

(2022) 11 DEL CK 0152

In the Delhi High Court

Case No : Regular Second Appeal No. 202 Of 2017

Sarti Devi (Deceased) Represented Through Lrs

APPELLANT

Vs

Gurdwara Management Committee, Gurudwara Nanak Sar
Thaat

RESPONDENT

Date of Decision : 25-11-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100, 151, Order 13 Rule 1, Order 13 Rule 2,
Order 1 Rule 10, Order 1 Rule 10(2), Order 41 Rule 27
Evidence Act, 1872 — Section 35, 74, 76
Resettlement of Displaced Persons Land Acquisition Act, 1948 — Section 3
Delhi Land Reforms Act, 1954 — Section 185

Citation : (2022) 11 DEL CK 0152

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : R.K. Bhardwaj, Dhruv Tamta

Judgement

Anu Malhotra, J

1. The appellant vide this Regular Second Appeal under Section 100 of the CPC, 1908 as amended assails the findings of the learned trial Court in Suit No. M38/99 dated 25.02.2000 and also assails the judgment/decreed dated 22.04.2017 of the First Appellate Court of the learned ADJ-02, West in RCA 1/17/91 whereby the appeal against the said judgment and counter objections in relation thereto were both dismissed.

2. The sole appellant now who was arrayed as plaintiff no.2 to the suit as initially instituted had filed a suit for possession and recovery of Rs.17760/- on account of damages against defendant no.1, the Gurudwara Management Committee, Gurudwara Nanaksar Thath and against defendant no.2 Sant Baba Amar Singhji, President of the said Committee contending that the plaintiffs were owners of three bighas of land forming part of Khasra No.1673/1100, Khewat Jamabandi No.69/70, Khatauni No.189 in the revenue estate of village Bahapur, Delhi as per Settlement of 1949/1950 and that the defendants had illegally encroached upon

the part of the said land measuring 2200 sq. yds. in February, 1979 and had raised unauthorized construction of a gurudwara over the same and despite protests made by the plaintiffs, the defendants paid no heed to the same whereupon the plaintiffs served a notice dated 05.02.1991 upon the defendants requesting them to remove the unauthorized construction and to hand over back the vacant peaceful possession of the land to the plaintiffs but the defendants did not respond and rather encroached (upon 800 sq. yrd. of land also which also belonged to the plaintiff in February, 1981) and thus the plaintiffs issued another notice dated 25.01.1982 again calling upon the defendant to remove the illegal and unauthorized construction and hand over to them the peaceful vacant possession of the land measuring 3 bighas to which also there was no response from the defendant nos.1 & 2 and thus the suit was filed by the plaintiffs seeking recovery of possession and for damages. The defendant nos.1 & 2 apart from the other contentions raised by them through the written statement submitted that the plaintiff had no locus standi to file the suit and the suit was not supported with the detailed site plan and the suit was barred by limitation and because defendant no.2 had been in possession of the suit property since December, 1969 and around and that he had raised the construction of the impugned Gurudwara for religious purposes and that the possession of the defendant no.2 had all along been open, continuous and hostile to all persons including the plaintiffs since 1969 and that the defendant no.2 had spent about Rs.30 lakhs on the construction of the superstructure and no objection at any point of time during the construction of the Gurudwara was raised by anyone including the plaintiff. Inter alia it had been contended by defendant nos.1 & 2 that the suit was barred under the Delhi Land Reforms Act, 1954.

3. Issues that were framed in the said suit were to the effect:

"1. Whether the suit is not properly valued for the purposes of court fees and jurisdiction? OPD. If not so, what is the proper valuation?

2. Whether the suit is bad for misjoinder of parties? OPD

3. Whether the suit is barred by the period of limitation against defendant No.2? OPD-2

4. Whether the plaintiffs are the owners of the land in dispute? OPP

5. Whether the plaintiffs are entitled to possession as claimed? OPD

6. Whether the plaintiffs are entitled to claim any damages for use and occupation, if so, at what rate and for what amount, for what period? OPP

7. Relief.",

and subsequently vide order dated 03.11.1988, an additional issue no.3(A) was framed which was to the effect:

"3(A). Whether the suit is barred by Delhi Land Reforms Act?"

