(2009) 07 DEL CK 0466

In the Delhi High Court

Case No : L.P.A. 209 of 2009

Manju Jain and Another APPELLANT

Vs

Deputy Commissioner (S-W) and Others RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173
Delhi Land Revenue Rules, 1962 — Rule 63(3)

Citation : (2009) 07 DEL CK 0466

Hon'ble Judges : A.P. Shah, C.J;Manmohan, J

Bench : Division Bench

Advocate : A.K. Sen Shahzad Khan and Mnati Murari, for the Appellant; V.K. Tandon, for R-1 and R-2 and Sunil Chauhan, for R-3 and R-4, for the Respondent

Final Decision : Allowed

Judgement

Manmohan, J.—Admit.

2. Learned Counsel appearing for the respondents waive service of notice. By consent of the parties, the appeal is taken up for hearing.

3. The appellant No. 2 and the respondent Nos. 2 and 3 are real brothers and appellant No. 1 is the wife of appellant No. 2. The appellants claim that appellant No. 1 owns the agricultural land falling in Khasra No. 193/1(6-19), 193/2/2 min (6-7), 193/2/2 min (0-8), of village Bijwasan, Tehsil Vasant Vihar, New Delhi. The adjoining landed property [Khasra No. 193/2/4 (6-15)] belongs to her husband i.e. appellant No. 2, and the total land admeasures 20 Bighas 9 Biswas. The case of the appellants is that sometime in the year 1990 they shifted to Mumbai in connection with their business. In August 1998, when the appellant No. 2 came to Delhi he could know that the respondent No. 3 along with other members of his family by means of forged and fabricated documents got the agricultural land belonging to the appellants transferred to M/s Luhadia Developers (P) Ltd. wherein the respondent Nos. 3 & 4 and their wives were the Directors. On

making enquiry, it was revealed that the respondent No. 3 on the strength of a forged and fabricated GPA represented himself as attorney of appellant No. 1 and transferred her above land to M/s Luhadia Developers (P) Ltd. According to the appellants respondent No. 3 got the name of his company mutated in the revenue record as owner/bhumidar in place of appellants. However, in an appeal filed by appellants before Deputy Commissioner/Collector (South-West), the said mutation/entry was cancelled.

4. Further the case of the appellant is that a complaint was lodged with the DCP (Crime Branch) and after registering a case vide FIR No. 23/99 at P.S. Kapashera the accused persons were arrested. After investigation a charge sheet u/s 173 Cr.P.C. has been filed and a criminal case is pending before the Metropolitan Magistrate, Patiala House, New Delhi. The appellant No. 1 has filed a Civil Suit being Suit No. 2598/1998 in the High Court of Delhi seeking declaration of those sale deeds in favour of M/s Luhadia Developers (P) Ltd. as null and void. The said suit is transferred and pending in the court of ADJ, Delhi. It is also brought to our notice that respondent Nos. 3 and 4 have filed Suit No. 134/04/2003 for permanent injunction wherein the respondent Nos. 3 and 4 have alleged that the property in question has been sold by them on the basis of power of attorney executed by the appellant No. 1. This suit is also pending before the ADJ, Delhi.

5. The appellants further alleged that the respondent Nos. 3 and 4 in order to grab their property took advantage of their being out of Delhi, filed WP (C) No. 691-692/2004 and without any notice being served upon the appellants, obtained an order from this Court directing the revenue authorities to take a decision on the application made by the petitioners therein i.e. respondent Nos. 3 & 4 herein in the present appeal, for entering their names as cultivators in possession for the year 2004. It is further alleged by the appellants that taking advantage of this ex parte order the respondent Nos. 3 and 4 managed to influence the lower revenue staff to record their names as cultivators in possession on the agricultural land belonging to appellants. It is also contended that there were no crops in the land at the relevant time and therefore the question of making any entry as cultivators in view of Rule 63(3) of the Delhi Land Revenue Rules, 1962 could not arise. The appellants have challenged those entries in Form P-4 and Form P-5, by filing appeals which are pending before the respondent No. 1 Collector (South-West) at Kapasehra, Delhi. The appellants have further alleged that the respondent Nos. 3 and 4 again moved an application before the revenue authorities for entering their names as cultivators for the period Kharif crop 2004 onwards on the ground that the same was not recorded by the revenue authorities. According to the appellants as per the entries in form P-4 for Rabi 2005, Kharif 2005 there is no crop in the land. The entries are already made by the Revenue authorities and question of recording names of respondent Nos. 3 & 4 would not arise. The respondent Nos. 3 and 4 then filed WP(C) No. 16723/2006 which was disposed of by the learned single Judge by order under appeal with a direction to the revenue authorities to hold an enquiry with regard to the cultivator possession of the land comprised in

Khasra No. 193/1, 193/2, and 193/2/4 situated in the revenue estate of village Bijwasan, New Dehi for the period with effect from Kharif Crop 2004 onwards and thereafter to pass an order within eight weeks.

6. Learned Counsel appearing for the appellants strenuously argued that the entries have already been made in respect of khasra girdawries for the Rabi 2005, Kharif 2005 which shows that there is no crop in the land and consequently no entry could have been made under the provisions of Rule 63 of the Delhi Land Revenue Rules particularly in view of the specific bar created under Sub-rule 3 of the Rule 63 of the Rules. The learned Counsel submitted that the entries of possession sought are based on the alleged title which is under challenge in Civil Court and criminal proceedings are also pending between the parties. Both the parties have filed suits and the matter is seized by the Civil Court and under the circumstances there is no occasion for recording any entries in respect of the lands in question. Learned Counsel for the appellant further submitted that entries which were made earlier for the year 2004 pursuant to an order made by this Court without notice to the appellants are being challenged in appeal before the Collector (South-West) at Kapashera, Delhi. On the other hand, learned Counsel appearing for the respondent Nos. 3 and 4 submitted that pendency of the aforesaid appeal does not preclude the revenue authorities from inspecting the land in question and recording the cultivatory possession thereof for subsequent years, in accordance with the provisions of the Delhi Land Revenue Act, particularly when there is no stay operating against the revenue authorities in that regard.

7. Having considered rival submissions, we are of the view that there is no need to consider merits of the respective arguments of the learned Counsel appearing for the parties. Apparently there is a serious dispute about the title in respect of lands in question and cross suits have been filed by the parties against each others and those suits are pending before the Civil Court and also the criminal proceedings are pending before the Metropolitan Magistrate, Patiala House, New Delhi u/s 173 Cr.P.C. In view of the pendency of the civil suits the revenue authorities in the facts of the case should await orders of the Civil Court and then make appropriate entries in the revenue record as per the decision of the Civil Court. Moreover, an appeal is also pending before the Collector against the entries made in 2003. In our opinion, in the background of above facts the learned single Judge ought not to have invoked power under Article 226 to direct the Revenue officials to record entries in respect of period after 2004. In our opinion the ends of justice would be served if the Civil Court is directed to dispose of the suits expeditiously. The ADJ, Tis Hazari Courts is accordingly directed to dispose of the Suit No. 134/04/2003 titled Praveen Jain and Ors. v. Manju Jain and Ors.; Suit No. CS 247/2004 titled Manju Jain v. Manak Chand Jain and Ors. and Suit No. CS 246/2004 titled Ramesh Jain v. Praveen Jain and Ors. expeditiously and preferably by end of April 2010. The Deputy Commissioner/ Collector (South-West), Delhi is also directed to dispose of the Revenue Appeal titled Manju Jain & Ramesh Jain v. Praveen Jain and Ors. within six months from

today. All contentions on merits are left open to the parties. The appeal is accordingly allowed.