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**(2009) 07 DEL CK 0531**

**In the Delhi High Court**

**Case No :** Regular First Appeal No. 381 of 2004

Bimla Chaudhary

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 15-07-2009

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 7 Rule 11  
Delhi Development Act, 1957 — Section 22, 22(1), 53B  
Delhi Land Reforms Act, 1954 — Section 185(1), 7, 85  
Delhi Land Reforms Rules, 1954 — Rule 2, 3  
Delhi Municipal Corporation Act, 1957 — Section 507, 507(A)

**Citation :** (2009) 07 DEL CK 0531

**Hon'ble Judges :** P.K. Bhasin, J

**Bench :** Single Bench

**Advocate :** J.P. Sengh and Gurkamal, for the Appellant; Ajay Verma, for R- 2 (DDA), for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

P.K. Bhasin, J.—The appellant-plaintiff had filed a suit for permanent injunction for restraining the Union of India, Government of Delhi, Delhi Development Authority and Municipal Corporation of Delhi from dispossessing her from a piece of land bearing Khasra No. 2731/1674 measuring 7 Bighas 18 Biswas situated in the revenue estate and abadi area of village Kishangarh, Tehsil Mehrauli, New Delhi and also from demolishing the super-structures existing there. That suit was dismissed by the learned Additional District Judge vide order dated 3rd July, 2004 and that has led to the filing of the present appeal by the unsuccessful plaintiff.

2. The plaintiff's case has been summarized by the learned trial Court in para No. 2 of the impugned judgment as under:

The brief facts of the case are that the plaintiff is the bhumidar/co-owner and in possession of land bearing khasra No. 2731/1674 measuring 7 Bighas 18 Biswas

situated in the revenue estate and abadi area of village Kishangarh, Tehsil Mehrauli, New Delhi. According to the plaintiff, the first man who settled in Village Kishangarh was one Sh. Kishan Chand and after his name the village was named as Kishan Garh. At the time of settlement and rehabilitation of this village landless labourers and other persons like carpenters, black smith, potters also settled in Village Kishan Garh. The village Kishangarh was inhabited in 1940 and predecessors of the plaintiff and other persons have been residing in the village. The name of the owners of the land, forming the part of aforesaid Khasra No. 2731/1674 were recorded as "Shamlat Taraf Dulle. and Sh. Dulle was recorded as the owner of the land in question. In the year 1946, the predecessor of the plaintiff and proprietors of village Mehrauli settled in Khasra No. 2731/1674 and constructed rooms for their residence. According to the plaintiff, the suit property never vested in the Gram Sabha and it was used for residential and agricultural purposes. According to the plaintiff, the land was joint undivided holding of the proprietors known as "Shamlat Taraf Dulle.. According to the plaintiff, the aforesaid land was shown in the revenue records till the year 1946-1950 in the possession of the proprietors. Notification u/s 7 of the Act was never issued in respect of the aforesaid land and in the absence of compliance of Section 7 the land could not vest in Gaon Sabha. According to the plaintiff, land situated in village Abadi cannot vest in Gaon Sabha. According to the plaintiff, false entries have been made in the revenue records. Request was made to Halqa Patwari and Kanungo to make correct Khasra Girdawari entries in respect of the above said land but they refused. Request has been made by the plaintiff to pass decree of permanent injunction restraining the defendants from demolishing the properties of the plaintiff situated in Khasra No. 2731/1674 measuring 7 Bighas 18 Biswas and from interfering with the possession of the plaintiff.

The plaintiff had also pleaded in her plaint that neither the suit land had ever vested in the Gaon Sabha nor the same could vest in it after the promulgation of the Delhi Land Reforms Act, 1954 since no notification u/s 7 thereof was ever issued nor it could even be issued since it was a private land and that false entries had been made in the revenue records showing the suit land to be Gaon Sabha land before 1966 and thereafter of the Central Government. The only prayer made in the plaint was for a decree of permanent injunction restraining the defendants- respondents from interfering with the plaintiff's possession over the suit land and from demolishing the construction existing there.

