
(2007) 03 DEL CK 0205

In the Delhi High Court

Case No : Regular First Appeal NO. 110 of 1982

Virender Gopal

APPELLANT

Vs

Municipal Corporation of Delhi

RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 6 Rule 17, 10
Contract Act, 1872 — Section 28
Delhi Municipal Corporation Act, 1957 — Section 477, 478
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Specific Relief Act, 1963 — Section 18, 20, 34, 39, 42

Citation : AIR 2007 Delhi 183

Hon'ble Judges : Swatanter Kumar, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : Kuldeep Kumar, for the Appellant; NEMO, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—Virender Gopal, plaintiff (appellant herein), filed a suit for mandatory injunction against the defendant-Corporation of Delhi to remove the roads, sewage lines, drainage and other things done on the suit property. This suit for injunction was founded on the averments that the plaintiff-appellant was the owner of the suit property to the extent of one-half share in the property bearing khasra numbers 775 to 796, 810, 813, 814, 817, 818, 2047 and 2062 in the revenue estate of Village Tihar, Delhi. It is alleged by the appellant that without giving any notice acquiring land in accordance with law and paying compensation to him, the Corporation took forcible possession of the land and started illegal construction of the above roads, sewage, drainage systems etc. The plaintiff-appellant had earlier filed a suit for injunction bearing No. 200/1976 which was stated to be pending at the time of filing of the subsequent suit bearing No. 103/1979. The plaintiff served a notice upon the Municipal authorities on 16.4.1979 for payment of damages to the extent of Rs. 9000/- per month with interest, which request was not acceded to by the authorities.

Compelled with these circumstances, the appellant-plaintiff filed the subsequent suit i.e. Suit No. 103/1979 for mandatory injunction against the defendant.

2. The suit was contested by the Corporation, who in the written statement, raised preliminary objections stating that the suit was barred under Sections 477 & 478 of the Delhi Municipal Corporation Act, 1957, the plaintiff had no locus standi to file the suit, the suit was not valued properly for the purposes of court fee and jurisdiction and suit for injunction, in any case was not maintainable and was hit by the provisions of Order 2 Rule 2 read with Section 10 of the Code of Civil Procedure. On merits it was stated that an area of 9.56 acres was under the Municipal Corporation of Delhi (for short "MCD"). The roads, drainage systems and sewage had been in existence for a long period and to maintain them was the responsibility of the Corporation. It was denied that the plaintiff was the owner or had, in any way, a right over the suit land. Upon pleadings of the parties, vide order dated 28.5.1980, the learned trial court framed the following issues:

1. Whether the plaintiff is entitled to the injunction as prayed for?
2. Whether the suit is not maintainable as alleged in the written statement? OPD
3. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD
4. Whether the suit is barred under Order 2 Rule 2 CPC? OPD
5. Relief.

3. The trial court formed the opinion that in the event issue No. 2 was decided at the first instance and was answered against the plaintiff, no other issue would be required to be dealt with as the suit itself would not be maintainable. After detailed discussions, the Court held that where the plaintiff is not in possession of suit property and he claims a declaration that he is the owner thereof, it would follow that he must claim further relief of possession, as well and in view of the Proviso to Section 34, a suit for mere declaration or for mere injunction cannot lie and that the suit for mandatory injunction, in any case, would not be tenable. Consequently, the issue was answered against the plaintiff in the suit and the suit was dismissed vide judgment and decree dated 27.2.1982. Aggrieved from this judgment and decree, the plaintiff-appellant filed the present appeal in the year 1982 and since then the appeal is pending before the Court.

4. The learned Counsel appearing for the appellant challenges the correctness of the decree on the ground that issue No. 2 has been answered by the trial court on a misinterpretation of law keeping in view the facts and circumstances of the present case.

