

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA NO.71/2010 & CM Nos.6685-86/2010**

Date of Decision: April 30, 2010

BHOOP SINGH & ORS. Appellants
Through: Mr.S.S.Tomar, Advocate.

versus

BALWANT SINGH & ORS. Respondents
Through: Nemo.

%

CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

- | | |
|--|-----|
| (1) Whether reporters of local paper may be allowed to see the judgment? | |
| (2) To be referred to the reporter or not? | Yes |
| (3) Whether the judgment should be reported in the Digest ? | Yes |

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Checkered history of this case is that Bale Ram, father of the appellants, filed a civil suit seeking permanent injunction against respondent No.1 and Sh.Bhalle (since deceased) for restraining them from interfering or making any encroachment or raising any construction over the vacant plot of land measuring 100x50 square yards situated in Village

Daryapur Kalan, Delhi, which they claimed to be theirs'. The suit was filed on 17th June, 1980. Civil Judge decreed the suit of Bale Ram. Respondents filed an appeal being RCA No.28/1995 against the said judgment and decree of the Civil Judge in the First Appellate Court, which was dismissed vide order dated 23rd November, 1982. Appellate Court vide its order dated 5th March, 1986 remanded back the case to the Lower court for disposing it afresh with the directions that Lower Court would permit Bale Ram to file a map of the plot in dispute, further record statements of the parties with regard to correctness of the map as the plot in question was not properly identified and then decide the case afresh.

2. After remand of the case, Trial Court appointed a Local Commissioner for identification of the suit property. Trial Court assessed the report of the Local Commissioner analysed evidence of the parties, finding no merits dismissed the suit of Bale Ram. While dismissing the suit, Court recorded that land belonged to Gaon Sabha, and Gaon Sabha had already filed a suit against the parties under Section 86A of the Delhi Land Reforms Act for possession of the suit land. Parties also could not disclose khasra number of the disputed property. Trial Court also found some names cancelled in the list of persons who had encroached upon the Gaon Sabha but original of the said list was not produced before the Local

Commissioner. Report of the Local Commissioner was based on inspection report of Halka Patwari, prepared by him for perusal of his senior officers. Court observed that report of Halka Patwari had no Patwari validity/sanctity on the date when Local Commissioner allegedly inspected the spot.

3. Appeal was preferred against the judgment and decree of the Trial Court. Appellate Court in a very short order dismissed the appeal observing that both the parties were in unauthorized occupation of the land in suit and the property had not been demarcated by the appellant and no khasra number had been mentioned in the plaint. Considering that Trial Court did not accept the report of the Local Commissioner, appellate court found no merits in the appeal.

4. Appellants are the legal heirs of Bale Ram. Appellants have tried to raise certain substantial questions of law in the appeal to meet provisions of Section 100 of the Code of Civil Procedure. However, none of the suggested questions of law are substantial questions of law. They are all questions of fact. Judgment and decree of the Trial Court, as well as of the Appellate Court, has been challenged on the basis of oral evidence and documentary evidence adduced on record. It is not the case of the appellants that the courts below had given any perverse findings of facts.

Both the parties are in unauthorized occupation of the property belonging to Gaon Sabha and appellants failed to properly demarcate and identify the suit property. In the absence of proper identification of the suit property, Trial Court rightly appreciated evidence of the parties while dismissing the suit.

5. As pointed out above, Gaon Sabha has already initiated proceedings against the parties to the appeal under the Delhi Land Reforms Act for taking back possession of its land.

6. Mr.S.S.Tomar, counsel appearing on behalf of appellants has argued that the Civil Judge while giving findings on issue No. 1 and other issues in favour of the appellants had committed an illegality when it declined to grant relief to the appellants. He further argued that First Appellate Court acted in an illegal manner as it did not touch ground No.1 in the grounds of appeal filed before it, wherein the entire facts related to identification of the suit property, its khasra number, size, location etc. had been stated and identification of the suit property had been duly proved and false stand of the defendant had also been exposed. He has submitted that First Appellate court acted in an illegal manner in disturbing some of the findings of the Lower Court, which were not under challenge.

7. I find no force in the submissions of counsel for the appellants.

8. Trial Court gave a well reasoned finding for declining relief of injunction as prayed. It is the discretion of the court to grant permanent injunction on facts and circumstances of a given case in a reasonable manner. Since in this case, appellants themselves were found to be unauthorized occupants, they had no better title in the suit property than that of the respondents. Besides, since property was not properly identified before the Trial Court, despite the fact that case was remanded back by the First Appellate Court with the directions to appellants to file a site plan, which they did not file at the relevant stage. Findings on other issues are fact findings regarding possession and nature of possession of a piece of land which remained unidentified. Court was right in declining relief of injunction as prayed, specially when Gaon Sabha has already initiated proceedings of eviction against the parties.

9. Admittedly, no application was filed before the First Appellate Court for permission to lead additional evidence, therefore, Appellate Court was within its rights not to consider ground No.1 of the appeal, whereby appellants had tried to identify the property by its khasra

number, size, location etc.

10. Since suit of the appellants was dismissed on appreciation of oral, documentary evidence as well on the facts and circumstances of the case, no substantial question of law is involved in this appeal, I find no merits in the same and it is accordingly dismissed.

CM Nos.6685/2010 (for exemption) & 6686/2010 (for stay)

11. With dismissal of the appeal, both these applications have become infructuous. Hence, the same are accordingly dismissed.

**(ARUNA SURESH)
JUDGE**

**April 30, 2010
sb**