4. The said judgment indicates that issue no.3 as to whether the suit was barred by the period of limitation against defendant No.2 had been disposed of vide judgment dated 16.03.1991 in the suit as it then bore No.63/1982 vide which it had been held that the suit filed by the plaintiff was barred by limitation and the suit had thus been dismissed with it having been observed that there was no necessity for giving any findings on other remaining issues. However, in an appeal filed by the plaintiffs, vide order dated 28.09.1999 of this Court the matter was remitted back to the learned trial Court for recording its findings on all the remaining issues.

5. Vide the judgment dated 25.2.2000 of the Civil Judge, Delhi in Suit no.M-38/99, issue no.3(A) which was to the effect that whether the suit of the plaintiffs is barred by the Delhi Land Reforms Act, 1954 was decided in favour of the plaintiffs holding that the suit was not barred under Section 185 of the Delhi Land Reforms Act, 1954 as it did not fall within the meaning of 'land' as defined under Section 3(13) of the Act and that the Civil Court has the necessary jurisdiction to try the suit. Issue no.1 which related to the suit being not properly valued for the Court fees and jurisdiction, was decided in favour of the defendants and against the plaintiffs, it having been held that the suit land admittedly fell in the area now known as Greater Kailash-II in South Delhi and taking into account the lowest market value of the land for residential purposes in the area of Defence Colony which is close to Greater Kailash, Part-II and Village Bahapur where the suit land was situated, the lowest market value of the land being Rs.2,000/- for residential purposes and Rs.6,000/- for commercial purposes, taking into account that the suit land fell on an area of uncultivable waste area forming part of South Delhi with the surrounding areas having been urbanized with the rate of land being Rs.2,000/- per square meter valid even for the year 1981 and the suit having been filed in the year 1982 and taking judicial notice of the increase of the price of land rapidly in the urbanized area as laid down in "Vinod Khanna And Ors. Vs. Bakshi Sachdev" 1995 RLR 431 and the judgment of the Hon'ble Supreme Court in "DC Oswal Vs. V.K. Bhambhish" AIR 1982 SC 194, the market value of the suit property was required to be calculated at Rs.2,000/- per square meter for the relief of possession and not at Rs.200/- and had thus been undervalued by the plaintiffs.

6. Issue no.2, which was qua the contention of the defendants that the suit was bad for mis-joinder of the parties i.e. non-joinder of Gaon Sabha and the Union of India, it was held by the learned Trial Court in view of findings on issue no.3(A) that the suit property was not covered by the Delhi Land Reforms Act, 1954, the said issue was decided against the defendants and in favour of the plaintiffs holding that neither the Gaon Sabha nor Union of India were necessary parties to the suit. Qua issue no.4, the onus of which was on the plaintiffs, it was held by the learned Trial Court that the plaintiffs had been successful in proving their ownership of the suit property by virtue of the Jamabandi entries by production of the certified copy of the Jamabandi entries admissible in evidence under Section 76 of the Indian Evidence Act, 1872 it being a certified copy of the

public record in terms of Section 74 of the Indian Evidence Act, 1872 and the said entries having been maintained in the public record in performance of an official duty by a public servant was thus admissible in terms of Section 35 of the Indian Evidence Act, 1872 and there being no 'bhoomidaari rights' nor 'assami rights' having been declared in favour of any person in respect of the suit property with there being no directions that the suit property would vest for the Gaon Sabha, the defendants had been unable to controvert the claim of the plaintiffs as being the owners of the suit property and thus issue no.4 was decided in favour of the plaintiffs and against the defendants.

