

IN THE COURT OF SH. RAJINDER KUMAR
SCJ/RC(WEST), TIS HAZARI COURTS, DELHI

RCA No.410/2016

In the matter of :

Delhi Development Authority
Through It's Vice Chairman,
Vikas Sadan, INA
New Delhi.

..... Appellant

VS.

A) Sh. Nathu Ram
(Deceased represented by Legal Heirs)

- (1) Smt. Lalman
W/o Sh. Nathu Ram
20 N Krishna Nagar,
Safdarjung Enclave, New Delhi- 110029
- (2) Sh. Jai Pal Singh
S/o Sh. Nathu Ram
20 N Krishna Nagar,
Safdarjung Enclave, New Delhi- 110029
- (3) Sh. Dharamvir Singh
S/o Sh. Nathu Ram
20J Krishna Nagar,
Safdarjung Enclave, New Delhi- 110029
- (4) Sh. Rambir Singh
S/o Sh. Nathu Ram
112, Humayun Pur,
New Delhi- 110029
- (5) Sh. Lakhpat Singh
S/o Sh. Nathu Ram

- 112, Humayun Pur
New Delhi- 110029
(6) Smt. Roshni Devi,
D/o Sh. Nathu Ram
20N Krishna Nagar,
Safdarjung Enclave, New Delhi- 110029.
(7) Smt. Raj Bala,
D/o Sh. Nathu Ram
20J, Krishna Nagar,
Safdarjung Enclave, New Delhi- 110029

B) Sh. Surat Singh
(Deceased represented by Legal Heirs)

- (1) Dropti (Wife)
W/o Late Sh. Surat Singh
(2) Geeta (Daughter)
D/o Late Surat Singh
C/o and R/o H.No.122,
Humayun Pur,
New Delhi.

..... Respondents

Date of institution of the suit	:	23.12.2011
Date of reserving order	:	29.02.2020
Date of pronouncement	:	19.06.2020*

(* The order is pronounced lately because of suspension of work of courts due to COVID 19 since 24.03.2020.)

J U D G M E N T

1. This is an appeal U/s 96 of CPC on behalf of the Appellant

assailing the impugned judgment dated 24.09.2011 passed by the Court of Ms. Shefali Sharma, Ld. Civil Judge, West, Tis Hazari Court, Delhi in the Civil Suit No.390/2006 titled as Sh. Surat Singh and Anr. Vs. DDA for setting aside the impugned judgment.

2. The plaintiffs / respondents filed a suit for perpetual injunction restraining the defendant from demolishing the construction of H.No.20 B on plot measuring 800 sq.yards in Khasra No.48/7.

3. The brief facts of the case of the plaintiffs / respondents are that they are the owners in possession of 2500 sq. yards in Khasra No.48/7, Village Humanyunpur, New Delhi. That the property is ancestral and is in their possession since the time of their forefathers. That the plaintiff have constructed a house no.20 B, Krishna Nagar, New Delhi consisting of 9 rooms on a piece of land measuring 800 sq.yards in the said Khasra. That the area of the said house has not been acquired by the LAG and the same has not been handed to the defendant for any public purpose. That on 08.05.84 at 11:30 AM, the officers of the defendant came to the property of the plaintiffs and threatened to demolish the construction.

4. It is the plea taken by the defendant / appellant that its



officials have inspected the site and found that the plaintiffs have illegally occupied the Horticulture Park –which falls in Khasra No.48/5 and not in Khasra No.48/7, which has been acquired by Union of India vide Award No.1170 and placed at the disposal of DDA. That the plaintiffs have no right, title or interest in the suit property.

5. It is pertinent to mention here that during pendency of appeal, respondent no.2 died on 04.01.2014 and vide order dated 23.03.2015 LRs were allowed. The respondent no.1 / plaintiff no.1 also got expired during the pendency of the case before the Ld. Trial Court and vide order dated 03.12.1998, LRs were impleaded while allowing the application u/o XXII Rule 3 CPC. So, the list of LRs of the deceased plaintiff no.1 / respondent no.1 filed on 04.10.2013 is allowed to be taken on record.

5. On the basis of pleadings, following issues were framed by the Ld. Trial Court as under :

1. Whether the suit property form part of Khasra No.48/7, Village Krishna Nagar, Humanyun Pur, Delhi. OPP

2. Whether the suit property form part of Khasra No.48/5, Village Krishna Nagar, Humanyun Pur, Delhi, which has been acquired and placed at the disposal of DDA ? OPD

3. Whether the plaintiff is owner in settled possession of

the suit property? OPP

4. Whether the plaintiff is entitled to the relief claimed for? OPP

5. Relief

ISSUE WISE FINDINGS ARE AS UNDER :-

6. ISSUE NO.1, 3 & 4.

All the issues are inter-connected. Accordingly, the same are taken up together. The onus to prove the same was put upon the plaintiffs, who have pleaded themselves to be the owner and in possession of the suit property which falls in Khasra No.48/7.

It is contended by the side of defendant that there are no documents filed by the plaintiffs / respondents in this case and only marked documents are there, which are even unproved.

During his examination in chief, the plaintiff no.2 (PW1) marked 7 documents i.e Khasra Girdawari which is marked as Mark A and C, Revenue Record Mark B, Jamabandi Mark D besides copies of Sale Deed which are Mark E, F and G.

