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

% *Judgment reserved on : 15.3.2016*

Judgment delivered on : 17.3.2016

+ CM(M) 771/2015 & C.M. No.16237/2015

M/S TEXMACO LTD (NOW KNOWN AS M/S TEXMACO
INFRASTRUCTURE & HOLDING LTD) Petitioner

Through Mr. J.P. Sengh, Sr. Adv. with
Mr.Amit Bhasin, Adv. and Mr. Rajesh
Dubari, Legal Officer.

Versus

CH RAM SWAROOP WRESTLING CLUB & ORS..... Respondents

Through Mr. Rakesh Munjal, Sr. Adv. with
Mr.R.P. S. Sirohi, Adv for R-1.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Petitioner is aggrieved by the order dated 15.7.2015 vide which his application filed under Order XII Rule 6 of the Code of Civil Procedure (hereinafter referred to as the Code) in the pending suit had been dismissed.

2 Petitioner is defendant no. 2 in the Trial Court.

3 Record shows that the present suit has been filed by Ch.Ramswaroop Wrestling Club (hereafter referred to as the plaintiff) seeking relief of declaration, mandatory injunction and permanent injunctions. The version of the plaintiff was that “TIKONA AKHARA” (situated in F-Block, Kamla Nagar, Delhi measuring 325. 82 sq. yards) is a public land. It belongs to the MCD; this is open for use by all citizens. The plaintiff (since deceased) was in possession of this “TIKONA AKHARA” since the year 1945. He has formed the Ch. Ramswaroop Wrestling Club. After his death his son Raghuwar Singh @ Raghuwar Pehlwan has carried on this legacy. The plaintiff participated in various wrestling competitions and has brought various laurels to the country. Defendant nos.1 to 4 (M/s Birla Textiles Ltd.) are claiming false ownership over this land. The land belongs to defendant nos.5 and 6 (MCD). It is a public land. The suit was accordingly filed. The prayers made in the plaint are relevant and it read herein as under:

“i) to pass a decree of declaration in favour of the plaintiff and against the defendants no.1 to 4 thereby declaring that the suit property i.e. “Tikona Akhara” situated along side the Wall of Nagar Nigam Kanya Vidyalaya, Block “F”, Kamla Nagar, Delhi-110007, more clearly shown red colour in the annexed site plan is the property of the defendant No.5/MCD and is a public land meant for use as play ground i.e. Wrestling ground;

ii) to pass a decree of Mandatory injunction in favour of the plaintiff and against the defendant No.5 and 6 hereby directing them to allow the plaintiff club to continue to carry on Wrestling activities at suit property i.e. Tikona Akhara.

iii) to pass a decree of permanent injunction in favour of the plaintiff and against the defendants No.1 to 4 thereby restraining defendants No.1 to 4, their agents, officials, servants, etc., etc. from taking over the physical possession of the suit property i.e. Tikona Akhara, or convernting the use of the same for commercial activities;

iv) to award cost of the proceedings throughout in favour of the plaintiff and against the defendants.

v) any other order/s which this Hon'ble Court may deem fit and proper may also be passed in the interest of justice."

4 Written statement was filed by defendant no.2. It was denied that the defendant is falsely claiming to be the owner of the land in question. Submission was that pursuant to an exchange deed dated 13.9.1954 (duly registered) the said area of 146 sq. yards was given to M/s Birla Textiles Ltd. who had become the owner of the land in question. Pursuant to an order of amalgamation between defendant nos.1 and 2, defendant no.2 (M/s Texmaco Ltd.) had acquired all rights and titles of the land in question and had become the owner of the land in question. Having acquired the same from M/s Birla Textiles Ltd., defendant no.2 is now the owner of the land in question. In consideration of the exchange deed a sum of Rs.8411/- had

been given by the defendants to the MCD; the MCD having transferred all its rights in this land to defendant no.1 and now defendant no.2 has since acquired ownership and title in the suit land. It was denied that the land in question belongs to defendant no.5; it was offered as a play ground. In this written statement it was further stated that in the year 1984 certain proceedings under Section 145 of the Cr.P.C. were got initiated inter se the parties and late Raghuvar Singh and his sons unsuccessfully tried to grab this land. The SDM on 27.12.2001 appointed the SHO Police Station Roop Nagar as custodian of the land in question. The order of the SDM was challenged before the Court of Sessions Judge. On 08.9.2005 the Sessions Judge had granted possession of the land in question to the defendant no.2. The matter reached the High Court in Criminal Revision Petition No.4732/2005. The High Court on 04.01.2013 dismissed this petition thus endorsing the order of the Sessions Judge and holding that possession be retained by defendant no.2. The possession letter indicating that possession of the suit land is with defendant no.2 is dated 22.4.2013. The fact that the possession of the suit land is with defendant no.2 is also an admitted fact.