7. As regards issue no.5 which relates to a prayer made by the plaintiffs seeking possession of the suit property, it was held that the plaintiffs were the owners of the suit property and the defendants were in unauthorized construction of the same and that no specific plea of adverse possession was raised by the defendants neither through pleadings nor by their evidence nor during the course of arguments and that the defendants had also not brought forth on the record how they could have been in possession of the suit property, it was held that the suit had already been held to be barred by limitation vide judgment dated 16.03.1991 and qua issue no.3 that the plaintiffs were entitled to get the possession of the suit property.

8. Issue no.6 related to the plaintiffs claim of entitlement and claim of damages for use and occupation charges and also the rate of amount of such interest payable, the onus of which was also laid on the plaintiffs, in relation to which it was held by the learned Trial Court that though the plaintiffs were the owners of the suit property and it was made apparent through the findings of the learned Civil Judge that the defendants were in unauthorized use and occupation of the suit property and the plaintiffs being the owners of the suit property was upheld and it was held that as the suit was time barred though the plaintiffs were not entitled to the possession of the suit property yet in the absence of there being any specific plea of adverse possession having been raised by the defendants, the plaintiffs being the owners of the suit property were clearly entitled to damages from the defendants for use and occupation of the suit property by them.

9. Vide the said impugned judgment dated 25.02.2000, the plaintiffs were given damages @ Rs.160/- p.m. for the 2200 Sq. yds. of land from Feb., 1979 to 31.1.82 i.e. till the date of filing of the present suit and also granted damages @ Rs.70/- for the 800 Sq. yds. of land from Feb., 1981 till 31.1.82. The plaintiffs were also held entitled to pendent lite and future damages from the date of filing of the suit @ Rs.230/- p.m. It was also held that the plaintiffs being the owners and the defendants were in unauthorized use and occupation of the same but the plaintiffs were not entitled to possession as the suit was time barred but the same having been valued for the purposes of court fees and jurisdiction. The plaintiffs were held entitled to damages as held in para 6 of the plaint with it having been held that the plaintiffs being the owners of the suit property, the

plaintiffs were however not entitled to possession as the suit was time barred qua the same and thus it was held that the plaintiffs were entitled to damages only.

10. Through the present appeal, the appellants submitted that in the evidence led by the official witness of the plaintiff i.e. PW-4, it had been stated that the defendants encroached upon the suit property in February 1997 and that the learned Trial Court had wrongly relied upon the defendants documents Ex.DW6/1 to 6 and that the suit had been decided on conjectures and without prejudice to any case. It was brought forth by the appellants that there was subsequent events during the pendency of the First Appeal and that the respondent no.1 filed an application during the pendency of this appeal and that the DDA had executed a lease deed in favour of the respondent no.1/defendant and the respondents moved an application dated 26.10.2005 for bringing on record that the DDA had claimed to be the owner of the suit land and as such owner of the property in question and thus, the Perpetual Lease Deed was filed on record and the said lease deed also indicated that the DDA had received from the lessee / Gurudwara / Respondent No. 1 a consideration of Rs. 6,12,58,180/- (Rs. Six Crore Twelve Lakhs Fifty Eight Thousand One Hundred and Eighty Only) for a plot of Nazrul Land situated at G.K. II and that the site plan was also annexed with the lease deed wherein no Khasra number had been mentioned and that the lease deed dated 25.11.2005 is an after thought.

