

REPORTED

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

% **DATE OF RESERVE: December 16, 2009**

DATE OF DECISION: February 04, 2010

+ **RFA No.141/2005 and CM No.3637/2005**

ANAND PRAKASH & ORS Appellants
Through: Mr. J.K. Jain with Mr. M.K. Tyagi,
Advocates.

versus

SH RAM KALA & ANR Respondents
Through: Mr. S.C. Singhal with Mr. S.R. Sharma,
Advocates.

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

: **REVA KHETRAPAL, J.**

1. This appeal is directed against the judgment dated January 31, 2005 passed by the learned Additional District Judge dismissing the suit of the plaintiffs.

2. The plaintiffs (appellants and the respondent No.2) had filed a suit for cancellation and declaration with the consequential relief of permanent

injunction on the ground that the four plaintiffs/appellants and late Shri Pehlad were the joint bhumidhars of agricultural land bearing Khasra Nos.43/16 (4-9), 15/2 (3-4), 16 (4-16) 25/1 (0-6), 190/3 (3-19) and residential plot bearing No.235 (1-0) measuring 1 bigha, total 17 bighas 14 biswas situated in the Village Paprawat, Najafgarh, Delhi. Shri Pehlad died on 07.01.2000 at the age of 48 years as a bachelor. After the death of Pehlad, the appellants by virtue of the provisions of Section 50 of the Delhi Land Reforms Act, 1954 succeeded to his estate being the real brothers and natural heirs of the deceased. The appellants on 18.04.2000 accordingly moved an application for mutating the share in the agricultural bhumidhari holding left behind by Shri Pehlad in their names. Subsequently, the respondent No.1 (hereinafter referred to as 'the respondent') moved another application before the Tehsildar for mutation in his name on the ground that Shri Pehlad had executed a will dated 15.07.1996 in his favour. According to the appellants, the will purported to have been executed by the deceased in favour of the respondent is a forged and fabricated document. The appellants have stated in the plaint that the respondent on the basis of the said forged will was threatening to interfere in the peaceful possession of the appellants over the suit land. The appellants thus filed the present suit claiming their right over the land on the basis of inheritance from the deceased, asserting that the documents including the will

dated 15.07.1996 being put forth by the respondent were forged and fabricated and conferred no title on the respondent.

3. The suit filed by the appellants was contested by the respondent, who raised a preliminary objection that the suit as framed for declaration with consequential relief was not maintainable as the civil court had no jurisdiction to entertain a suit in respect of agricultural land in view of the provisions of the Delhi Land Reforms Act. On merits, the respondent denied that after the death of Pehlad the appellants had succeeded to his estate and contended that in view of the fact that the Pehlad had left behind a will in favour of the respondent, the civil court had no jurisdiction to declare the same as null and void, and the suit was not maintainable. It was also stated that the appellants were out of possession and the respondent was in possession of the agricultural land and that the appellants wanted to dispossess the respondent after obtaining an injunction order.

4. The appellants filed replication wherein the averments made in the plaint were reiterated and the pleas raised by the respondent in the written statement denied.

5. On the pleadings of the parties, the following issues were framed on 15.10.2003:-

“1. Whether the Civil court has no jurisdiction to entertain the suit in view of the provisions of Delhi

Land Reforms Act? OPD.

2. *Whether the suit of the plaintiff is not maintainable in view of para 2 of the preliminary objections of the written statement? OPD.*

3. *Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD.*

4. *Whether the suit is barred by time? OPD.*

5. *Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP.*

6. *Whether the plaintiff is entitled for permanent injunction as prayed for? OPP.*

7. *Relief.”*

6. At the time of hearing of the parties, Issue No.3 was decided against the respondent, Issue No.4 was not pressed and Issues No.5, 6 and 7 were disposed of on the findings rendered on Issues No.1 and 2. The appellants were held not entitled to the relief of declaration or permanent injunction.

7. The findings rendered on issues No.1 and 2 are thus apposite for the purpose of deciding the present appeal. As regards Issue No.1, it was held by the learned trial court that the suit was barred under Section 185 of the Delhi Land Reforms Act and the civil court had, therefore, no jurisdiction to entertain the suit. As regards issue No.2, it was held that only the probate court was vested with the power to adjudicate upon the proof or validity of the will and the civil court cannot go into the said question. In view thereof, the suit of the plaintiff was dismissed as not maintainable.

