

**IN THE COURT OF SH. BHARAT AGGARWAL, CIVIL  
JUDGE-02 (WEST), TIS HAZARI COURT, DELHI**

**SUIT NO.607455/2016**

Balwant Arora

Plaintiff

Versus

Delhi Development Authority

Defendant

**THROUGH CISCO WEBEX VIDEO CONFERENCING**

Date:21/07/2020 (2.30 P.M to 2.50 P.M)

Present:- Sh. Ravinder Singh, Ld. Counsel for plaintiff. (Mobile No.9810005591 and E-mail ID – [rsinghadvo@gmail.com](mailto:rsinghadvo@gmail.com))

Sh. Anupam Sharma, Ld. Counsel for defendant/DDA.  
(Mobile No.9811101789 and E-mail ID – [vakilsahib2002@yahoo.co.in](mailto:vakilsahib2002@yahoo.co.in))

1. Vide this order I shall decide an application on behalf of defendant/DDA filed u/o 26 R.9 CPC seeking demarcation by Total Station Method for ascertaining the khasra number where the land in possession of the plaintiff is situated.

2. The matter was listed at the stage of final arguments. The plaintiff initially claimed to be in possession of land forming part of Khasra No.442 and 443, Village Khirkee, Mehrauli, Delhi. It is stated that vide order dt.26/11/2007 an application of the plaintiff u/o VI R.17 CPC was allowed and no permission was sought by the plaintiff to amend Para-1 or prayer in the suit. Thereafter, it is stated that in the amended plaint the plaintiff unauthorizedly deleted Khasra No.442 from Para-1 of the plaint as well as from the prayer clause by pen in

blue ink. It is further stated that on 18/10/2019 during the course of final arguments the said unauthorised deletion was pointed out by the counsel for the defendant/DDA and thereafter the plaintiff made a statement to the effect that the plaintiff only claims relief of permanent injunction in respect of Khasra No.443 measuring 3 Bighas and 2 Biswas at Village Khirkee, Tehsil Mehrauli, Delhi. It is further stated that the plaintiff in his evidence in an agreement to sell i.e. Ex. PW-1/1 and in his cross-examination stated that he alongwith several persons purchased the land measuring 4 Bigha and 1 Biswa of Khasra No.442 and 443. It is stated that further as per statement of PW-9 i.e. Kanoongo, the suit land forms part of Khasra No.441 and 443 which have been transferred to the Land and Building Department. It is stated that pursuant to the order dt.18/10/2019 DDA visited the suit site and conducted rough demarcation. It was revealed that plaintiff was in unauthorised possession of part of Khasra No.442 and 443 of Village Khirkee. It is stated that as the area of Khasra No.443 is 3 Bigha and 2 Biswas and the land purchased in the agreement to sell was 4 Bigha and 1 Biswa, the area and location of the suit land is not clear and absolute and in these circumstances it is prayed that demarcation be conducted by TSM method. In these circumstances the defendant/DDA has prayed for demarcation to be conducted of suit land through TSM method.

3. In response, it is submitted by the plaintiff that he had closed his evidence on 18/07/2018 and the evidence of the defendant was closed on 01/08/2019. It is stated that allowing the present application at this stage of final arguments would amount to reopening of the case from the beginning as the case is already about 30 years old and no additional evidence can be allowed at this stage of the suit. It is further stated that defendant neither in the written statement nor at the

stage of evidence has ever requested for demarcation of the suit property and initially the plaintiff had filed the suit in respect of two khasra numbers i.e. 442 and 443 but as later on it was transpired that suit property is situated only in Khasra no.443, the plaintiff had filed an application for amendment on 04/10/2004 and the said amendment was allowed on 26/11/2007. It is further stated that on 19/01/2010 DDA made the statement that they do not want to file the written statement to the amended plaint and thus the stand of the plaintiff in the amended plaint was admitted by DDA. It is further stated that DDA has got no concern over Khasra No.443 and the present suit pertains to only simplicitor injunction. It is further stated that provisions of Order 18 R.17A CPC which provided for production of additional evidence has already been repealed by the amending Act of 1999 and is no longer allowed by the Code of Civil Procedure.

