

(2013) 07 DEL CK 0095

In the Delhi High Court

Case No : Regular Second Appeal No. 110 of 1993

Hafiz Abdul Mannan

APPELLANT

Vs

DDA and Another

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Delhi Development Act, 1957 — Section 53B
Evidence Act, 1872 — Section 58
Limitation Act, 1963 — Section 3

Citation : (2013) 5 AD 689 : (2013) 171 PLR 19

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Rajesh Banati and Mr. Sunil Verma, for the Appellant; Parvinder Chauhan, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a regular second appeal u/s 100 CPC against the order dated 6.2.1993 passed by the learned Additional District Judge in appeal No. 204 of 1984 upholding the judgment and the decree dated 17.11.1984 passed by the learned Sub Judge in Suit No. 885/1972 (renumbered as 433/1973) by virtue of which the said suit was dismissed. Briefly stated the facts of the case are that the appellant/plaintiff filed a suit for possession in respect of property bearing Municipal No. XI/3438 to 3453 situated at Delhi Gate, Delhi. It was alleged that a portion of the property referred to as bearing Municipal No. XI/3440-3445 (old Nos. 4485-4490) is under the unauthorized and illegal possession of the Municipal Corporation of Delhi (MCD) from September, 1961 and presently, the same is under the unauthorized occupation of the defendant/respondent herein (DDA) and they are also not paying any rent, damages or license fee. The respondent/defendant contested the suit and took the plea that the aforesaid building/land was acquired for implementation of Slum Clearance Scheme known as Delhi Ajmeri Gate Scheme vide award No. 943/590 dated 22.5.1950 which

property vested in Delhi Improvement Trust through Special Land Acquisition Collector. It has been stated that the present suit is not maintainable on account of the fact that the suit is filed for declaration without giving notice u/s 53-B of the DDA Act, 1957. Further, the land having been voluntarily acquired and utilized for the purpose for which it was meant, the appellant/plaintiff was not left with any right, title or interest to claim the property in question. Further, it was also stated that the respondents have been in possession of the suit land for more than 12 years which has been admitted by the appellant/plaintiff and, therefore, they have become owner by way of adverse possession.

2. On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is the owner of the disputed property as alleged by him? If so, its effect? OPP
2. Whether the suit property was transferred as an evacuee property on or before 22/5/50? If so, its effect? OPP
3. Whether there has been an estoppel against the defendant as alleged by the plaintiff in para No. 7 of its replication? OPP
4. Whether the defendant DDA is the owner of the suit property? OPD
5. Whether this court has no jurisdiction? OPD
6. Whether the suit is bad for want of a valid notice? OPD
7. Relief.

3. An additional issue was also framed on 11.1.1980 which reads as under:-

1. Whether the defendant DDA has been in possession of the suit property for more than 12 years and has become owner of the property in question by adverse possession? OPD

4. After the parties were permitted to adduce evidence, the suit for possession was dismissed by the learned trial court. While dismissing the said suit, the court also observed that the suit was barred by limitation and further that the suit has not been properly valued for the purpose of court fees. In this regard, it was observed by the learned Sub Judge that originally in 1972, when the suit for possession was filed by the appellant, he had valued the suit at rupees one lac and the said suit was withdrawn later on in the year 1975. When the present suit was filed, the value of the suit for the purpose of court fees and jurisdiction was shown to be only Rs. 3,450/- which was well below than the value which was referred to in the earlier suit.

5. The appellant, feeling aggrieved, preferred the appeal bearing No. 204/1984 which was also dismissed on 6.2.1993 by the learned Additional District Judge upholding the reasoning given by the trial court that the suit is barred by limitation and further it is not properly valued for the purpose of court fees. The plea of the appellant was not accepted and it was held that the suit land has

been acquired by an award No. 943/590.

6. Still not feeling satisfied, the present regular second appeal has been filed by the appellant.

7. I have heard the learned counsel for the appellant and have gone through the record. The contention of the learned counsel for the appellant is that the following substantial questions of law arise from the present appeal:-

1. Whether the learned ADJ erred in holding that the suit is liable to be rejected since the suit has not been valued properly in the absence of any issue before learned Sub Judge and that too at an appellate stage? Can the learned ADJ give its own valuation?

2. Could the learned ADJ wrongly dismiss the suit on the ground of limitation, especially when there is no issue nor it was raised by defendant at trial court?

3. Can the learned ADJ rely on the award which even the trial court has not accepted since the defendant failed to produce the original? Moreover, defendant did not challenge the judgment of learned trial court on this point.