3. The suit was contested by Delhi Development Authority (DDA) and Municipal Corporation of Delhi but main contest was between the plaintiff and the DDA. MCD in its written statement pleaded that the main relief of injunction being against DDA only MCD was not a necessary party to the suit and in fact not even a proper party. The DDA in its written statement, inter-alia, took an objection that the plaint was liable to be rejected under Order VII Rule 11 CPC since suit for permanent injunction was misconceived and was not maintainable. It was also pleaded that the land in question was a part of village Kishangarh in Mehrauli which was Gaon Sabha land and later on had ceased to be rural area

when a notification dated 3rd June, 1966 was issued u/s 507(A) of the Delhi Municipal Corporation Act in respect of the whole of Kishangarh. Consequently the Gaon Sabha stood dissolved and the entire village Kishangarh stood vested in the Central Government which, in turn, had placed it at the disposal of DDA vide notification dated 20.08.1974 issued u/s 22(1) of the Delhi Development Act and that the plaintiff's predecessors-in-interest had at no time any title or interest in the suit land and so rightly they were not shown as the bhumidars or in possession of suit land. Regarding the plaintiff's claim that she was in possession of the suit land the defence of DDA was that the plaintiff or her predecessors were never in possession of the suit land and that in fact she had been attempting to encroach upon the suit land by constructing temporary structures without permission of the Government but her attempts were thwarted by DDA and the structures put up were removed. As per the further case of the DDA, after the plaintiff filed the present suit and got stay order she again tried to grab the suit land under the protection of the stay order passed in her favour in this suit by trying to remove the fencing and boundary wall raised by the DDA before the grant of stay but the DDA had re-constructed the wall.

4. The learned Additional District Judge framed the following issues for his decision:

1. Whether the suit filed by the plaintiff is not maintainable? OPD.
2. Whether the suit is barred u/s 53-B of Delhi Development Act? OPD.
3. Whether the suit of the plaintiff is barred under provisions of Specific Relief Act as plaintiff has no legal right over the suit property? OPD.
4. Whether the suit property vests in Central Govt. and has been placed at the disposal of DDA u/s 22 of the DDA Act? OPD
5. Whether plaintiff are in lawful possession of the suit property?
6. Whether plaintiff is entitled for the relief claimed?
7. Relief.

5. Issues No. 1 and 4 were treated as preliminary issues by the learned trial Judge as requested by the counsel for the DDA who had submitted that these issues required no evidence as DDA had placed on record the notifications regarding vesting of village Kishangarh in the Central Government and its entrustment to the DDA for development as green area of which the Court could take judicial notice. Then after hearing the arguments advanced on behalf of the parties by their counsel and perusing the documents placed on record by the plaintiff and the DDA the learned trial Judge decided both these preliminary issues against the plaintiff. The relevant observations and the reasons given by the trial Court for deciding the two issues against the plaintiff and which reasons are now being challenged in this appeal by the plaintiff are to be found in paras No. 5 to 8 of the impugned order dated 3rd July, 2004. Relevant portions from

these paras to which my special attention was drawn by the learned senior counsel for the appellant- plaintiff while challenging the correctness thereof are re-produced below:

5...Ld. Cl. for the plaintiff has also brought to the notice of the court Jamabandhi of the village for the year 1946-1950 to show that the land in question was not shamlat deh but it was Sham taraf Dulley and Majkur. plaintiff has also placed on record Khasra Girdawri for the year 1957-1959 to show that the land in question was in the name of Shamlat Taraf.... On the other hand, Ld. Cl. for the DDA has brought to the notice of the court, attested copy of the notification dated 03.06.1966. Vide this notification, the whole of the area of Village Kishangarh ceases to be a rural area. The attested copy of notification dated 20.08.1974 has also been placed on record by DDA showing that the suit land was placed at the disposal of the DDA....