4. Arguments were heard and record has been perused.

The present suit has been filed by the plaintiff against the defendant/DDA seeking permanent injunction restraining the defendant from interfering in the peaceful possession of the suit land comprised in Khasra No.443 (3-2) situated in revenue estate of Village Khirkee, Tehsil Mehrauli, Delhi and restraining the defendant from demolishing the structure at the suit property. It is noticeable that in the plaint originally filed the plaintiff stated to be in possession of land measuring 17 Biswas in Khasra No.442 and land measuring 3 Bighas and 2 Biswas in Khasra No.443 in Village Khirkee, Tehsil Mehrauli. The written statement was filed on behalf of the defendant/DDA stating thereby that the entire land comprised in Khasra No.442 (0-17) and Khasra No.443 (3-2) in Village Khirkee and other land approximately measuring 1020 acres were transferred to the defendant authority through package deal dt.02/09/1982 and the

physical possession of the suit land was handed over to the defendant authority on 21/12/1987.

5. Perusal of the order dt.26/11/2007 reveals that Para-3 of the plaint was allowed to be amended and plaintiff was allowed to add Para-7A. Para-3 pertained to the purchase of the suit land by the plaintiff from the previous owners through the agreement and Para-7A pertain to an averment that Khasra No.442 and 443 have not been acquired by DDA till date. It is apparent from the order that no amendment in prayer or Para-1 was sought. It appears that even in the amended plaint as well as in the application filed U/O VI R.17 CPC Khasra No. 442 has removed/cut wherever it appeared. Therefore, it is quite apparent that the plaintiff restricted its claim only to Khasra No.443. On 19/01/2010 it was submitted on behalf of DDA that they do not want to file amended written statement and thereafter the matter was put up for filing of replication and admission denial of documents.

6. From the comprehensive perusal of the documents it appears that the plaintiff has now restricted its claim only to Khasra No.443 (3-2). It was pointed out by the counsel for the defendant/DDA on 18/10/2019 that the plaintiff was only allowed to amend Para-3 and add Para-7A in the plaint, however, the plaintiff has also amended Para-1 of the original plaint and the prayer clause to the extent of removing Khasra No.442 and restricting it to Khasra No.443. Since the suit has reached at the stage of final arguments when it was pointed by the Ld. Counsel for the defendant/DDA it was only appropriate to record the statement of the plaintiff that the claim is restricted qua Khasra No.443 only. It is not the case that the defendant/DDA was taken by surprise when the plaintiff chose to

restrict the claim in the present suit for permanent injunction only qua Khasra No.443. In fact the plaintiff has always stated and affirmed his claim upon Khasra No.443 in the original as well as amended plaint. The suit has already reached the stage of final arguments and it is at least 30 years old. Therefore, no purpose would be served to carry out the demarcation proceedings at this fag end of the trial. In fact, the trial has already undergone and now the suit has to be adjudicated after hearing the final arguments of the parties. Whether the plaintiff is entitled to simplicitor injunction as claimed in the suit qua the Khasra No.443 has to be decided on the basis of the evidence already led by the plaintiff on record. It is not the case that the defendant/DDA had no opportunity to file this application for appointment of Local Commissioner to conduct demarcation at the appropriate stage as the defense of the DDA had always been the same about the Khasras being acquired lands.

In the considered opinion of this court, allowing the present application would only delay the trial which has already seen several decades and it would be only in the interest of justice and expediency that the present application be dismissed and the suit be adjudicated on the basis of evidence which has already been led by the parties. Needless to say that the Plaintiff's case would only be decreed if the averments made in the amended plaint have been substantiated by evidence already led. Therefore, in view of the aforesaid observations the present application filed by the defendant/DDA is hereby dismissed.

