

(2010) 08 DEL CK 0063

In the Delhi High Court

Case No : Regular Second Appeal No. 115 of 2009 and C.M. No. 11989 of 2009

Shri Jai Charan @ Jai Chand and Another APPELLANT
Vs

Shri Mahender Kumar Aggarwal RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2010) 08 DEL CK 0063

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Mahmood Hassan, for the Appellant; Ritu Singh Mann and Brijesh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—Trial Judge on 10.7.2008 had decreed the suit of the plaintiff/respondent. This was a suit instituted for recovery of possession of a piece of land measuring 5 Biswas (250 sq. yds.) situated in Village Khichripur, Illaqa Shahdara, forming part of Khasra No. 76/2 (hereinafter referred to as the "suit property") in March 1998. The defendant had illegally occupied the suit property representing herself to be the owner.

2. The main defence of the defendant was on the identity of the suit property; his submission being that the suit property does not fall in Khasra No. 76/2 but it falls under Khasra No. 76/3. Further that Khasra No. 76/2 was fully built up and Khasra No. 76/3 is vacant; defendant claimed ownership of the suit property stating that the same falls in Khasra No. 76/3.

3. Trial Judge on the pleadings of the parties has framed six issues. Issue No. 2 is relevant for deciding this appeal. It related to the averment as to whether the suit property was comprised in Khasra No. 76/2 or not. The demarcation of the suit property had been carried out by the Tehsildar and was proved through the testimony of PW-2 who was the Kanoongo of the area; the report was proved as

Ex.P-12 along with the map of property showing the demarcation proceedings. The site plan of the property has been proved as Ex.P-1. Learned Counsel for the respondent has placed on record the certified copy of the cross-examination of DW-2 wherein DW-2 has admitted that the site plan Ex. P-1 is correct; it is submitted that this witness was of the appellant/defendant himself.

4. This demarcation report was accepted by Trial Judge which had categorically stated that the suit property falls in Khasra No. 76/2 and not in Khasra No. 76/3; further the defendant has not produced any document of title. Suit was decreed.

5. The first Appellate Court vide impugned judgment dated 6.4.2009 had endorsed the finding of the Trial Judge. Attention has been drawn to para 6 of the impugned judgment which inter alia reads as follows:

The only controversy in this appeal is that the suit property does not lie in Khasra No. 76/2 but it is in Khasra No. 76/3. It is alleged that Ld. Trial Court has committed an error in not appreciating the evidence of parties. It is conceded by Ld. Counsels of parties that there is no other controversy.

6. It is pointed out by learned Counsel for the respondent that the only dispute raised by the appellant/defendant in the first Appellate Court was about the identity of the suit property as to whether the same falls in Khasra No. 76/2 or 76/3 and the first Appellate Court had also endorsed the finding of the first Court. It is submitted that these are factual findings which cannot be gone into by the second Appellate Court.

7. Learned Counsel for the appellant has placed reliance upon a judgment of the Supreme Court reported in P. Chandrasekharan and Others Vs. S. Kanakarajan and Others, to support his submission that the second Appellate Court while examining a substantial question of law, under the provisions of Section 100 of the CPC, can go into the interpretation of the document which goes to the root of the title of the property and where such a document is misread or misappreciated the High Court can interfere in second appeal.

8. This judgment does not come to the aid of the appellant. Learned Counsel for the appellant has not been able to point out any discrepancy in the document of title on which attention has been drawn. The sale deed (Ex.P-4 page 133 of the paper book) states that the vender had sold 5 bighas out of Khasra No. 76/2 situated in Village Khichripur, Illaqa Shahdara to the vendee namely Shri Ram, father of the plaintiff. The land had been described as Ahata No. 181 measuring 250 sq. yards. The site plan (Ex.P-1 page 140 of paper book) relied upon by the plaintiff also shows that the suit property measures 250 sq. yards is contained in Khasra No. 76/2 situated in the area of Khichripur, Illaqa Shahdara. The entire Khasra i.e. Khasra No. 76/2 had been depicted in the site plan with a coloured portion of 250 sq. yards in the corner i.e. the suit property. There is no discrepancy in the said two documents i.e. Ex.P-1 and Ex.P-4 as has been urged by the learned Counsel for the appellant. Both the documents describe the suit property as contained in Khasra No. 76/2 in Village Khichripur, measuring 250

sq. yards. There is no misconstruction or misreading of this document of title which in any manner raises any substantial question of law. They are, in fact, in conformity with one another.

9. No substantial question of law has arisen. The appeal is without any merit. The appeal as also the pending application is dismissed in limine.