

IN THE COURT OF SHRI BHARAT AGGARWAL, LD. CIVIL JUDGE – 02**WEST DISTRICT, TIS HAZARI COURTS, DELHI****SUIT No.8238/2016**

Late Sh. D.N Chauhan, substituted by:

1. Smt. Laxmi W/o Late Sh. D.N. Chauhan (Widow)
2. Shri Raju Chauhan S/o Sh. Late D.N. Chauhan (Son)
Both R/o House No.157, Village Dhakka, Delhi-9.
3. Smt. Varsha W/o Shri Satish D/o Late Sh. D.N. Chauhan,
R/o Village Jakholi, District Sonapat, Haryana (Daughter)
4. Smt. Ritu W/o Sh. Gajender R/o Sector-44,
Village Challer, District Gautam Budh Nagar, U.P. (Daughter).
5. Smt. Preeti, W/o Sh. Aman, D/o Late Sh. D.N. Chauhan
R/o Sector-44, Village Challer,
Distt. Gautam Budh Nagar, U.P. (Daughter)

.....Plaintiffs

Versus

1. Sunil Kumar,
R/o House No.86, Village Dhakka, Kingsway Camp, Delhi.
2. Prem Singh S/o Shri Hukan Singh,
R/o 157, Village Dhakka, Kingsway Camp, Delhi-110009.
3. Station House Officer,
P.S. Kingsway Camp, Delhi-110009.
4. Delhi Development Authority,
Through its Vice Chairman, Vikas Sadan,
INA, New Delhi.

.....Defendants

Suit filed on: 01/08/1989

Judgment reserved on: 29/07/2020

Date of decision: 29/07/2020

SUIT FOR PERMANENT INJUNCTION

JUDGMENT

By this judgment, I shall adjudicate a suit for permanent injunction filed by the plaintiffs against the defendants. Before adjudicating upon the issues framed in the present suit, it is necessary to state the pleadings in the present suit concisely.

Pleadings of the plaintiff: -

1. The present suit has been filed by the plaintiff against the defendants seeking relief of permanent injunction that the defendants be restrained from taking forcible possession from the plaintiff of the disputed plot situated at khasra No.816/98, village Dhansa, Kingsway Camp, Delhi (hereinafter referred to as the “**suit land**”) and from causing any disturbance or interference in the plaintiff’s peaceful possession of the suit land.

It is the case of the plaintiff that the plaintiff is the lawful occupant in respect of the suit land admeasuring 3 bigha 5 biswa for the last about 25 years and his name is duly recorded in the girdawari with the revenue records. It is stated that he has been paying the land and water charges to the defendant No.4/DDA in respect of the suit land. It is stated that at the suit land, the plaintiff is running a milk dairy and has number of buffaloes from which he has been earning his livelihood. It is stated that the suit land is fortified with a boundary wall and iron gate and also consists of chowkidary huts etc.

It is alleged that the defendant No.2 and cousin of the plaintiff and defendant No. 1 is the cousin of his nephew and that the defendant No.1 has an illegal intention to grab the plaintiff's suit land.

It is stated that out of jealousy and revenge, the defendant No.1 made false complaints to various government authorities including the defendant No.3/SHO PS Kingsway Camp and defendant No.4/DDA and has been harassing the plaintiff to grab the suit land. It is alleged that defendant No.1 and 2 alongwith the several persons having lathies in their hands came to the suit land and tried to take forcible possession from him, but they could not succeed due to the resistance of the plaintiff. It is further alleged that again attempts were made by defendant No.1 and 2 and the plaintiff alongwith several persons resisted the illegal attempt of the defendants and that the acts of the defendants are illegal, arbitrary and against the rules of natural justice. It is further stated that earlier defendant no.2 who was proceeded ex-parte vide order dated 14.02.1990 tried to forcibly dispossess the plaintiff and the plaintiff filed a suit for permanent injunction against him which was dismissed. It is further alleged that the officials of defendant No.3 and 4 are in collusion of defendant No.2 and bereft of any remedy, the plaintiff is compelled to file the present suit seeking permanent injunction against the defendant.

