

(1999) 12 DEL CK 0056

In the Delhi High Court

Case No : Regular Second Appeal No. 73 of 1996

Manohar Lal Sharma

APPELLANT

Vs

Purshottam Das Malhotra and Others

RESPONDENT

Date of Decision : 06-12-1999

Acts Referred:

Citation : (2000) 2 AD 422 : (2000) 83 DLT 493 : (2000) 56 DRJ 67

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. V. Shukla, for the Appellant; Mr. J.L. Kalra and Mr. Sandeep Puri, for the Respondent

Judgement

Ramamoorthy, J.—The first defendant in the suit is the appellant in the second appeal. Respondents 1 to 5 who were the plaintiffs presented a plaint on 18th October, 1979 for possession from the appellant. It may be noticed here that prior to this the appellant had instituted a suit against the respondent on the basis of his alleged possessory title and that suit was dismissed on 6th April, 1976. He preferred an appeal before the learned Senior Civil Judge and that appeal was dismissed on 11th March, 1979. The learned Senior Civil Judge while deciding the appeal had characterised the appellant as a liar and had concurred with the view taken by the Trial Court that the appellant had not proved his possession.

2. In the suit filed by the respondents for possession in 1979 the appellant as a contesting defendant again took the plea that he had been in possession for a long time and, Therefore, respondents 1 to 5 would not be entitled to recover possession. The Trial Court decreed the suit. In the appeal before the learned Additional District Judge apart from the points taken in the Trial Court it was submitted that the jurisdiction of the Civil Court is barred by the provisions of the Delhi Land Reforms Act, 1954. The land had been subject matter of acquisition under the Land Acquisition Act, 1897. It was also contended that by virtue of the provisions of Delhi Land Restriction of Transfer Act, 1972 any purchase by the

respondents would not clothe them with any right. The learned Additional District Judge while dealing with the submissions held as follows at para 5 page 36 :

"I have gone through the Trial Court record carefully and heard the Counsels for parties patiently. The document Ex. DW. 1/1 perused, it is a notice of unauthorised occupation on the appellant. The same has been discussed and considered by the Trial Court and held in applicable with reasons. This point is not available to the appellant. The next ground the appellant has taken the ground of jurisdiction in appeal in view of provisions of Delhi Land Reforms Act and Land Acquisition Act. This point was not made the point of controversy nor any issue was framed before Trial Court the same cannot be available in appeal. That too appellant has himself failed to establish his any title in the suit being unauthorised occupant and trespassers is not to be protected of illegal possession free of cost and allow to defeat the object of law and principles of natural justice. Even if the land is under acquisition process the unauthorised person is not entitled to draw benefit of same. The appellant himself has moved Civil Court previous suit which has gone against him and operated res judicata in later suit. Mere saying by witness that plot came under Delhi Land Reform Act is not sufficient. This aspect required to be proved to the fullest extent that the Civil Court could not at all be approached in any respect. But here appellant himself has availed remedy from Civil Court. This ground of objection also not available to the appellant."

3. The learned Additional District Judge further said in para 7 page 38 :

"Now to consider whether the appellant acquired any Bhumidhar right ousting respondents. Neither such issue was pressed before the Trial Court nor finds any place in pleadings of the appellant and not made a point of controversy before Trial Court nor any evidence to prove such rights adduced before the Trial Court. In view of these facts and circumstances the appellant's this objection also not tenable and the very ground is not available to him. On the other hand the verdict of unlawful occupancy of appellant is on the record."

4. The learned Additional District Judge rested his view on the premises that the point was not taken by the appellant before the Trial Court and, Therefore, those were not available to him in the appeal.

5. The contesting first defendant has preferred the second appeal against that judgment and the second appeal is coming up for the admission now. The learned Counsel for the appellant Mr. V. Shukla submitted his three fold submissions. First was that whatever the findings rendered by the Civil Court in the suit filed by him would not operate as res judicata and those findings cannot be put against him as those were findings rendered by a Court without jurisdiction, in view of the provisions in the Delhi Land Reforms Act, 1954, and, Therefore, those judgments cannot be looked into for the purpose of adjudicating on the points raised by the appellant.

6. The second submission was that u/s 185 of the Delhi Land Reforms Act, 1954

the jurisdiction of a Civil Court is barred. To establish that the land in question would come under the purview of the Delhi Land Reforms Act, 1954, the learned Counsel, Mr. V. Shukla, referred to the Delhi Land Reforms Rules wherein at page 206 rates of installments of Land Revenue are given wherein the Village Khureji Khas is mentioned. Therefore, according to the appellant the land was within the purview of the Delhi Land Reforms Act, 1954. Besides this, the learned Counsel Mr. Shukla relied upon the judgment of the Supreme Court in Hatti Vs. Sunder Singh, for the proposition that the jurisdiction of the Civil Court is totally barred.

7. Challenging the view taken by the learned Additional District Judge that the point was not taken in the Trial Court and, Therefore, the appellant was precluded in law from urging the law before the Appellate Court, the learned Counsel Mr. Shukla referred to the judgment of the Supreme Court in Chandrika Misir and Another Vs. Bhaiya Lal, .

8. Mr. Shukla also referred to the judgment of the Supreme Court in Smt. Isabella Johnson Vs. M.A. Susai, to show that the findings rendered by a Civil Court which is without jurisdiction cannot operate as res judicata and the jurisdiction cannot be conferred on the Court by parties by consent. The learned Counsel also referred to the judgment reported in Jaisingh Jairam Tyagi Vs. Mamchand Ratilal Aggarwal, 1980 (2) RCJ 159.

9. The third point that was raised was that in any event the land in dispute was subject matter of land acquisition and, Therefore, the respondents cannot claim any right before the Civil Court. The learned Counsel referred to judgment reported in Kashmeri Lal Vs. University Delhi, 1973 RLR 57 wherein this Court had taken the view that once there is a land which is subject matter of acquisition, Delhi Land Reforms Act would not apply.

10. The learned Counsel Mr. Shukla referred to the evidence at page 68 in the paper book (Kasturi Lal). His evidence is relied on for the purpose of showing that the plot in question was governed by the Delhi Land Reforms Act, 1954 and the land was subject matter of acquisition.

11. The trial Judge after going into the question of possession held against the appellant. The lower Appellate Court concurring with the view taken by the learned trial Judge had come to the conclusion about possession. The Civil Court on the earlier occasion when the appellant himself moved Court for protection had given a categorical finding that the claim of adverse possession by the appellant had absolutely no foundation what so ever. By virtue of the finding rendered in the suit filed by the appellant himself he is not a person having any right, title or interest in the property. When that is the position in a suit for possession on the basis of title by respondents 1 to 5 it is no answer by the appellant/defendant No. 1 to say that the claim of respondents 1 to 5 are barred under the provisions of Delhi Land Reforms Act, 1954 or by virtue of acquisition. If the land is subject matter of acquisition, it cannot be disputed that it is outside the purview of the Delhi Land Reforms Act, 1954. Whatever be the merits of the

contentions putforth by Mr. Shukla, I am of the view that in view of the findings recorded in the earlier suit filed by him, the appellant is precluded from taking any point such as the one that is sought to be urged now. The lower Courts have taken the correct view and there are no substantial questions of law arising for consideration between the parties. Accordingly, the second appeal is dismissed.