5 Seprate written statement was also filed by defendant nos.5 and 6 i.e. the Municipal Corporation of Delhi. Their stand was that in terms of the

exchange deed dated 13.9.1954 this suit land measuring 146 sq. yards was exchanged with defendant no.1 and the MCD had handed over the title and possession of the suit land to defendant no.1(now with defendant no.2). Further submission in the written statement of the MCD being that defendant nos.1 to 3 always being in possession of the suit land and their possession has been endorsed by the judgment of the High Court in Criminal Revision Petition No.4732/2005 in its judgment dated 04.01.2013. In para 10 of the written statement, the Department further states that the plaintiff has filed documents which are not registered. It is stated that the documents relied upon by the plaintiff do not relate to the suit property and the erstwhile MCD (now North Delhi Municipal Corporation) on a re-examination of the matter qua ownership of the suit property has found that the erstwhile Municipal Committee had in fact exchanged the suit land with defendant no.1 by virtue of an exchange deed dated 13.9.1954; plaintiff is not in possession of the suit premises; plaintiff is misreading the documents and trying to mislead the Court by relying upon only an extract of an Immovable Property Register. In paras 11 and 12 of the written statement, on the identity of the suit property it was stated that the plaintiff is taking undue advantage of the fact that a portion of the suit land without any proper dimensions or the area

having been mentioned and only by placing a copy of the extract of the Immovable Property Register has attempted to show that it is a municipal land.

6 In view of the aforementioned pleadings, an application under Order XII Rule 6 of the Code came to be filed by defendant nos.1 and 2. Their contention was that there were clearcut admissions made in the pleadings which entitles the suit to be disposed of straightway; the exchange deed dated 13.9.1954 being a registered document clearly show that the suit land had been exchanged between defendant no.1 and the MCD; the possession of the suit land has been endorsed by the orders passed by the SDM under Section 145 of the Cr.P.C. which has been affirmed by the High Court on 04.01.2013. The prayer made in the petition no longer survives. The judgment/decreed on the admissions of the parties should straightway follow.

7 Learned counsel for the petitioner has placed reliance upon 2015 II AD (Delhi) 159 Razia Begum (Smt) Vs. Delhi Development Authority & Ors., 211(2014) DLT 149 (Division Bench) Keshav Chander Thakur and Anr. Vs. Krishan Chandedr & Ors., 2011 (3) RCR (Civil) 932 Ramrameshwari Devi and Ors. Vs. Nirmala Devi and Ors. and 223 (2015) DLT 132 Seema Thakur Vs. Union of India & Ors.

8 Needless to state that these arguments have been refuted.

9 An application under Order XII Rule 6 of the Code which is a shortcut in the trial entitles either the plaintiff or the defendant to obtain a decree on admissions provided that the admissions are clearcut, unambiguous and transparent. If there is a cloud over any issue a decree under Order XII Rule 6 of the Code cannot be granted. This is the thumb rule for an application under Order XII Rule 6 of the Code to be decided.

10 Noting the pleadings of the parties, this Court is of the view that the impugned order does not suffer from any infirmity. The plaint discloses that the exchange deed dated 13.9.1954 purported to have entered into between the defendant no.1 and defendant no.5 does not identify the land correctly. The site plan annexed with the plaint has been perused. Admittedly no counter plan has been filed by the defendants. This site plan of the plaintiff reflects the wrestling ground in the triangular portion. The southern, eastern and western sides are bounded by roads. On the northern side there is an MC Girls School. The total area has been depicted as 2932.4 sq. feet. The submission of the learned counsel for plaintiff is that that identity of the suit land as given in the site plan does not conform with the land mentioned in the exchange deed dated 13.9.1954. A perusal of the exchange deed shows

that this is an exchange made between the Municipal Committee of Delhi and M/s Birla Cotton Spinning and Weaving Mills Ltd. Municipal Committee of Delhi has been described as the first part. His ownership has been depicted in the first schedule. A perusal of the first schedule shows that the land which belongs to the Municipal Committee of Delhi at point “K” (subject matter of exchange) is 146 sq. yards which on the northern side is bounded by M/s Birla Mills Ltd. and on the southern side there is a municipal road; on the eastern side also there is a municipal road; on the western side there is a land of M/s Birla Mills Ltd. Contention of the plaintiff being that the identity of the suit property is not clear and the land which is the subject matter of exchange deed (dated 13.9.1954) is in fact not the land for which the present suit has been filed is noted. Further submission that the proceedings under Section 145 of the Cr.P.C. are also indicative only of a possession and not of title i.e. the settled position at law; the possession qua the proceedings under Section 145 of the Cr.P.C. are also on a limited aspect and for a temporary purpose. This stand is also noted. The additional submission of the learned counsel for the plaintiff that the inter se admissions made by defendant nos.1 and 2 and defendant nos.5 and 6 are collusive and require trial is additionally noted.

11 This Court is thus of the view that first and foremost the identify of the suit property has to be decided and this can only be done after the parties are relegated to a trial and after giving them opportunity to lead evidence to establish whether the suit land for which the present suit has been filed is in fact the same land which forms a part of the exchange deed dated 13.9.1954.

12 The judgments relied upon by learned counsel for the petitioner have no bearing to the factul matrix of the instant case. Their ratios are wholly inapplicable. The first three judgments (supra) relate to the law of limitation which is not an objection taken in present case. The last judgment is also on the ground of delay in initiating proceedings. None of them are applicable to the present scenario.

13 The impugned order in this background dismissing the application under Order XII Rule 6 of the Code suffers from no infirmity. There are no clearcut admissions. Petition is without any merit. It is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

MARCH 17, 2016

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