11. It has also been brought forth through this present appeal that during the pendency of the First Appeal, the respondents in order to substantiate their claim on the basis of the aforesaid lease deed filed an application under Order 1 Rule 10(2) of the CPC dated 25.02.2009, seeking that the Director Institutional Land, DDA, Vikas Sadan, INA, New Delhi be impleaded as a respondent in the present appeal and it was thus submitted that the First Appellate Court had thus impleaded the DDA as a party vide order dated 21.07.2011 and that the First Appellate Court directed the DDA vide order dated 21.07.2011 to file the status report with respect to the suit property/suit land and also directed the present appellant to supply copy of the Sale Deed dated 07.01.1983 to DDA / Respondent No. 3, which was so supplied. The DDA filed its status report in relation to the case wherein it was submitted that Khasra No.1673/1100 had been acquired by the LAC U/s 3 of Resettlement of Displaced Persons Land Acquisition Act, 1948 vide offer / award No. 1337 of Village Bahapur and it was also observed that the physical possession of the land was taken on 18.11.1983 as Site No. 57 having an area of 7.79 acres. It was further stated in that Status Report that at the time of taking over the possession of that land, it had been encroached upon by the Gurudwara and Temple and it was also stated that the demand letter had been issued for regularization of the land in question having an area of 2.74 acres by the Institutional Branch, DDA vide file No.F.18(104)/02/IL dated 8th Nov. 2004.

12. The objections were filed on the said report on behalf of appellant to the said

Status Report dated 05.02.2015. It was further stated in this present appeal by the appellants that 3 bighas of land was acquired under Section 3 of the resettlement of displaced persons Land Acquisition Act 1948 vide notification no.F.I(71)\48 LSG(I) dated 26-03-1949 and compensation was received by Lt. Smt. Sarti Devi and Sh. Khushal Chand in equal shares and that out of total land of 6 Bighas the remaining 3 Bighas has been encroached upon by Gurudwara Nanaksar Thath, G.K-II, New Delhi and that the respondent no.3 had illegally sold the land to Gurudwara Nanaksar Thath Ishar Darbar through its Secretary Sh. Paramjeet Singh for a sum of Rs.6,12,58,180 measuring 2.74 acres situated at Greater Kailash-II. The appellant further contended that the Khasra No.1673/1100 was acquired in Min i.e. in part and whereas in the revenue record in column no.2 the ownership of Smt. Sarti Devi and Sh. Khushal Chand was shown. The appellant further contended that the peripheral boundary line of Kalkaji scheme composite plan for which the land was acquired by the government bifurcated the entire Khasra No. 1673/1100 measuring 6 Bighas in two equal parts of 3 bighas each through its North and South boundary. The part Khasra acquired by MOR from the bisector line to the eastern boundary (DOT) was surrendered/encircled by the other adjoining land of MOR acquired in the Kalka scheme. The remaining unacquired part of 3 Bighas beyond the periphery of Kalka scheme plan belonging to the petitioner from the dividing line to the western boundary (DDL) of the Khasra stood now, encroached by the Gurudwara Management forming part of total land 2.74 acres regularized and allotted to it by the DDA. The Western boundary (DDL) of the unacquired part Khasra adjoins the road opposite M Block G.K. II fully negating the claim of the DDA.

13. The appellants further submitted that they had also filed an application on 29.11.2007 in the pending appeal Under Order 41 Rule 27 read with Order 13 Rules 1 & 2 and 151 CPC for placing on record the certified copies of Khasra Girdwaris from 2000 to 2006 pertaining to Khasra No. 1673/1100 of Village Bahapur issued by SDM/RA (Kalkaji) wherein in the said Khasra Girdawaris, name of appellant in the column of ownership was clearly mentioned in area measuring 3 Bighas to submit that the land 3 Bighas had not been acquired. It was also submitted by the appellants that as per the R.T.I. report dated 07.09.2010, the information given by the SDM was to the effect:-

"a. As per record of Khasra No. 1673/1100 min (3 Bigha) ownership of Sarti Devi and Khushal Chand is shown, name of cultivator Gurudwara Nanak Sar area 3 Bigha.

b. Above intimation is as per report Halka Patwari with respect to the existence of Gurudwara the report is supported by enclosure KhasraGirdawari dated 31.10.2008, 31.03.2009, 19.10.2009 and 31.03.2010."

