

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

+ **CS(OS) 427/2006**

%16.01.2009

Date of decision:16th January, 2009

SMT. PUSHPA SAROHA Plaintiff

Through: Mr. Ashim Vachher, Advocate

Versus

SHRI MOHINDER KUMAR & ORS Defendants

Through: Mr. Kuldeep Balhara & Mr. Charanjit,
Advocates for the defendants No. 1to3
Mr. Naresh Kumar Beniwal, Advocate
for the defendant No.4

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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 the judgment should be reported
in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. The defendants have challenged the very maintainability owing to the bar of Section 185 of Delhi Land Reforms Act, and which is for consideration.

2. The suit was originally filed by the plaintiff herein along with the defendant No.4 herein as plaintiff No.1 for the relief of partition of agricultural land ad-measuring 6.75 acres in Village Auchandi, Delhi and for permanent injunction restraining the defendants from dealing with the said land. In the plaint as original filed it was the case that Shri Nand Ram Verma being the father of the plaintiff and the defendants 1,2&4 (who was then the plaintiff No.1) and the grandfather of the defendant No.3 was the owner of the said land;

that after the demise of the said Shri Nand Ram Verma, in or about 1996 there was a settlement amongst the plaintiff, defendants No.1,2,4 and the father of the defendant No.3 as well as the widow of the said Shri Nand Ram Verma whereby all the family members agreed that the present plaintiff being the only daughter of Shri Nand Ram Verma shall be entitled to a equal share in the aforesaid land in terms of the last wishes of Shri Nand Ram Verma; that in accordance with the said family settlement the plaintiff, defendants No.1,2&4 and the father of the defendant No.3 became the owner of 1/5 equal share in the aforesaid land; that however it was discovered in 2006 that the land had been mutated in the names of the defendants only and the name of plaintiff was not mentioned in the revenue records in contravention of the family settlement. The suit was thus filed for partition and injunction aforesaid.

3. The defendant No.4 (who was then the plaintiff No.1) however appeared before this court on 3rd April, 2006 and stated that he would not like to pursue the case any further. The suit being for partition, he was transposed as the defendant No.4 as the plaintiff herein wanted to continue with the proceedings.

4. The defendants No.1,2,&3 filed a common written statement. The defendant No.4 also filed a written statement. It was inter-alia contended that the suit was barred by Section 185 of the Delhi Land Reforms Act, 1954.

5. On 14th February, 2007 the following preliminary issue was framed:-

“1. Whether the suit filed by the plaintiff is barred under Section 185 of Delhi Land Reforms Act, 1954? OPD”

6. On 16th May 2007 arguments were heard on the aforesaid preliminary issue. It is recorded in the order of that date that it was clear from Section 185 r/w Section 50 and Schedule 1 of the said Act that the suit for partition of agricultural land cannot be entertained by the Civil Court and the Revenue Assistant is the original court of jurisdiction in respect of such suits. It is further recorded that faced with this dilemma the counsel for the plaintiff sought permission to amend the plaint which permission was granted.

7. I.A. No.12756/2007 was thereafter filed by the plaintiff for amendment of the plaint. The plaintiff by the said application sought to delete the relief of partition from the plaint and sought to confine the relief claimed in the plaint to that of declaration and injunction. The defendants filed their reply to the said application in which they inter alia contended that the suit even after amendment would be barred by the aforesaid provisions of law.

8. On 1st October, 2008 the counsel for the defendants reiterated the aforesaid argument. However, since the arguments on maintainability could not be heard without first allowing the amendment, the application for amendment was allowed and arguments were also heard on the maintainability of the suit as per the amended plaint.