Pleadings of the defendants:-

2. Defendant Nos.1 to 3 were proceeded ex-parte and no written statement has been filed on record by the defendant Nos.1 to 3.

Written statement was filed on behalf of the defendant No.4/DDA wherein *inter alia* it was stated that the plaintiff has no *locus standi* to file the present suit. That the suit is barred by the principle of *res judicata* and that the suit is not maintainable for want of service u/s 53(B) of the Delhi Development Act, 1957. It was stated by defendant No.4/DDA that the plaintiff is an illegal and unauthorized encroacher on the land in dispute which falls in Khasra No.816/98 and the same stood acquired vide award No.1557 dated 30.03.1963 and the physical possession of the same was taken

over on 14.05.1963 and was placed at the disposal of the defendant/DDA u/s 22 of the DD Act vide notification dated 20.03.1974.

It is further stated that the land was vacant at the time of transfer to the defendant/DDA. It is further stated that in 1980 the plaintiff for the first time cultivated the land unauthorisedly and the defendant/DDA imposed a penalty which was not deposited by the plaintiff. It is stated that the collector then issued a recovery against the plaintiff which were to be recovered as arrears of land revenue. It is further submitted that by having buffalos/milk dairy or tube well, etc. at the suit land would not confer any right to claim injunction upon the plaintiff. It is thereafter submitted that the land in dispute is meant for development or rehabilitation scheme of Kingsway Camp and the DDA has the right to remove the plaintiff from the same in order to clear the encroachment. In these circumstances, it was submitted by the defendant No.4/DDA that the suit filed by the plaintiff is baseless and meritless.

3. Replication was filed by the plaintiff to the written statement of the defendant No.4 wherein *inter alia* it was stated that plaintiff is in lawful use and possession of the land in dispute for last more than 35 years and his name is also recorded on the revenue record i.e. khasra girdawri.

Issues:-

4. From the pleadings of the parties, following issues were framed in the present suit vide order 05.03.2003.
- (a) Whether the suit is barred by resjudicata? OPD.
 - (b) Whether the suit of the plaintiff is not maintainable for want of service of notice u/s 53(B) of the Delhi Development Act 1957? OPD.
 - (c) Whether the suit of the plaintiff is not maintainable for declaration under the garb of injunction? OPD.

- (d) Whether the suit property has already been acquired vide award No. 1557 dated 30.03.1963, if so, at what effect? OPP.
- (e) Whether the plaintiff is entitled to the equitable relief of injunction? OPP.
- (f) Relief.

5. **Evidence :-**

In order to prove his case, plaintiff got examined himself as PW-1 and led his evidence on 20.03.2006 by way of affidavit which is Ex. PW-1/A wherein he reiterated the averments made in the plaint. Certain documents were also relied upon by the plaintiff, however, thereafter PW-1/plaintiff could not be cross examined and due to his death, the application of the legal representative of the plaintiff filed u/o XXII R.3 CPC was allowed vide order dated 15.04.2010. Therefore, as plaintiff/PW-1 was not cross examined, his evidence shall not be read for the purpose of adjudication of the present case.

Thereafter, evidence affidavit of Shri Raju Chouhan/PW-1 stated to be son of deceased plaintiff was filed and was tendered in evidence on 20.07.2013 as Ex. PW-1/A. Several opportunities were given to the plaintiff to lead evidence and for cross-examination of the witness, however, as the plaintiff failed to complete the evidence despite giving several opportunities, the plaintiff's evidence stood closed by the courts' order dated 24.08.2015.

In these circumstances, it is apparent from the record that not even one witness was examined and cross-examined on behalf of the plaintiff in the present case despite various opportunities beginning in 2003 and hence no document/evidence shall be read on behalf of the plaintiffs in the present case.