14. The appellant has further submitted that cross objections had also been filed on behalf of the respondents against judgment dated 25.02.2000 and that necessary directions were directed to be given to the DDA to demarcate 3 bighas of land forming part of Khasra No. 1673/1100 situated at Village Bahapur now

known as Greater Kailash, in the interest of justice for effectual adjudication of appeal therefore DDA through Deputy Director, Institutional Land, INA, Vikas Sadan, New Delhi had been included in the present appeal who had already filed the Land Status Report and thus no dispute remains so far as 3 Bighas land of the appellants is concerned and that the Court can take judicial notice from the official record and taking into consideration the subsequent event mentioned therein, the dispute now left is to be adjudicated upon essentially / mainly between the appellant and DDA/ Respondent No. 3.

15. The appellant thus urged that the following substantial questions of law emerged in the matter:-

"A) Whether after the execution of perpetual lease deed dated 25.11.2005 by respondent No. 3 / DDA in favor of Respondent No. 1/ Defendant No. 1 (Gurudwara Nanak Sar Thaat, Ishar Darbar) the findings given by both the courts below especially by the First Appellate Court on Issue No.1,3,5 & 7 have become redundant infructuous i.e. for a Sale consideration of Rs. 6,12,58,180/- (Rs. Six Crore Twelve Lakhs Fifty Eight Thousand One Hundred and Eighty Only) with respect to land measuring 2.74 acres or whether the said perpetual lease deed is binding upon the appellant / plaintiff?

B) Whether the suit of the appellant / plaintiff is liable to be decreed against Respondent No. 3 / DDA by First Appellate Court in view of concurrent findings given by both the Courts below on Issue No. 4 with respect to undisputed title of Appellant / Plaintiff i.e. ownership of remaining 3 Bighas out of 6 Bighas of Khasra No. 1673 / 1100 on unacquired land and appellant / plaintiff is liable for possession and the relief claimed in the suit?

C) Whether the First Appellate Court was justified in ignoring the offer number / award No. 1337 dated 30.05.1962 with respect to 3 Bighas of land which was acquired out of 6 Bighas of land of appellant / plaintiff out of Khasra No. 1673/1100 U/s 3 of the Re- Settlement of Displaced Persons Act vide notification No.F.I(71)\ LSG (1) dated 26.03.1949 ?

D) Whether the Ld. First Appellate Court rightly taken the Status Report into consideration dated 05.02.2015 after permitting it to be taken on record ?

E). Whether the First Appellate Court was right in ignoring the public documents i.e. Revenue Record for the year w.e.f 24.10.2000 to 30.10.2006 in the name of Appellant / Plaintiff as its owner pertaining to 3 Bighas of remaining unacquired land pertaining to Khasra No. 1673/1100 ?

F) Whether the Ld. First Appellate Court after impleadment of Respondent No. 3 / DBA during the pendency of First Appeal Under Order 1 Rule 10 R/w Section 151 CPC on application of Respondent No. 1 & 2 dated 25.02.2009 is justified in dismissing the appeal of the Appellant / Plaintiff ?

G) Whether the impugned judgment & decree dated 22.04.2017 passed by the Ld. First Appellate Court is perverse, illegal based on conjectures and surmises

and suffers from material irregularity in view of subsequent events during the pendency of the First Appeal in which the Respondent No. 3 / DDA having been impleaded as Respondent No. 3?

16. On a consideration of the available record, in view of the stated execution of the property lease deed dated 25.11.2005 by the respondent no.3/ DDA in favour of the defendant no.1 in relation to land measuring 2.74 Acres for sale consideration of Rs.61,25,810/- with the contention raised on behalf of the appellant that the sale deed executed by the DDA in favour of the defendant no.1 was in relation to 3 bighas out of six bighas of Khasra No.1673/1100 of unacquired land of which the appellant is clearly the owner thereof and that the respondent no.3/ DDA vide the said lease deed dated 25.11.2005 had illegally sold the land to the Gurudwara Nanaksar Thath Ishar Darbar, the respondent no.1 to the appeal through its Secretary Mr. Paramjeet Singh with no khasra number or any other details mentioned in the lease deed nor in the site plan, the DDA had sold the unacquired land belonging to the petitioner and regularized its allotment to the respondent no.1 in relation to which the appellant had filed an application on 15.11.2007 in the appeal before the First Appellate Court under Order 41 Rule 27 R/w Order 13 Rule 1 & 2 and also Section 151 of the CPC, coupled with the factum that the said application to lead additional evidence was not disposed of by the First Appellate Court as indicated vide verdict dated 22.04.2017 in RCA No.1/17/91, the said aspects merit consideration.