8. Mr. J.K. Jain, the learned counsel for the appellants has assailed the aforesaid findings principally on the ground that the trial court had failed to

take into consideration that under Section 185 of the Delhi Land Reforms Act the jurisdiction of the civil court to grant relief is barred only for such type of cases which are enumerated in Schedule-I attached to the Delhi Land Reforms Act. He urged that no entry has been pointed out by the learned trial court in Schedule I under which the revenue court can grant the relief claimed by the appellants in the suit. The succession to bhumidhari rights, it was urged by him, no doubt, is governed by Section 50 of the Delhi Land Reforms Act, but the question involved in the instant case is as to rightful successor to the title of the bhumidhari rights of the deceased Pehlad .

9. It was next contended by the learned counsel for the appellants that the mutation of agricultural lands is governed by sub-section (1) of Section 22 of the Delhi Land Revenue Act, 1954, which is captioned **“Report of succession or transfer of possession”** and envisages that every person obtaining possession as Bhumidhar or Asami or by succession or by transfer of any land in a village which is required to be recorded in the register specified in Section 20 shall report such admission, succession or transfer to the Tahsildar concerned (other than in the case of a lease permitted under the Delhi Land Reforms Act, 1954). Even under this Act (i.e., the Delhi Land Revenue Act), Section 41 stipulates that the entries of mutation entered in the record-of-rights shall be presumed to be true until the contrary is proved, and further lays

down that no such entry or decision shall affect the right of any person to claim and establish in the civil court any interest in land which is required to be recorded in the register prescribed by Section 20. In other words, it is contended that the statute itself has provided that for the purpose of establishing his right or any interest in land any person may approach the civil court regardless of the entries made in the record-of-rights prepared by the revenue authorities in accordance with the provisions of Section 20 of the Act, which falls in Chapter III thereof.

10. The learned counsel for the respondent Mr. S.C. Singhal, on the other hand, supported the judgment of the learned trial court by placing reliance upon the provisions of Section 185 of the Delhi Land Reforms Act. It was also contended by him that the Court of the District Judge alone is entitled to deal with all the questions relating to the grant of probate as is clear from a bare reading of Section 266 of the Indian Succession Act and it was not open to the appellants to challenge the will in favour of the respondents in the instant suit. Reliance was also placed by the learned counsel for the respondent on the judgment of the Supreme Court reported in ***Chiranjilal Shrilal Goenka vs. Jasjit Singh & Ors., 50 (1993) DLT 226 (SC)*** wherein in paragraph 22 it has been held as follows:-

“Thus the necessary conclusion is that the Probate Court alone has exclusive jurisdiction and the Civil

Court on original side or the Arbitrator does not get jurisdiction, even if consented to by the parties, to adjudicate upon the proof or validity of the Will propounded by the executrix, the applicant.”

11. In order to appreciate the respective contentions of the learned counsel for the parties, it is deemed necessary to reproduce the provisions of Section 50 and Section 185 of the Delhi Land Reforms Act, which read as under:-

“50. General order of succession from males.—Subject to the provisions of section 48 and 52, when a Bhumidhar or Asami being a male dies, his interest in his holding shall devolve in accordance with the order of the succession given below:

(a) male lineal descendants in the male line of the descent:

Provided that no member of this class shall inherit if any male descendant between him and the deceased is alive:

Provided further that the son or sons of a predeceased son howsoever low shall inherit the share which would have devolved upon the deceased if he had been then alive;

- (b) widow;
- (c) father;
- (d) mother, being a widow;
- (e) step mother, being a widow;
- (f) father’s father;
- (g) father’s mother, being a widow;
- (h) widow of a male lineal descendant in the male line of descent;
- (i) **brother, being the son of same father as the deceased;**
- (k) unmarried sister;
- (l) brother’s son, the brother having been son of the same father as the deceased;
- (m) father’s father’s son;
- (n) brother’s son’s son;

- (o) *father's father's son's son;*
 (p) *daughter's son.*
- x x x x''

“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.

