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IN THE HIGH COURT OF DELHI

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FAO No.188/2007

Sh.Raj Kishore Tyagi Appellant
through: Mr. Arun Kumar Arora and
Mr. N.R.Singh, Advs.

VERSUS

Radhey Shyam & Ors. Respondents
through: Mr. R.S.Tomar, Adv.
for respondent No.1.
Mr. Madhu Mukul Tripathi, Adv.
for respondents 2 and 3.
Mr. R.C.Gupta, Adv.
for respondent No.5.
Mr. Anil Kaushik, Adv.
for respondent No.6.
Mr. Prem Mishra for
Mr. V.K.Tandon, Adv. for GNCTD.

DATE OF DECISION:

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25.04.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

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

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Though service is not effected on all the respondents I can proceed ahead with the hearing and disposal of the appeal for the reason the battle has to be fought inter se the appellant

and respondent No.1 who was impleaded as defendant No.8 in the suit and on whose application under Order 7 Rule 11 CPC the plaint has been rejected.

2. Mr. Tomar learned counsel for respondent No.1 states that the appeal may be heard for disposal today itself.

3. The appellant had filed a suit for possession, declaration and permanent injunction in para 1 whereof it was pleaded as under:-

“That the plaintiff purchased a plot admeasuring 917 sq. yds. approx. vide property No/Khasra No. 410/1 & 411/1 situated in extended Lal Dora abadi of village Burari and presently known as Laxmi Vihar, Delhi-84 by virtue of Sale Deed dated 29/11/2005 vide Regn.No.8344, book No.1, volume No.1686 on pages 159 to 164. Photocopy of the said Sale Deed is attached herewith as Annexure 'A'.”

4. In the application under Order 7 Rule 11 CPC it was alleged that the jurisdiction of the Civil Court is barred under Section 185 of the Delhi Land Reforms Act.

5. The plea of respondent No.1 has been accepted. The learned Trial Judge has held that a suit for possession is maintainable before the revenue officers and hence the Civil Court would have no jurisdiction to entertain the suit.

6. Section 185 of the Delhi Land Reforms Act 1954 reads as under:-

“185. Cognizance of suits, etc., under this

Act.- (1) Except as provided by or under this Act no court other than a court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.

(2) Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid.

(3) An appeal shall lie from the final order passed by a court mentioned in column 3 to the court or authority mentioned in column 8 thereof.”

7. Since the learned Trial Judge has relied upon entry at item nos. 11 and 19 of Schedule 1 appended to the Delhi Land Reforms Act the two entries need be noted. Entry No.11 refers to a suit for partition of holding of a bhoomidar. Entry No.19 refers to a suit for ejectment of a person occupying land without title and damages filed by a bhoomidar or the gaon sabha.

8. As pleaded in the plaint the land is in the extended abadi. The land in the extended abadi may be land as defined under Section 3(13) of the Delhi Land Reforms Act 1955 but this land would not be a holding as defined under Section 3 (11a) of the Delhi Land Reforms Act. Holding is defined under:-

“(11a) “holding” means -

(a) in respect of -

(i) Bhumidar or Asami; or

(ii) tenant or sub-tenant under the Punjab Tenancy Act, 1887, or the Agra Tenancy Act, 1901; or

(iii) lessee under the Bhoodan Yagna Act, 1955,
a parcel or parcels of land held under one tenure, lease, engagement or grant; and

(b) in respect of proprietors, a parcel or parcels of land held as "*sir or khudkhasht*".

9. To put it pithily, land comprised in a holding would be such land which has to be used for an agricultural purpose as defined under the Delhi Land Reforms Act 1954 and in relation whereto the proprietary interest would be that as a bhoomidar, sir, khudkhasht, or an asami.

10. The appeal is accordingly allowed.

11. Impugned order dated 15.3.2007 is set aside.

12. Respondent No.1's application under Order 7 Rule 11 CPC is dismissed.

13. The suit is restored.

14. Needless to state all issues which arise between the parties in relation to the plaint would be decided by the Civil Court in accordance with law.

15. Parties shall appear before the learned District and Sessions Judge on 26.5.2008. Such of the defendants who are unrepresented before me today shall be served afresh by the

learned Trial Judge.

16. No costs.

17. Copy of this order be supplied dasti to learned counsel for the parties.

18. TCR be returned forthwith.

April 25, 2008
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PRADEEP NANDRAJOG, J.