

(2009) 08 DEL CK 0055

In the Delhi High Court

Case No : Regular First Appeal No.123 of 2009 and C.M. No. 4775 of 2009

Khatri Hotels Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Delhi Development Authority

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 2 Rule 2(1), Order 2 Rule 2(2), Order 2 Rule 2(3), Order 39 Rule 1
Delhi Development Act, 1957 — Section 150, 22, 22(1), 7, 7(2)
Delhi Land Reforms Act, 1954 — Section 150, 150(3), 7, 7(1)
Delhi Land Revenue Act, 1954 — Section 66
Delhi Municipal Corporation Act, 1957 — Section 507
Land Acquisition Act, 1894 — Section 4
Limitation Act, 1963 — Article 58, 22

Citation : (2009) 169 DLT 226 : (2010) 7 RCR(Civil) 2060

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : V.P. Singh and Ashish Aggarwal, for the Appellant; Parag Tripathi Shobhana Takiar, Indrani Ghosh and Amey Nargolkar for DDA, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Present appeal has been filed against judgment dated 28th March, 2009 of Additional District Judge, Delhi, vide which suit of the appellants was dismissed.

2. Brief facts of this case are, that appellant No. 1 is a family company of sons of appellant No. 2 and is incorporated under Companies Act, 1956. Harbir Khatri, is its Managing Director.

3. Appellant No. 2 along with his brothers, is owner/ bhumidar of property forming part of Khasra No. 2728/1674/2 and 2728/1674/3, having purchased the same, vide registered sale deed dated 10.10.1963. The property is situated in Revenue Estate of village Kishangraha, Tehsil Mehrauli, New Delhi. One Shri Ram Jas and others, including Shri Rattan Lal and Smt. Kasturi, purchased land

bearing Khasra No. 2728/1674, measuring 13 bighas 17 biswas, from recorded owners, who were in the possession of the same, as per Revenue Records. Shri Rattan Lal and Smt. Kasturi, sold and transferred all their rights of ownership and possession in favour of S/Shri Parma Nand, Tej Nath, Tej Parkash, Gokal Chand and Ram Dhan in Khasra No. 2728/ 1674/2 (3 bighas 3 biswas), and Khasra No. 2728/1674/3 (1 bigha 1 biswas) out of Khewat No. 164, Khatoni No. 436, vide document registered, on 17.10.1959 with Sub Registrar.

4. Shri Om Parkash and Mahinder Pal sons of S/Shri Parma Nand, Tej Nath, Tej Parkash, Gokal Chand and Ram Dhan, sold and transferred all their rights in respect of above said land, in favour of S/Shri Ram Singh, Dhanu, Lal Chand and Surat Singh, sons of Mam Raj in equal share, vide documents registered on 15.10.1963 with Sub Registrar and actual physical possession of this property was recorded in their favour in revenue record of 1964-65.

5. This property consists of two built up rooms with tin sheds bounded by a boundary wall of stones.

6. Appellant No. 2, continued to be in actual possession since date of purchase, i.e. 15th October, 1963 as rightful and lawful owner/bhumidar and part of same was used for his residence. Appellant No. 2 having grown up sons and suit property being situated on a vantage place in the village towards a wide road, they floated a company in the name of appellant No. 1 and started business of restaurant in a part of the property, after obtaining all necessary sanctions from concerned authorities, under the name and style of "Sahara Restaurant".

7. In 1990, respondent No. 2 tried to dispossesses appellants and demolish the suit property on the ground that same belonged to it. Pursuant to it, appellant No. 2, filed a suit (bearing No. 2576/1990 also numbered as 211/02/90) in this Court. During pendency of that suit, appellants applied for copy of Khasra Girdwaris of above land and were shocked to learn that said land vest in Gaon Sabha and appellants were not recorded as owner/bhumidar in Khasra Girdwaris.

8. No notification u/s 7 of the Delhi Land Reforms Act 1954 (for short as "Act") has been issued in respect of the suit property. Since land of suit property did not vest in Gaon Sabha under any requisite or valid notification etc, nor its possession was ever taken by Gaon Sabha, nor any suit for ejectment was filed against predecessors in interest of the appellants. Gaon Sabha, thus did not acquire any right or interest, whatsoever in the suit property. This land never remained in possession of Gaon Sabha or Central Government and entries in revenue records are false, wrong and illegal. Respondent No. 1 had no power to issue notification u/s 507 of Delhi Municipal Corporation Act (for short as "DMC Act"). Appellants requested halqa patwari and kanoongo, to make correct entries in respect of suit property but they refused and asked the appellants to approach higher authorities.

9. The construction of suit property is old and except for making the same habitable and worthy of an eating house, no structural changes have been made

therein. Even otherwise, construction at the site is well within building bye laws. On 11.2.2000, a police official from local Police Station, came to suit property for survey of same and appellants were shocked to learnt that respondents had passed orders for demolition of suit property on the ground that orders in pending suit did not cover the restaurant as name of "Sahara Restaurant" was not mentioned in the order and demolition was scheduled for 15.02.2000.

10. Appellants filed present suit seeking a declaration, that entries made by respondents in Revenue Records in respect of land comprised in Khasra No. 2728/1674/2 and 2728/1674/3 situated in Revenue Estate of Mehrauli, Village Mehrauli Kishangrah, Tehsil Mehrauli, New Delhi are wrong and illegal. A decree of mandatory injunction directing respondents to correctly record ownership and possession of appellants in Revenue Records being maintained and in custody of respondent No. 2 is sought, as well as permanent injunction is also sought restraining respondents, their servants, agents and representatives from demolishing the super structure, sealing or interfering in any manner in possession of appellants or from running of Sahara Restaurant from property bearing Khasra No. 2728/1674/2 and 2728/1674/3 situated in Revenue Estate of Mehrauli, Village Mehrauli Kishangrah, Tehsil Mehrauli, New Delhi.

11. No written statement was filed by respondent No. 1/ Union of India, despite opportunities and right of respondent No. 1 to file written statement, was closed, vide order dated 1.2.2002.

12. Respondent No. 2/DDA, in its written statement took preliminary objection that appellants have not come to the court with clean hands and have concealed material facts. There is no cause of action against answering respondent due to which reason the suit is not maintainable and is liable to be dismissed, as this Court has no jurisdiction to try the same. Further, the suit of appellants is barred by provisions of Specific Relief Act and also as per Article 58 of the Limitation Act, according to which a declaration can be sought within three years, from the date when the cause of action first arose.