(4) A second appeal shall lie from the final order passed in an appeal under sub-section (3) to the authority, if any, mentioned against it in column 9 of the Schedule aforesaid.”

12. It is also deemed necessary at this juncture to look into the provisions of Sections 22 and 41 of the Delhi Land Revenue Act, 1954 which are as follows:-

“22. Report of succession or transfer of possession.—(1) Every person obtaining possession on admission by the Gaon Sabha as Bhumindhar or Asami or by succession or by transfer other than a lease permitted under the Delhi Land Reforms Act, 1954, of any land in a village which is required to be recorded in the register specified in section 20 shall report such admission, succession or transfer to the Tahsildar.

(2) *In the case of any admission by the Gaon Sabha as Bhumidhar or Asami or of a succession or transfer, other than a lease permitted under Delhi Land*

Reforms Act, 1954, the report shall be made immediately after it has taken place.

(3) In the case of lease permitted under the Delhi Land Reforms Act, 1954, the report shall be made by lessor immediately after the lessee has been delivered possession thereunder.

(4) If the person so succeeding, or otherwise obtaining possession, or, in the case of a lease, the lessor is a minor or otherwise disqualified, the guardian or other person who has charge of his property shall make the report required by this section.

(5) No revenue court shall entertain a suit or application by the person so succeeding or otherwise obtaining possession or, in the case of a lease, by the lessor until such person has made the report required by this section.

Explanation.—The word 'transfer' includes—

- (i) a family settlement by which the holding or part of the holding recorded in the record-of-rights in the name of one or more members of that family is declared to belong to another or other member, or
- (ii) an exchange of holding under section 40 of the Delhi Land Reforms Act, 1954.”

x x x x

“41. Presumption as to entries.—All entries in the record-of-rights prepared in accordance with the provisions of this Chapter shall be presumed to be true until the contrary is proved; and all decisions under this Chapter in cases of dispute shall, subject to the provisions of sub-section (3) of section 27, be binding on all revenue courts in respect of the subject-matter of such disputes; **but no such entry or decision shall affect the right of any person to claim and establish in the civil court any interest in land which is required to be recorded in the register prescribed by section 20.**”

13. Having examined the various provisions of law and the precedents cited at the Bar, I am of the view that the findings returned by the learned trial court on Issues No.1 and 2 are clearly erroneous. A bare reading of Section 185 of the Delhi Land Reforms Act shows that only those suits are barred which are covered by any entry of Schedule I. The learned trial court held that the civil court had no jurisdiction to entertain the suit in the light of Section 185 of the Act, without pointing out any entry in Schedule I under which the appellants could have claimed the relief claimed in the suit. A meticulous examination of Schedule I of the Act shows that declarations in Schedule I are provided on the basis of cultivatory possession at the commencement of the Act or on the basis of adverse possession for three years or when an Asami is admitted as bhumidhar and under other such like provisions (See for instance Entry No.4). There is only one entry, viz., Entry No.28 which provides for declaratory suits as provided in Section 104. The said entry also, in my view, has no application to the present case as is clear from a bare reading of Section 104. The said Section reads as under:-

“104. Declaratory suit.—Notwithstanding anything to the contrary in section 42 of the Specific Relief Act, 1877, the Gaon Sabha may institute a suit against any person claiming to be entitled to any right in any land for the declaration of the right of such person in such land, and the court in its discretion may make a declaration of the right of such persons:

Provided that no court shall make any such

declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

14. By virtue of the provisions of the aforesaid Section, it is clear that notwithstanding the provisions of Section 42 of the Specific Relief Act, 1877, the Gaon Sabha has been vested with the right to institute a suit against any person claiming to be entitled to any right in any land for the declaration of the right of such person in such land. The instant suit not being a suit instituted by the Gaon Sabha clearly neither Section 104 nor Entry 28 can be said to be attracted.