5. In order to examine the merits of this submission we would proceed on the basis that the averments made in the plaint by the appellant, for the sake of

arguments, are correct, though they have been seriously disputed by the respondents. In the plaint there is no reference as to how and on the basis of what documents, the plaintiff-appellant claims title to the property, which in any case, has been disputed by the respondent-Corporation. The plaint besides being vague in all respects does not even record as to when the Corporation had taken the unauthorised possession of the suit property and from whom. No details of the intervening circumstances have been stated in the plaint. Basically, the court is to examine whether a suit in the present form and particularly coupled with other circumstances would be maintainable. Section 34 of the Specific Relief Act reads as under:

34. Discretion of court as to declaration of status or right

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation- A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

6. The appellant has certainly claimed a declaration in regard to his status vis-a-vis the property in dispute. In paragraph 2 of the plaint, the appellant has specifically admitted that possession of the suit land had been taken by the Corporation authorities without paying any compensation and without even acquiring the said land. In paragraph 4 of the plaint, reference has been made to suit No. 200/76 which was instituted by the plaintiff and was stated to be pending in the court of Sub Judge, 1st Class, Delhi at the time of filing of the present suit. The suit filed earlier by the appellant in terms of paragraph 4 was obviously relatable to the averments made in paragraph 2 of the plaint. In the paragraph relating to cause of action or in any other part of the plaint, no details have been given when the possession was taken. In fact, paragraph 16 of the plaint relating to cause of action is void of any definite facts. The appellant, thus, clearly admits that he is not in possession of the suit property and in fact various acts of development including making construction of drainage, sewage and other activities have been carried out by the Corporation on the land in question. This obviously would have taken years and years. The suit for implicate mandatory injunction in the facts and circumstances of the case would not be even maintainable. To claim an injunction u/s 39, the case essentially has to fall beyond the application of Section 34 of the Act. Wherever a person is entitled to claim further relief than a mere declaration of title, omits to do so despite even opportunity, the provisions of Section 34 place an obligation upon the court not

to make a declaration. Proviso to Section 34 is not only an exception to the principle paragraph of Section 34 but even impliedly has a restriction upon exercise of discretion by the court in granting declaration. Grant of declaration, in any case, is not an absolute right vested in a plaintiff but the court has been vested with the discretion that it could make a declaration if the plaintiff is so entitled, where in the opinion of the court, it was not obligatory upon the appellant to ask any further relief. Usefully, at this stage, reference can be made to certain judgments enunciating the law governing such cases. In the case of *State of M.P. Vs. Mangilal Sharma*, the court though in somewhat different circumstances, discussed the principles applicable to Section 34 of the Specific Relief Act and held as under:

7...It is difficult to accept this proposition as the provisions of law contained in Section 34 of the Specific Relief Act are specific and in that case even declaration could not have been granted as it could be said that respondent was able to seek further relief than a mere declaration of his legal status and which he omitted to do so. In *State of Punjab and others Vs. Krishan Dayal Sharma*, the plaintiff obtained a decree that he was entitled to be promoted from the post of Inspector of Police to that of Deputy Superintendent of Police with effect from the date when his juniors were promoted and further claimed relief for all consequential benefits, rights and privileges. The suit was decreed and in the execution application filed by the plaintiff in addition to the benefits flowing from the decree, he also claimed compound interest at the rate of 12% per annum on the amount found due to him. The claim of interest was allowed by the executing Court. This Court noticed that the decree which was put to execution did not contain any order or direction for the payment of any interest on the amount which was payable to the decree holder consequent to the declaration made by the Court decreeing a suit. It was also not disputed that no relief for interest had been claimed by the decree holder in his suit nor any such claim was discussed or awarded by the Court decreeing the suit. This Court held that the executing Court was bound by the terms of the decree and could not add or alter the decree on its notion of fairness or justice. The Court further observed that no doubt the Courts had power to award interest on the arrears of salary or pension or other amount to which a Government servant was found entitled to having regard to the facts and circumstances of the case but that power could not be exercised by the executing Court in the absence of any direction in the decree. In *Parkash Chand Khurana, etc. Vs. Harnam Singh and Others*, one of the contentions raised by the appellants before this Court was that the award in question was merely declaratory of the rights of the parties and was, Therefore, inexecutable. The Court observed as under (at p.2069 of AIR)

This contention is based on the wording of Clause 7 of the award which provides that on the happening of certain events the respondents "shall be entitled to take back the possession". We are unable to appreciate how this clause makes the award merely declaratory. It is never a pre-condition of the executability of a decree that it must provide expressly that the party entitled to a relief under it

must file an execution application for obtaining that relief. The tenor of the award shows that the arbitrator did not intend merely to declare the rights of the parties. It is a clear intendment of the award that if the appellants defaulted in discharging their obligations under the award, the respondents would be entitled to apply for an obtain possession of the property.

