

*

HIGH COURT OF DELHI AT NEW DELHI

+

FAO(OS) 406/2007

%

Date of Decision: 29th February, 2008

RAM NIWAS

.....APPELLANT

Through: Mr.Subhash Markandeya,
Sr.Advocate with Mr.Ritam
Aggarwal , Advocates.

Versus

PITAMBER SINGH & OTHERS

.....RESPONDENTS

Through:Mr.Manmohan Gupta,
Advocate for R-1 & 4 and LR's
of R-5&6
Mr.Ravi Gupta with Mr.Ankit Jain,
Advocates for R-2&3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

DR. MUKUNDKAM SHARMA, CJ

1. By this judgment we propose to dispose of this appeal filed by the appellant being aggrieved by the impugned judgment and order, dated 19th September, 2007, passed by the learned Single Judge in the suit filed by the appellant. In the said suit, the following issues were framed:

“1. Whether late Smt.Mishri Devi executed a valid and legal Will dated 18.11.1971 ? (OPD1)

2. Whether the order dated 23.7.1996 in Case No.704/1988 passed by Shri K.K.Dahiya, SDM/R.A is void, inoperative, ab initio and non est ? (OPP)

3. Whether the sale deeds executed by defendant No.1 in favour of defendants No.2 to 6 on 25.7.1996 are null and void and illegal ? (OPP)

4. Whether the mutations made by the Revenue Authority in favour of defendant No.2, defendant No.4(i) and (ii), defendant No.5 and defendant No.6 are liable to be declared illegal and null and void ? (OPP)

5. Whether this Court has the jurisdiction to determine the controversy raised in issues No.2 to 4 ? (OPP)

6. Relief

2. In the suit, the defendants took up the plea that except for issue No.1, the rest of the issues namely, issue Nos.2, 3 & 4, cannot be tried by a Civil Court. Issue No.5 was framed in the light of the said objection taken up by the defendants. Issue No.5 came to be decided in the impugned judgment and order in favour of the defendants. The findings recorded therein are under challenge in

this appeal on which we have heard the learned counsel appearing for the parties.

3. During the course of arguments, counsel for the appellant had to concede that so far as issue Nos. 2&4 are concerned, they are probably issues which cannot be decided by a Civil Court and may have to be referred to a Revenue Court for decision, as the said issues relate to title. In this connection, reference was made to the provisions of Section 186 of the Delhi Land Reforms Act, 1954. In sub-section (1) of Section 186 it is provided that if there is any dispute with regard to title of any party to the land which is the subject matter of revenue proceedings, in that event the Court may frame an issue on the said question of title and submit the record for decision of the civil court. The issues, namely, issue Nos.2&4, therefore, are required to be considered by the Revenue Court and if the Revenue Court is of the opinion that the said issues relate to the question of title then the same are required to be referred to the competent Civil Court for its decision as laid down under Section 186(1) of the Delhi Land Reforms Act. To the aforesaid extent there is also admission on the part of the appellant which is disclosed from the impugned order, where the learned Single Judge referred to the said admission thus:

“Learned senior counsel appearing for the plaintiff submits that the Order dated 12.03.2007 needs to be modified to the extent that it is only issues no.2 & 4 which cannot be tried by the Civil Court (Collateral proceedings being pending before the Revenue Court) and not issue no.3.”

4. The aforesaid admission and concession made before the Learned Single Judge on behalf of the appellant clinches the issue that the aforesaid issues namely, issue Nos. 2 & 4 cannot be decided by the Civil Court and are required to be considered by the Revenue Court in an appropriate proceeding. We are informed that the said proceeding is pending as of date and, therefore, it would be proper for the appellant to take recourse to the provisions of Section 186(1) of the Act and in case the appellant is able to satisfy the Revenue Court that the provisions of Section 186(1) are applicable, in that event, the appropriate Revenue Court would pass an order in accordance with law.

