



* **HIGH COURT OF DELHI : NEW DELHI**

Judgment reserved on : October 29, 2009
Judgment delivered on : November 06, 2009

+ **F.A.O. (OS) No. 335/2009 &**
C.M. No. 11122/2009

% Sh. Rame & Others ... Appellants/Plaintiffs
 Through: Mr. R.M. Sinha with Ms. Namita Sinha,
 Advocates.

versus

Mr. Dhanpal & Others ... Respondents
 Through: Mr. Santosh Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. The litigating parties are the successors of Birju and Behu, who had in earlier round of litigation gone up to the Apex Court in a suit for permanent injunction in respect of the suit property. Now, Appellants in this round of litigation have sought possession of the suit property, i.e., 4 Bighas and 12 Biswas of agricultural land in Khasra No.42/8, in Village Karawal Nagar, Delhi. At the stage of evidence of Respondents/Defendants, Appellants/Plaintiffs had sought to place



on record certified copy of order of April 24, 1972, passed by the Assistant Collector (Revenue), holding that Birju, the predecessor-in-interest of the Plaintiffs, did not possess the suit land and that the possession of the suit land was kept as before in the Revenue Records. It is not in dispute that copy of the aforesaid order is already on record. Another document sought to be placed on record by the Appellants/Plaintiffs is certified copy of order of September 08, 2000, passed in R.S.A. No.181/1981, i.e., of the earlier litigation. Appellants/Plaintiffs had also sought permission to lead the evidence to prove these two documents, which has been declined by the learned Single Judge vide impugned order of July 06, 2009.

2. Notice of this appeal was confined to the question of taking on record the certified copy of the order of September 08, 2000 in R.S.A. No. 181/1981 and certified copy of order of April 24, 1972 of Assistant Collector (hereinafter referred to as order the Revenue Officer).

3. Though, there is no opposition from the side of the Respondents to take on record certified copy of the order of September 08, 2000 of this court in earlier round of litigation, i.e., in R.S.A. No. 181/1981, but the prayer of the Appellants to take on record a certified copy of the order of the Revenue Officer of April 24, 1972, is vehemently opposed by learned counsel for the Respondents.



4. After having heard learned counsel for the parties and upon perusal of the record of this case, we find that the opposition of the Respondents to taking on record the certified copy of order of April 24, 1972 of the Revenue Officer is primarily on the ground that the prayer for amendment of the plaint in respect of these document already stands declined in the present proceedings. This fact has also been noticed by the learned Single Judge in the impugned order and it is weighed heavily with him to refuse permission to the Appellants/Plaintiffs to place on record certified copy of order of April 24, 1972. During the course of the arguments, learned counsel for Respondents had referred to the various provisions of Code of Civil Procedure with specific reference to Order XVI and Order XVIII of Code of Civil Procedure and had pointed out that the certified copy of the order of the Revenue Officer sought to be placed on record is beyond pleadings and there is delay of fifteen months to place these documents on record.

5. Both the sides had made their respective submissions regarding the merits of this order of the Revenue Officer, which we are not inclined to go into, for the reason that the appropriate stage to judge the merits the documents produced is after the evidence is led by the parties in the suit proceedings. To do so now, would be premature and is uncalled for. Reliance placed by counsel for the Appellants upon a decision of the Apex Court in **“Ashok Sharma vs.**



Ram Adhar Sharma", 2009 IV AD (SC) 65, is misplaced as we find that this was a case where a witness was allowed to place on record documents during the course of his deposition.

6. What has weighed with the learned Single Judge in disallowing application of the Appellants to place on record certified copy of order of the Revenue Officer of April 24, 1972, is contained in para 10 of the impugned order and it reads as under:-

*"In the present application as per the prayer, it appears that the Plaintiff wishes to call another office bearer from the office of Revenue to prove certified copy of the said order dated 24th April, 1972 and to prove the other revenue record which is already placed on record. It is also prayed in the application that the entire revenue record of the suit property may be read for both the Plaintiff and Defendant. **It appears that the prayer made in this application is very wide as the Plaintiff not merely wants to produce the two certified copies but is also trying to summon the witness to prove the certified copy dated 24th April, 1972 and other revenue record as per prayer (ii) and (iii) of the application.** Since the evidence of the Plaintiff has already been closed and the said order has already been dealt with by this Court vide order dated 21st July, 2006 thereby rejecting the application of the Plaintiff, the application is highly misconceived and is not maintainable and the same is dismissed with costs of Rs.10,000/-"*

7. Where is the need for the Appellants to call a witness to prove the order of April 24, 1972 of the Revenue Officer, when it stands



filed an application for summoning witness from the Revenue Office to produce the record for the suit land in question. In this regard, what is noted in the impugned order is as under:-

“Further it appears from the record that alongwith the evidence, the Defendant has filed the application for summoning of the witness including the Patwari from the Village Karawal Nagar Tehsil, to bring the record pertaining to the relevant file.”

8. We are of the considered view that since the witness of the Respondents/Defendants from the Revenue Department is to appear with the record pertaining to the suit land, therefore, Appellants/Plaintiffs would be well within their rights to confront the said witness with the order of April 24, 1972 of the Revenue Officer. Order XIII Rule 3 of the Code of Civil Procedure permits the Plaintiffs/Appellants to do so. In this view of the matter, without commenting upon the evidentiary value of this document, i.e., order of April 24, 1972 of the Revenue Officer or about its admissibility, it would be indeed in the interest of justice to permit the Appellants/Plaintiffs to place on record certified copy of this order so that they are able to confront the witness of the Respondents/Defendants sought to be summoned from the Revenue Department. The question whether the order of April 24, 1972 of the Revenue Officer is beyond pleadings or not, is left open to be decided in the suit proceedings at an appropriate stage. Thus, we refrain from



order of April 24, 1972 of the Revenue Officer. It is hereby clarified that we should not be understood to have found these documents relevant or eligible for consideration, since they appear not to have been alluded to in the pleadings.

9. In view of the aforesaid, impugned order is set aside and application of the Appellants/Plaintiffs is allowed to the extent of permitting them to place on record certified copy of order of April 24, 1972 of the Revenue Officer and to place on record certified copy of order of September 08, 2000, passed in R.S.A. No.181/1981. This, of course, would be subject to costs of Rs.10,000/-.

10. This appeal is disposed of accordingly and the pending application is also disposed of as infructuous.

Sunil Gaur, J.

Vikramajit Sen, J.

November 06, 2009

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