6. In order to prove its case the defendant No.4/DDA chose to lead evidence of one Sh. Kunwar Singh working in the capacity of Kanoongo, Land Management (NZ) in DDA. They filed his evidence affidavit which was taken on record as Ex.D4W1/A

whereby he reiterated the contentions of defendant No.4/DDA in their written statement. D4W1 Shri Kunwar Singh also relied upon the following documents :-

Identification mark	Description
Ex. D-4W-1/1 (OSR)	Attested copy of award No. 1557 dated 30.03.1963
Ex. D-4W-1/2 (OSR)	Attested copy of possession proceedings dated 14.05.1963
Ex. D4W-1/2A	Translated version of D4W1/2
Ex. D4W-1/3 (OSR)	Attested copy of notification dated 20.03.1974

D4W1 was also cross examined by the counsel for the plaintiff whereby he withstood his testimony and he *inter alia* stated that LAC has already handed over the possession of the suit property to the DDA vide Ex.D4W1/2 and that DDA has not initiated any legal proceedings against the plaintiff till date.

Thereafter, the defendant's evidence stood closed by the courts order dated 19.11.2016.

Decision with reasons :-

7. The arguments were heard on behalf of defendant no.4/DDA. Plaintiffs failed to advance arguments despite giving several opportunities. Record has been carefully perused. Now, I shall give my issue-wise findings which are as under :-

8. **Issue No.(a)**

(a) **Whether the suit is barred by resjudicata? OPD.**

The onus to prove this issue was upon the defendant.

It has been alleged by the defendant that the suit of the plaintiff is barred by the *res judicata*, however, the defendant has failed to give any details about the earlier suit instituted by the plaintiff against the defendant. The principle of *res judicata* is

contained in Section-11 of the Code of Civil Procedure, 1908 whereby *inter alia* it is stated the defendant has to establish that the issue which has already been decided and attained finality in an earlier case is also the issue in the present case. However, the defendant has failed to give any details of the earlier case between the parties and has also failed to advance any arguments on this aspect. Therefore, due to the lack of details about the previous case between the parties, the court is not in a position to ascertain whether or not the principle of *res judicata* would be applicable. In any event the onus to prove this issue was upon the defendant and the defendant has failed to lead any evidence or arguments on this issue.

Accordingly, issue no.(a) is decided against the defendant and in favour of the plaintiffs.

9. **Issue No.(b)**

(b) **Whether the suit of the plaintiff is not maintainable for want of service of notice u/s 53(B) of the Delhi Development Act 1957? OPD.**

The onus to prove this issue was upon the defendant.

No specific evidence was led by the defendant on this issue. It is relevant to refer the observations of the Hon'ble High Court of Delhi in the case of **“Col. A.B. Singh (through LRs) V/s Shri Chunni Lal Sawhney and Others (RFA No.96/2002, decided on 05/10/2011),”** which are reproduced hereinafter :-

“In any case, this issue is no longer *res integra* in as much as, it has been held by division bench judgment of this court in “Yashoda Kumari V/s MCD and Others (AIR 2004 Delhi 225),” that once there is a contest to the suit, the suit cannot be held to be barred for not giving of notice U/S 53B of DD Act in as much as the basic object of Section-53B, like Section-80 CPC is to prevent the matters from coming to court and once the matter reach the court and are contested the suit should not be dismissed on such technical grounds.”

The present case has been contested on merits and has gone through the rigors of trial and thus, as per the observation of Hon'ble High Court of Delhi as aforementioned, the non-service of notice U/S 53B of DD Act cannot be held to be fatal to justify the dismissal of the suit on the ground of maintainability. In the considered opinion of this court, the defendant no.4/DDA has contested the case at length and the dismissal of the suit which was filed in the year 1989 on this technical non-compliance of Section-53B of DD Act would not be justified.

Hence, issue no.(b) is decided against the defendant and in favour of the plaintiffs.

10. Issue No.(c)

(c) Whether the suit of the plaintiff is not maintainable for declaration under the garb of injunction? OPD.

The onus to prove this issue was upon the defendant.