7. It was deposed by the plaintiff no.2 Sh. Nathu Ram, during



his cross-examination that the original documents were not brought by him in the court on the day of his cross-examination i.e on 07.09.1997. It was also deposed by him that he reserves his right to file the same but has never filed for the reasons best known to them. Admittedly, the plaintiff no.2 (PW1) also did not bring house tax, electricity bill, I-card, Ration Card etc. On the day of his examination to make the court to believe that the suit property falls in Khasra No.48/7.

The plaintiffs / appellants have failed to prove their documents. Law is well settled that merely marking of documents does not mean that the same are proved. The documents filed by the plaintiffs / respondents in this case are not proved.

8. During their examination in chief, both Hari Singh (PW2) and Sh. Sultan Singh (PW3) have deposed similarly that the land bearing Khasra No.48/7 belongs to the plaintiffs. But while under cross-examination, it was deposed by them that they do not know the location of Khasra No.48/7. Sh. Surat Singh (PW5) during his examination in chief has deposed that the Khasra Number of the land of the plaintiffs was 48/7 but while under cross-examination, it was deposed by him that no demarcation of land was done in his presence of Khasra No.48/7. It

was also deposed by him that he do not know about the demarcation of Khasra No.48/5. Admittedly, Ms. Geeta (PW4) also does not know the area of Khasra No.48/7.

During his cross-examination at page 3, the plaintiff no.2 (PW1) has stated that their documents mark E, F and G do not contain the khasra number and B-20 only has been mentioned which is now municipal number.

9. It is also the plea taken by the appellant / defendant that Village Humanyunpur had already been seized to be rural area by Delhi Govt. notification dated 03.11.2006 and that it was declared urbanized. That same is not denied by the respondents / plaintiffs. If it was so, then, how can be the land in the village in question be shown under cultivators in the Revenue Records for the relevant period and makes the documents filed by the plaintiffs doubtful.

9. During his further cross-examination (post-lunch) on 07.04.1997, it was deposed by (Plaintiff no.2) PW1 that he do not know the scale of site plan (Ex-PW1/1). For the sake of arguments, if the site plan is presumed to be correct, neither the description of the Khasra nor the area is disclosed in the same. As per Sh. Om Prakash (PW5), there



is a road between Khasra No.48/5 and 48/7 but it is nowhere reflected in the said site plan (Ex-PW1/1) filed by the plaintiff / respondent. The site plan is even not signed by anyone

It is also contended by the applicant / respondent that the respondent / plaintiff themselves did not know the scale of site plan nor the directions and accordingly, the same should not be considered.

10. The plaintiffs / appellants have failed to prove their documents. Law is well settled that merely marking of documents does not mean that the same are proved. The documents filed by the plaintiffs / appellants in this case are not proved and have no value. Even, the site plan (Ex-PW1/1) is also not clear and specific.

11. Sec 101 of Indian Evidence Act makes it obligatory to prove the burden of proof of any fact on the person claiming or asserting any fact. As per Sec. 102 of Indian Evidence Act, the burden of proof lies on that person, who would fail if no evidence at all were given on either side.

In the case in hand, it is claimed by the plaintiffs that they are owners and in possession of the suit property. The plaintiffs have failed to prove that the suit property falls in Khasra No.48/7 as pleaded by them. The plaintiffs have also failed to prove that they are in possession



of the property falling in Khasra No.48/7, which itself is suffice to allow the appeal.

12. Tehsildar was appointed as L/C vide order dated 13.12.1989 and was directed to visit the suit property. In the report filed by the L/C (Tehsildar), it is clearly mentioned that correct demarcation could not be done for the want of permanent point but filed a report in favour of the plaintiff by reporting that the suit property falls within Khasra No.48/7.

The said report of the L/C rightly was not relied upon by the Ld. Trial Court since the demarcation was not as per procedure and based on presumption.

In view of above, the Issue no.1 was incorrectly decided by the Ld. Trial Court in favour of the plaintiffs. Therefore, it is decided against the plaintiffs and in favour of the defendant.

13. ISSUE NO. 2 :-

The onus to prove the issue was placed upon the defendant. Since, the plaintiffs have failed to prove their ownership over the suit premises and have also failed to prove that the suit property is situated in Khasra No.48/7, there is no need to deal with this issue as there is no counter-claim filed by the defendant nor any relief is sought by it against



the plaintiffs in this case.

The issue no.2 is accordingly strike out.

14. It is the plaintiff himself, who is supposed to prove his case by standing on his own legs on the scale of preponderance of probabilities. It was for the plaintiff to prove that the suit property was situated in Khasra No.48/7, which he has failed to prove in this case.

Hence, on the basis of the pleadings and the evidence led by the parties and also in the light of finding on issues (Supra), the impugned judgment / decree is not tenable. Hence, the same is set aside. The appeal is allowed.


16. No order as to cost.

17. Decree-sheet be prepared accordingly.

18. A copy of the order along with T.C.R. be sent to Ld. Trial Court.

19. Appeal file be consigned to record room after due compliance

PRONOUNCED ON
19th of June 2020


(RAJINDER KUMAR)
SCJ/RC(WEST)/DELHI