

(2000) 09 DEL CK 0119

In the Delhi High Court

Case No : Regular Second Appeal No. 156/83

New Delhi Municipal Committee

APPELLANT

Vs

Ashok Diesh and Another

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Punjab Municipal Act, 1911 — Section 225

Citation : (2000) 55 DRJ 499 : (2001) 4 RCR(Civil) 217

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : Hima Kohli, for the Appellant;

Final Decision : Allowed

Judgement

Devinder Gupta, J.—This appeal is against the judgment and decree passed on 28.2.1983 by Additional District Judge, Delhi dismissing the appellant's appeal and thereby confirming the judgment and decree passed on 21.7.1980 by Shri P.D. Jarwal, Sub-Judge 1st Class, Delhi decreeing the suit of the plaintiff/respondent.

2. Facts in brief are that Shri Ashok Diesh filed a suit seeking decree for injunction against the defendant/appellant from demolishing the property bearing Nos.95, 97,99, 101 and 103 situated at Baird Road, New Delhi. The plaintiff alleged that the property was inherited by him and Shri Janardan Diesh and was assessed to municipal taxes. Certain officials of the appellant came to the spot on 18.11.1978 with a view to demolish the portion of the property shown in red colour without any notice. They were appraised that the property is old one and no new constructions were made Since they were adamant to demolish the property, a cause had accrued to him to claim decree for injunction.

3. The suit was resisted by the appellant on merits and preliminary objections were also raised that the suit was barred in a civil court in view of Section 225 of the Punjab Municipal Act, 1911 and the suit was not maintainable in view of

Section 41 of the Specific Relief Act. It was admitted that the officials of N.D.M.C. had gone to the spot on 28.11.1978 but it was pleaded that only after notice under Sections 195 and 195-A of the Punjab Municipal Act, which were duly served on the plaintiff, who had made new construction without permission. Therefore, N.D.M.C. was within its right to take action for demolition. The following issues were framed by the trial court:-

1. Whether the threatened action of the defendant is illegal, ultra virus and without jurisdiction ? D.P.P.

2. Whether the suit barred u/s 225 of the Punjab Municipal Act and u/s 41 of the Specific Relief Act ? D.P.D.

3. Whether the plaintiff is entitled to the injunction prayed for ? D.P.P.

4. Relief.

4. On issue No. 1, the trial court found that the plaintiff had not carried out any unauthorised construction, Therefore, threatened action of N.D.M.C. was illegal and ultra virus and without jurisdiction. On issue No. 2, it was held that the suit was not barred u/s 225 of the Punjab Municipal Act, 1911 and Section 41 of the Specific Relief Act. In view of the findings on issue Nos. 1 and 2, it was held that the plaintiff was entitled to injunction prayed for. Accordingly, decree prayed for was granted in favor of the respondent and against the appellant from demolishing any portion of the property bearing No. 101 and 103 situated at Baird Road, New Delhi. Feeling aggrieved, the appellant preferred appeal, which was dismissed by the impugned judgment and decree by Additional District Judge holding that the service of notice u/s 195 was mandatory and that too within six months of the raising of unauthorised construction ; service of such notice was denied by the plaintiff, Therefore, the onus to prove service squarely lay on the N.D.M.C. so as to non-suit the plaintiff. Such service was not proved. In view of the categorical denial by the plaintiff that action of N.D.M.C. without serving any notice was illegal arid unauthorised. As such it was all the more necessary for N.D.M.C. to have proved on record that noticed was served on the appellant. It was held that in the absence of compliance of the provisions of Section 195 of the Punjab Municipal Act, 1911 the suit was not barred u/s 225 of the Act. Against this judgment and decree, N.D.M.C. has preferred this appeal urging that the suit filed by the respondent was not maintainable because of statutory bar u/s 225 of the Punjab Municipal Act, 1911. While admitting the appeal on 25.1.1984 no substantial question of law was formulated.

5. I have heard learned counsel for the appellant and been taken through the record. None appeared for the respondent.

6. Needless to add that civil suit will have no jurisdiction to entertain and decided a suit raising a dispute, which would be within the exclusive domain of the authorities constituted under the Act. The question whether there is any unauthorised construction made or not made and that offending construction is

or is not liable to be demolished, would be a question within the exclusive domain of the authorities, which will have to be resorted to under the relevant provision of the statute and to that extent the suit would be barred as per Section 225 of the Punjab Municipal Act, 1911 but Court's jurisdiction to go into the question whether the order was nullity being vitiated by jurisdictional error would not be barred in view of what has been held by the Supreme Court in Dhulabhai etc. v. State of Madhya Pradesh and Anr., AIR 1969 SC 70 and Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others,

7. The trial court, in view of the settled position in law exceeded its jurisdiction in recording a finding on merits that whether or not the plaintiff had carried out unauthorized construction. It did not record any reason about maintainability of the suit in civil court. However, the lower appellate court rightly confined its enquiry on the jurisdictional aspect of the case and rightly concluded that in the absence of proof as regards service of notice, civil court was not precluded from going into the question about jurisdiction of N.D.M.C. to take out proceedings for demolition. However, learned lower appellate court having come to the conclusion that there was no proof brought on record about service of notice, acted with material irregularity in not setting aside the findings of the trial court on the merits of the case and in not reserving an opportunity ought to have been reserved to the appellant to take out appropriate proceedings in accordance with law, which course of action ought to have been adopted. In view of findings of fact recorded that no notice was proved to have been served on the respondent the impugned judgment and decree passed by the courts below are liable to be modified.

8. Consequently, the appeal is allowed. The judgment and decree of the courts to the extent where it has been held that the respondent has not carried out any unauthorised constructions are set aside and stands modified to the extent that the appellant shall stand restrained from demolishing the offending construction otherwise than in due course of law.