9. The counsel for the plaintiff does not dispute that the provisions of the Delhi Land Reforms Act apply to the land. It is also not disputed that under Section 50 thereof the Bhumidari rights of Shri Nand Ram Verma aforesaid do not devolve upon the plaintiff as the daughter and devolve only upon the male descendants i.e. the defendants only. It is also not in dispute that Shri Nand Ram Verma did not leave any will with respect to the aforesaid land in favour of the plaintiff. The counsel for the plaintiff however urged that even though under the law, being Section 50 of the Delhi Land Reforms Act the plaintiff had no right in the land but in a family settlement in 1996 the defendants (including predecessor defendant No.3) had agreed to give a share in the land to the plaintiff and the plaintiff was in the present suit claiming a declaration with respect to the said family settlement. Relying upon **Mam Raj Vs. Ram Chander** 1974 DLT 227, **Shri Ram Vs. Jai Prakash** 1991(21)DRJ 48:1991 RLR 275 & **Cdr. Bhupinder Singh Rekhi Vs. C.S. Rekhi** 1998(VII)AD Delhi 200, it was urged that the jurisdiction of this court is not barred by Section 185 (Supra) to grant relief of declaration claimed and it was further argued that such a declaration was outside the domain of the revenue courts.

10. At this stage, it would be apposite to set out the reliefs claimed in the amended plaint.

“In the premises stated herein above it is the most respectful prayer of the plaintiff that this Hon’ble court may be pleased to:-

- a. pass a decree for declaration in favour of the plaintiff and against the defendants thereby directing and holding that the said family settlement dated 28th September, 1996 entered into between the plaintiff and the defendants was

valid with respect to the suit property situated at Khewat No.73/67, Khasra Nos.7/3, 7/6, 7/7, 7/8, 7/13, 7/14, 15/1, 15/2 measuring 6.75 acres in Village Auchandi, Delhi – 110 039; and

- b. pass a decree of declaration in favour of the plaintiff and against the defendants thereby directing and holding that the plaintiff and defendants are entitled to equal share of 1/5th each in the said suit property situated at Khewat No.73/67, Khasra Nos. 7/3, 7/6, 7/7, 7/8, 7/13, 7/14, 15/1, 15/2 measuring 6.75 acres in Village Auchandi, Delhi – 110 039, the share of each plaintiff and defendants being detailed herein-below:

S.No.	Name	Relation	Share in the property
1	Shri Jagdish Singh Lochab	Son	1/5 th
2	Shri Mohinder Kumar	Son	1/5 th
3	Shri Sunder Singh	Son	1/5 th
4	Shri Mukesh Kumar through his father Late Sh. Virender Singh	Grandson	1/5 th
5	Smt. Pushpa Saroha	Daughter	1/5 th

- c. pass a final decree in terms of prayer clause (a) and (b) above in favour of the plaintiff and against the defendants.
- d. pass a decree of the permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendants, their agents, assigns, servants, employees, representatives etc. from selling, alienating, transferring or parting with or creating any third party interests in the said suit property situated at Khewat No.73/67, Khasra Nos. 7/3, 7/6, 7/7, 7/8, 7/13, 7/14, 15/1, 15/2 measuring 6.75 acres in Village Auchandi, Delhi – 110 039 till the disposal of the present suit; and
- e. award the costs of the present suit to the plaintiff; and
- f. in that behalf, pass such other orders and directions as may be deemed fit, proper and necessary.”

11. Per contra the counsels for the defendants urged that the jurisdiction of the Civil courts was barred. It was argued that the division bench of this court in **Ram Mehar Vs. Mst. Dakhan** 1973 DLT 44 has held that the rule of succession governing Bhumidars is to be found in section 50 of the Act and not in Hindu Succession Act. Reliance was, of course also placed on **Hatti Vs. Sunder Singh** AIR

1971 SC 2320 where it was held that the Civil Court has no jurisdiction in view of Section 185 (1) of the Act to entertain a suit in which the plaintiff alleging that he is the proprietor of the suit land asks for declaration that he is entitled to Bhumidari rights in respect of that land; that any person who is aggrieved by a declaration of Bhumidari rights issued in favour of another person, can move an application before the Revenue Assistant under item 4 of the First schedule to that Act, whereupon if he succeeds, he will obtain a declaration that he is the Bhumidar.