6....The documents placed on record by the plaintiff are unattested copies whereas the revenue records placed on record by the DDA are certified copies and attested by the Tehsildar, DDA. As the documents placed on record by the plaintiff are not certified, it shows that the same have been obtained in unauthorized way.....Therefore I do not want to attach any importance to uncertified and unattested copies furnished by the plaintiff.... On the other hand, copies placed on record by the DDA are certified and attested by the Tehsildar....

7. Now it is to be seen if the relief of injunction can be granted to the said persons who are in possession of Govt. land in unauthorized way. Mere possession is not sufficient. Lawful possession has to be proved.... The plaintiffs have only sought relief of injunction. It is of discretionary nature and should not be granted to the person occupying the Govt. land unauthorisedly. Holding full-fledged trial in such type of cases, will amount to wasting public money. If such cases are disposed of at the initial stage, it will save the time of the court to enable it to devote more time to other cases which require trial.... The Govt. is owner of the land and hence, the occupation of the plaintiff over the suit property is that of a rank trespasser....

8. Moreover, the suit land has been placed at the disposal of DDA. It may take years together to dispose of the case finally if full fledged trial is held. It will give premium to the plaintiff allowing them to remain over the Government land unauthorisedly till the decision of the case. One must nip the evil in the bud. Such steps are necessary in public interest. Under these circumstances, I am of the view that plaintiffs are having no legal right over the property in dispute having been placed at the disposal of DDA after its acquisition and hence, the suit filed by the plaintiffs is not maintainable. It is dismissed.

6. It was submitted by Shri J.P. Singh, learned senior counsel for the appellant-plaintiff that the learned trial Court was firstly not justified in treating the two issues as preliminary issues since the same were not pure issues of law and the trial Court was further not right in dismissing the suit as being not maintainable

on the ground that the plaintiff had not established any title over the suit land and particularly without affording an opportunity to the plaintiff to adduce necessary evidence. Mr. Sengh, thus, made a prayer for setting aside the impugned order and remanding back the matter to the trial Court for deciding all the issues together after giving opportunity to the parties to adduce evidence to substantiate their respective pleas.

7. Arguing for the DDA its counsel Shri Ajay Verma submitted that the question of title over the suit land cannot be decided by a Civil Court in view of the bar created u/s 185(1) of the Delhi Land Reforms Act, 1954 and this is what the plaintiff wants the Court to do. Mr. Verma supported the conclusion of the trial Judge that the suit was not maintainable. Learned Counsel contended that it was the plaintiff's own case in the plaint itself that the entire village Kishangarh had ceased to be rural area way back in the year 1966 with the issuance of necessary notification under the Delhi Municipal Corporation Act and the village came to be vested in the Central Government and in 1974 the same was placed at the disposal of DDA for development as green area. It was also submitted that although the plaintiff had also claimed that the revenue records which showed the suit land to be belonging to Gaon Sabha before 1966 and in its possession were falsely prepared and needed to be corrected but that relief also could not be sought from the Civil Court by the plaintiff in the garb of a suit for injunction which relief has been claimed only to avoid the bar to the jurisdiction of the Civil Court created u/s 185(1) of the Delhi Land Reforms Act, 1954. In this regard the learned Counsel placed reliance on a judgment of a Division Bench of this Court in Gaon Sabha of Lado Saral Vs. Jage Ram, . Mr. Verma also contended that even though the trial Court has not dismissed the suit for the reason that in fact the plaintiff was claiming the decree of declaration of her bhumidari rights in the garb of suit for injunction and so suit was not maintainable u/s 185(1) of the Delhi Land Reforms Act, 1954 this Court can also in this appeal without remanding the suit back to the trial Court return that finding while affirming the trial Court's final conclusion dismissing the plaintiff's suit since no evidence is required to be adduced from either side for deciding this legal point and whole matter can be decided here itself by looking at the averments in the plaint alone.

