

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

% *Date of Judgment : 2nd of August, 2010*

+ **RSA No.59/2009 & CM APPL. No.6634/2009**

RAMESH BEHL & ORS.Appellants
Through: Mr.Ravinder Sethi, Sr. Advocate with
Mr. L.B. Rai, Adv.

Versus

RAMJEE DASSRespondent
Through: Mr.P.C.Kaushik, Advocate.

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. Counsel for the appellant has urged that the judgments of the two fact finding Courts below is based on no evidence; the plaintiff must discharge the onus of proving his case which he has failed to discharge; in such an eventuality the Trial Judge having decreed the suit of the plaintiff which was confirmed by the Appellate Court is clearly a perversity raising a substantial question of law. Further the power of attorney holder PW-1 had no special authority authorizing him to depose on behalf of his father, the plaintiff, has not come into witness box and this was without any special reason; in the absence of which the suit of the plaintiff having been decreed again raises a second substantial question of law.

2. Briefly stated the facts of the case are as follows:-

(i) Plaintiff Ramji Dass had filed a suit for possession, cancellation and permanent injunction. He was stated to be a lawful allottee of plots no.1203 & 1204, Gharoli Dairy Farm Colony, Delhi measuring 50 sq. yards each for the purpose of running a dairy at a licence fee of Rs.5/- per month. These plots had been allotted by the MCD in 1976.

(ii) On 12.1.2002 the defendants committed a criminal trespass and unauthorisedly and illegally took possession of the aforementioned property. A complaint was filed with the concerned police station. Forged documents including a forged General Power of Attorney, Affidavit, Will and Receipt dated 17.2.2000 and 26.5.1993 had been got prepared by the defendants. False litigation was also preferred by them against the plaintiff. Decree for possession and cancellation of the aforementioned forged documents has been prayed for.

(iii) Written statement was filed by the defendants. Defence of the defendants was that the suit property had been allotted by the MCD in favour of Suresh Kumar Behl, defendant no.3; plaintiff had in fact been allotted plots no. 1102-1103 and 1104.

(iv) Five issues were framed by the Trial Court. PW-1, the son and attorney of the plaintiff deposed in the said capacity. He had proved the Special Power of Attorney Ex.PW-1/2 executed by his father in his favour dated 20.2.2002. Two other witnesses were examined on his behalf of whom PW-3 Prem Singh was again summoned as

DW-4 by the defendant. Apart from DW-4 three witnesses have been examined by the defendant.

(v) The suit of the plaintiff was decreed on 22.3.2005 in view of the oral testimony of the aforementioned witnesses as also documentary evidence Ex.PW-1/4, Ex.PW-5 & Ex.PW-1/6 proved through PW-1 and PW-3 on which reliance has been placed upon by the Trial Judge.

(vi) The findings of the Trial Judge were endorsed by the first Appellate Court vide its judgment and decree dated 17.4.2009.

3. Counsel for the appellant in order to substantiate his first submission has placed reliance upon a judgment of the Supreme Court reported in JT 2004(6) SC 556 Sayed Muhammed Mashur Kunhi Koya Thangal Vs. Badagara Jumayath Palli Dharas Committee & Ors., (2007) 6 SCC 737 Ramchandra Sakharan Mahajan Vs. Damodar Trimbak Tanksale submission being that it is for the plaintiff to prove his own case and the weakness in the case of the defence does not entitle the plaintiff to any benefit. It is submitted that in the judgment reported in 162(2009) DLT 684 Mahesh Chandra Agarwal Vs. Rameshwar & Ors. it has been held that revenue entries are not by themselves sufficient to establish title; in the instant case plaintiff had no document of title; both the Courts below had committed a gross illegality in decreeing the suit of the plaintiff on this "no evidence".

4. Reliance has been placed upon the judgment reported in AIR 2005 SC 439 Janki Vashdeo Bhojwani & Anr. Vs. Indusind Bank Ltd. & Ors. to support his second submission that the power of attorney holder cannot depose for the principal in respect of a

matter of which only the principal can have a personal knowledge and in respect of which the principal is to be cross-examined. It is submitted that in this case as per the averments in the plaint, the plaintiff had been allotted these plots of land in the year 1976; suit has been filed by the plaintiff in the year 2002 i.e. after a lapse of 26 years. The original allotment was admittedly in the name of the father of PW-1 i.e. the plaintiff who has not come into witness box at all thereby denying a chance of a cross-examination to the defendants and whose testimony alone could have emanated the truth.

5. Arguments have been countered by the learned counsel for the respondents. It is submitted that the submissions of the appellant are fact based and do not raise any substantial question of law.

