

Smt. Parmod Lata Atri & Anr vs Smt. Kusum Lata Tyagi on 29 September, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ RFA 213/2020 & CM APPL. 15469/2020
SMT. PARMOD LATA ATRI & ANR. Appellants
Through: Mr. B.K. Bharti, Advocate.

versus

SMT. KUSUM LATA TYAGI Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 29.09.2020 The hearing was conducted through video conferencing. CM APPL. 15471/2020 (for summoning TCR)

1. This application seeks summoning of the Trial Court Records ('TCR'). The relief sought in the application is as under:

"I. Trial Court Record from the Court of SH. BALWANT RAI BANSAL (LD. ADJ-05) (SW) DWARKA COURTS in respect of CS NO. 1110/17 Titled as KUSUM LATA TYAGI VS PARMOD ATRI & ANR. Decided on 23-05- 2020.

II. Trial Court Record from the Court of SH. DHEERAJ MOR (LD. ACJ) (SW) DWARKA COURTS in respect of CS NO. 220/16 Titled as KUSUM LATA TYAGI VS PARMOD ATRI & ANR. Decided on 16-09-2017.

III. Trial Court Record from the Court of SH. CHANDER MOHAN (LD. CJ-04) (WEST) TIZ HAZARI COURTS in respect of CS NO. Misc. SCJ No. 29821/2016 Titled as PRAMOD VS UMESH TYAGI. Decided on 13-10-2016. IV. Trial Court Record from the Court of SH. AJAY KUMAR MALIK (LD. CJ/WEST-08) TIZ HAZARI COURTS in respect of CIVIL SUIT NO. 608/12 Titled as SMT. PRAMOD VS SH. UMESH TYAGI & ANR. Decided on 07-09-2013.

V. Trail Court Record from the Court of SH. SAMEER BAJPAI (LD. JSCC.Cum-ASCJ-Cum Guardian Judge) (WEST) TIZ HAZARI COURTS in respect of

RCA NO.

40/2013 Titled as SH. UMESH TYAGI VS SMT.

PARMOD. Decided on 30-06-2015."

2. The learned counsel for the appellants submits that the TCR would be necessary for adjudication of the case, especially the Site Plan filed therein, to clarify the position that the appellants are in possession of Plot Nos. 6 & 7A, area measuring 46 sq. yds. out of Khasra No. 18/21, B-Block, Vikas Nagar, situated at village Hastal, New Delhi- 59, would be necessary.

3. In view of the above, let the aforementioned records be requisitioned digitized and made available before the next date. After digitization the records shall be returned to the respective courts.

4. The application is allowed and disposed-off in terms of the above.

CM APPL. 15468/2020 (seeking extension of time to file court fees)

5. Exemption allowed, subject to the condition that the appellant will file the duly sworn/attested affidavit and the requisite Court fee within 72 hours from the date of resumption of the regular functioning of this Court.

6. The application stands disposed-off.

CM APPL. 15470/2020 (exemption)

7. Allowed, subject to all just exceptions.

8. The application stands disposed-off.

RFA 213/2020 & CM APPL. 15469/2020 (stay)

9. The appellants impugn the judgment of the learned Trial Court in CS. No. 1110/17 titled as Kusum Lata Tyagi vs. Parmod Atri & Anr., dated 23.05.2020, on the ground that it has erred in fact and in law, inasmuch as it has recorded that the earlier suit, decreed in favour of the present appellant no.1, apropos plot nos.6 and 7A, measuring 46 sq. yds out of Khasra No. 18/21, situated in Village Hastal Colony, Uttam Nagar, New Delhi - 110 059, was for possession of the said lands, whereas it was the appellant no.1's case that she was already in possession of the said lands.; the suit was only for permanent and mandatory injunction seeking to restrain the husband of the present respondent, from interfering in the peaceful possession of the aforesaid lands.

10. The learned counsel for the appellants refers to the judgment dated 07.09.2013 passed by the learned Trial Court in suit no. 608/12 (Annexure-D), which in the first sentence itself records as under:

"....

1. The suit of the plaintiff is that the plaintiff is owner and in possession of suit property bearing Plot No. 6 & 7A, area measuring 46 Sqr. Yds. out of Khasra No. 18/21, B-Block, Vikas Nagar situated at village Hastal, New Delhi-59 (hereinafter referred as „Suit Property). The suit property was purchased by the plaintiff from Pandit Ramchander on 26.10.2004 for consideration of Rs. 46000/- vide registered sale deed bearing registration No. 25043, additional book no. 1, Volume 12087 at page no. 155 to 161 registered in the office of Sub-Registrar - II.

...."

(emphasis supplied)

11.It was finally ordered as under:

"....

Issue no. 5:- "Relief"

9. In view of observations made while deciding issue nos. 1 to 4, the present suit is decreed in favour of the plaintiff. The defendants, their agents, legal heirs, representatives and assignees are hereby restrained from creating any hindrance, obstacle to the physical possession of the suit property of the plaintiff bearing Plot No. 6 and 7A, area measuring 46 Sqr. Yds. out of Khasra No. 18/21, B-Block, Vikas Nagar situated at village Hastal, New Delhi-59.

9.1 The relief of mandatory injunction claimed by the plaintiff is against the defendant no. 4 and 5 only. In view of the statements/undertakings dated 30.03.2011 given by the defendant nos. 4 and 5, the claimed relief in prayer clause C of the plaint is infructuous.

Cost of the suit be also awarded in favour of the plaintiff. Decree Sheet be prepared accordingly.

....."

12.Evidently the aforesaid judgement has recorded that appellant no.1 was in possession of the plots bearing nos.6 and 7A, admeasuring 46 sq. yds., i.e. two plots of identical sizes have been linked together. It is not, however, clear as to whether they were diagonally joined or they were joined side-by-side. Be that as it may, the position of appellant no.1 apropos the two plots which are claimed by her as plot nos.6 and 7A is not in dispute. The court had directed police assistance to ensure that the said appellant's possession was not disturbed.

13.The impugned order seeks to upset the established position by holding that appellant no.1 was not in possession of plot no.6,whereas, it is clearly held otherwise in the aforementioned judgment dated 07.09.202013, that the respondent-plaintiff was already. The issue determined in the

impugned order relates to whether the physical possession by the appellant, was actually of plot no.6 or 6A.

14.The appellant no.1 says her possession of plot nos. 6 and 7A has not been disturbed and she has been in a settled possession of the same for the past 16 years i.e. since 2004.

15.Issue notice to the respondent through Speed Post, approved courier, SMS, e-mail, WhatsApp and such other viable electronic modes, through counsel as well, returnable on 11.02.2021.

16.The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through e-mail.

NAJMI WAZIRI, J SEPTEMBER 29, 2020 AB