) - Order 2 Rule 2; Developmental Disabilities Act (DD Act) - Section 22(1)

Appeal No. : CS(OS) No.1464/2009

Appellant : Satwant Singh Devgan

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Mr. Pawan Mathur; Ms. Shyel Trehan, Advs.

Advocate for Pet/Ap. : Mr. Rajesh Gupta; Mr. Harpreet Singh, Advs.

Judgement :

1. This is a suit for mandatory injunction and possession.
2. The case of the plaintiff is that he is the owner of the land bearing No.WZ 133-A, Srinagar, Shakarpur, Delhi, admeasuring 150 sq. yds., which has been carved out of Khasra No.30/11 of village Shakarpur, Delhi. It is also alleged in the plaint that the defendants have illegally dispossessed the plaintiff from the suit property and have clandestinely merged the same with a municipal park. It is further alleged that on 6.11.2000, the officials of DDA came to the suit property and started demolishing the structure. The plaintiff thereupon was constrained to file a

suit for permanent injunction in which DDA claimed that the suit property falls in Khasra No.30/26/1 min.

3. When questioned about the date on which the plaintiff was dispossessed from the suit property, the learned counsel for the plaintiff states that though the date on which the plaintiff was dispossessed from the suit property has not been given in the plaint, the dispossession came soon after 6.11.2000 when his structure was demolished. The plaintiff has sought two reliefs. The first relief claimed by him is for a decree for mandatory injunction directing the defendants to demarcate the land bearing No.WZ 133-A, Srinagar, Shakarpur, Delhi, as well as the adjoining municipal park and the other is for possession of the aforesaid property.

4. The suit has been contested by defendant No.2 DDA which has taken preliminary objections that the suit is barred by res judicata as also under Order 2 Rule 2 of CPC. It is also claimed that the suit is not properly valued for the purpose of court fee and jurisdiction.

5. The following issues were framed on the pleadings of the parties:-

(i) Whether the suit land falls in Khasra No. 30/11 of Village Shakarpur, Delhi as alleged in the plaint and is owned by the plaintiff? OPP

(ii) Whether the suit land stands acquired as alleged in the written statement of defendant No.1 DDA? OPD-1

(iii) Whether the suit is barred by res judicata as alleged in the preliminary objection in para 4 of the written statement of defendant No.1? OPD-1

(iv) Whether the suit is properly valued for the purpose of Court fee and jurisdiction? OPP

(v) Whether the plaintiff is entitled to possession and mandatory injunction as claimed by him? OPP

(vi) Whether the suit is barred under Order 2 Rule 2 of CPC as alleged in the written statement of defendant No.1? OPD-1

(vii) Relief.

5A. Issues No.(iii), (iv) & (v) were treated as preliminary issue. I have, however, proposed to take up only issues No.(iii) & (v).

6. Section 11 of the Code of Civil Procedure, to the extent it is relevant provides that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the parties, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Admittedly, the plaintiff had filed a suit for permanent injunction which came to be decided by Ms.Madhu Jain, Civil Judge, Delhi, vide judgment dated 10.01.2002. The suit was filed on 14.11.2000 and a perusal of the judgment would show that in the suit, the plaintiff claimed to be owner in physical possession of property No. WZ 133-A, Srinagar, Shakarpur, Delhi, admeasuring 150 sq. yds. having purchased it from Mr.Rajiv Kumar vide sale deed dated 15.12.1998. This was also the case of the plaintiff before the civil court that the suit property falls in Khasra No.30/11 of village Shakarpur. The suit was contested by DDA which claimed that the said land falls in Khasra No.30/26/1 min. and had been acquired vide award No.2112, its physical possession had been taken by DDA on 31.07.1968 from Land & Building Department and the land had been placed at its disposal under Section 22(1) of DD Act by virtue of Notification dated 3.6.1972.

7. Onus of proving issue No.3 was on the defendant DDA and the issue was decided against the defendants, whereas issues No.1 & 4 onus of proving which was on the plaintiff were decided against the plaintiff. The Court noted that the plaintiff had neither produced documents nor had he come in the witness box to prove his case and, therefore, had failed to discharge the onus placed on it.

8. Thus by deciding issue No.1 against the plaintiff, the Court rendered a finding that he was not owner of property No. WZ 133-A, Srinagar, Shakarpur, Delhi, and was not in its possession.

9. Admittedly, no appeal was filed by the plaintiff against the aforesaid judgment and, therefore, the finding of the learned Civil Judge became final and binding on the parties.

10. Since the finding of the learned Civil Judge in the aforesaid suit operates as res judicata, the same issue cannot be allowed to be re-agitated in the present suit and the plaintiff cannot claim to be owner of the suit land, as against DDA.

11. Since the plaintiff is not the owner of the suit land, in view of the findings rendered against him in the civil suit decided by Ms.Madhu Jain, Civil Judge, Delhi, he has no right in law to claim back possession of the suit land from DDA.

12. As regards the relief of mandatory injunction directing DDA to demarcate the suit land as also the adjoining municipal park, since the plaintiff is neither owner nor in possession of the suit land, he cannot claim demarcation of the suit land. As regards demarcation of the adjoining municipal park, the relief claimed by the plaintiff is based on the allegation that he is the owner of the land bearing No. WZ 133-A, Srinagar, Shakarpur, Delhi, which falls in Khasra No.30/11 and that land has been merged by the defendants with the adjoining municipal park. Since the plaintiff is not the owner of the land alleged to have been illegally merged with the adjoining municipal park, he is not entitled even to demarcation of the adjoining land on which the park has been developed.

13. Issues No.3 & 5 are, therefore, decided against the plaintiff and in favour of the defendants. In view of my finding on these issues, the plaintiff is not entitled to relief.

14. The suit is hereby dismissed without any costs. Decree sheet be prepared accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com