8. Replying to the argument of Mr. Verma regarding non- maintainability of the suit in view of the bar u/s 185(1) of the Delhi Reforms Act, 1954 Mr. Sengh had submitted that the plaintiff's suit was for injunction only based on her settled possession and not for a declaration of her title over the suit land and under none of the entries in the Schedule to the Delhi Land Reforms Act, 1954 a suit for injunction is barred in a Civil Court. So, Section 185(1) is not attracted in the facts of the present case. And even if the possession of the plaintiff is considered to be not lawful, counsel contended, she cannot be dispossessed by anyone, including the Government, except by following due process of law. Mr. Sengh placed reliance on one decision of the Supreme Court in Muddanna and Others Vs. The Panthanagere Group Panchayat, Kengeri Hobli, and two judgments of this Court reported as Rattan Lal Vs. Municipal Corporation of Delhi, and 54

(1994) DLT Amrik Singh Sabharwal v. Kanta Devi. in support of the submission that even a trespasser cannot be forcibly evicted from the trespassed land.

9. Now, as far as the power of the Court to decide some issues only in a suit as preliminary issues is concerned the Court is empowered to frame and decide certain issues as preliminary issues under Order XIV Rule 2 of the CPC but only in case the issues proposed to be decided as preliminary issues relate to the jurisdiction of the Court or any bar to the suit created by any law for the time being in force and while deciding such legal issues the Court is expected to consider if on the basis of the averments made in the plaint the suit of the plaintiff appears to be barred or not maintainable because of any bar created under any law for the time being in force or that the Court has no jurisdiction to try the suit and nothing beyond that. Now, I shall proceed further to examine the merits of the rival submissions but before I do that it would be appropriate to notice here certain averments made in the plaint to which my special attention was drawn by the counsel for the DDA and which according to him this Court should keep in mind while appreciating the arguments advanced from both the sides:

7. The suit property in question never vested in the Gram Sabha, as it was never a wasteland as it was used for residential and agricultural purposes. The said property has never been acquired....The plaintiff being the absolute owner in the possession of the same is entitled to enjoy the same without any interference from the defendants.

8. That the aforesaid land was joint undivided holding of the proprietors known as Shamlat Taraf Dulle, who were the owners since 1940, and the entries in the revenue records showed the said land as such, namely, in possession of the proprietors of Shamlat Taraf Dulle. This land was in the possession and occupation of the predecessors-in-interest of the plaintiff who also became the Bhoomidar/owner of the suit land u/s 85 of the Delhi Land Reform Act, 1954.

10. That it is significant to mention herein that the aforesaid land was shown in the revenue records till the year 1946-50, in possession of the proprietors, that is "Maqbooza Malkan" and in the column of ownership it was shown as that of "Shamlat Taraf Dulle". It was never shown as wasteland at any point of time. The aforesaid suit land was in use and possession of the predecessors-in-interest during their lifetime and after the death of the predecessors-in-interest in the said suit land has been in use and possession of the plaintiff. The plaintiff is the co-owner/Bhoomidar of the suit land even otherwise, has the possessory title to the said land.

11. That it would be further pertinent to mention here that u/s 7 of Delhi Land Reforms Act, proprietary rights in wasteland, pasture lands of common utility etc., vest in Gaon Sabha after the commencement of Delhi Land Reforms Act, 1954 by the Notification to be issued by the Deputy Commissioner of Delhi....

12. That the Notification u/s 7 of the Act, after the commencement of Delhi

Reforms Act or the proclamation thereof as required under Rules 2 & 3 of Delhi Land Reforms Rules 1954 was never issued in respect of the aforesaid land. In the absence of compliance of Section 7 of the Act and Rules 2 & 3 of the rules the land in question did not/could not vest in Gaon Sabha. Assuming for the sake of argument, though not admitting that any notification purporting to be u/s 7 of the Delhi Land Reforms Act was issued and the proclamation was published as required under Rules 2 & 3 of the Delhi Land Reforms Act in respect of the land in question, even then it is submitted that such a Notification was wholly wrongfully, illegal, ultra vires, without jurisdiction and a nullity.

