

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment : 17th August, 2010.*

+ **R.S.A.No.192/2007**

BHARAT BHUSHAN GULATIAppellant
Through: Mr.B.S.Mann and Mr.Jai
Prakash, Advocates.

Versus

HARI SINGHRespondent
Through: Mr.Siddharth Luthra, Sr.Adv.
with Mr.Ashok Kaushik, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.(Oral)

1. This second appeal has impugned the judgment dated 29.5.2007 which had endorsed the finding of the trial judge dated 20.03.2003 dismissing the suit of the plaintiff.

2. Plaintiff/appellant had filed a suit for possession stating to be the owner of land measuring 200 sq. yds. bearing no.A3/29, Dal Mill Road, Uttam Nagar, New Delhi. He had purchased it from Hari Prakash on 28.11.1981. Defendant was permitted to use the property as a licensee which license has since been terminated but in spite of request to the defendant to evict the property; he has not vacated the property. The defendant had refuted the claim of the plaintiff. He had claimed ownership by way of adverse possession. The trial court had framed three issues. Issue no.1 was as to whether the plaintiff

is owner of suit property? While dealing with this issue,

the trial court had recorded that the plaintiff has filed copy of Khasra Girdawari for the year 1994-95 of the village Hastal as also a copy of Khatoni for the year 1978-79. It had further held that in the first document the Gram Sabha has been shown to be as a Bhumidar of land measuring 4.13 bighas comprised in Khasra no.76, Katoni No.694, Killa no.9/2/2 and the latter document shows that Khasra no.72/2/2/2, 76/9/2/2 vests in the Gram Sabha by virtue of Section 81 of Delhi Rent Control Act. In these circumstances, it cannot be said that the plaintiff was the owner of the suit property as the same had vested in the Gram Sabha. The registered sale deed relied upon by the plaintiff dated 28.11.1981 does not pass any title as the vendor had no right to sell this suit property. It was further held that defendant is not a licensee in the suit property. Suit of the plaintiff was dismissed.

3. The first appellate court endorsed the finding of the trial judge. The relevant extract of which reads as follows:

“8. The provisions quoted by Ld.counsel for appellant does not create right or title in the suit property as owner thereof on the basis of documents executed by Hari Prakash on 28.11.81 in favour of the plaintiff as Hari Prakash too was having no title to the suit property even from so called original owners/bhoomidars of the suit land namely Daya Nand, Khshi Ram and Ishwar Singh and their successor in interest who executed documents of the property in favour of Hari Prakash as was discussed in detail by the Ld.Civil Judge. It is well settled proposition of law that a person having no title cannot pass on any title in respect of the property. Since the land in suit belongs to gram sabha as per khasra girdawari and khatoni of the village and was also vested in the gram sabha under Section 81 of the Delhi Land Reforms Act by order of the SDM Punjabi Bagh in case no.93/84, no other person other than gram sabha could create a title of

ownership in favour of the plaintiff as on 28.11.81 the date when one Hari Prakash executed documents in favour of the plaintiff on which basis ownership was claimed by the plaintiff including one of the substituted plaintiff namely Bharat Bhushan who was brought on record vide order dt.14-2-2000 after death of the plaintiff on 15.11.99. As such, the sale deed in favour of Bharat Bhushan also does not create right or title as owner of the suit property in favour of Bharat Bhushan which has been proved on record by the appellant as Ex.PW1/6 i.e. the sale deed dt.27.8.98 by the plaintiff in favour of his own son namely Bharat Bhushan. The same principle that person having no title cannot pass any title applies to this sale deed also against one of the plaintiff namely Bharat Bhushan.”

4. The learned counsel for the appellant has urged that the judgment and decree passed by the Courts below is liable to be set aside for the reason that the disputed land has been notified under Section 507 (a) of the the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as ‘the DMC Act’) as ‘urban land’ and as such it is taken out of the purview of the Delhi Reforms Act. For this proposition reliance has been placed upon a judgment of Division Bench of this court in W.P.(C) 4143/2003 Smt.Indu Khorana vs. Gram Sabha & Ors. wherein it has been held that once a rural area is urbanized by issuance of a notification under Section 507 (a) of DMC Act, provisions of Delhi Reforms Act will cease to apply. There is no dispute to this proposition. However, it is to be noted that the notification under Section 507 A of DMC Act had not been brought on record by the plaintiff. This is an oral submission which is made at this stage. No court below had any such evidence to draw a finding that the disputed land had become urbanized under Section 507 (a) of the DMC Act and was

excluded from the provisions of the Delhi Reforms Act. This judgment is inapplicable.

5. Learned counsel for the appellant has also placed reliance upon 162 (2009) DLT 684 *Mahesh Chandra Agarwal vs. Rameshwar & Ors.* to support his submission that question of ownership cannot be decided only by looking at the revenue records and Khasra Girdawari and the Khatoni were not documents sufficient to hold that the plaintiff was not the owner of the suit property. Reliance by the learned counsel for the appellant on this judgment is totally misplaced. It was the plaintiff himself who had placed the Khasra Girdawari for the year 1994-95 and Khatoni for the year 1978-79 to substantiate his claim of title to the suit property. These were the documents of the plaintiff himself which had been relied upon by the courts below to draw a conclusion that they are contrary to his submission that he is owner of the suit land. This judgment also does not come to help of the appellant.

6. The substantial questions of law have been formulated on page 16 of the memo of appeal; they are nine in number. The same have been perused. They relate to findings of fact that the disputed land has vested in the Gaon Sabha. They cannot by any stretch of imagination be termed as substantial questions of law. Arguments addressed have already been aforementioned.

7. Learned counsel for the respondent, on the other hand, has submitted that no question of law has arisen before this court. There is force in the submission of the learned counsel for the respondent. Arguments addressed before this court have in fact raised no substantial question of law.

8. Both the fact finding courts below had on a detailed analysis of the evidence adduced before them, both oral and documentary, drawn the fact finding conclusion that the plaintiff is not owner of the suit property. The plaintiff not being the owner was not entitled to the relief sought for by him. This court is not a third fact finding court. No substantial question of law having arisen, appeal is dismissed in limine.

INDERMEET KAUR, J.

AUGUST 17, 2010

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