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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**PRINCIPAL BENCH NEW DELHI**

O.A. No. 815 /2022

In the matter of

Suresh Chand

Applicant

Versus

D.M. Kapashera & Ors

Respondents

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Date:07.05.2024**New Delhi****FILED BY:-**


RAHUL KHURANA & HASIL JAIN
Advocates

Chamber No. 295, Lawyer Chamber Block II
Delhi High Court, New Delhi

M. 9811894060, 7838707338

254**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****PRINCIPAL BENCH NEW DELHI**

O.A. No. 815 /2022

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**REPLY BY ORIGINAL APPLICANT TO THE APPLICATION U/O
1 RULE 10 OF THE CPC FOR IMPLEADMENT FILED BY
INTERVENORS.****Most Respectfully Showeth:**

1. That the present Application has been filed by the Intervenors to stall the process of demarcation and to create hindrance upon the restoration of the Pond at Khasra no. 111 village Kanganheri.
2. That the village Pond has been encroached for a very long time and same now requires restoration.
3. That the present Application has been filed maliciously and for defeating the purpose of demarcation as the Applicants in this application do not have any title documents with respect to the Khasra no. 274 and others.
4. It is submitted that the question/issue under consideration before the Hon'ble Tribunal is a question of fact which is to be decided on the basis of various demarcation reports and the revenue records like Masavi etc. And thus there is no role to be played by the proposed parties.

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5. That it is pertinent to apprise the Hon'ble Tribunal here that one Civil Suit for declaration was filed by the Intervenors before the Court of Ld Civil Judge Dwarka in the year 2013 which has been dismissed by the Court on 14.01.2019 for lack of title documents and lack of Jurisdiction. And which fact has been concealed by the Applicants in the present Application. The copy of the dismissal order is annexed as **ANNEXURE A/1**.

PRAYER

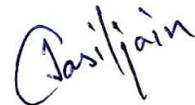
In light of the above submissions it is humbly prayed that present Application for impleadment be kindly dismissed.

07.05.2024



Original Applicant

Through



Counsel

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH NEW DELHI**

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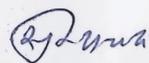
D.M. Kapashera & Ors

Respondents

AFFIDAVIT

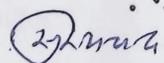
I, Suresh Chand S/o Shri Harnarayan Singh, Village Kanganheri Post Office Chhawla, Kapashera, New Delhi 110071 aged about 69 years do hereby solemnly affirm and declare as under :

1. That I am the Applicant in the Original Application and well being and acquainted with facts and circumstances of the case and thus competent to swear this affidavit.
2. That the accompanying Reply to the Application U/O 1 Rule 10 CPC has been drafted by my counsel under my instructions and contents thereof have been read over and explained to me in my vernacular which are true and correct to my knowledge, the contents thereof may kindly be read as part and parcel to this affidavit also and not repeated herein.
3. The contents as stated above are true and correct to my knowledge and belief.


DEPONENT

Verification

It is verified at 7.5 on 2024 that the contents of the present application are true and correct and nothing has been concealed therefrom.


DEPONENT



ATTESTED

NOTARY PUBLIC

Reg. No. 1 / 2024

7.5.2024

IN THE COURT OF MS NIYAY BINDU : SENIOR CIVIL
JUDGE-CUM- RENT CONTROLLER
SOUTH WEST, DWARKA COURTS, NEW DELHI



CS No. 26648/16

Hari Ram & Ors.
Versus
Govt. of NCT of Delhi & Ors.

14.01.2019

ORDER

1. Vide this order, I shall decide the application moved by defendant no. 5 w/O VII R 11 r/w section. 151 CPC. For deciding the same, the contents of the plaint are to be taken into account.

2. The present suit is filed by the plaintiff for declaration, mandatory and permanent injunction against the defendants, whereby, submitting that plaintiffs have ancestral lands (residential as well as agricultural) comprised of different khasra numbers in village Kanganheri, Najafgarh, New Delhi and they are enjoying uninterrupted possession of the same since long and before their birth, their predecessor were also enjoying the same. It is stated that plaintiffs are the owners of buildup houses bearing khasra no. 112 ad-measuring 1 bigha 8 biswa, khasra no. 274 ad-measuring 10 X 16

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attha, and khasra no. 245 ad-measuring 1 bigha 17 biswa much prior to the consolidation / settlement of 1971 in the area.

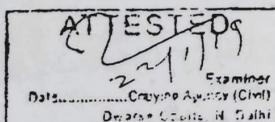
3. It is further stated that the house in khasra no. 112 was built up before the consolidation / settlement of 1971 and has already been declared as kayami whereas, through the demarcation of plots bearing khasra no. 245 and 274 belong to plaintiffs and according to demarcation report, there is no encroachment upon the same.

4. It is further stated that in khasra no. 112, demarcation was carried out by a private firm Intech Engineers on 03.09.2013 by TSM and against the settled base point, the procedure was adopted through the previous base point despite the protest of the villagers and thereafter, despite of several objections and complaints being filed before the concerned authorities, no action was taken. A number of irregularities are being mentioned by the plaintiff in the said demarcation report which are not required with respect to the present application, to be considered at this stage.