13. Further, assuming for the sake of argument, though not admitting that the aforesaid land was regarded as wasteland and the requisite notification u/s 7 of the Delhi Land Reforms Act was issued validly and the proclamation as required under Rules 2 and 3 of the said Act was made, even then, it is stated that the said land continued to remain in use and possession of the owners and their predecessors-in-interest and the possession of the land was not taken by Gaon Sabha and nor the Gaon Sabha even came into possession of the said land at any point of time....

14...Even otherwise, the land situated in village abadi cannot vest in Gaon Sabha u/s 7 or any other provision of the Delhi Land Reforms Act. The entry in Revenue Records showing the land in question that of Gaon Sabha is ex-facie false, bogus, fictitious and manipulated besides being illegal and void....Even assuming, though not admitting, the land in question was notified to vest in Gaon Sabha u/s 7 of the Act and Rules 2 and 3 of the Rules, as already stated above, even then the vesting order of the Deputy Commissioner was wholly illegal....

15....The said land is in possession and occupation and enjoyment of the plaintiff. As stated herein above the plaintiff is the owner/ bhoomidar of the land, subject matter of the present suit. The plaintiff is utilizing the said land for her own purposes.

19. That on coming to know of the illegal designs of the defendants, the plaintiff applied for copies of Khasra Girdwaris and other records of the above said land and were shocked to learn that the revenue records have been incorrectly maintained and the plaintiff and/or their predecessors-in-interest have neither been shown as owner/Bhoomidar nor in possession of the above said land. The land has been wrongly and illegally shown to be vested in Gaon Sabha/Central Government/ DDA.

20. That no notification u/s 7 of the Delhi Land Reforms Act, 1954 after the commencement of Delhi Land Reforms Act nor the proclamation thereof as required under Rules 2 & 3 of Delhi Land Reforms Rules 1954 was ever issued in respect of the aforesaid land. Even, otherwise this land could not have been legally vested in Gaon Sabha as it was built up Abadi property. It was in use and occupation of the predecessors-in-interest of the plaintiff. Since the aforesaid land did not vest in the Gaon Sabha under any requisite or valid notification etc.

and nor its possession was ever taken by the Gaon Sabha and nor any suit for ejectment was taken by the Gaon Sabha and nor any suit for ejectment was filed within limitation against the predecessors-in- interest of the plaintiff, Gaon Sabha did not acquire any right or interest of any nature, whatsoever, in the said land. The Central Government had also no power, competence or authority to issue any notification u/s 507 of Municipal Corporation Act. The land never remained in the possession of Gaon Sabha or Central Government and the entries to this effect are wholly false, wrong, illegal, fictitious and mere paper entries. The plaintiff and/or her predecessors-in-interest have been continuously in settled possession of the land/property in question as owners/Bhumidars thereof....

21.... Even, unauthorized possession has to be shown in the record of Khasra Girdwari. The correct entries have not been maintained. The record of Khasra Girdwari and Jamabandi require immediate correction in respect of true status of the above said land.

10. Now I come to the merits of the rival submissions. In the present case there was an objection raised on behalf of the DDA that the plaintiff's suit was not maintainable. According to the submission of the learned Counsel for DDA that objection could very well be decided as a preliminary issue since it was purely a legal point whether the Civil Court could entertain the suit of the plaintiff in view of the averments in the plaint itself and that point required no evidence. I am in full agreement with this submission of the learned Counsel for the DDA that the objection of DDA was purely legal in nature and I do not find any merit in the argument of the learned senior counsel for the appellant- plaintiff that the point raised by the DDA was a mixed question of law and fact. I, therefore, do not find any fault in the trial Court's decision to decide the DDA's objection regarding the maintainability of the suit as a preliminary issue.

