

ismaeli Devi and ors. Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Apr-11-2013

Judge : S.Ravindra Bhat

Appellant : ismaeli Devi and ors.

Respondent : Delhi Development Authority and anr.

Judgement :

\$~42 * IN THE HIGH COURT OF DELHI AT NEW DELHI + RFA(OS) 120/2012

Date of Decision:

11. h April, 2013. ISMAELI DEVI & ORS. Appellants Through Mr. Kamal Mehta with Mr. Vijay Kumar, Mr. Brijesh Oberoi & Mr. Sudeep Singh, Advocates. versus DELHI DEVELOPMENT AUTHORITY & ANR. Respondents Through Mr. Harish Malhotra, Sr. Advocate with Ms. Shobhna Takiar, Advocate for DDA. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA S. RAVINDRA BHAT, J.

(OPEN COURT) 1. The appellants are aggrieved by an impugned order dated 15 th October, 2012, whereby their suit for declaration for title and other reliefs was dismissed. The learned Single Judge had invoked the provisions of Order 7 Rule 11 of the CPC to hold that in view of the terms contained in Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the suit was not maintainable. The learned Single Judge placed reliance on his previous decision in another case, titled as DCM Ltd. v. DDA, decided on 19th September, 2012 in

CS No.1085/1991.

2. At the outset, reliance is placed upon the decision of this Bench dated 19th March, 2013, RFA (OS) No.104/2012, the Division Bench, where, while allowing the appeal, the Court relied upon and cited several Supreme Court rulings, including *Government of A.P. v. Thummala Krishna Rao*, AIR 198.SC 1081.*Mandal Revenue Officer v. Goundla Venkaiah*, (2010) 2 SCC 461.*State of Rajasthan v. Padmawati Devi*, 1995 Supp(2) SCC 290.and held that title suits, which urge or raise bonafide disputes of title, should nevertheless be gone into by civil court and bar under Section 15 of the Public Premises Act would not come in the way of determination by the civil court.

3. Reading of the judgment would disclose that this Court had discussed the law declared by five Judges decision of the Supreme Court in *Ashoka Marketing Ltd. v. Punjab National Bank*, (1990) 4 SCC 40.also. This Court notices that the plaintiffs/appellants in this case had approached the Division Bench on an earlier occasion too and filed FAO(OS) No.358/2009, which was disposed off by an order dated 29 th October, 2011, as clarified by a subsequent order dated 4th November, 2011. The effect of the orders of the previous Division Bench was that the plaintiffs/appellants were given the liberty to move an application for suitable directions before the learned Single Judge seeking demarcation of the property since there was dispute amongst parties as to the identity and location of the suit lands. It was at that stage that the suit was taken up by the learned Single Judge. The Court also notices that, prior to this, several issues had been framed far back in the year 2009, with regard to the points of dispute. After remission, in the background of the plaintiffs application seeking order for demarcation, learned Single Judge proceeded to dismiss the suit by invoking the bar under Order 7 Rule 11 of the CPC.

4. Having regard to this Courts decision in *DCM Ltd. v. DDA* (supra), learned counsel, duly instructed by parties, submitted that the appropriate course, in these circumstances, would be to require a determination as to whether plaintiff has raised a bonafide issue of title before other issues are decided. Counsel for DDA submitted that an application, being I.A. No.2935/2012, for framing of additional

issues, that is, whether the suit was barred by limitation, had been moved.

5. Having regard to the submission and the position in law clarified in DCM Ltd. v. DDA(supra), this Court is of the opinion that the impugned order, inasmuch as it straightaway proceeded to invoke the bar under Section 15, when the plaintiff had raised a bonafide issue of title, cannot be sustained. Consequently, and having regard to the submission made on behalf of the parties, the impugned order is set aside. Learned Single Judge shall, however, first decide on the basis of the pleadings and the material on record, as well as the law on the subject, as to whether the plaintiff, in the facts and circumstances of the case, has been able to make out that the suit raises a bonafide dispute with regard to title and also whether the suit was filed within the period of limitation, prescribed in that regard; in the eventuality of these issues being decided in plaintiffs favour alone, the matter would be proceeded with for a decision on the merits on the other issues by the learned Single Judge. It is open to the learned Single Judge at any stage of the hearing, having regard to the submissions made, to pass an order on a request being made by the plaintiffs for demarcation of the property, if permissible in law, after taking into consideration the previous directions issued in FAO(OS) No.358/2009.

6. The appeal is allowed in the above terms with no order as to costs.

7. Parties are directed to appear before the learned Single Judge on 29 th April, 2013. S. RAVINDRA BHAT (Judge) SUDERSHAN KUMAR MISRA (Judge) APRIL 11 2013 dr

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