The plaintiff in the present case has sought relief of mere injunction on the basis of possession. A case whereby the plaintiff seeks injunction against forcible dispossession on the basis of prior settled possession is maintainable against the defendant who has an intention to dispossess the plaintiff without resorting to the process of law. It is also noticeable that the defendant has not been able to clarify as to how a declaration is sought by the plaintiff as the suit only pertains to permanent injunction against forcible dispossession. In any event no evidence or arguments were advanced by the defendant on this particular issue, hence, issue no.(c) is decided against the defendant and in favour of the plaintiffs.

11. Issue Nos (d) and (e)

(d) Whether the suit property has already been acquired vide award No. 1557 dated 30.03.1963, if so, at what effect? OPP.

(e) Whether the plaintiff is entitled to the equitable relief of injunction? OPP.

The onus to prove these issues was upon the plaintiff.

The present suit for simplicitor injunction against forcible dispossession has been filed by the plaintiff against the defendants alleging that the defendants are having an intention to dispossess the plaintiff from the suit land illegally. The plaintiff has alleged that he is in settled possession of the suit land measuring 3 bigas 5 biswas for the last 25 years and is also running milk dairy from the said premises. The present suit has been filed as it is alleged that defendant Nos.1 and 2 being the relatives of the plaintiff have colluded with officials of defendant No.3/SHO PS Kingsway Camp and defendant No.4/DDA to dispossess the plaintiff from the suit land. It is very significant to note that in the present case despite repeated opportunities plaintiff has failed to lead any evidence on record. It was incumbent upon the plaintiff in the present case to establish his settled possession in the suit property by way of leading evidence and also to show the nature of his possession as to how he or his predecessors in interest came to be in the settled possession of the suit land. It is very evident from the record that the plaintiff has miserably failed to prove not just the fact of its settled possession, but also the nature of plaintiff's possession.

On the other hand, the defendant has alleged that the suit land is an acquired government land which was acquired vide award No.1557 dated 30.03.1963 and the physical possession was taken by DDA on 14.05.1963. It was further stated that the land has been placed at the disposal of DDA u/s 22 of the DD Act, 1957 vide notification dated 20.03.1974 and thereafter transferred to the Engineering Department for redevelopment of the Kingsway Camp Scheme. It was alleged that during inspection by DDA, it came to light that plaintiff has illegally encroached the suit land and created tin shed in order to illegally grab the government land. It was argued that as there is no evidence led by the plaintiff in the present case he does not deserve any relief from this court and even otherwise the document placed on record by the defendant shows that the suit land is acquired land as per Ex.D4W1/1. I find force in the arguments urged by the ld. counsel for the defendant No.4/DDA that the plaintiff is

not entitled to any relief as he has failed to prove any averments by way of evidence and all the averments made by the plaintiff have remained unsubstantiated on record. The court is not required to decide the issue of ownership in the present case as the suit pertains to simplicitor injunction against the forcible dispossession.

In these circumstances, as the plaintiff has miserably failed to show his settled possession over the suit land, this court is of the considered opinion that the plaintiff is not entitled to any relief from this court.

In view of the aforesaid observation, the issue Nos.(d) and (e) are hereby decided in favour of the defendant and against the plaintiffs.

12. **Issue No. (f)**

(f) Relief – In view of the findings given on issue No.(a) to (e), documents placed on record, pleadings of the parties and evidence led by the parties, the plaintiffs have failed to prove their case on the scale of preponderance of probabilities. Accordingly, the suit of the plaintiffs is hereby dismissed.

Decree sheet be prepared accordingly. File be consigned to the record room after completing the necessary formalities.

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(BHARAT AGGARWAL)

Civil Judge, Delhi (West)-02

Pronounced through video conferencing using Cisco Webex application on 29/07/2020.