11. However, the learned trial Judge has not dealt with the legal point involved correctly and has deviated from the path which only the Court is expected to follow while deciding any legal issue as a preliminary issue. The Court is not to go into questions of fact requiring evidence and exactly that the trial Court in the present case has done. As noticed already, the only prayer in the plaint was for a decree of permanent injunction. The trial Court was expected to return a finding whether the suit for injunction could be said to be not maintainable because of any bar under any law for the time being in force or whether for any reason the Court had no jurisdiction to try such a suit assuming the allegations made in the plaint to be correct and documents accompanying the plaint to be authentic. The trial Court has, however, not examined the matter from this angle at all and that has necessitated that exercise to be undertaken now by this Court in appeal.

12. The question which arises is whether a suit for injunction like the one filed by plaintiff is barred under any law or the Civil Court has no jurisdiction to entertain such a suit. Learned senior counsel for the appellant-plaintiff did not dispute the fact that the Delhi Land Reforms Act, 1954 applies to the suit land. However, he submitted that there is no bar against the entertainment of a suit for injunction

only by a Civil Court under any of the provisions of the said Act of 1954. I fully agree with this submission and even the learned Counsel for the DDA did not raise a plea that a suit for injunction simpliciter is barred under the said Act.

13. However, the submission of the learned Counsel for the DDA was that if the plaintiff's suit had really been for permanent injunction only based on possession and not on title the same would have been maintainable in the Civil Court but here the plaintiff had although described her suit as a suit for injunction only but actually relief of injunction was being claimed as a ruse and in fact she was indirectly claiming a declaration from the Civil Court that the suit land never vested in the Gaon Sabha and so it could also not vest in the Central Government and that initially her predecessors-in-interest were the bhumidars/proprietors of the suit land and after their death she became the bhumidar and further that false revenue records had been prepared showing the suit land to be Gaon Sabha land before 1966 and not showing the plaintiff's predecessors or her own possession over the suit land. To support this contention Mr. Verma had drawn my attention to the averments in different paras of the plaint which I have already re-produced.

14. Mr. Verma also drew my special attention to the following observations of the Division Bench judgment of this Court in *Gaon Sabha Lao Sarai v. Jage Ram*(supra) to support his argument that this Court should not go only by the form of the suit and the final relief claimed by the plaintiff in her plaint but should read the substance of the plaint to find out the real intention behind the prayer for a decree of injunction only:

(12) It is settled law that jurisdiction with reference to the subject-matter of a claim, as in the case of other kinds of jurisdiction, depends upon the allegations in the plaint and not upon the allegations in the written statement, nor upon those which may ultimately be found true. Such allegations may, after the trial, be held to be unfounded and in that case, the suit will be dismissed, not because the court has no jurisdiction, but because the allegations on which it was based are found to be untrue. The question of maintainability of a suit is also governed by the same principles and must be dealt with on the footing of the allegation in the plaint being correct. The plaintiff cannot, by merely so drafting his prayers to exclude or include relief which can or cannot be granted by a court, confer on the court jurisdiction to try the suit. It is necessary in each case to consider what the cause of action in the plaint is and what is the substantive relief which the plaintiff would be entitled to if he succeeds in the suit, in order to determine whether the court has jurisdiction, irrespective of what prayers the draftsman has thought fit to put in the plaint. The substance of the relief and not the mere form in the plaint has to be looked to. In deciding the point of maintainability of a suit the allegations in the plaint alone have to be considered. It is the allegation in the plaint which determine jurisdiction. To discover the real nature of the suit the plaint has to be looked at and plaint has to be read as a whole and in doing so the court must look at the substance of the plaint and not its outward

form only. In each of ten appeals, therefore, we will take into account the substance of the suit in order to determine the nature of the claim made and reliefs sought.