12. De hors the aforesaid controversy, in the light of the admission that the plaintiff did not acquire any rights in the land under any will of Shir Nand Ram Verma or under Section 50 of the Act, I find the plaintiff even otherwise is not entitled to the declaration claimed with respect to a oral family settlement. Undoubtedly, the apex court in **Kale Vs. Dy. Director of Consolidation** AIR 1976 SC 807 has laid that a very liberal and broad view of the validity of the family settlements ought to be taken and an attempt should always be made to uphold and maintain a family settlement. However, for a family settlement to take place, there has to be a pre-existing right in the property subject matter of settlement in favour of the family members or all the family members part of the settlement. By a family settlement such rights can be restricted or given up or rights of others can be expanded to the extent of making them the absolute owners of a property which but for the settlement would have belonged to all. However, by a family settlement no fresh or new rights can be created in favour of a family member who otherwise had no rights to the property.

13. The plaintiff in the present case did not have any right in the property subject matter of the present suit. Thus, under the family settlement alleged, no rights in the said property could be created for the first time in favour of the plaintiff. It is also not the case of the plaintiff that there were some other properties also which were settled together with this property and the plaintiff under the settlement gave up right in other property for share in this property. In my view, the suit is not maintainable for this reason alone.

14. The question which arises is, whether when the plaintiff having no pre-existing rights in the property could not acquire a share in the property under a family settlement, should the plaintiff be permitted to lead evidence to show such a settlement. The apex court in **T. Arvindam Vs. T.V. Satyapal** AIR 1977 SC 2421 has held that if on a meaningful-not formal-reading, claim is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the trial court should ensure that bogus litigation is shot down at the earliest stage. Again, in **Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I & Another** (2004) 9 SCC 512 it was held that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of suit; the court should interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the courts resources being used up in cases which will serve no useful purpose. It was further held that a litigation which in the opinion of the court is doomed to fail should not further be allowed to be used as a device to harass.

15. In my considered opinion, applying the aforesaid principles, the plaint in the present case does not disclose any cause of action or

right to sue for the relief and is vexatious, meritless and trial thereof will serve no useful purpose.

16. There is yet another aspect of the matter. The plaintiff has claimed the relief of declaration alone. Section 34 of the Specific Relief Act bars the court from making a declaration, where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so. The plaintiff in the plaint as originally filed had, consequent to the relief of declaration, claimed the relief of partition. The plaintiff, however, faced with a situation of the jurisdiction of this court being barred to grant relief of partition, has sought to confine the relief claimed to that of declaration. The conduct of the plaintiff unequivocally establishes the plaintiff being able to seek further relief and having omitted to do so. Though, the plaintiff has in the plaint claimed to be in possession along with the defendants of the land but a meaningful reading of the plaint does not disclose the plaintiff to be in possession of the property. The plaintiff, claiming a family settlement of 1996, pleads that it is in 2006 only that she learnt of the mutation in the name of the defendants only. The plaintiff does not state that after the alleged family settlement any application for mutation was made by her. The plaintiff after remaining quiet for over nearly ten years instituted the suit first along with the defendant No.4 but upon the defendant No.4 refusing to toe the line of the plaintiff, is now wanting to seek a declaration of a family settlement, which as aforesaid cannot create any right or share which earlier did not exist in favour of the plaintiff. In any case the plaintiff is able to seek relief further to a mere declaration and the suit for declaration is thus not maintainable.