5. It is further alleged that with respect to demarcation of the plots in khasra no. 245 and 274, previously no encroachment was shown but in the fresh demarcation report, a contrary report is submitted, wherein, an encroachment is shown. It is stated that the written objections of the villagers including the plaintiffs are not being considered and defendants are adamant to mark the residential houses of the villagers including that of plaintiffs as encroachment to demolish

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the same on the basis of the above said faulty demarcation report.

6. On the basis of these submissions and allegations, plaintiff is seeking the said demarcation dated 03.09.2013 as incorrect and also to order fresh demarcation to be carried out alongwith the relief of permanent injunction for restraining the defendants from demolishing the portions of the houses bearing khasra no. 112, 274 and 245 of plaintiffs or causing interference in their peaceful enjoyment.

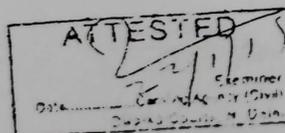
7. In the present application, it is submitted on behalf of gram sabha, the lately impleaded defendant that the demarcation of village Kanganheri was carried out by M/s Intech Engineer on 03.01.2013 whereby, it was discovered that the plaintiffs have sought to have encroached upon some portion of the land of khasra no. 111 that is a water body measuring 13 bigahs and 10 biswas situated in revenue estate of the said village. It is clarified by the said report that plaintiffs have encroached upon common utility land of government and want to create an illusion of the cause of action in their favour by way of the present suit.

8. It is stated that in the resent judgment of Jagpal Singh and Ors Vs. State of Punjab, the Hon'ble Appex Court has held that *"the common interest of the villagers can not be allowed to suffer merely because the unauthorized occupation has subsisted for many years."* It is further stated that in the landmark judgment namely 2001 VII A.D



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(Delhi)72 namely *Madho Prasad Vs. Ram Kishan and ors.*, it is laid down that "trespasser will not be entitled to an injunction more so against the true owner."



9. It is further alleged that the plaintiffs want the relief of declaration coupled with injunction indirectly for which the proper forum is that of a Deputy Commissioner / Revenue Assistant as enshrined in the revenue laws and hence, the present suit is barred as per section 9 of CPC r/w section 28 of Delhi Land Revenue Act, 1954 r/w Rule 403 of Delhi Land Revenue Rules, 1962 and hence, the suit is not maintainable qua khasra no. 111, which pertains to a water body and hence the present court lacks jurisdiction to entertain the same.

10. It is further alleged that the plaintiffs do not have any right, title or interest in the suit land and no title document is being filed to establish their rights with respect to the same and in the absence of any title documents, suit for declaration coupled with relief of injunction is not maintainable vide "*Anathula Sudhakar v. P. Buchi Reddy AIR 2008 SC 2033.*" it is further alleged that the suit is hit by section 185 of DLR Act, 1954 and hence is liable to be rejected under Order VII Rule 11 r/w section 9 of CPC.

11. It is further stated that by virtue of demarcation dated 03.09.2013, the plaintiffs have been shown to be encroachers upon the land belonging to gram sabah and if the same is allowed to be

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continued, it would cause great injustice and irreparable loss to the said defendant so the present suit is liable to be rejected.

12. In the reply to the present application, it is submitted by the plaintiff that the application is highly misconceived and not maintainable. It is stated that the suit involves a question of title of the plaintiffs over the suit properties as the plaintiffs are residing in abadi land and the suit is not filed with respect to agricultural land therefore, the suit is maintainable. Moreover, plaintiffs are owners in possession of the houses built up in the above mentioned three khasras whereas, khasra no. 112 has already been declared as Kayami" and in the previous demarcation report with respect to other khasra nos. ie. 245 and 274, there was no encroachment while in the fresh report, the plaintiffs are shown to be the encroachers over the said land.

13. Arguments are heard on the application and material placed on record perused for reference.

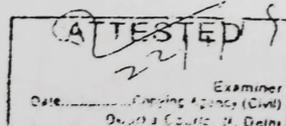
14. During the oral arguments, it is submitted on behalf of plaintiffs that the plaintiffs are having possession over the suit properties since their birth and before that their ancestors were enjoying the said possession and hence, no government authority / agency is having any right to demolish or remove the said construction.

15. On the other hand, it is argued on behalf of the defendants, whereby, submitting that the present suit is not

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maintainable as the plot in question was originally a part of Gram Sabha land while khasra no. 112 is a water body and no private person can claim any right to enjoy the possession of the same and even if anyone is having possession over the same, he is apparently an encroacher upon the same.



16. Applicant has also quoted specifically the celebrated and much quoted judgment of Hon'ble Supreme Court of India "*Anathula Sudhakar v. P. Buchi Reddy 2008 (4) SCC 594*".

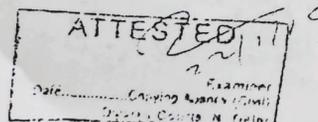
It is submitted in this regard that as per the observation of the Hon'ble Supreme Court in the given judgment, in the absence of title documents, the present suit for declaration alongwith relief of injunction is not maintainable.