8. In *Parkash Chand Vs. S.S. Grewal and Others*, (Full Bench) (Punjab and Haryana High Court), the petitioner had a decree in his favor declaring his dismissal from service to be illegal, void and of no effect. The Punjab Government did not reinstate him nor paid him the arrears of salary. He, Therefore, filed a writ petition for taking contempt of Courts proceedings against certain officials of the State Government. The Court held as under (at p.684 of Cri LJ)

A declaratory decree, in my opinion, cannot be executed as it only declares the rights of the decree-holder qua the judgment-debtor and does not in terms, direct the judgment-debtor to do or to refrain from doing any particular act or thing. Since there is no command issued to the judgment-debtor to obey, the civil process cannot be issued for the compliance of that mandate or command. The decree-holder is free to seek his legal remedies by way of suit or otherwise on the basis of the declaration given in his favor.

9. In our view, it is a correct statement of law except that it may not be fully applicable in the case of a Government servant who acquires a status and his service conditions are governed by statutory rules as noticed above.

10 We are, Therefore, of the opinion that the Courts below did not exercise their jurisdiction properly and the respondent could not have sought execution of the declaratory decree when no relief was granted to him towards arrears of salary and other consequential benefits.

7. In the case of *Maharaji Educational Trust and Anr. v. Punjab & Sind Bank and Anr.* 2006 IV AD (DELHI) 316, While after discussing various judgments of the Supreme Courts as well as different High Courts, the court held as under:

34. The contention of the plaintiffs that the proviso to Section 42 would not be attracted as the rights and obligations of the parties are controlled under DRT and the plaintiffs cannot ask for any further relief while relying upon the case of *J.V. Vinnisami Thever* (supra) is without any merit. In the event the plaintiffs raise such a contention then the very maintainability of the suit in face of the bar to the maintainability of the suit u/s 18 of the Act would be the first, paramount and legal impediment in the way of the plaintiffs to claim any relief in the present suit. The order passed by the DRT dated 25th August, 2005 is subject to the appellate proceedings in accordance with the provisions of Section 20 of the Act. It will not be appropriate for this Court to touch upon the merits of the order passed by the DRT and/or the results thereof, as it is bound to prejudicially effect the interest of one or the other party in those proceedings. In the case of *Ghulam Mohiuddin Vs. The Official Assignee and Others*, where the plaintiff had

filed a suit for declaration that list in favor of the defendant was null and void and omitted to pray for the relief of the suit, it was held that the said suit is not maintainable. It is also a settled principle of law that the Court will not make declaration of title where the plaintiff being able to seek relief than a mere declaration omits to do so (refer S. Bhagat Singh Vs. Satnam Transport Co. Ltd. and Others, Still in another case where the suit for declaration of title in relation to the suit land was filed and the plaintiff was able to seek consequential relief of confirmation of possession or injunction on the date of the suit and omitted to do so, it was held that bar of Section 34 would be attracted in such cases (Dulana Dei alias Dolena Dei Vs. Balaram Sahu and Others,

35. The plaintiffs have failed to comply with the provisions of Section 34 of the Act and have failed to ask for a further and necessary relief. The suit normally would be liable to be dismissed. However, in the interest of justice an opportunity is granted to the plaintiffs to amend the suit within two weeks from today. In the event the plaintiff fails to take such appropriate steps, the suit of the plaintiffs shall be liable to be dismissed.

