

(2010) 10 DEL CK 0192

In the Delhi High Court

Case No : Regular Second Appeal No. 15 of 1993 and C.M. Application 187 of 1993

Smt. Amaravati (since deceased) and Sh. Ram Briksh Pandey (since deceased) through LRs APPELLANT

Vs

Sh. Dharamraj and Others RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(6), 146

Citation : (2010) 174 DLT 177 : (2011) 1 JCC 182

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—Matter is on board and has been called. On 29.9.2010 counsel for the appellant had put in appearance. None had appeared on the earlier date when the matter had been taken up i.e. on 4.10.2010. None has appeared today either.

2. This appeal has impugned the judgment and decree dated 28.8.1992 which had endorsed the finding of the trial judge dated 15.5.1986 whereby the suit of the plaintiff Amravati Devi had been dismissed. Plaintiff had filed a suit for possession. Trial judge had framed five issues. In view of the oral and documentary evidence adduced before the trial judge the relief of possession was declined to the plaintiff. This has been confirmed by the first appellate court in the impugned judgment dated 28.8.1992.

3. This is a second appeal. On 25.5.2010, two substantial questions of law had been formulated which inter alia read as follows:

1. Whether the Courts below had misconstrued the documents of title?

2. What is the effect of findings u/s 146 of the Code of Criminal Procedure on the question of title of the plaintiffs in respect of the land in dispute?

4. Both these contentions have been dealt with in the impugned judgment while disposing of Issue No. 1 and Issue No. 2. They inter alia read as follows:

ii After going through the entire evidence led by the parties before the trial court, pleadings and the documents proved on record on behalf of plaintiffs as well as defendants 1 to 4, I am in full agreement that the findings of the Ld. Trial Court to the effect that the land in suit does not form part of plot No. 62 and that sale deed dated 26.10.70, Ex.PW1/2, did not pertain to the land in suit.

iii. Plaintiff's case that plot No. 62 was measuring 242 sq. yards is belied from the sale deed dated 11.6.65 itself, certified copy of which is Ex.PW1/1. This sale deed, mentions that plot No. 62 was measuring 200 sq.yds and the vendee i.e. plaintiffs had agreed to purchase the same for a sum of Rs. 2000/-. This document further contains a Clause that possession of the said plot had been delivered to the plaintiffs. This document nowhere provides that plot No. 62 was of 244 sq. yards or that vendors had agreed to execute the sale deed in respect of the remaining areas of 44 sq. yards later on as the vendees had not sufficient funds, at that time to pay the plaintiffs as sale consideration, as has been claimed by the plaintiff in the present suit. It is highly improbable that any person of even ordinary prudence would deliver the possession of some property without receiving the sale consideration more particularly when there is no relationship between vendor and the vendee. Had there been any such agreement between the plaintiffs and defendants 5 to 8, same would have been mentioned either in the aforesaid sale deed itself or in any separate document. Plaintiff's case that they had been put in possession of 244 sq. yards is also belied from the fact that subsequent sale deed dated 26.10.70, Ex. PW1/2, which purports to be in respect of 44 sq. yards of land out of the plot No. 62 mentions that possession thereof had been delivered to the plaintiffs on the spot. It, nowhere, provides that the possession had been handed over in 1965. Had this fact been agreed, same must have been written in the said document, itself.

iv. There are certain other facts also which go to prove that Ex. PW1/2 does not pertain to land in suit or in any case failed to have been established by the plaintiff. One such fact is that the plaintiffs themselves admitted during his cross examination that he had raised construction over the entire piece of land measuring 244 sq. yards and if that be so, there is no question of 37 sq. yards of land being left vacant in possession of the plaintiff, as claimed by him in the suit. Second such fact is that size of the plot as mentioned by the plaintiff in para No. 3 of the plaint interestingly does not find mention in his original sale deed, Ex. PW 1/1 or even the subsequent sale deed, Ex. PW1/2. Third such fact which goes against the case of the plaintiffs is that one of the original owners i.e. defendant No. 7 when he appeared as PW1 stated altogether a new case that after execution of the original sale deed, Ex.PW1/1; it was brought to his knowledge that infact, plot No. 62 was measuring 244 sq. yards, although sale deed was

executed for 200 sq. yards and that possession of 244 sq. yards had also been given to the plaintiff, at that time and hence the second sale deed, Ex. PW1/2 for 44 sq. yards was executed. Plaintiff's case, as already observed, in this case is that right from the beginning the agreement between them and the owners was in respect of 244 sq. yds. but sale deed was executed for 200 sq. yards only as the plaintiffs did not have sufficient funds in April, 1965. Thus the story of the plaintiffs and the original owners is totally contrary. Another important fact which goes against the Plaintiffs' case is that they have not even made any attempt to prove even by any oral evidence that sale deed Ex. PW1/2 was in respect of land in suit, inasmuch as PW 2 who was one of the sellers also did not make any statement to the effect that sale deed Ex. PW1/2 was in respect of the land in the suit. Plaintiffs have also not examined the Munshi of the original owners who is alleged to have informed them that the area which had been handed over to the plaintiff originally was more than what was mentioned in the sale deed as was stated by PW 1 during his cross examination.

c. Learned Counsel for the appellant, drew my attention to the sale deed executed in favour of respondents 1 to 4 i.e. Ex. DW 2/1 which mentions that on the eastern side of the plot of defendants 1 to 4 was a portion of "ahata" No. 62. In my view, this fact also does not help the plaintiffs in any manner, inasmuch as even in their sale deed Ex. PW 1/1, it is mentioned that on the west side of their plot, was plot No. 61. i.e. plot. Defendants 1 to 4 and obviously in the sale deed of defendants 1 to 4, it had to be mentioned that on the eastern side of their plot was "ahata" of plot No. 62. According to the plaintiffs' counsel also "ahata" means enclosure and which in common parlance means boundary. Since Ex. DW 2/1 was executed in July 1965 and Ex. PW 1/1 was executed in April 1965, naturally at that time only boundary of plot No. 62 must have been in existence.

vi. From the aforesaid discussion, I am of the considered view that the Learned trial court has rightly decided issue No. 1 against the plaintiffs and I find no illegality in the said findings and are hereby confirmed.

ISSUE NO. 2

9. As already discussed, plaintiffs themselves, have admitted that the civil court on a reference u/s 146 CrPC had found defendants 1 to 4 in possession of the suit land two months prior to 28.11.70 and this finding was not challenged by the plaintiffs and as such this finding of fact is binding on them. Findings on issue No. 2 have been rightly given by the Id. Trial judge and the same are also confirmed.

5. There are concurrent findings of fact by both the courts below. Findings in no manner can be said to be perverse. This is not a third fact finding court. Plaintiff had failed to prove that the disputed land formed a part of his ownership.

6. The scope of the provisions of Section 145 - 146 of the Code of Criminal Procedure is limited, it cannot go into the question of title. The Supreme Court in *Bhinka and Others Vs. Charan Singh*, had in this context held as follows:

In passing an order u/s 145(6), Criminal Procedure Code, the Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is an apprehension of the breach of the peace, and, with that object, he makes a temporary order irrespective of the rights of the parties which will have to be agitated and disposed of in the said manner provided by law. The life of the said order is coterminous with the passing of a decree by a civil court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court. The orders are thus merely police orders and decide no question of title.

7. There is no merit in the appeal. Appeal as also the pending application is dismissed.