17. The First Appellate Court vide observations in paragraph 26 of the judgment dated 22.04.2017 observed to the effect:-

"26. During the pendency of the appeal PDA was impleaded as party and a detailed status report was filed. Accordingly to the report that Khasra No. 1673/1100 has been acquired by LAC under Section 3 of Resettlement of Displaced Persons Land Acquisition Act, 1948, vide offer no. 1337 Village Bahapur. Thereafter it was purchased by PDA and physical possession was taken on 18.11.1983 as site No. 57 having area 7.79 acres which was encroached by the Gurdwara & temple. The copy of offer No. 1337 also filed on record. Accordingly to which out of Khasra No. 1673/1100 3 bighas has been stand acquired. Further PDA has given perpetual lease to Gurdwara. In my considered opinion the Id. Trial court legally and rightly held that plaintiffs were the owner of the suit property and defendants failed to establish the ownership of the same on the day of filing of the suit with regard to the suit land. Therefore I find no illegality or error in the finding of Id. Trial court on this issue.",

thus, accepting the aspect of acquisition of only 3 bighas of land of Khasra No.1673/1100 with the respondent no.1 having been held to be an encroacher on the land on the date of filing of the suit. It is thus considered appropriate to formulate the following substantial questions of law, which are to the effect:-

1) Whether after the execution of perpetual lease deed dated 25.11.2005 by respondent No. 3 / DDA in favor of Respondent No. 1 / Defendant No. 1

(Gurudwara Nanak Sar Thaat, Ishar Darbar) the findings given by both the courts below especially by the First Appellate Court on Issue No.1,3,5 & 7 have become redundant / infructuous i.e. for a Sale consideration of Rs. 6,12,58,180/- (Rs. Six Crore Twelve Lakhs Fifty Eight Thousand One Hundred and Eighty Only) with respect to land measuring 2.74 acres or whether the said perpetual lease deed is binding upon the appellant /plaintiff?

2) Whether the suit of the appellant / plaintiff is liable to be decreed against Respondent No. 3 / DDA by First Appellate Court in view of concurrent findings given by both the Courts below on Issue No. 4 with respect to undisputed title of Appellant / Plaintiff i.e. ownership of remaining 3 Bighas out of 6 Bighas of Khasra No. 1673 / 1100 on unacquired land and appellant /plaintiff is liable for possession and the relief claimed in the suit?

3) Whether the First Appellate Court was justified in ignoring the offer number / award No. 1337 dated 30.05.1962 with respect to 3 Bighas of land which was acquired out of 6 Bighas of land of appellant / plaintiff out of Khasra No.1673/1100 U/s 3 of the Re - Settlement of Displaced Persons Act vide notification No. F.I(71)\ LSG (1) dated 26.03.1949 ?

4) Whether the Ld. First Appellate Court after impleadment of Respondent No. 3 / DBA during the pendency of First Appeal Under Order 1 Rule 10 R/w Section 151 CPC on application of Respondent No. 1 & 2 dated 25.02.2009 is justified in dismissing the appeal of the Appellant / Plaintiff ?”,

and the matter is thus, directed to be re-notified for the date 06.12.2022 for hearing of the appeal before the Roster Bench on the aforesaid substantial questions of law.

18. Copy of this order be also served on either side by the Registry.