Now, put up for final arguments on 25/08/2020. Both the parties are directed to file written submissions not exceeding seven pages after supplying advance copy to the other side.

A copy of this order be sent to the Ld. Counsel for plaintiff as well as Ld. Counsel for defendant and also to the filing branch Tis Hazari Court, Delhi for uploading the same on the official website of the District Courts.

Bharat Aggarwal  
C.J-02, West, THC, Delhi  
dt.21/07/2020

**IN THE COURT OF SH. BHARAT AGGARWAL, CIVIL  
JUDGE-02 (WEST), TIS HAZARI COURT, DELHI**

**SUIT NO.956/2018**

Kanhaiya Lal .....Plaintiff

Versus

MCD & Others .....Defendants

**THROUGH CISCO WEBEX VIDEO CONFERENCING**

Date:21/07/2020 (2.00 P.M to 2.19 P.M)

Present:- None for the plaintiff.

Sh. Ashutosh Gupta, Ld. Counsel for defendant  
no.1/MCD. (Mobile No.9891826827 and E-mail –  
ashutosh.adv10@gmail.com)

Sh. R.D. Dutt and Sh. Lakshay Laroia, Ld. Counsels for  
defendant no.2 (Mobile No.9650678272 and E-mail –  
[lakshay.legal@gmail.com](mailto:lakshay.legal@gmail.com))

Ms. Rashmi Srivastva, Ld. Counsel for defendant  
no.3/DDA. (Mobile No.9810330428 and E-mail –  
[rashmi20a@gmail.com](mailto:rashmi20a@gmail.com))

Despite intimation the counsel for the plaintiff could not join the proceedings through video conferencing due to some personal difficulty.

1. Vide this order I shall decide an application filed u/o XXXIX R.1 & 2 CPC r/w s. 151 CPC filed by the plaintiff on 20/01/2020 seeking *inter alia* that the defendant no.2 and defendant no.1/MCD shall be restrained from demolishing the existing room at the suit

property and from raising any wall or structure at the suit property and further the defendant no.1 & 2 be directed to restore the Dhobi Ghat in its original position.

2. It is stated by the applicant/plaintiff that during the pendency of the case, the defendant no.2 alongwith with one Sh. Bal Kishan Shukla hatched a conspiracy with officials of defendant no.1/MCD and removed certain structures of the Dhobi Ghat and its platform which came to the knowledge of plaintiff on 09/01/2020 when he visited the suit property. It is further stated that they have demolished the structure and platform completely leaving a big room/hall which is meant for ironing the dried cloths and after demolition they have removed most of the demolished malba. It is stated that the plaintiff had made written complaint to SHO, P.S. Timarpur on 11/01/2020 in this regard and it is alleged that the such demolition activity is completely illegal due to which the plaintiff has suffered losses.

Along with the application, the plaintiff has relied upon printouts taken from the Public Grievances Monitoring System of the Government of NCT of Delhi whereby MCD North has responded upon the complaint of the plaintiff that on 27/12/2019 and 28/12/2019 inspections were carried out by the officials of Civil Line Zone/North MCD and during the inspections, open defecation was observed at the Dhobi Ghat which was removed by the sanitation staff by hiring of JCB. He further relied upon another complaint made to the Public Grievances Monitoring System of the Government of NCT of Delhi whereby the Executive Engineer has responded that no encroachment was found at the site under reference and some "Thada" have been demolished to avoid open defecation.