15. This Court also finds merit in the submission of the learned counsel for the appellants that though the question of succession to bhumidhari rights is governed by Section 50 of the Delhi Land Reforms Act (which provides that when a Bhumidhar being a male dies, his interest in his holding shall devolve in accordance with the order of succession given in the said Section), the question in the instant case is as to who is the rightful successor to the title of late Shri Pehlad to the land in dispute. Even the provisions of Section 50 are subject to the provisions of Sections 48 and 52 which deal with bequest by a bhumidhar (Section 48) and succession in the case of a holding inherited as father's father (Section 52), but it is significant to note that Schedule I of the Act does not deal with the proceedings envisaged under Sections 48 to 53 of

the Act, which are found in Part E of Chapter III under the heading “Devolution (Bhumidari and Asami)”. In the instant case, the appellants have filed the present suit to establish their title and to challenge the will propounded by the respondent. The title to the Bhumidari rights acquired by the appellants by way of devolution and the challenge raised by them to the will cannot, therefore, be decided by the revenue courts.

16. In ***Shri Ram vs. Jai Prakash and Ors.*** reported in ***DRJ 1991 (21) 48***, the position of law was examined by this Court on somewhat similar facts. The petitioner had filed a suit for declaration and permanent injunction against the respondents founded on the claim that he was the sole heir and successor of Shri Om Prakash, who was his real brother. The respondent No.1, however, contested the suit and claimed succession to the land in dispute by virtue of an Adoption Deed allegedly executed by Shri Om Prakash – which was disputed by the petitioner. It was submitted by the respondent No.1 that the jurisdiction of the civil court was clearly barred in view of the law laid down by the Supreme Court. In paragraphs 7, 8 and 9 of the judgment in the ***Shri Ram*** case (*supra*), this Court held as under:-

“7. There is no dispute that in the present case the controversy revolves on the question of succession to the land in dispute left by Shri Om Parkash. Declaration of bhoomidari rights of Shri Om Parkash is not the question in dispute. In these circumstances the question that arises for consideration is whether

the jurisdiction of civil court is barred or not. Section 185(1) of the Act which bars the jurisdiction of the civil court in the matter of declaration of bhoomidari rights may be reported below:-

“185(1) Except as provided by or under this Act no court other than court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.”

8. From the perusal of the above section it is clear that this saves only those cases which are mentioned in column 7 of Schedule I of the Delhi Land Reforms Act. Thus, the scope of Section 185 is confined to the specific matters enumerated in Schedule I of that Act and to none other. The present suit of the petitioner–plaintiff for declaration and permanent injunction seeking that he is sole heir and successor of Shri Om Parkash is not covered under specific matters enumerated in Schedule I of the Act and, therefore, the civil court has every jurisdiction to try the suit. Reliance was placed by the learned counsel for the respondent No.1 on Entry 28 of Schedule I and, according to him, the jurisdiction of civil court is barred. Mere perusal of Entry 28 of Schedule I relates to the declaratory suit under Section 104 of the Act. Such a suit is permissible to be filed by the Gaon Sabha only against any person claiming to be entitled to any right in any land or his right therein. Here it is not a suit by the Gaon Sabha. Therefore, this argument is of no help to respondent No.1.

9. Strong reliance placed by counsel for respondent No.1 in a case reported as **Hatti v. Sunder Singh (AIR 1971 SC 2320)** was also conceived. A close scrutiny of that judgment reveals that the case centres round substantially on the relief for declaration that the grant of bhoomidari rights to Hatti was wrong and illegal and such a declaration

should have been granted in favour of Sunder Singh and that Sunder Singh was entitled to claim possession from Hatti whom he called a trespasser. The Supreme Court has held that all these reliefs can be granted by revenue courts. The disputes regarding declaration of bhoomidari rights is, inter alia, provided in Sections 11 and 13 of the Act and remedy for the disputes about it are included at item No.4 of Schedule I of the Act. The question of seeking possession from a person without authority is provided for under Section 84 of the Act and the same is entered at serial No.19 of Schedule I of the said Act. Having thus found that all the three reliefs claimed in that suit were provided for in Schedule I of the Act, therefore, the jurisdiction of the civil court to grant the same did not arise. It is thus clear that in the present suit no declaration whether Shri Om Parkash has acquired bhoomidari rights has been prayed for by the petitioner. But the only question which has been raised is as to who is the rightful successor of his title therein. The Act does not make any provision for cognizance of such questions under it. Counsel for the respondents next argued that the petitioner was seeking succession to the land in question under Section 50 of the Act. Section 50 only lays down the order of succession to the land of a bhoomidar. It nowhere provides the forum which is to decide if disputes arise regarding succession. There is no corresponding entry for cognizance of disputes arising to the succession under Section 50 in Schedule I of the Act. Therefore, the main question involved in the present case does not fall under any entry of Schedule I of the Act. Therefore, Section 185 of the Act does not affect the jurisdiction of civil court to try the present. The argument of counsel for respondent No.1, therefore, has to fail.”