15. From the above-noted averments in the plaint which were highlighted by the counsel for the appellant-plaintiff it is quite evident that it is the plaintiff's case that the necessity of filing this suit arose when she came to know that in the revenue records the suit land was shown to be Gaon Sabha land before 1966 and also that neither her predecessors-in-interest nor she was shown to be either bhumidars or in possession of the suit land. According to her case there are false entries in the revenue records which needed to be corrected and her name should be shown as bhumidar. However, learned Counsel for the appellant-plaintiff had submitted that on the basis of the aforesaid facts relating to the entries in the revenue records pleaded in the plaint the plaintiff had not sought any relief and in fact it had been categorically pleaded in the plaint that she would establish her title and get necessary relief regarding false entries in the revenue records from the appropriate forum(which undisputedly is the Revenue Court constituted under the Delhi Land Reforms Act,1954). Learned Counsel also submitted that the relief of injunction could be claimed on the basis of title as well as plaintiff's settled possession over the suit land and the plaintiff was claiming decree of injunction on the basis of her possession alone and the factual background as to how she was claiming herself to be the bhumidar had been given in the plaint. It was also contended that decree of injunction claimed by the plaintiff was not dependant on her title over the suit land and so she was not expected to establish her title in the present suit and her suit was not barred and that opportunity to adduce evidence was being sought not because the plaintiff wanted the Civil Court to give a declaration in her favour that she is the bhumidar but because the trial Court itself had entered into the controversy of title firstly by framing issues concerning the title in respect of the suit land and then deciding the same against the plaintiff without affording her any opportunity to adduce necessary evidence. My attention was drawn to the following lines in the plaint:

The plaintiff reserves her right to file proceedings in respect of the illegal entries and declaration as to the title before the appropriate forum in accordance with law.

In my view, learned senior counsel was right in submitting that when the plaintiff herself was not claiming any relief on the basis of her title the trial Court was not justified in returning the finding that the plaintiff had failed to establish her title over suit land. The trial Court has exercised the jurisdiction which, in view of the averments in the plaint itself, it did not possess in law while returning the finding that the plaintiff was not the bhumidar/owner of the suit land and consequently her suit was not maintainable.

16. I am also of the view that in view of the statement made by the plaintiff in her plaint that she would be agitating her grievance in respect of her title over

the suit land and false entries in the revenue records before the appropriate forum the learned trial Court was not justified in framing issue No. 4 relating to the notification issued by the Government vesting some villages in Central Government and then the same being placed at the disposal of the DDA. When the plaintiff herself was claiming that she would seek necessary relief in respect of the notifications vesting the suit land firstly in the Central Government and subsequently in the DDA before the appropriate forum and was not claiming any relief in that regard in the present suit there was no occasion for the trial Court to have framed an issue and decided the same. Therefore, issue No. 4 is being struck off.

17. I am, therefore, of the view that plaintiff's suit for permanent injunction was not barred under any law and Civil Court's jurisdiction is also there to decide a suit for injunction even in respect of some land to which the provisions of the Delhi Land Reforms Act, 1954 apply provided the relief of injunction is not being claimed on the basis of bhumidari rights in respect of that land and the relief is being claimed only on the basis of possession over the suit land. Consequently, the decision of the learned trial Court to the effect that the plaintiff's suit for injunction was not maintainable is set aside.

18. Now, the question which arises is whether the case deserves to be remanded back to the trial Court, as was the submission of the learned senior counsel for the appellant or this Court can deal with the remaining issues also without remanding the case to the trial Court, as was the submission of the learned Counsel for the respondent-DDA.

19. In my view, there is no necessity of remanding back the matter to the trial Court and this Court itself can deal with the remaining aspects of the matter. Since the learned Counsel for DDA himself had made the submission that this Court can dispose of the entire matter looking at the averments in the plaint alone it can be said that DDA's objection regarding absence of notice u/s 53B of the Delhi Development Act, 1957, which as per the averments made in the plaint was served by the plaintiff on DDA, stands given up and consequently no finding need be given by the Court on issue No. 2.