13. On merits, it is stated that land in dispute belongs to Gaon Sabha and on urbanization of village Mehrauli(Kishangrah), land vested in Central Government. Central Government transferred the same at the disposal of answering respondent for the purpose of development and maintenance of the said land as green, vide notification No. S.O. 2190 dated 20th August, 1974, u/s 22 of the Delhi Development Act.

14. Appellants have no right, title or interest in property in question. There is no document or title in favour of Ramjas, Ratan Lal or Smt. Kasturi or their alleged predecessors. No such persons exist or appears to have existed. Even name of alleged "recorded owners" are not mentioned. Entry as alleged in Revenue Records, if it exists, does not create or confer any right, title or interest.

15. It is denied that physical possession of property was handed over to Ram Singh, Dhanu, Lal Chand and Surat Singh. Appellant No. 2, unauthorisely

occupied the land in dispute shortly before filing (suit No. 2576 of 1990) and illegally constructed a boundary wall with three temporary rooms. The licences obtained from various government authorities does not create any right, title or interest in the property. Since the land vested in Central Government, therefore, provisions of Act are not applicable. There was no construction on the land in 1954 or 1957 or till shortly, before filing of suit in 1990 by appellant No. 2. There was no built-up abadi nor suit land fell in built-up abadi. As such, appellants have no right, title or interest in property. Contentions of Learned Counsel for Parties

16. It is contended by learned Counsel for the appellants that basic question involved is that, whether land comprised in Khasra No. 2728/1674/2 (3 bigha 3 biswa) and khasra No. 2728/1674/3 (1 bigha 1 biswa) measuring 4 bighas 4 biswas, situated in Village Kishangarh vested in Gaon sabha or not, under the provisions of the Act. Vesting of such land is provided u/s 7 of the said Act, provides the procedure for the same. Unless procedure as prescribed in the said Section is followed and the land duly vest in Gaon Sabha, a proprietor is not deprived of his proprietary rights. If the statute provides for in method and procedure to be followed, all the acts have to be done accordingly and no act can be performed in violation of the same. Admittedly, procedure as stipulated u/s 7(2) of the Act, has not been complied with. No order of vesting was passed by Deputy Commissioner and no compensation as is mandatorily required, was paid. On this point, learned Counsel cited decision of Supreme Court, *Meera Sahni v. Lt. Governor of Delhi and Ors.* (2008) 9 SCC 170.

17. It is further contended that Shri Ratan Lal and Smt. Kasturi were the bhoomidars/owners in possession of the said property and were duly shown so in revenue records. The suit land was "Shamlat Thok land" and same was duly shown as "Shamlat Thok Chana" and in possession of the owner in the Register of Mutation for year 1953, as per Ex.PW3/5. The said land was again shown as abadi area in Khasra Girdawari for the year 1957-59 as per Ex.PW3/5A.

18. Above said Ratan Lal and Smt. Kasturi, executed sale deed dated 07.10.1959 (Ex.PW1/4) in favour of S/Shri. Parmanand, Tej Nath, Tej Prakash, Gokal Chand and Ram Dhan. These persons, then further executed a sale deed dated 10.10.1963 (Ex.PW1/3) in favour in appellant No. 2 and his brothers and handed over the possession of suit land, including entire built up structure existed on the suit land.

19. Other contention is that, notification u/s 507 of DMC Act, is a general notification concerning 48 villages. Similarly, notification u/s 22 of Delhi Development Authority Act, is also general notification. Section 150 of the Act, envisages that properties of Gaon Sabha would vest in Central Government only, when area is declared urbanised u/s 507 of the DMC Act and this Section, is not a Section vesting land in Central Government, it only transfers land to Central Government, if such land is already vested in Gaon Sabha.

20. Further, land in question was never "Shamlat Deh/Gaon Sabha Land" but was

"Shamlat Thok Land. which means, it was owned by a section of proprietors of the village. The said land which is "Shamlat Thok Chana" initially, measured 13 Bighas 17 Biswas. Revenue assistant, passed an order of Taksim (Partition) on 14.12.1951, thereby separated, the suit land from "Shamlat Thok". Therefore, on 14.12.1951, suit land became individual land of proprietors. Khasra No. 2728/1674/2 measuring (3 Bighas 3 Biswas) was recorded in register of mutation in the name of Smt. Kasturi and Khasra No. 2728/1674/3 measuring (1 Bighas 1 Biswas) was recorded in the name of Shri Ratan Lal. As the land in question being a private land, it could not be vested in Gaon Sabha.

21. It is further contended that appellants purchased the said land on 15.10.1963 and Gaon Sabha which came in existence on coming in force of the Act, never claimed this land. The question, therefore, of Central Government or DDA, claiming any right in the land does not arise.

22. On this point, learned Counsel for appellants cited following judgments;

- (1) (2000) 10 SCC 644 Gram-Panchayat of Village Mundhal Khurd v. Amar Singh
- (2) 1976 P.L.J. 489 Ajaib Singh & Kaka Singh v. The Sub-Divisional Officer, Civil, Kharar
- (3) Union of India and another Vs. Sher Singh and others, .
- (4) Sher Singh and Others Vs. Gaon Sabha and Others, .
- (5) 1991 (4) Delhi Lawyer 375 Union of India and Ors. v. Mamleshwar Prasad and Ors.

23. Trial Court while holding that appellants have proved that they had purchased the land which fell in Khasra No. 2728/1674/2 and 2728/1674/3 further held, that appellants have not been able to prove that land on appellant No. 1 is running "Sahara Restaurant", fell in the said Khasra Numbers. There is no plea in the written statement, disputing the location and Khasra Numbers, wherein suit property is located. Moreover, in written statement filed by DDA, (in suit No. 2576/90), it has been admitted by them that land forms part of Khasra No. 1674 of Village Mehrauli. (Khasra No. 1674 is the number of old Khasra Nos. 2728/1674/2 & 2728/1674/3).