3. By way of brief background, the plaintiff has filed the present suit seeking a decree of declaration in favour of the plaintiff and against the defendants that the plaintiff be declared as the lessee of the suit property i.e. Dhobi Ghat at Lucknow Road, Timarpur, Delhi and a decree of permanent and mandatory injunction directing defendant no.1/MCD to provide vacant and physical possession of the suit property to the plaintiff and directing the defendant no.2 to not cause any obstruction in the plaintiff's use of the suit property. The plaintiff has alleged that he is a washerman and that the father of the plaintiff Late Sh. Shyam Lal was the lessee and used to pay yearly lease money to the Notified Area Committee and the Notified Area Committee later came to be known as MCD i.e. the defendant no.1. He further states that on 09/03/2001 plaintiff requested the defendant no.1 to mutate the lease of Dhobi Ghat in his favour which earlier stood in his father's name and vide letter dt.16/03/2001 MCD mutated the lease of the suit property in favour of the plaintiff and he became the lessee of the Dhobi Ghat. It is further stated that when the plaintiff visited the Dhobi Ghat on 20/01/2002 for arrangement of an inauguration ceremony he was stopped by the men of the defendant no.2 stating that they have a stay order from court in their favour. It is further stated that defendant no.2 has taken illegal occupation as trespasser over the suit property and due to his illegal occupation plaintiff and other Dhobies have been unable to enter the Ghat.

4. The suit has been defended by defendant no.1/MCD *inter alia* on the ground that MCD is the owner and in possession of the suit property i.e. the Dhobi Ghat and small portion of the said land has been encroached by the defendant no.2. MCD further states that it has not renewed any license since 01/04/2009 as the suit property was to be used for public utility. It is further stated that as per the records

only four stones were given on license basis to the father of the plaintiff and thereafter the same was mutated in the name of the plaintiff and the said Dhobi Ghat is not functional for many years having no electricity or water connection.

Defendant no.2 has defended the suit *inter alia* stating that he is continuously in possession of the suit property for more than 45year. It is further stated by defendant no.2 that plaintiff has no relation or connection with the suit property and a suit filed by the defendant no.2 against the MCD seeking injunction against MCD was decreed by Ld. Civil Judge-06/West on 15/02/2016 and the challenge to said decree made by North MCD was also dismissed by Ld. SCJ, Central, Tis Hazari, Delhi vide judgment dt.15/05/2018. It is stated that, hence, the continued uninterrupted possession of defendant no.2 has been established. Defendant no.2 has further opposed the application under consideration on the ground that MCD in pursuance of cleanliness drive and to avoid open defecation removed some “Thada” and cleaned the surroundings which was required for the purpose of general cleanliness. It is further alleged that plaintiff never remained in possession and never did any work of washing over the property in dispute.

5. Defendant no.3/DDA has defended the suit alleging that the suit property is a Nazul/Government land which was transferred to DDA on 20/07/1974 by L&DO in pursuance of notification No.1810 dt.20/07/1974 issued by Ministry of Work and Housing. It is also denied by DDA that Notified Area Committee used to grant yearly lease of the Dhobi Ghat. It was further stated that MCD has no right to lease the suit property. Therefore, contrary claims over the suit property have been made by both the statutory bodies, i.e., the defendant no.1/MCD and the defendant no.3/DDA.

6. Arguments were heard and record was perused.

The plaintiff alongwith his case has relied upon the mutation letter issued by the MCD -Land and Estates Department which shows that in reference to the plaintiff's application the suit was mutated in his favour and certain damages/license fee was assessed. It is also stated in the said letter relied upon by the plaintiff that the said mutation was purely on temporary basis and plaintiff will have to vacate the premises as and when the same is required by MCD for any public purpose. Certain other receipts showing payment of money to the Notified Area Committee or MCD have been placed on record by the plaintiff. Plaintiff has also relied upon certain letters exchanged for the purpose of renovation and construction of Dhobi Ghat. The primary grievance of the plaintiff in the present application appears to be that despite the pendency of the present case the defendant no.1/MCD has allegedly demolished certain structures at the Dhobi Ghat which is meant for placing dried cloths. In response it has been submitted by defendant no.1/MCD and even by defendant no.2 that such demolition and cleaning were done only to avoid open defecation and to ensure general cleanliness which is also a statutory duty of the defendant no.1/MCD.