17. In ***Mam Raj vs. Ram Chander etc.*** reported in **1974 Rajdhani Law Reporter 428**, permanent injunction was claimed by the plaintiff on the basis

of succession to bhumidhari rights by virtue of a will. A learned Single Judge of this Court [Hon'ble Mr. Justice Yogeshwar Dayal (as His Lordship then was)] held that a suit in which permanent injunction is claimed on the basis of succession to bhumidhari rights is not covered by any entry in column 3 of the First Schedule and thereby is not either expressly or impliedly barred by the Delhi Land Reforms Act. In paragraphs 7 to 9, it was observed as follows:-

“7. In the present suit the plaintiffs were not claiming any declaration for grant of bhoomidari rights or a declaration that the grant of bhoomidari rights to somebody else was wrong or illegal. The plaintiffs case was simply this that there was already a bhoomidar under whom they were cultivating the land as non-occupancy tenant and after his death also, they were in possession of the land in dispute. The only question which the plaintiffs were raising in the present suit was that on the death of their father they succeeded to the bhoomidari rights of their father to the exclusion of the appellant. No question arose of the applicability of section 11 or 13 of the Act. The averments made in paragraph 4 of the plaint were also not to the effect that they were initially entitled to the grant of bhoomidari rights to the exclusion of their father, Chet Ram and the said averments cannot be construed to mean that the plaintiffs were claiming bhoomidari rights in view of their occupation during the year 1953-54 under section 13 of the Act. The Supreme Court was concerned with the case where the parties were disputing the grant or refusal of bhoomidari rights by the authorities under the Act to one or the other, on the basis of criteria as given in sections 11 and 13 of the Act. The Supreme Court was concerned with the suit purely of the nature as contemplated by section 185 of the Act read with First Schedule.

8. Mr. Vohra, learned counsel for the respondent contended that section 48 of the Act confers right on Bhoomidar to bequeath his property by will and section 185 of the Act does not bar an issue to determine as to who were entitled to succeed the bhoomidari rights by virtue of the will or otherwise. In the case reported as **Abdul Waheed Khan v. Bhawani and others (A.I.R. 1966 S.C. 1718)** the Supreme Court held that under section 9 of the Code of Civil Procedure the civil court can entertain a suit of a civil nature except a suit of which its cognizance is either expressly or impliedly barred. It has been observed that it is a settled principle that it is for the party who seeks to oust the jurisdiction of a civil court to establish his contention that jurisdiction has either expressly or impliedly been ousted. It was also held that it was equally well settled that a statute ousting the jurisdiction of a civil court must be strictly construed (sic. construed). The same principles were reiterated in the case of **Dhulabhai etc. v. State of Madhya Pradesh and another (AIR 1969 S.C. 78)**.

9. It will thus be noticed that it is only under section 185 which expressly ousts the jurisdiction of the civil courts in certain matters and not in all matters. The matters in respect of which the jurisdiction of the civil courts is ousted are only those matters which are mentioned in Schedule I to the Act, and various types of suits, applications and other proceedings are mentioned in column 3 of the said Schedule read with entries mentioned in column 2 and the courts in which the proceedings have to be filed are mentioned in column 7 thereof. It is thus clear that in the suit of the present type in which permanent injunction is claimed on the basis of succession to bhoomidari rights by virtue of a will, such a suit is not covered by any entry in column 3 of First Schedule and thus the Delhi Land Reforms Act does not either expressly or impliedly bar the present suit. So far as the alternative relief of possession is concerned, namely, that in case it be held that the plaintiffs have