24. Trial Court also erred in holding that Land in Khasra No. 2728/1674(1.01) has been acquired vide award Ex.PW4/I and compensation to be awarded with respect to the same to the appellant No. 2 and his brothers as shown at S. No. 66 of the Award. A bare perusal of the award in question shows, that only Khasra Numbers mentioned at pages 2 to 14 of the award, were acquired vide the said award. The land in question bears Khasra Nos. 2728/1674/2 and 2728/1674/3 and the said list does not contain the said Khasra numbers. Further, the list of owners whose lands were covered under the said award, are listed at page Nos. 15 to 29 of the said Award. The said list also does not contain names of appellant No. 2 and/or his brothers. Name(s) of appellant No. 2 and/or his brothers,

appear only in the list of claimants shown at pages 30 to 48 of the said award. The said list does not imply that land is acquired or compensation has been paid with respect to the land in question, after acquisition. Appellant No. 2 and his brothers, may have filed their claim under misconception, as the said land was notified u/s 4 of the Land Acquisition Act. A bare reading of said award shows that no award was passed with respect to land bearing Khasra No. 2728/1674/2. Further, land bearing Khasra No. 2728/1674/3, is shown in the list attached as Annexure "A" with the award, which lands were not acquired as there is/was old abadi on the said lands and it was stated in the said award, that said lands would be acquired through another supplementary award.

25. It is also contended that vide letter dated 22.09.2004 (Ex.PW4/2) issued by Sh. J.S. Sharma, SDM (Head Quarter), it was duly admitted that land in question was to be included. PW4 Sh. G.S. Meena, Record Keeper, LAC South, also in its deposition clearly stated, that land in question has not been acquired vide said award.

26. Another argument is that, it is the case of respondent No. 2 that, said land was transferred to respondent No. 1 and respondent No. 2 was a maintaining agency, with respect to the suit land. As such, onus to prove alleged transfer was on respondent No. 1, who failed to file any reply to the averments of the suit.

27. It is also argued that trial court erred in holding that suit is beyond period of limitation. Cause of action in the present suit is continuing and the same arises again and again, when respondents threatened to demolish and/or takeover the possession of the suit property. Present case is covered u/s 22 of the Limitation Act, whereby a fresh period of limitation begins to run at every moment of time during which the said threat continues. Moreover, appellants came to know of the wrong entries in the revenue records only in November/December 1998, when appellants learnt about the said wrong recordings. The suit in question was filed on 14.02.2000, within a period of three years from the date of the said knowledge.

28. Another contention is that, trial court erred in holding that entire Kishan Garh Village belonged to Gaon Sabha and consequently to Central Government and thereafter, to respondent No. 2, vide notification dated 03.06.1966 and 20.08.1974 respectively. Admittedly only "Shamlat Deh/Gaon Sabha Land" was/ could have vested in Gaon Sabha and consequently, became property of Central government on urbanization, vide Notification dated 03.06.1966. The suit property does not fall within the definition of "Shamlat Deh land" and is a private land. It is admitted case of respondent No. 2, as admitted by Sh. Puran Singh (D2W2), that land in question was not a Gaon Sabha Land. Further, Sh. Ramesh Chand, Patwari (D2W1), admitted in his cross examination, that the said notification pertains to Nazul Lands and not to lands belonging to the individuals. As such, there was no occasion for land in question vesting in Central Government or same being transferred to respondent No. 2. Further, Sh. Bhanwar Singh, Patwari (PW1), deposed that, as per records, land in question

was initially owned by "Shamlat Thok Cheena" and same is not "Shamlat Deh land". Trial Court, however, failed to return any finding on said issue and instead, erred in holding that entire village-Kishan Garh belonged to Gaon Sabha. Trial Court also failed to appreciate that any change in Khasra Girdawari & Khatoni cannot be done without prior notice to the affected parties as per Section 66 of the Delhi Land Revenue Rules 1962. No notice of change in khasra entries was ever received by the appellants. Moreover, mutation/ revenue entries, do not create any title and are not evidence of title. On these points, learned Counsel for appellants cited following judgments;

- (1) Durga Das Vs. The Collector and others, .
- (2) Baleshwar Tewari (Dead) by LRs. and others Vs. Sheo Jatan Tiwary and others, .
- (3) Miss. Talat Fatima Hasan Vs. His Highness Nawab Syed Murtaza Ali Khan Sahib Bahadur and others, .
- (4) AIR 1948 210 (Privy Council) .
- (5) Penumarthy Veera Panasa Ramanna Vs. Penumarthy Sambamoorthy and Others, .

29. Even otherwise, there is a presumption in regard to correctness of the registered documents and following judgments have been relied upon by learned Counsel for the appellants;

- (1) Prem Singh and Others Vs. Birbal and Others, .
- (2) Parmeswari Das Vs. G.R. Kohli (deceased) by his Legal Representative, (deceased) by his legal representatives
- (3) Asokan Vs. Lakshmikutty and Others, .
- (4) 2004 VII AD (Delhi) 241 Subhash Chander Ahuja and Ors. v. Shri Ashok Kumar Ahuja and Ors.

30. Another contention is that case of Rajinder Kakkar and Others Vs. Delhi Development Authority, , is not applicable to the present case, as no copies of documents showing that vendor had any title, right or interest in the property or the documents of title in favour of the petitioners therein, were placed on record in the said case, whereas in the present case, appellants have placed Revenue Record and Sale deeds on record. Moreover, none of the petitioners in the said case, had a registered sale deed in his/her favour. While in the present case, there is a duly registered sale deed in favour of appellant No. 2 and his brothers. Moreover, issues raised in the present suit have not been considered in the said judgment. The said judgment does not set up a precedent and cannot act as an authority and the said judgment was with respect to Gaon Sabha Land, whereas, present case relates to private land. Even otherwise, appellants cannot be dispossessed, where title to the property is seriously contested. Principle of

natural justice are to be followed. Respondent No. 2 is under obligation to observe the compliance with law before ejecting the appellants or before demolition of any super-structure belonging to them. On this point, learned Counsel relied upon following judgments;

(1) Muddanna and Others Vs. The Panthanagere Group Panchayat, Kengeri Hobli,

(2) 54 (1994) DLT 401 Amrik Singh Sabharwal v. Kanta Devi

31. Lastly, it is contended that judgments in the suit titled Lal Chand v. MCD and Surat Singh v. DDA, do not act as *res judicata* in the present case. Judgment passed in the case of Lal Chand, stands merged with present case, vide judgment of this Court in (RFA No. 651/2003), dated 24.11.2008. Whereas, the case of Surat Singh Vs.MCD was decided without the plaintiff therein, having led any evidence and thereby failing to prove his case. As such, the same cannot act as *res judicata*. Moreover, proceedings in said case, were not considered at the stage of trial and respondents cannot now raise same for first time at this stage.