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

SUIT NO.8238/2016

Sh. D.N. Chauhan (Since Deceased)

Through Legal Representatives

Plaintiffs

Versus

Sh. Sunil Kumar & Others

Defendants

THROUGH CISCO WEBEX VIDEO CONFERENCING

Date:29/07/2020 (2.50 P.M to 2.57 P.M)

Present:- Sh. Nitish Chauhan, Ld. Counsel for plaintiffs. (Mobile No.9811390399 & E-mail ID – niteshsinghchauhan@gmail.com)

Sh. K.D. Sharma, Ld. Counsel for defendant/DDA.
(Mobile No.9811137136 & E-mail ID – kdsharma_advocate@hotmail.com)

Vide separate judgment announced today through video conferencing through Cisco Webex Application, the suit of the plaintiffs has been dismissed.

Decree sheet be prepared accordingly. File be consigned to record room after completing the necessary formalities.

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

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C.J-02, West, THC, Delhi

dt.29/07/2020

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

SUIT NO. /2020

Sh. Mohit Khurana

Plaintiff

Versus

Sh. Yogesh Sharma

Defendant

THROUGH CISCO WEBEX VIDEO CONFERENCING

Date:29/07/2020 (3.28 P.M to 3.39 P.M)

Fresh suit received by way of assignment by Ld. SCJ, Delhi through email at the office email address i.e. readercj02west@gmail.com of this court. Let it be checked and registered.

Present:- Sh. Manoj Khatri, Ld. Counsel for the plaintiff. (Mobile No.9811383828, 9212010211 and E-mail ID – advocatem.khatri@gmail.com)

Ld. Counsel for plaintiff seeks some to file documents in respect of the suit property and to show the locus standi of the plaintiff/Mohit. Put up for consideration on 24/08/2020.

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

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C.J-02, West, THC, Delhi

dt.29/07/2020

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

SUIT NO.522/2020

Onkar Singh

Plaintiff

Versus

Surinder Singh and other

Defendants

THROUGH CISCO WEBEX VIDEO CONFERENCING

Date:29/07/2020 (2.00 P.M to 2.24 P.M)

Present:- Sh. Sumit Gaba, Ld. Counsel for plaintiff. (Mobile No.9310377771) (E-mail ID of Sh. Sumit Gaba: Sumitgabaadvocate@gmail.com)

An affidavit of service was filed on behalf of plaintiff electronically on 13/07/2020 stating that the defendants denied taking personal service and, therefore, copy of plaint and copy of order was served through speed post to the defendants on 10/07/2020.

Speed post tracking report has been filed alongwith the affidavit. As per the report received from the Nazarat Branch the defendants have not been using Whatsapp application on the mobile number provided by the plaintiff. It is also stated that defendants were informed telephonically about the pendency of the present case.

Counsel for plaintiff states that he has filed certain documents physically which have not been filed electronically. Plaintiff is directed to file all the documents pertaining to the suit property

electronically on the court's official E-mail address i.e. (readercj02west@gmail.com).

In terms of the last order dt.08/07/2020, the Assistant Ahlmal has given an explanation today that due to heavy work load she could not issue the summons in the present case. The court has noticed repeated defaults on her part, and she is directed and warned to be careful in future.

Put up for further proceedings on 19/08/2020.

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

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C.J-02, West, THC, Delhi

dt.29/07/2020

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

SUIT NO. /2020

Ms. Sarita Dhiman

Plaintiff

Versus

Sh. Joginder Kumar Gogna & Others

Defendants

THROUGH CISCO WEBEX VIDEO CONFERENCING

Date:29/07/2020 (3.05 P.M to 3.20 P.M)

Fresh suit received by way of assignment by Ld. SCJ , Delhi through email at the office email address i.e. readercj02west@gmail.com of this court. Let it be checked and registered.

Present:- Sh. Ravinder Kumar Tyagi, Ld. Counsel for the plaintiff.
(Mobile No.9811299960 and E-mail ID – advravinder87@gmail.com)

After making some points on consideration, Ld. Counsel for the plaintiff sought some time to seek further instructions from the plaintiff. At his request, the matter is adjourned for arguments on consideration.

Put up for argument on consideration on 13/08/2020.

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

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C.J-02, West, THC, Delhi

dt.29/07/2020