

(2008) 04 DEL CK 0001

In the Delhi High Court

Case No : Regular Second Appeal No. 131 of 2004

Tara Chand and Another

APPELLANT

Vs

Kumari Rajni Jain and Others

RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:

Delhi Land Reforms Act, 1954 — Section 185
Specific Relief Act, 1963 — Section 41

Citation : (2008) 150 DLT 101 : (2008) 103 DRJ 65

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : N.S. Dalal, for the Appellant; Dinesh K. Gupta, for R-1, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—The substantial question of law which arises for consideration in the instant appeal is whether the finding by the learned Trial Judge pertaining to issue No. 1 and 2 is sustainable in law.

2. On 5.7.2002 learned Trial Judge framed the following issues:

1. Whether the suit is maintainable in the form as filed and presented before this Court? OPP.
2. Whether the suit by the plaintiff is barred under the provision of law, particularly those of Specific Relief Act and Delhi Land Reforms Act? OPP.
3. Whether the plaintiff is entitled to get the relief of mandatory injunction as prayed for? OPP.
4. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP.

3. In the suit, appellants who were the plaintiffs, had pleaded that they were in possession of the suit land which was hithertofore shamlat land and on

consolidation of the village Rajokri in the year 1954-55 was assigned khasra No. 2052-2056. They pleaded that notwithstanding plaintiffs being in possession of the suit land through their ancestors it was wrongly declared as vested in the gaon sabha but notwithstanding said entry in the revenue record, plaintiffs continued to remain in cultivatory possession of the land. It was stated that adjoining lands belonged to one Chandi Ram and Samay Singh who sold off the same to Rajni Jain, defendant No. 1. That defendant No. 1 has carved out small portions of the adjoining land and sold the same to defendants No. 2 to 5.

4. Claiming easementary rights through the said adjoining lands and alleging that a strip having width of 1-1/2 gathas was the passage in question it was stated that the defendants cannot deprive the plaintiffs of their easementary rights. Thus, an injunction was prayed for to restrain the defendants from blocking or putting impediments in the passage. Mandatory injunction was prayed for to direct the defendants to remove the building material stacked at the site.

5. Pertaining to issue No. 1 learned Trial Judge held that before a party can seek injunction it must plead and establish a legal right and that there was an invasion of said right. Noting that the plaintiffs had pleaded that in the revenue records the land comprised in the khasra, possession whereof was claimed by the plaintiffs, were vested in the Gaon Sabha it was held that the plaintiffs have no right to maintain the suit and hence issue No. 1 was decided against the plaintiffs.

6. Pertaining to issue No. 2 it was held that the plaintiffs were disentitled to an injunction u/s 41(h) of the Specific Relief Act.

7. The consequence of the decision in issue No. 1 and 2 was an automatic finding against the plaintiffs pertaining to issue No. 3 and 4.

8. The first appeal against the judgment and decree of the learned Trial Judge failed.

9. At the outset I may note that the counsel for the appellants i.e. the plaintiffs states that since defendant No. 1 has admittedly sold the adjoining land through which easementary right of passage is claimed by the appellants they seek no relief against respondent No. 1 and if the instant appeal is allowed they would delete the name of respondent No. 1 from the array of defendants.

10. Reverting to the controversy at hand, suffice would it be to note that issue of maintainability of a suit in a particular form has to be decided with reference to pleadings in the plaint. The defense has not to be considered.

11. A perusal of the plaint shows that the plaintiffs i.e. the appellants claimed possession of the suit land which hithertofore was shamlat land and stated that they were in continuous cultivatory possession thereof. They pleaded that notwithstanding the land being wrongly shown in the revenue record as belonging to the gaon sabha land they were in possession of the suit land. Qua the defendants no adverse rights qua the land in respect whereof possession was

stated was claimed. Qua the defendants an easementary right was prayed for.

12. Averments were made in the plaint as to how this easementary right is claimed.

13. Thus, as framed, the suit was clearly maintainable.

14. Pertaining to the findings on issue No. 2 suffice would it be to note that u/s 185 of the Delhi Land Reforms Act 1954 only such suits are not maintainable before Civil Courts remedy whereof is not available before a revenue court.

15. Pertaining to agricultural land no remedy is available to a party before a revenue authority to seek a relief of injunction.

16. Pertaining to Section 41(h) of the Specific Relief Act it has to be noted that an injunction may be refused when a party has an equal efficacious remedy except in case of breach of trust. I fail to understand as to what efficacious other remedy would be available to the plaintiffs on the cause pleaded other than a suit for injunction.

17. A perusal of the decisions of the Trial Court and the First Appellate Court shows that both learned Judges who have pended the respective judgment have been coloured by the fact that the plaintiffs have themselves pleaded that the suit land was recorded as vested in the gaon sabha.

18. Both Courts have failed to appreciate that the plaintiffs categorically pleaded that said entry was contrary to law.

19. Be that as it may, the subject matter of the suit was a right of easement claimed by the plaintiffs through the adjoining lands so as to reach the lands which were in possession of the plaintiffs.

20. I hold that the suit filed by the plaintiffs was maintainable. I hold that the suit is neither barred under the provisions of the Specific Relief Act or the Delhi Land Reforms Act.

21. I may note a short order passed by their Lordships of the Hon^{ble} Supreme Court reported as AIR 2008 SCW 1965 Rajender Singh v. Vijay Paul and Ors. In somewhat similar circumstances their Lordships of the Supreme Court held that suits for injunctions pertaining to agricultural land have to be decided after trial by the Civil Courts and not before the revenue authorities.

22. Instant appeal accordingly stands disposed of allowing the same and as a consequence thereof allowing RCA No. 25/03. The judgment and decree dated 16.4.2004 passed by the learned Appellate Judge is set aside. As a consequence, impugned judgment and decree dated 7.8.2003 passed by the learned Civil Judge is set aside.

23. Since the suit of the plaintiffs stands restored, the learned Trial Judge would re-decide the suit after framing appropriate issues. Needless to state, evidence would be recorded.

24. As noted herein above plaintiffs would give up relief against respondent No. 1 imp leaded as defendant No. 1.

25. No costs.

26. TCR be returned forthwith.