32. On the other hand, it is contended by learned Counsel for respondent No. 2 that principle issue is, whether land in question is public land or not, and answer to it, would settle the entire controversy. Before dealing with this aspect, it is to be noted that land in question is in Village Kishangarh, in revenue estate of Mehrauli.

33. Factual matrix need not be travelled any further, whatsoever, for simple reason as issue about status of the land in Village Kishangarh is no longer *res integra* but was subject matter of detailed judgment, of Division Bench of this Court, in case of Rajendra Kakkar v. DDA (Supra).

34. It is further contended that it is established that the land was Government land and Appellants were neither "Bhoomidars" or "Asamis" nor owners of the land, at any point of time. The very document, which is foundation of the present suit, i.e., Khasra Girdawari for year 1957-59, shows the land to be entirely "Shamlat" i.e. public land and as "Gair Mumkin" i.e. non-cultivable. It also shows the land and position of occupiers therein, as "Gair Mourasi" Expression "Gair Mourasi" is defined in revenue dictionary. Nonetheless, trial court examined the matter afresh and came to specific conclusion that factually, land never belonged to appellants, as owners and even their predecessors in interest, never had any ownership rights for this purpose.

35. It is further contended that as per Khatuni of village Mehrauli; Tehsil for 1964-65, it clearly shows land in question to be as "Uncultivable Rock" i.e. "Gair mumkin pahar.. As per Jamabandi records (Ex.CW1/1), it shows land to be "Gaon Sabha land" and "Sarkar Daulat Madar". Even Halka Patwari who was summoned as a Court witness, stated that land in question to be "Gaon Sabha land". Thus, trial court after re-examining facts all over again, gave a well reasoned judgment, that land is indeed a public land/ Government land and appellants or their predecessors were never the owners thereof.

36. Another contention is that trial court in impugned judgment, does refer to land in dispute being "acquired" which is an error. To that extent, responsibility would lie on both parties for not making situation clear. However, this aspect has no bearing to the correctness or otherwise of impugned judgment, as same can easily be traced from other principle findings, i.e. in view of judgments referred to above and the findings based on revenue records, none of the appellants nor their predecessors in interest, can claim ownership rights in the said land.

37. Regarding limitation, it is contended by learned Counsel for respondent No. 2 that, as many as three suits have been filed by co-owners.

38. First suit filed by Lal Chand (Appellant No. 2 in the present proceedings), being suit (No. 2576 of 1990), was suit for Injunction simplicitor. That suit was dismissed by judgment/ order dated 3.3.2003. As per findings given in that suit, the plaintiff was never the owner; the land was Government land; the land vested in Central Government after issuance of notification u/s 507 of DMC Act and thereafter, the land was transferred to DDA.

39. Against dismissal of that Suit for Injunction, an appeal bearing (No. RFA 651/2003) was filed and this Court disposed of the Appeal, vide order dated 24th November 2008.

40. In that suit, it was alleged in plaint that;

It was sometime in March 1990 that Tehsildar along with officers of DDA came to the site of plaintiff with dispossession and demolition.

41. Now after 10 years, appellant being a co-owner, cannot seek relief against alleged threat of demolition or dispossession and present suit is clearly barred by limitation.

42. In that suit in written Statement, a specific plea was taken by answering respondent herein, that land in question by virtue of issuance of notification u/s 507 of DMC Act, on urbanization, came to be vested with Union of India and thereafter, transferred to answering respondent. Relevant preliminary objection taken therein the written statement, is as under;

That the suit as filed is false, frivolous and not maintainable. The plaintiff has no legal right to file the present suit. The land forms a part of Khasra noy 1674 of Village- Mehrauli. This land belong to the Gram Sabha and on the urbanization of village Mehrauli, all the Gram Sabha land vested in the Central Government, later transferred this land at the disposal of the defendant DDA vide notification No. S.O. 2190 dated 20- 8-1974. Therefore, it is clear that the plaintiff has no right, title or interest in the property. In this view of the matter, this suit may be dismissed.

43. It is also contended that second suit was filed by Surat Singh, one of the co-owners. That was again a Suit for Injunction, which was dismissed and against this, an appeal (No. RCA No. 29/2004) was preferred before Additional District

Judge on 5th August 2004 and same was also dismissed.

44. The appellate court, while dismissing the suit of Surat Singh, referred to the pleadings made in the plaint,

That on 29-2-1992, police officials along with the officials of DDA visited the site and proceeded to demolish inter alia the boundary wall of the disputed land. Clearly, therefore, the cause of action had matured and limitation, which necessarily commenced from the date of the demolition of the premises.

45. That suit was filed in 1992 and surely, a subsequent suit by another co-owner, cannot be maintained after a lapse of 8 years.

46. In view of this specific stand of this respondent, it is clear that cause of action fructify at least from the date when Written Statement was filed sometime in 1992. The present suit is thus beyond limitation, even from this date as well.

47. Another contention is that appellants had come with unclean hands and their suit has to be dismissed on this ground as well. Various co-owners have been abusing the process of law by filing various litigations referred to,

(i) the first one being Suit for Injunction simplicitor filed by Lal Chand

(ii) the second suit filed by Surat Singh and;

(iii) the present suit.

48. It is settled law that re-agitation or re-litigation per se, is an abuse of process even if it does not attract principles of res judicata.

49. On this point, learned Counsel for respondent- DDA cited a decision of Supreme Court, i.e., K.K. Modi Vs. K.N. Modi and Others, .

50. Another contention is that co-owners have been making self-serving averments in respect of the date when cause of action has arisen;

(i) as in the first suit by Lal Chand namely, suit No. 2576 of 1990, averment was that cause of action arose on 10.8.1990.

(ii) In the second suit of Surat Singh, averment was that cause of action arose from 29.2.1992.

(iii) While in present case, averment of appellants is that cause of action arose in November/ December 1998.

51. Further, the stand of co-owners in respect of status and nature of the property, has been equally inconsistent and equally lacking bonafides; as in the pleadings in the first suit filed by Lal Chand, it was alleged that initially, land was being used to tether.

52. While in the second suit filed by Surat Singh, an allegation was made that suit property at the time of purchase, comprised of two rooms and some tin

sheds.

