

(2011) 02 DEL CK 0063

In the Delhi High Court

Case No : Regular Second Appeal No. 51 of 2004 and CM No. 2628 of 2004

Shri Rizak Ram

APPELLANT

Vs

Rajeev Singh and Another

RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

Delhi Land Reforms Act, 1954 — Section 2, 7, 7(2)
Delhi Panchayat Raj Act, 1954 — Section 2(15), 99

Citation : (2011) 02 DEL CK 0063

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : N.S. Dalal, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 5.11.2003 which had endorsed the finding of the trial judge dated 30.10.1998 whereby the suit filed by the Plaintiff Rizak Ram seeking injunction against the Defendants from interfering in the suit property i.e. the part of land of Khsara No. 64/47 measuring 400 sq. yards in Village Alipur, Delhi was dismissed. .

2. The case of the Plaintiff was that this land was Shyamlat Deh land. Contention of the Gaon Sabha was that this land was Gaon Sabha land; Plaintiff having no right or title in the suit land; no injunction can be granted in his favour. On the basis of oral and documentary evidence led, the suit of the Plaintiff stood dismissed. In appeal the appellate Court had endorsed this finding.

3. This is a second appeal. Arguments urged before this Court is that under Punjab Land Reforms Act, 1887 Shyamlat Deh refers to land which is in common ownership of the proprietors of the village. It is contended that this land cannot be treated as Goan Sabha land; if it is to be treated as a common land under the proprietorship of the village. The impugned judgment had noted this argument. Para 8 which is relevant reads as follows:

8. With an enactment and advent of Delhi Land Reforms Act, 1954 several Acts which were earlier applicable in Delhi have been repealed by virtue of provision contained in Section 2 of the Delhi Land Reforms Act and that includes Punjab Land Revenue Act, 1887, Punjab Land Reforms Act, 1954 and Punjab Tenant (Security of Tenure Act) 1950 etc. In these circumstances, the contention of Ld. Counsel for the Appellant that the definition of Shyamlat Deh can be taken in the Punjab Land Reforms Act or Punjab Tenant Act seems untenable especially in view of the fact that the Delhi Panchayat Raj Act, 1954 has taken care of the land falling into the domain of Shyamlat Deh, Section 2(15) of the said Act provides the definition Public Land or Common Land as the land which is not on exclusive use of any individual or family but is common use of villagers and includes the land entered as "Shyamlat Deh" in revenue records. Thus, the contention of the counsel for the Appellant stands demolished as far as definition of Shyamlat Deh is concerned. It is evident that the land which has been shown in records as Shyamlat Deh is nothing but the land of common utility and ownership of that cannot vest in any individual or set of individuals.

4. The Court below had rightly noted that Section 2 of the Delhi Land Reforms Act 1954 had repealed the Punjab Land Reforms Act, 1887. The definition of Shyamlat Deh cannot be derived from this repealed provision. Under the Delhi Panchayat Raj Act, 1954 Section 2(15) defines "public land" or "common land". Section 2(15) reads as follows:

(15) public land or common land" means that the land which is not in exclusive use of any individual or family but is in common use of villagers and includes a land entered as Shyamlat deh in revenue records;

5. This definition as contained in Delhi Panchayat Raj Act, 1954 defines shamilat deh as land to be common land which is public land not to be in exclusive use of any individual or family but which is in the common use of the villagers.

6. Explanation (ii) of Section 7 of the Delhi Land Reforms Act, 1954 defines "lands of common utility". This includes such lands as are recorded as such at the last settlement or have been or would have been customarily recorded as such on 1st July, 1950. Section 7(2) states that on the commencement of the Delhi Land Reforms Act, 1954, all such lands will vest with the Gaon Sabha.

7. The impugned judgment in a subsequent part of the judgment had in this context *inter alia* held as follows:

Section 7 of the Act is very categorical and clear about the fact that the right of individual proprietor or proprietor pertaining to waste land grazing or collection of forest due etc. and such other land of common utility shall be terminated on the commencement of Delhi Land Reforms Act, 1954. The explanation attached to Section 7 in Clause c(ii) defines the land of common utility and as per that the land recorded in the last settlement as such would be part of the land of common utility. The documents placed on record specially khasra girdavari and other revenue records show the land in question as Shyamlat Deh which, as per the

definition in Delhi Panchayat Raj Act is land of common utility. Therefore the opinion/finding given by the Ld. Trial Court is nothing but an elaboration and clarification of the legal position qua the land in question. Therefore, in these circumstances the finding given by the Ld. Trial Court cannot be upset.

8. Substantial questions of law have been formulated on page 15 of the appeal. They reads as follows:

- (i) What is the meaning of the word "Shamlet Deh" and interpretation thereof?
- (ii) If the word "Shamlet Deh" is not being defined under the provisions of Delhi Land Reforms Act, can an assistance be not drawn from other Statute, more particularly from where it has been so derived or where it has been so inserted.?
- (iii) What is the true meaning and effect of Section 7 of Delhi Land Reforms Act?
- (iv) Whether Section 7 of Delhi Land Reforms Act can be made applicable in the absence of the things which are mandated to be done has not been done?
- (v) Whether, in the absence of any such order being passed as has been so mentioned in Section 7, can still Section 7 be made applicable in the absence of the same?
- (vi) If the provisions of Section 7 have not been followed nor any such order has been passed, can any effect be given thereby holding that Section 7 is still applicable?
- (vii) If a person is in possession of the land and the land is of the proprietors, can he be denied the right of injunction, which he is so seeking for?
- (viii) Whether the rights of the proprietors can be taken away or divested without the authority of law?
- (ix) Is not Section 7 otherwise unconstitutional and violative of the fundamental rights of the Appellant as it violates the rights so recognized by the Constitution as well as recognized by other statutes and also by the common law?
- (x) Whether the learned Appellate court was not duty bound to discuss and dispose of the appeal thereby considering all the ground so taken by the Appellant in the appeal and what is the effect of not deciding the grounds so taken by the Appellant in the appeal?
- (xi) Can any section be made applicable in the absence of the conditions of its applicability are fulfilled and also more particularly when its conditions are not being pleaded?
- (xii) Can any finding be recorded by the Courts in the absence of the pleadings, more particularly when there is factual foundation which is necessary for the applicability of particular Section?
- (xiii) Whether the findings qua Sections 2 and 7 of Delhi Land Reforms Act as

well as Section 99 of Delhi Panchayat Raj Act could have been recorded in the absence of factual foundation being pleaded and proved?

(xiv) What is the effect of maintenance of the records by the Authorities? If the Authorities are maintaining the records as per law, can the same be discarded by the Courts as has been so done.

(xv) Can interpretative process be used to discard the records of the rights so maintained by the Authorities, more particularly when it is being so done by them in the discharge of the official duties? Should not the presumption be attached to its correctness?

(xvi) As per the record, when the land has been recorded as Shamlet Deh, meaning thereby belonging to the proprietors as per their pro-rata share, then how the finding can be recorded qua the applicability of Delhi Land Reforms Act of the land being vested in the Gaon Sabha?

(xvii) If the records of the rights are being so maintained by the Authorities showing the proprietors as owners showing the land being belonging to the proprietors, can the same be ignored altogether and that too without any basis or meaning thereby does not it amount to creating a different sort of rights, which are not being so recognized by the law?

9. No such substantial questions of law having arisen, the appeal as also the pending application is dismissed.