17. It is further alleged that the property in khasra no. 112 is a water body and the plaintiffs being the encroachers upon the same, are not at all entitled for seeking any relief with respect to the said land. So far as the other two khasra nos. ie. 245 and 274 are concerned, it is stated that the same belongs to gram sabah and hence the plaintiffs are not having any right over the same, more specifically when by virtue of demarcation dated 03.09.2013, the plaintiffs are shown to be the encroachers. Moreover, even if plaintiffs were bearing any grievance against the said demarcation report, they could have challenged the same before the competent authority i.e. the Deputy Commissioner / Revenue Assistant and hence, the suit is barred under

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Section 28 of DLR Act r/w Rule 403 of Delhi Land Revenue Rules, 1962.



18. In order to establish the maintainability of the suit, the plaintiff has to establish his local standi to file the present suit as well as the cause of action in his favour. After bare perusal of the contents of the plaint, it is revealed that the plaintiff is taking a presumption that the defendants are admitting their possession without realizing the fact that the plaintiffs have already been shown to be encroachers over the suit properties and even if, the possession is admitted, the same is not going to serve any purpose in favour of the plaintiffs as the same is not a settled undisputed possession. This is also considerable that if any government body fails to take appropriate action in time against the encroacher, the encroacher can not claim that he is in settled possession of the said property. The applicant has correctly quoted the celebrated judgment of Hon'ble Supreme Court i.e. *Madhav Prasad Vs. Ram Kishan & Ors.* in this regard which gives weightage to the objections of the applicant.

19. The plaintiff has miserably failed to clarify as to when the title of the plaintiff over the suit property or the plot over which the suit property is constructed is already under dispute through the alleged demarcation, how the plaintiff can claim for declaration alongwith permanent injunction without filing proper title documents qua the suit properties on the judicial records to establish their claim over the same as the applicant has already referred to the observation

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ATTESTED
[Signature]
Examiner
Judicial Agency (Civil)
District Courts, N. Delhi

of Hon'ble Supreme Court in *Anathula Sudhakar v. P. Buchi Reddy*



20. The plaintiffs are highly dis-satisfied with the demarcation report submitted by Intech Engineers after conducting demarcation by TSM on 03.09.2013, but the plaintiffs have not availed the efficacious remedy of approaching Deputy Commissioner / Revenue Assistant who is the competent authority to adjudicate upon the disputes regarding demarcation etc. This aspect also remains unexplained by the plaintiffs.

21. In view of the above discussion, the application of defendant no. 5 / the applicant w/O VII R 11 CPC is allowed and resultant the suit stands dismissed.

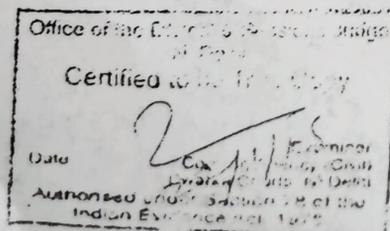
22. No order as to costs.

23. File be consigned to Record Room.

Announced in the open court,
today on 14th day of January 2019

(NIYAY BINDU)
SENIOR CIVIL JUDGE - GUM - RENT CONTROLLER
DWARKA COURTS : NEW DELHI

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VAKALATNAMA

BEFORE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI
O.A. No. 815 of 2022

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Suresh Chand

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Versus

D. M. Kapashera & Ors

Respondents

KNOW ALL to whom these present shall come, that I,, Suresh Chand S/o Shri Harnarayan Singh, Village Kanganheri Post Office Chhawla, Kapashera, New Delhi. Applicant do hereby appoint

RAHUL KHURANA Adv & HASIL JAIN Adv
(D/2183/2008) (D/2880/2013)

295, Lawyers Chamber Block-II, Delhi High Court,

A-174, 2nd Floor, Defence Colony, New Delhi-10024

9811894060, 7838707338 rkhuranalegal@gmail.com, advjain25@gmail.com

(herein after called the advocate/s) to be my/our Advocate in the above-noted case authorised him:-

To act appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each court by me/us.

To sign file verify and present pleadings, appeals, cross objections or petitions for executive orders, affidavits of other documents as may be deemed necessary or proper for the said case in all its stages.

To file and take back documents and documents of opposite party.

To withdraw or compromise the disputes that may arise touching or in any way connected with the said case. To take execution proceedings.

To appoint and instruct any other Advocate and authority hereby conferred upon the Advocate and authority hereby conferred upon the Advocate the Power of Attorney on our behalf.

And I/we the undersigned do hereby authorize the Advocate or his substitute in the matter as above for all purposes.

And I/we undertake that I/we or my/our duly authorized agent would appear on all hearings and will inform the Advocates for appearance when the case is called on.

And I/we undersigned do hereby agree not to hold the advocate responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain himself.

And I/we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/we hereby agree that once the fee is paid. I/we will not be entitled for the refund of the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be entitled for additional fee equivalent to half of the agreed fee for every addition three years, or part thereof.

IN WITNESS WHEREOF I/we do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this 5 day of March May 2024 Accepted subject to the terms of fees.



Advocate *(Signature)*

Client *(Signature)*