53. Whereas, in the present suit, averment was made that suit property comprises of three and a half rooms.

54. It is further contended that in (suit No. 2567 of 1990), an appeal (RFA No. 651/2003) was filed in this Court, on an earlier occasion, where in this Court indicated that prima facie, the specific order passed in that suit was violated by the appellants by making additional construction. Operative portion of order dated 13.9.2006, passed in this appeal, read as under;

The Local Commissioner appointed by this Court has submitted his report. None of the parties proposes to file any objection to the same. Mr Sabharwal, Senior Counsel appearing for the respondent DDA has drawn our attention to the averments in para 1 of the plaint and the order passed by the Trial Court on 20-8-1990 (at pg 1365 Ex PW1/13 of TCR) made absolute by order dated 14-7-1998(at pg 1367 Ex PW1/14 of TCR). He submits that according to the plaintiff's own version, as set out in the plaint, there existed three and a half rooms surrounded by a boundary wall on the disputed land on the date of filing of the suit. He states that the Trial Court had, by the orders mentioned above, directed the parties to maintain status quo as per the site plan filed with the plaint. This, according to the Id. Counsel, implied that the plaintiff could not raise any further constructions on the spot. In blatant disobedience of the order of the trial court, the plaintiff has, according to Mr. Sabharwal, raised extensive construction, as is evident from the report submitted by the Local Commissioner. The construction presently in existence comprises big halls, rooms, huts, kitchens etc. spreading over a total area of 2,300 sq. yds., being used as a hotel. According to the Id. Counsel, this construction is liable to be demolished as the same is not only in violation of the directions issued by the trial court, but also unauthorized and without any sanction plans from the competent authority in the MCD. Prima facie we are of the view that the submission is well founded. Mr. Bhardawaj, Id. Counsel for the appellant, however, seeks a short adjournment to file certain additional documents including certain inspection reports. Post on 21-9-2006. Mr. Bhardawaj may file the additional documents in the meantime. We further direct that the appellant shall file an affidavit disclosing whether the constructions raised by him on the spot are sanctioned by the Municipal Corporation of Delhi and if so, produce the letters granting sanction.

55. Thus, in view of this completely inconsistent and self-serving stand often at variance with each other having been consistently taken by the co-owners, it is absolutely clear that there is a complete abuse of process and the appellants have approached this Court with unclean hands and on this ground, the suit has been rightly dismissed by the trial Court.

56. It is further argued that present suit filed by appellants with the prayer referred in the plaint, is not maintainable in view of the law laid down by Supreme Court in Hatti Vs. Sunder Singh, , that the jurisdiction of civil court is

barred by Section 185 of the Act.

57. The suit for injunction was also filed by the appellants on these very facts except, declaration for correction of the entries in revenue record. Since issues as detailed in the said suit were decided against appellants vide judgment dated 3.3.2003, therefore, findings of that judgment, can be considered as *res judicata*.

58. Lastly, it is contended that documents filed by appellants, Khasra Girdawari for 1957-59, is prior to urbanization of village Kishan Garh. This also shows land as "Shamlat" and "Gair mumkin pahar". It was urbanized in 1966. The documents also describe the land as "Shamlat land". In any of the revenue records, appellants have not been shown as owner nor the land has been shown as private land. It is also well settled principle of law, that a person cannot pass a better title than he himself possess. The persons from whom appellant No. 2 and his brothers purchased the land, was also not having any ownership in the land in question and therefore, appellants who had stepped into their shoes, also cannot be said to have any ownership right on the land falling in Khasra No. 1674. Thus, the appeal is liable to be dismissed. Findings

59. Appellants case is that, Shri Rattan Lal and Smt. Kasturi were Bhoomidhars/ owners in possession of the property and were duly shown so in the revenue records. The land in question was never "Shamlat Deh/Gaon Sabha land" but was "Shamlat Thok land" which means, it was owned by section of proprietors of village and as such it does not vest in Gaon Sabha. On this point, learned Counsel for appellants relied upon certain judicial decisions namely: Gram Panchayat of Village Mundhal Khurd, Ajaib Singh and Kaka Singh, Sher Singh, Mamleshwar Prasad (*supra*).

60. Before dealing with these contentions, it would be fruitful to mention herein, the brief history of various suits filed by one co-owners or the other, of the property in question, at different point of time, during last 19 years.

61. In 1990, appellant No. 2 of the present case, that is, Lal Chand, filed in this Court a suit for permanent injunction (Suit No. 2576 of 1990 also numbered as 211/02/90) against MCD and DDA dated 16.08.1990.

62. In that suit, it was alleged by appellant No. 2, that he is co-owner of House No. 80, Ward No. IX, Kishangarh, Mehrauli, forming part of Khasra No. 1674, having purchased the same vide sale deed, dated 10th October, 1963. The premises comprises of three rooms and one hall surrounded by boundary wall. The Superstructure is in existence for last over 15 years. Two rooms and a tin shed was constructed in the year 1959-60. The prayer made in (suit No. 2576 of 1990) was:

That a decree of permanent injunction be granted in favour of the plaintiff and against the defendants restraining the defendants, their officers, servants, representatives and agents from dispossessing, interfering in the possession of the plaintiff and from demolishing or sealing any part of existing structure at

House No. 80, Ward IX, Kishan Garh, Mehrauli, New Delhi more particularly shown red in the plan annexed to the plaint.

63. The cause of action in this suit accrued in favour of appellants on 10.08.1990, when officials of respondents came to the suit premises and threatened to demolish the same. The cause of action is continuing till the threat of respondents to demolish suit property persists.

64. That suit was contested by DDA, who took a preliminary objection stating that appellant No. 2 has no right to file the suit. The land in question belongs to Gram Sabha and on urbanization vested in Central Government and Central Government, later transferred this land at the disposal of DDA, vide Notification No. S.O. 2190, dated 20th August, 1974.

65. That suit was disposed by Smt. Madhu Jain, Civil Judge, on 3rd March, 2003 holding that;

The Khasra Girdawari which are proved on record by the plaintiffs are for the year 1957-59 and not after that. As per DW-1, the Kishangarh was urbanized in 1966. There are no documents placed on record after year 1966 to show that the land is private land or belongs to the plaintiff. Even in the Khasra Girdawari the land is shown as "Shamlat Deh" land and the word "Shamlat" does not signifies a private land. According to PW-2, his father and brothers purchased the land from the previous owner and in turn purchased the land from the recorded owner but in the Girdawari Ex PW1/1, Rattan Lal etc. are shown only in possession and it is not mentioned that they are the owners. The land is no where shown to be the private land even in Ex.PW1/1, which is for the year 1957-59.