5. We are, therefore, now left with question as to whether or not issue No.3 is also required to be decided by the competent Revenue Court as contended by the respondent or whether the Civil Court may be required to decide the same only when there is a reference to that effect by the competent Revenue Court.

6. Issue No.3 is extracted hereinbefore and pertains to

illegality and invalidity of the sale deed which is executed by defendant No.1 in favour of defendant Nos. 2 to 6. The aforesaid issue is also inextricably connected with issue Nos. 2&4 and, therefore, without deciding the aforesaid issues, issue No.3 cannot be decided by the Civil Court. In our considered opinion therefore since all the issues namely, issue Nos. 2, 3 & 4 are intrinsically connected with each other, all the aforesaid issues were rightly held to be triable by the Revenue Court.

7. In this connection we may refer to the decision of the Supreme Court in Hatti v. Sunder Singh reported in 1970 (2) SCC 841. In paragraph 7 of the said judgment, it was held as under:

“7. The High Court, in this connection, referred to Section 186 of the Act under which any question raised regarding the title of any party to the land which is the subject-matter of a suit or proceeding under the First Schedule has to be referred by the Revenue Court to the competent Civil Court for decision after framing an issue on that question. Inference was sought to be drawn from this provision that questions of title could be competently agitated by a suit in the Civil Court, as the jurisdiction of the Civil Court was not barred. It appears to us that there is no justification for drawing such an inference. On the contrary, Section 186 envisages that questions of title will arise before the Revenue Courts in suits or proceedings under the First Schedule and, only if such a question arises in a competent proceeding pending in a Revenue Court, an issue will be framed and referred to the Civil Court. Such a provision does not give jurisdiction to the Civil Court to entertain the suit itself on a

question of title. The jurisdiction of the Civil court is limited to deciding the issue of title referred to it by the Revenue Court. This clearly implies that, if a question of title is raised in an application for declaration of Bhumidari rights under Item 4 of Schedule-I of the Act, that question will then be referred by the Revenue Assistant to the Civil Court; but a party wanting to raise such a question of title in order to claim Bhumidari right cannot directly approach the Civil Court. The Act is a complete Code under which it is clear that any one, wanting a declaration of his right as Bhumidar, or aggrieved by a declaration issued without notice to him in favour of another, can approach the Revenue Assistant under Item 4 of the First Schedule and this he is allowed to do without any period of limitation, because he may not be aware of the fact that a declaration has been issued in respect of his holding in favour of another. A declaration by a Gaon Sabha of the right of any person can also be sought without any period of limitation. If there is dispute as to possession of agricultural land, the remedy has to be sought under Section 84, read with item 19 of the First Schedule. All the reliefs claimed by the respondent in the present suit were, thus, within the competent jurisdiction of the Revenue Assistant, and the Civil court had no jurisdiction to entertain the suit."

8. When the aforesaid observations of the Supreme Court are read in conjunction with the provisions of Section 186 of the Act, which was interpreted in the said decision, it is established that the Civil Court would have no jurisdiction to try and decide directly in respect of matters of title. In such cases, proceeding has to be initiated before the Revenue Court and in such a proceeding, if a question arises with regard to title, the said issue would be framed

and referred to the Civil Court.

9. In our considered opinion, the aforesaid situation would arise in the present case also. If in case the appellant is able to prove before the learned Revenue Court that the aforesaid three issues refer to matters of title directly, in that event the Revenue Court would have jurisdiction to frame issue with regard to title and refer the same to the decision of the Civil Court. The decision rendered by the Supreme Court in the case of Dulabhai & Others v. State of M.P. & Anr reported in (1968) 3 SCR 682 and relied upon by the appellant, in our considered opinion, is not applicable to the facts of the present case. Whether or not there would be devolution of Bhumidari interest on defendant No.1 would be a matter to be considered by the Revenue Court initially and therefore, the contention raised by the appellant is without merit. There is no merit in this appeal which is dismissed.

CHIEF JUSTICE

(REVA KHETRAPAL)
JUDGE

29th FEBRUARY, 2008
“V”