6. Record has been perused. Ex.PW-1/4 dated 27.2.2002 is the receipt of the licence fee received by the MCD from the plaintiff in the sum of Rs.7920/- for plot nos.1203 and 1204, Gharoli Dairy From Colony, Delhi. Ex.PW-1/5 is the letter dated 16.4.1993 issued by the Zonal Assistant Commissioner Shahdara to the plaintiff asking him to shift his dairy to plots no.1201 to 1204 in the Dairy Colony of Gharoli which had been allotted to him in 1976-77. Ex.PW-1/6 is the letter dated 20.2.2002 of the plaintiff sent to the concerned authority seeking permission to deposit taxes for the aforementioned suit property i.e. the plot nos.1201 to 1204 in Gharoli Dairy Farm. Apart from these documents the Trial Court had also considered 'mark C' which was a document issued by the Municipal Corporation of Delhi, Shahdara Zone giving particulars of the dairy owners in the said Zone. Mark C

(although not marked as an exhibit) was proved on record through an official of the MCD namely PW-3 who had evidenced that plots no.1201 to 1204 had been allotted in favour of the plaintiff Ramji Dass and his name clearly finds mention therein. Trial Court had also appreciated the testimony of PW-3. PW-3 was Prem Singh, LDC from MCD department who had deposed that as per the record of the department plot nos. 1201 to 1204 had been allotted in the name of Ramji Dass; he had further corroborated the version of PW-1 (the son of the plaintiff) that Ex.PW-1/4 and Ex.PW-1/5 had been issued by their department; further document mark C was an attested document of their department dated 31.3.1989 evidencing that plot nos.1201 to 1204 is in the name of the plaintiff. PW-3 had also confirmed that document Ex.PW-1/6 was filed by the plaintiff seeking permission to deposit tax which permission had been granted to him on 27.2.2002.

7. It is relevant to state that this same witness had come into witness box again as DW-4. He had produced the dispatch register which had been exhibited as Ex.DW-4/1. The defence of the defendant is that plot nos.1201 to 1204 although initially allotted to the plaintiff had subsequently been cancelled. Defendants did not make any effort for summoning the plot cancellation register from the department. This has been clearly deposed by DW-4 who had stated that he had not brought the file in respect of cancellation of plots and had brought only the dispatch register; he was intentionally not requested to bring that record; further as per the record of the Department no notice of cancellation of plots no.1203 and 1204 had been issued. DW-4 in fact again reaffirmed the stand of the plaintiff that Ex.DW-4/2 was

the allotment register showing the allotment of plot nos.1201 to 1204 in favour of Ramji Dass.

8. In this view of the matter, the contention of learned counsel for the appellant that this was the case based on no evidence is clearly not forthcoming and does not in any manner advance this submission. There was clear documentary evidence showing the allotment of the disputed plots in favour of the plaintiff which had legally entitled him to the decree of possession. These were findings of fact which even otherwise the second Appellate Court cannot re-appreciate. The second Appellate Court cannot take a different view on facts even if it feels that the finding of facts have been mis-construed or mis-read; appreciation of fact finding evidence will not raise a substantial question of law. In this view of the matter, the judgments relied upon by learned counsel for the appellant in this context do not come to his aid.

9. The alternate submission of the learned counsel for the appellant that PW-1 could not have deposed on behalf of his father and reliance upon judgment of Janki Vashdeo Bhojwani (supra) is again misplaced. The testimony of PW-1 has to be appreciated in its entirety, as also Ex. PW-1/1 which was the Special Power of Attorney executed by the father of PW-1 in his favour. It had specially authorized him:

“1. To appoint an advocate/counsel/pleader in respect of the two plots, on my behalf.

2. To appear before any court (criminal/civil) or any other authority i.e. M.C.D./D.D.A/D.V.B. etc. on my behalf, in respect of my above said two plots No.A-1203 and A-1204.

3.To sign on Vakalatnama or application or affidavit etc. in respect of my above said plots, on my behalf.

4.To move an application/applications or affidavit or suit/petition, in respect of my above said two plots, in any court of law, on my behalf.

5.

6.To do any other act/acts or deed/deeds, except Sale, in regard to my above said two plots on my behalf and all the act/acts done by him(my Special Attorney) shall be deemed as the same would have been done by me personally.”

10. PW-1 in his affidavit by way of evidence has stated that he i.e Bishamber Kumar, is the son and attorney of his father Ramji Dass and in terms of this Special Power of Attorney Ex.PW-1/1 is authorized to depose on his behalf. There is no suggestion given to this witness that he does not have personal knowledge of the case and is not a fit person to depose on behalf of his father. This Court is not a third fact finding court. The arguments addressed before this Court all are matters of fact which have been gone into by both the two Courts below. The rigors imposed under Section 100 of the CPC have to be adhered to and concurrent findings of fact cannot be interfered with by the second Appellate Court. This has time and again been reiterated by the Apex Court.

11. Learned counsel for the appellant has not been able to point out any perversity in the findings of the two Courts below which may enable this Court to upset the said findings.

12. No question of law much less any substantial question of law has arisen in this appeal. The appeal as also the pending application is dismissed in limine.

INDERMEET KAUR, J.

AUGUST 2, 2010
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