Further held:

The persons from whom the father of PW2 and his brother purchased the land was also not having any ownership in the land in dispute and therefore, the plaintiff who stepped into his shoes also cannot be said to have any ownership right over the land falling in Khasra No. 1674.

It further held;

That plaintiff has failed to prove that he is in occupation of suit premises for the last 15 years.

The court also held that;

PW-2 who is attorney of plaintiff himself, has admitted that for correction of Revenue Record they have also filed suit in High Court of Delhi. Thus, there is admission on part of plaintiff himself, that at present in the Revenue Record; the plaintiff or his predecessor interest, have no right, title and the land belongs to the Gaon Sabha which has been transferred to DDA.

Lastly, it was held,

In the present case as the plaintiffs are mere encroachers upon the DDA Land as

on date, therefore, they are not entitled to any relief as prayed by them.

66. Lal Chand filed an appeal, i.e., RFA No. 651/2003, against dismissal of his suit, by the court of Smt. Madhu Jain, Civil Judge, Delhi.

67. Vide order dated 24th November, 2008 Division Bench of this Court, disposed of that appeal holding;

that view of the matter, we are of the opinion that no interference is called for as far as the impugned judgment and decree is concerned, save and except to record that nothing stated in the impugned judgment and decree dated 3.3.2003 pertaining to the issues of title would be construed as binding between the parties; needless to state the title dispute would be adjudicated in the suit filed by the appellant by the learned Judge who is seized of the suit, as per evidence before the learned Judge and law applicable.

68. In view of the decision dated 03.03.2003 of Civil Court and order dated 24.11.2008 passed by division bench of this Court, it stands clearly established that in Khasra Girdawari, the land in question, is shown as "Shamlat Deh Land" and this land is nowhere shown as private land even in Girdawari Ex.PW1/1, which is for the year 1957-59. So, there is no merit in the above contentions of the appellants counsel. None of the judgments cited by learned Counsel for appellants on this point, are applicable to the facts of the present case.

69. Similarly, various judgment cited by learned Counsel for appellant that there is presumption in regard to the correctness of the registered documents namely: Prem Singh, Parmeswari Das, Asokan, Subhash Chander Ahuja (supra) are also not applicable to facts of the present case.

70. Meanwhile, Surat Singh s/o Mam Raj, being one of the co-owners of the property in question, and brother of present appellant No. 2-Lal Chand, in 1992, also filed a suit against MCD and DDA. In that suit it was alleged that land in dispute was never acquired. The officials of defendants came to suit property on 29th February, 1992 and demolished the boundary wall of the property in question along with property of others, on the ground that same was Gram Sabha land. It was prayed that:

That a decree of permanent injunction be granted in favour of the plaintiff and against the defendants restraining the defendants, their officers, servants, representatives and agents from dispossessing or taking forcible possession by putting up barbed wires or otherwise to the land measuring 1200 sq. yds. forming part of Khasra No. 1674, village Kishan Garh, New Delhi shown red in the plan attached to the plaint.

71. That suit was dismissed by the trial court on 1st May, 2004.

72. Surat Singh, thereafter, filed appeal (RCA No. 29/2004). The same was dismissed on 14th October, 2005, by Sh. G.P.Mittal, Additional District Judge, Delhi, holding that;

5. As far merits of the appeal are concerned, it has been argued by the learned Counsel for the appellant that the particulars of the land placed at the disposal of the DDA have not been mentioned in the notification dated 20.8.1974. The suit land had never vested in Gaon Sabha. The land was never acquired by the government and thus, the appellant was entitled to the relief of perpetual injunction. It has been urged that the learned Civil Judge has erred in coming to the conclusion that the land belonged to the government and that the appellant did not have any locus standi to file the suit.

6. the Appellant claims himself the co- owner of the land, forming part of the khasra No. 1674, Village Kishangar on the basis of the Sale Deed dated 10.10.1963. A photocopy of the Sale Deed was placed on the record by the Appellant through which the Appellant along with the others claims to have purchased 4 bighas and 4 biswas of land bearing Khasra No. 2728/167/4 and 2728/167/3. As per the scheme of the Delhi Land Reforms Act, 1954 (for short the DLR Act) on coming into the force of the DLR Act the proprietor of the agricultural land ceased to exist. If any land was the part of the holding of a proprietor, he became the Bhumidar of it, if it was the part of the holding of some other person, such as a tenant or sub-tenant etc. he became either a Bhumidar or an Asami whereupon the rights of the proprietor in that land ceased. The land which was not holding of either of the proprietor or any other person vested in Gaon Sabha. A perusal of Kahatoni Paimaish, Ex. DW1/2 would show that the suit land was a waist land that is Gairmumkin Pahar. In Union of India v. Sher Singh and Ors. II (1997) CLT 58, it was held by the Hon'ble Supreme Court of India that except the land which for the timebeing comprised the holding or a grove whether cultivable or otherwise, vests in Gaon Sabha from the date of commencement of the Act. The onus was on the appellant to show that the suit land was a part of the holding or a grove and the predecessors of the appellant had become a "Bhumidar" in respect of the suit land on coming into force of the DLR Act. A notification dated 3.6.1977 was issued by the government u/s 507 of the DMC Act whereby the area of Kishan Garh in the revenue estate of Mehrauli was urbanized, consequently in accordance with the provisions of Section 150(3) of DLR Act, the land which had vested in Gaon Sabha came to vest in the Central Government on urbanization of the village. The Central Government, vide notification u/s 22(1) of the DD Act Dated 20.8.1974 (Ex DW1/1) had placed the entire land which had vested in the Central Government, on the urbanization of the village specified in the schedule, at the disposal of the DDA for the purpose of development and maintenance of the said land. Therefore, all land, including the suit land which had vested Gaon Sabha, came to vest in the Central Government and was ultimately placed at the disposal of the DDA.

73. No appeal had been filed against this order and thus these findings are binding on both parties. 74. Meanwhile on 14th February 2000, (suit No. 313/2000) from which present appeal has arisen, was filed by the appellants, claiming following reliefs;

(a) Grant a decree of declaration, declaring that the entries made by the defendants in the Revenue records in respect of land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3 situated in the revenue estate of Mehrauli, Village Mehrauli Kishangarh, Tehsil Mehrauli, New Delhi are wrong and illegal.

(b) Grant a decree of mandatory injunction directing the defendants to correctly record the ownership and possession of the plaintiffs in the Revenue Records being maintained and in custody of defendant No. 2.