7. It is not the case of the plaintiff that due to the demolition of such structures any harm or injury as such is caused to the plaintiff. Even otherwise, the plaintiff has not alleged that he was carrying out any functions of washerman at the said Ghat. In fact admittedly no renewal of the alleged lease was made in or is existing as on date in favour of the Plaintiff. It is noticeable that no water connection is there at the site, therefore, it is also difficult to assume that the said

functions of washing cloths is being carried out by the plaintiff at the suit site.

The matter is yet at the stage of plaintiff's evidence and it is incumbent upon the plaintiff to prove to the court on record that he has a locus over the suit site. The plaintiff claims the rights as a lessee from defendant no.1/MCD and the defendant no.1/MCD has very explicitly stated that the licenses have not been renewed since 01/04/2009 as the site was to be used for public utility. The plaintiff has alleged himself to be a lessee of the defendant no.1 whereas the defendant no.1 has stated that it only issued licenses and even from the documents placed by the plaintiff himself on record it *prima facie* appears that the plaintiff was a mere licensee at the relevant period. It is needless to state that the rights of a licensee cannot be equated with those of a lessee. At this stage, the court is not inclined to grant any relief in the favour of plaintiff *qua* the suit property as the plaintiff is yet to establish his case.

Even the relief of mandatory injunction for restoring of Dhobi Ghat also cannot be granted at this stage, unless the plaintiff has proved on record its locus qua the suit property. Therefore, there is no hesitation in holding that there is no *prima facie* case in favour of the plaintiff.

At this stage, it would be appropriate to place reliance upon **Kashi Math Samsthan V/s Srimad Sudhindra Thirtha Swamy AIR 2010 SC 296**, where it was observed as under (AIR @p.299):-

*“It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is*

*also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience of irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he had made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if so injunction order is granted.”*

Therefore, in view of the aforesaid observations as the Plaintiff has failed to cull out a *prima facie* case in his favour no relief as prayed in the interim injunction application at hand can be granted. Hence, the application u/o XXXIX R.1 & 2 CPC filed by the plaintiff is hereby dismissed.

Perusal of the record reveals that the matter was listed for cross-examination of PW-1. Since the suit is more than 10 years old, it is clarified that only one opportunity shall be given to each party to lead their evidence, failing which adverse orders shall be passed to ensure expeditious disposal.

Now, put up for cross-examination of PW-1 on 05/10/2020.

A copy of this order be sent to the Ld. Counsel for plaintiff as well as to Ld. Counsels for defendants and also to the filing branch Tis Hazari Court, Delhi for uploading the same on the official website of the District Courts.

Bharat Aggarwal  
C.J-02, West, THC, Delhi  
dt.21/07/2020

**IN THE COURT OF SH. BHARAT AGGARWAL, CIVIL  
JUDGE-02 (WEST), TIS HAZARI COURT, DELHI**

**SUIT NO.610212/2016**

Vijay Manchanda

Plaintiff

Versus

Inderjeet Singh Oberoi

Defendant

**THROUGH CISCO WEBEX VIDEO CONFERENCING**

Date:21/07/2020 (3.00 P.M to 3.25 P.M)

Present:- Sh. Bharat Bhushan Gupta, Ld. Counsel for plaintiff.  
(Mobile No.9810258457 and E-mail ID – [bbgadvocate@gmail.com](mailto:bbgadvocate@gmail.com))

None has appeared for the defendant.

The matter was listed for final arguments. Reader of this court informs that the Ld. Counsel for defendant was informed about the hearing today through video conferencing but he could not join due to some personal difficulty. Certain arguments were advanced on behalf of the counsel for the plaintiff.

Certain clarifications are required from the defendant.

Put up for clarifications on behalf of the defendant on 05/10/2020.

A copy of this order be sent to the Ld. Counsel for plaintiff as well as Ld. Counsel for defendant and also to the filing branch Tis Hazari Court, Delhi for uploading the same on the official website of the District Courts.

Bharat Aggarwal  
C.J-02, West, THC, Delhi  
dt.21/07/2020