4. Whether the learned ADJ completely ignored the resolution dated 14.7.1964 whereby defendant agreed to return the property to the appellant. Moreover, the resolution was passed on the representation made by appellant vide application dated 14.6.1964.

5. The learned ADJ also did not consider the fact that the purpose for which the land was acquired, i.e., for building telephone exchange, was not used for that purpose and property actually handed over to illegal occupants.

8. The first question is with regard to the valuation of the suit property. The contention of the learned counsel is that in the absence of any issue with regard to the valuation of the suit not having been framed by the trial court, the learned Sub Judge or even the learned Additional District Judge could not have given his own valuation. I do not agree with this submission made by the learned counsel that this involves any question of law much less a substantial question of law. The submission which has been urged by the learned counsel for the respondent is that there is no dispute that the land was acquired in the year 1950 and the suit for possession was originally filed by the appellant in the year 1972 where he had valued the suit for possession for a sum of rupees one lac. Subsequent thereto, the suit was withdrawn by the appellant and he chose to file a fresh suit in the year 1975. The appellant has valued his suit not at rupees one lac, as was done by him originally, but he had valued his suit at Rs. 3,450/- which was much below than the valuation which was done in the first instance. This is despite the fact that there was a lapse of more than three years in the filing of the two suits in which the value of the property must have increased rather than decreased. In any case, this, in my view does not involve any question of law much less a substantial question of law. The valuation of a suit is essentially a question of fact and it need not be established by permitting the parties to adduce evidence

when documents showing admission by the parties are produced on record which show the valuation of the suit property.

9. So far as the second question with regard to the limitation and dismissal of the suit by the learned Additional District Judge is concerned, it has been contended by the learned counsel for the appellant that no issue with regard to the limitation was framed by the trial court and, therefore, the question of limitation could not have been decided against the appellant.

10. Section 3 of the Limitation Act clearly lays down that a suit which is instituted after the expiry of period of limitation is barred by time and the court shall not entertain the same. According to Article 58 read with Article 113 of the Limitation Act, a suit for possession has to be filed within a period of 12 years from the date when the cause of action has accrued. Admittedly, the appellant's case itself is that the land in question was acquired in the year 1950. If that be so, then the suit for possession could have been filed by the appellant only upto 1962 and not after that. The law of limitation is a question which goes to the root of the matter with regard to entertainment of the suit itself. It is not necessary that while considering the limitation, an issue needs to be necessarily framed. The suit admittedly has been filed by the appellant after expiry of more than 22 years from the date of entitlement of filing of the suit and is, therefore, barred by limitation on the face of it. I do not feel that this involves any question of law much less any substantial question of law as the question of limitation, in the instant case, is a question of fact depending on the basis of the averments made in the plaint. The averments made in the plaint are that the land has been acquired in the year 1950 while as the suit for possession has been filed in 1975. If that be so, the suit for possession which is required to be filed within 12 years, has been filed after expiry of 25 years and thus, the suit, on the face of it is hopelessly barred by time.

11. So far as the third question with regard to the reliance on award is concerned, the contention of the learned counsel for the appellant is that the original award has not been proved and in the absence of original award, the land could not be deemed to have been acquired and the suit of the appellant could not have been dismissed. The acquisition of the land in question vide award No. 943/590 dated 22.5.1950 is not in dispute. The only contention of the learned counsel for the appellant is that the award is sought to be proved by exhibit DW 2/3 which was not admissible in evidence. The learned counsel for the respondents has contended that de hors the proof of award vide exhibit DW 2/3, the respondents are still relying upon documents exhibit DW 2/1 and DW 3/1 by virtue of which the land had been acquired. In addition to this, there is a letter dated 14.6.1965 exhibit DW 2/1 written by the appellant to the Commissioner of MCD wherein it shows that the appellant himself had admitted to the respondents that the land in question, though belonged to them, but stands acquired.

12. A document may be proved by different modes. The award is a public

document and a certified copy of the public document could be proved. There is other principle also with regard to proof which is enshrined u/s 58 of the Evidence Act which clearly lays down that a fact which is admitted, need not be proved. In the instant case, the appellate court has taken note of the fact that the appellant himself had made an application exhibit DW 2/1 to the DDA wherein he had admitted that the land in question has been acquired by the Delhi Improvement Trust vide award No. 943/590 dated 22.5.1950. That being the position, the absence of proof of the said award, in my view, is not vital to the case of the respondents. In any case, this does not raise any question of law much less a substantial question of law and is essentially a question of fact which is proved by the evidence. In view of the above, I feel since there is a concurrent finding on all these issues returned by the two courts below and the appellant has not been able to make out prima facie any substantial question of law involved in the matter, the appeal is without any merit and the same is dismissed.