(c) Grant a decree of permanent injunction in favour of the plaintiffs and against the defendants restraining the defendants, their servants, agents and representatives from demolishing the superstructure, sealing or interfering in any manner in the possession of the plaintiffs or from running of the Sahara Restaurant from the property bearing Khasra No. 2728/1674/2 and 2728/1674/3 situated in Revenue Estate of Mehrauli, Village Mehrauli Kishangarh, Tehsil Mehrauli, New Delhi.

75. It was alleged that cause of action accrued in their favour, when they learnt about the wrong recording in Khasra Girdawaris/Revenue records in November/December 1998; Secondly, when statutory notice was served on the respondents and lastly, when appellants learnt that respondents are intending to demolish the suit property on 11.2.2000. The cause of action is continuing till the threat of respondents, as aforesaid persists.

76. In this suit, DDA filed an application under Order 7 Rule 11, CPC, while appellant/plaintiff, filed an application, under Order 39 Rule 1 and 2 CPC.

77. Vide order dated 8th December, 2004 Shri G.P.Mittal, Additional District Judge, dismissed these applications. 78. It was held;

The plaintiffs have not given the date as to when exactly they came to know about the wrong entries in the revenue records. The plaintiffs have placed on record the copy of the register of mutation of the year 1952. The land forming part of Khasra No. 2728/1674 has been described as "Shamlat Thock Mina". Similarly, in Khasra Girdawari for the year 1957-59 the land has been shown as Shamlat, though at the bottom it is recorded "Mst. Kasturi-3 bighas and 3 biswas, Rattan Lal-1 bigha 1 biswas", but the plaintiffs have not placed any Jamabandi or Khatauni for the year 1963 or thereafter in the name of Lal Chand or his brothers when the land is alleged to have been purchased by them. It is true that the entries in the revenue record may always be not known to the tiller of the land and the entries may not be always true and genuine, yet it is highly improbable that the plaintiffs since the year 1963 till the filing of the suit in the year 2000 had never sought for the copies of the revenue records particularly when the plaintiff No. 2 had filed a suit for injunction in the year 1990 against the DDA and the MCD on the ground that the plaintiff No. 2 was co-owner of the land on the basis of the Sale Deed dated 10.10.63.

10. The defendant No. 2 has placed on record copy of Khatauni Paimaish for the

year 1980 whereby the suit land has been shown to have come to the DDA from Gaon Sabha. It is also not in dispute that vide notification dated 28.5.1966 issued u/s 507 of the Delhi Municipal Corporation Act the entire Village of Kishangarh, Mehrauli, was urbanized. As per provisions of Section 150(3) of the Delhi Land Reforms Act where whole of the area of any Gaon Sabha ceases to be included in rural area by virtue of the notification issued u/s 507 of the Delhi Municipal Corporation Act all the properties movable and immovable vested in Gaon Sabha was to vest in the Central Government. It is also not in dispute that the Central Government also issued notification dated 22.8.1974 u/s 22 of the Delhi Development Act whereby all the Nazul Lands were placed at the disposal of the D.D.A. Thus, simply on the basis of the sale deed dated 10.10.63 the plaintiffs cannot be said to have got any title to the suit land unless the land was part of a holding or grove so as to confer the Bhumidhari rights on the predecessors of the plaintiffs and then on the plaintiffs after coming into force of the Act. Since the plaintiff No. 2 has no title to the land in suit the contention of learned Counsel for the plaintiffs that the suit land was never acquired is of no consequence. It is nowhere the case of the defendants that the suit land had been acquired under the Land Acquisition Act. Rather the case of the defendants No. 2 is that it was Gaon Sabha land.

Further held that;

The plaintiff No. 2 had filed a suit for injunction on these very facts (except declaration for correction of the entries in the revenue records). The said suit was dismissed by the learned Civil Judge, Delhi, vide order dated 3.3.2003. the findings of the said suit may not be res judicata at this stage on account of filing of the appeal and stay of operation of the order dated 3.3.2003 by the Hon''ble High Court vide order dated 8.8.2003, but prima facie the suit for injunction cannot proceed when the earlier suit between the same parties or between the parties litigating under the same title is pending and the issue was also directly and substantially in issue in the previous instituted suit.

79. Appellants, filed appeal against this order, vide (FAO No. 10/2005), which was disposed of, vide order dated 24th November, 2008 by Division Bench of this Court, holding that;

4. Thus, we are of the opinion that the instant appeal requires to be disposed of confirming the order directing the parties to maintain status quo till the disposal of the suit with simultaneous directions to the learned trial judge to expeditiously hear arguments in the suit and pronounce judgment latest by 31.3.2009.

5. Needless to state, nothing stated in the impugned order or by us today, would be construed as an expression on the merits of the litigation between the parties and that the suit filed by the appellants shall be decided by the learned trial judge with reference to the evidence led by the parties and the law applicable thereto.

80. The position of fact and law in respect of entirety of land of village

Kishangarh, has been dealt with by a Division Bench of this Court in Rajinder Kakkar's case (supra), in which it was held;

12. The position in law as a result of the aforesaid Notification, therefore, was that all the Gaon Sabha land vested in the Central Government with the issuance of the Notification of 3rd June, 1966 u/s 507 of the DMC Act read with Section 150 of the Delhi Land Reforms Act. This land was Nazul land and vide Notification dated 20th August, 1974 was placed at the disposal of the DDA for maintaining the same as a green area. For some time this land was not to be regarded as a development area but since 26th July, 1989 this area has continuously become part of the development area.

15. We also have had the benefit of seeing the revenue record which has been produced by the Patwari of Mehrauli. The respondents have also placed on record the Khatauni of the village in question which shows that as per the last entry in 1980 the land in question belongs to the Gaon Sabha. In actual effect this land should have been shown as that of Central Government but be that as it may, it is evident that the land does not belong, as per the said revenue record, either to the petitioners or their predecessors in interest. In Khasra Girdawari also, the possession of the petitioners or their predecessors in interest is not shown.

81. The principle findings, which emerges from this judgment are as follows:

(i) That by virtue of Notification of 3.6.1996 (Ex. D2W-1/1) read with Section 150 of the Act, the entirety of the land of Village Kishangarg, vests with Union of India.

(ii). This Nazul land, by notification dated 20.8.1974, (Ex. D2W-1/2), was placed at the disposal of respondent No. 2 for maintaining green area.

(iii). That being so, nothing further survives.