17. The relief of declaration is even otherwise a discretionary relief. The court under Section 34 of the Specific Relief Act is not obliged to make such a declaration. In the facts aforesaid, I also find that the plaintiff is not entitled to exercise of discretion by this court. This is for the reason that it is felt that the grant of declaration, if any, would not serve any purpose. The plaintiff even after such a declaration would still have no rights in the property unless gets herself recorded as a Bhumidar thereof. The plaintiff will have to still approach the court of the Revenue Assistant. In the circumstance, the time of this court ought not to be taken in adjudicating the relief claimed which as aforesaid would be infructuous. The provisions of Section 186 of the Act are relevant in this regard. The Revenue courts are empowered to, if they consider a question regarding title to any land put in issue in a proceedings before them, to frame an issue on the said question of title and to submit the record to the competent Civil court for the decision of that issue only.

18. The reliefs in the plaint claimed by the plaintiff, are even otherwise directly in the teeth of the bar contained in the Section 185 (Supra). Merely by claver drafting, the provisions of law cannot be defeated. Schedule 1 to the Act in entry 4 thereof provides for an application for declaration of Bhumidari rights under Sections 10,11,12,13,73,74,79 & 85 to lie before the court of the Revenue Assistant. The relief which the plaintiff is seeking in the present suit is nothing but a declaration of her rights and which in the context of the property subject matter of the suit are Bhumidari rights.

19. In **Hatti** also the relief claimed was of declaration of Sunder Singh being entitled to Bhumidari rights. The grievance of the plaintiff in the present case is of declaration of Bhumidari rights issued in favour of defendants. In this context the apex court in **Hatti** held that the scheme of the Act is to approach the Revenue Assistant with such grievance and if the party succeeds, it will automatically obtain a declaration that he is the Bhumidar and that declaration will automatically supersede the declaration issued by the authorities in accordance with the Delhi Land Reform Rules, 1954. In spite of the pronouncement of the Apex court in **Hatti**, this court in the judgments (Supra) cited by the counsel for the plaintiff held the suits to be maintainable. However, a perusal of those judgments show that in **Mam Raj** the validity of a will was in question, in **Shri Ram**, who is the original successor was in question and in **Cdr. Bhupinder Singh Rekhi** the sale was in issue. This court held that the said issues did not fall for adjudication by the Revenue courts but fall for adjudication by this court even though the outcome thereof may have a bearing on who was entitled to the Bhumidari rights. The present case does not fall in the aforesaid class of classes. The present case as aforesaid is directly in the teeth of the bar contained in Section 185 of the Act.

20. Reference in this regard may also be made to **Kamla Prasad Vs. K.K. Pathak** 2007 (2) SCALE 607, though concerned with the U.P. Zamindari Abolition and Land Reforms Act. There plaintiff sued in the Civil court for settling aside of sale deeds executed by him under intoxication, of his rights as an asami of land, in favour of defendants who were also jointly with him, asamis of said land. Under the U.P. Act, any person claiming to be an asami either

exclusively or jointly with other was required to sue the land holder for declaration of his rights as an asami in such holding, in the Revenue Court. The mutation on the basis of impugned sale deed had been effected in the names of defendants. The Apex court held that the jurisdiction of the Civil court was barred and that the legality of mutation could only be decided by the Revenue Court, since the names of the purchaser had already been mutated and only a Revenue Court could decide whether such an action was in accordance with law or not.

21. In the present case also, it is the case in the plaint itself that the land stands mutated into the names of the defendants for long. The law laid down in Kamla Prasad (Supra) by Apex court squarely applies to the present case and the jurisdiction of this court is barred by Section 185 (Supra).

22. The preliminary issue framed is thus decided in favour of the defendants and against the plaintiff. The suit as framed is held to be not maintainable and barred by the provisions of the Delhi Land Reforms Act and is as such dismissed. The plaintiff shall however be at liberty to take remedies available to her in accordance with law. The plaintiff, after admitting that the suit for the relief of partition originally claimed did not lie before this court is found to have vexatiously perused the present suit and is burdened with costs of Rs.35,000/- payable to the defendants No.1,2&3.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**January 16, 2009
PP**