8. In the case of Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd. and another, wherein a truck owner on not returning the truck and merely asking for a declaration without consequential relief of possession or in terms of money, the Supreme Court not only accepted the contention that a suit without claiming the consequential necessary relief would not be maintainable but also stated that the amendment after the expiry of the period of limitation would be impermissible. The court in that case held as under:

4. The question, Therefore, is whether the appellant had property framed the suit and whether the claim is barred by limitation. It is true, as rightly pointed out by Sr. Rakesh Khanna, that Section 28 of the Contract Act prohibits prescription of shorter limitation than the one prescribed in the Limitation Act. An agreement which provides that a suit should be brought for the breach of any terms of the agreement within a time shorter than the period of limitation prescribed law is void to that extent. The reason being that such an agreement is absolutely to restrict the parties from enforcing their rights after the expiration of the stipulated period, although it may be within the period of general limitation. But acceptance of that contention does not per force solve the controversy in this appeal. Section 34 of the Specific Relief Act provides that any person entitled to a legal character, or to any right as to any property may, institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make such declaration and the plaintiff need no ask for such relief. However, proviso to the said Section puts the controversy beyond pale of doubt that "no courts shall make any such declaration where the plaintiff, being able to ask for other relief than a mere declaration of title, omits to do so." In other words, mere declaration of title, without consequential relief does not provide the needed relief in the suit, it would be for the plaintiff to seek both the reliefs. The omission thereof mandates the Court to refuse to grant the

declaratory relief. In this appeal, the appellant has merely asked for a declaration that he is entitled to the payment for the loss of the truck in terms of the contract but not consequential relief of payment of the quantified amount, as rightly pointed out by the courts below. The question, Therefore, is whether the amendment under Order 6, Rule 17 C.P.C. could be ordered in this background. Section 3 of the Limitation Act speaks of bar of limitation providing that subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, after the prescribed period shall be dismissed, although limitation has not been set up as the defense. In other words, unless there is a power for the court to condone the delay, as provided under Sections 4 to 24 (inclusive), every suit instituted after the prescribed period shall be dismissed although limitation has not been set up as the defense. Order 6 Rule 17 C.P.C. envisages amendment of the pleadings. The court may at any stage of the proceedings allow either parties to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question of controversy between the parties. Therefore, granting of amendment on such terms is also a condition for the purpose of determining the real question in controversy between the parties. The amendment to grant consequential relief sought for in this case, is as envisaged in proviso to Section 34 of the Specific Relief Act, 1963. That relief was, however, available to him, to be asked for, when the suit was filed.

xxx xxx xxx xxx 6. On a consideration of this case in its proper perspective, we are of the view that granting of amendment of plaint seeking to introduce alternative relief of mandatory injunction for payment of specified amount is bad in law. The alternative relief was available to be asked for when the suit was filed but not made. he cannot be permitted to amend the plaint after the suit was barred by the limitation during the pendency of the proceeding in the appellate court or the second appellate court. Considered from this perspective, we are of the opinion that the District Court and the High Court were right in refusing the prayer of amendment of the suit and the courts below had not committed any error of law warranting interference.

9. In light of the above principles, now we may revert back to the facts of the present case. The plaint is vague, uncertain and does not plead any essential facts. No reference has been made in the plaint as to on what basis the appellant claims ownership of the land except a bald averment in the plaint that the plaintiff is owner to the extent of half share. No document of ownership or title has been placed on record. Be that as it may, it gives no details and even the date on which the possession was taken. Once the possession has been taken by the Corporation and it has carried out much development activities on the land in question for years together, the plaintiff was required to claim the relief of possession failing which the suit would be hit by the provisions of Section 34 of the Act. The appellant took no steps even during the pendency of the suit to amend his plaint despite the fact that definite objection had been taken in regard to maintainability of the suit by the Corporation. Thus, the plaintiff by his own

conduct has permitted the suit to become even time barred at the face of it. Even in the appeal, there is no application for amendment. Admittedly, being out of possession, the suit of the plaintiff, as framed, would not be maintainable and the findings recorded by the court in this regard do not call for any interference. Furthermore, as already noticed above by us, the plaintiff had earlier filed a suit for injunction and again the present suit is filed for injunction. In the plaint, no effort has been made by the appellant to show that the present suit is not hit by the provisions of Order 2 Rule 2 of the CPC.

10. For the reasons afore-stated, we do not find any reason to interfere with the judgment of the learned trial court. The present appeal is dismissed. However, in the facts and circumstances of the case, parties are left to bear their own costs.