82. Coming to the contentions of the appellants that present suit is not barred by principles of res judicata i.e. it is not hit by Section 11 and Order II Rule 2 of CPC (for short as "Code"), the relevant provisions applicable in the present case is, Order II Rule 2 of Code, which reads as under:

Rule 2. Suit to include the whole claim-

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.

Relinquishment of part of claim-

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Omission to sue for one of several reliefs-

(3) A person entitled to more than one relief in respect of the same cause may sue for all or any of such reliefs; but if he omits, except with the leave of the

court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation- For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

83. Supreme Court in *Shri Inacio Martins, Deceased through LRs. Vs. Narayan Hari Naik and others*, held;

The next contention which found favour with the High Court was based on the language of Order 2 Rule 2(3) of the CPC. The submission regarding constructive res judicata was also based on this very provision. Now Order 2 concerns the framing of a suit. Rule 2 thereof requires that the plaintiff shall include the whole of his claim in the framing of the suit. Sub-rule (1) of Rule 2, inter alia, provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. If he relinquishes any claim to bring the suit within the jurisdiction of any court he will not be entitled to claim that relief in any subsequent suit. However, Sub-rule (3) of Rule 2 provides that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs he shall not afterwards sue for any relief so omitted. It is well known that Order 2 Rule 2 CPC is based on the salutary principle that a defendant or defendants should not be twice vexed for the same cause by splitting the claim and the reliefs. To preclude the plaintiff from so doing it is provided that if he omits any part of the claim or fails to claim a remedy available to him in respect of that cause of action he will thereafter be precluded from so doing in any subsequent litigation that he may commence if he has not obtained the prior permission of the court. But the Rule does not preclude a second suit based on a distinct cause of action. It may not be out of place to clarify that the doctrine of res judicata differs from the rule embodied in Order 2 Rule 2, in that, the former places emphasis on the plaintiffs duty to exhaust all available grounds in support of his claim while the latter requires the plaintiff to claim all reliefs emanating from the same cause of action.

84. Meaning of "cause of action" has been defined in *Rajasthan High Court Advocate Association v. Union of India* AIR 2001 SC 416, in which it was held;

The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in

"cause of action". It has to be left to be determined in each individual case as to where the cause of action arises.

85. In other words, if the cause of action, enables a person to ask for a large and wider relief than that to which he limits his claim, he cannot afterwards, seek to recover the remaining relief available to him, by independent proceedings.

86. As stated above, appellants and their brother, instituted three different suits, in respect of the suit property. It was stated by the appellants in the present (suit (No. 313 of 2000), that when they applied for a copy of Khasra Girdwaris of the above said land, they were shocked to learn that the revenue records have been incorrectly maintained and they have neither been shown as owners/bhumidhars nor in possession of the above said land. Therefore, Order II Rule 2 of the Code, cannot be applied to their case, as there was no knowledge on their part regarding the mistake in the revenue record and therefore, declaration could not be sought when suit was instituted by Lal Chand-appellant.

87. As per the appellants, they learnt about mistake in Khasra Girdwaris in November/December 1998. Suit of Lal Chand-appellant (No. 2576 of 1990) was disposed of by Smt. Madhu Jain, Civil Judge Delhi on 03.03.2003 i.e. at a much later date, from the date, when appellants learnt about the mistake made in the revenue records. Appellants, after learning about such mistake, could have amended their relief by claiming relief of declaration and mandatory injunction also, but no such action was taken. This clearly shows malafide on their part.

88. By instituting fresh suit, they not only wanted the court to grant a decree of declaration but also, decide the issue of ownership afresh, which was heard and finally decided by the trial court and confirmed by this Court.

89. Analyzing the nature of reliefs that were sought by the appellants in different suits, the conclusion derived is that appellants/co-owners in every suit wanted to restrain the respondents from interfering in peaceful possession and demolishing the suit property.

90. In case of K.K.Modi (supra), it was held;

One of the examples cited as an abuse of the process of court is re- litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re- litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re- agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion

whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.

44. In the case of *Greenhalgh v. Mallard* (1947) 2 All ER 255 the court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. The Court, held that if the plaintiff has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of *res judicata* or the statement or plea may be struck out on the ground that the action is frivolous and vexatious and an abuse of the process of court.

45. In *McIlkenny v. Chief Constable of West Midlands Police Force and Anr.* (1980) 2 All ER 227, the Court of Appeal in England struck out the pleading on the ground that the action was an abuse of the process of the court since it raised an issue identical to that which had been finally determined at the plaintiffs' earlier criminal trial. The court said even when it is not possible to strike out the plea on the ground of issue estoppel, the action can be struck out as an abuse of the process of the court because it is an abuse for a party to re-litigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of *res judicata* or the requirement of issue estoppel.

91. The principles stated above are fairly applicable to the present case, as appellants resorted to two parallel reliefs flowing from the same cause of action. When order of permanent injunction, was vacated in suit (No. 2576 of 1990) filed by Lal Chand, appellant being one of the co-owners, with respect to the suit premises, he sought the relief of declaration, permanent and mandatory injunction by way of present suit. Issues in the two proceedings, that is, (suit No. 2576 of 1990 and suit No. 313 of 2000), were identical. Suit No. 313 of 2000 was filed substantially to create a new case, out of the same facts and was for setting aside the previous order of the court.

92. Therefore, the proceedings by way of present suit, are abuse of the process of court, since it amounts to re-litigating the same issue, in a different form of reliefs, through different proceedings.

93. Notification dated 20.8.1974 has been proved before the trial court in earlier suit (No. 2576 of 1990) filed by the appellant No. 2 and also by other co-owner Sh. Surat Singh. Thus, the appellants have been unnecessarily trying to harass the defendants by re-litigating on the same facts and opening the issues, which have been heard and finally decided by the civil court.

94. The trial court also held that;

Under the garb of the present suit the plaintiffs are indirectly challenging the notification by which village Kishangarh was urbanized and the land was placed

at the disposal of the DDA without specifically challenging the same as the entries made in the revenue records are only pursuant to the said notifications.

95. In view of the above discussion and keeping in view the findings of the trial court, in the present suit, I have no hesitation in holding that present appeal is not maintainable and same is hereby dismissed.

+C.M. No. 4775 of 2009 in RFA 123 of 2009 *

96. Since the appeal has been dismissed, present application for stay also stands dismissed.

97. No order as to costs.

98. Trial court record be sent back.