20. Issue Nos. 3 and 5 have been framed because of the objections taken by the DDA that the appellant-plaintiff had no right to get the relief of permanent injunction. The learned trial Court has while declining the relief of injunction proceeded on the basis that the plaintiff was in possession of the suit land and has declined the relief of injunction on the ground that being a rank trespasser she was not entitled to that relief. Therefore, no evidence is required to be adduced on these issues and this Court can examine the correctness of the reasoning of the trial Court for declining the relief of injunction even after accepting the plaintiff's possession. The argument of the learned senior counsel for the appellant-plaintiff was that even a trespasser cannot be dispossessed from any property which is alleged to have been encroached upon by anyone except by due process of law. There is no dispute that nobody has a right to take

the law in his hands. However, the question here is whether the appellant-plaintiff has any right to ask for the discretionary relief of injunction. Since the appellant-plaintiff has till date not even initiated any proceedings to have a declaration from the competent Court that she is the owner/ bhumidar of the suit land and she is also admitting that as per the revenue records the suit land belonged to the Gaon Sabha upto the year 1966 when it came to be vested in the Central Government the trial Court has rightly held her to be a rank trespasser over the suit land. I also do not find any fault with the conclusion of the trial Court that being a rank trespasser the plaintiff was not entitled to the relief of injunction. I have gone through the judgment of the Hon.ble Supreme Court in Muddanna v. Panthanagere Group Panchayat (supra) cited by learned senior counsel for the appellant in support of the argument that even a person in wrongful possession of some property is entitled to the relief of injunction. A perusal of this judgment shows that there was a serious dispute regarding the title of the suit property between the parties and the Hon.ble Supreme Court had also observed that "it is nobody's case that the appellant-plaintiffs are rank trespassers." Observing so, the Hon.ble Supreme Court came to the conclusion that the appellant therein was entitled to the relief of injunction against forcible dispossession from the suit property. This judgment, however, does not come to the rescue of the appellant-plaintiff since in the present case, as has been observed already, the appellant-plaintiff despite having become aware long time back that in the revenue records the suit land had been shown to be belonging to the Gaon Sabha and not to her predecessors-in-interest has not approached the Revenue Court constituted under the Delhi Reforms Act to have a declaration that the suit land never belonged to the Gaon Sabha and her predecessors-in-interest were the bhumidars thereof she was accepting DDA's right/title over the suit land.

21. The Hon.ble Supreme Court had held in Premji Ratansey Shah and Others Vs. Union of India (UOI) and Others, that no injunction can be issued against the true owner of some property in favour of a person who has no interest therein. This is exactly what was observed by the Hon.ble Supreme Court in para No. 5 of the judgment:

It is equally settled law that injunction would not be issued against the true owner. Therefore, the Courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner, pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.

22. In M. Kallappa Setty Vs. M.V. Lakshminarayana Rao, it was held by the Hon.ble Supreme Court that a trespasser can seek protection against interference in his possession by someone having no better title than himself but

not against someone who has a better title than him to the suit property.

23. In view of the afore-said pronouncements of the Hon.ble Supreme Court clearly holding that a trespasser cannot claim injunction against dispossession against the true owner of the encroached property the learned trial Court was fully justified in rejecting the relief of injunction to the appellant-plaintiff after holding her to be a rank trespasser.

24. For the fore-going reasons, I dismiss this appeal with costs of Rs. 15,000/-. However, it is made clear that if at all the appellant-plaintiff moves the Revenue Court for a declaration of title in respect of the suit land or for correction of the revenue records in respect of the suit land the Revenue Court would decide the matter uninfluenced by any observation made either in the trial Court's judgment or in the present judgment of this Court.