been dispossessed during the pendency of the suit, it may be argued that such claim can be decided by Revenue Courts in view of entry No.19 in column 3 of the First Schedule but that question cannot be decided as a preliminary issue. The case of the plaintiffs is that they are in fact in possession whereas the defendant has denied the possession of the plaintiffs. It will thus be a question for trial whether the plaintiffs on the date of the suit had any possession or not. Again, if the plaintiffs are dispossessed during pendency of the suit, it will again be a question to be determined on facts. The question cannot be determined without taking evidence and so long as the issue is not decided as a question of fact, it cannot be held that the suit itself is beyond the cognizance of civil courts; as and when the question arises whether the plaintiffs have been dispossessed during the pendency of the suit, the question will then arise as to the jurisdiction of the civil court to grant a decree for possession. On the allegations as contained in the plaint which has to be taken as correct for the purpose of deciding jurisdiction of the courts to take cognizance of the suit, it cannot be said that the cognizance of the civil court is barred.”

18. In fact, in the **Mam Raj** case (supra), the decision of the Supreme Court in **Hatti's** case (supra) was analysed in detail wherein an issue had been raised by the tenant that the civil court had no jurisdiction to entertain the suit in view of the provisions of Section 185 of the Act. The trial court held that the trial court had jurisdiction to decide the suit of the landlord, Sunder Singh. When the matter went before the Supreme Court, the relevant provisions of the Act including Sections 11, 13, 185, 186 and the relevant entries in the First Schedule to the Act, namely, Items No.19 and 28 were dealt with by the

Supreme Court. The Supreme Court after noticing the provisions of Sections 185 and 186 and Schedule I to the Act came to the conclusion that in respect of the matters covered by Section 185 read with the First Schedule, only the revenue courts had jurisdiction and the civil courts jurisdiction had been expressly barred under Section 185 of the Act. It was noticed by the Supreme Court that of the three reliefs claimed in the suit before the Supreme Court, the question whether the bhumidhari was rightly granted under Section 13 of the Act to the tenant or should have been granted under Section 11 of the Act to the proprietor were questions which had to be decided on an application under Item No.4 of the First Schedule and if a person without title was occupying the land, the question of ejectment of such a person would be decided under Item No.19 in the First Schedule and with respect to the declaratory suit, whether the tenant or the landlord was entitled to bhumidhari rights could be decided under Item No.28 to the First Schedule.

19. In the present case, as noticed above, the appellants are not claiming any declaration for grant of bhumidhari rights or a declaration that the grant of bhumidhari rights to the respondent was wrong or illegal. The appellants' case simply is that they were joint bhumidhars of the agricultural land along with their brother Shri Pehlad and he having died without any other legal heir, after his death the appellants must be held to have succeeded to the bhumidhari

rights of the deceased Pehlad.

20. A similar question also arose in the case of ***Jai Bhagwan vs. Lachmi Devi and Ors.*** reported in ***1972 Rajdhani Law Reporter (Note) 25***. In the said case, one Manbhari had sold the suit land in favour of the plaintiff on 29.09.1955. She then made a gift of the same to her step-daughter in 1957. The plaintiff filed a suit for declaration and in the alternative for possession, which was dismissed by the trial court. On appeal to the High Court, it was held that as there was no claim that the grant of Bhumidhari rights to Manbhari was wrong, the suit was not barred. As the plaintiffs claimed that the gift was void while the defendants claimed that the sale to the plaintiff was void and both claimed to succeed to the right of Manbhari, such a suit was maintainable under Section 41 of the Delhi Land Reforms Act and the finding of the lower Court that the civil court had no jurisdiction was wrong.

21. The ratio of the decision in ***Jai Bhagwan*** case (*supra*) squarely applies to the facts of the present case, inasmuch as in the present case the appellants claim bhumidhari rights by way of succession while the respondent claims to succeed to the bhumidhari rights of late Shri Pehlad on the basis of a will and other documents executed by him, and thus both parties for their title rely on the bhumidhari rights of late Shri Pehlad, which have not been questioned by either party.

22. In ***Cdr. Bhupinder Singh Rekhi vs. C.S. Rekhi and Ors.*** reported in 76 (1998) DLT 257, this Court again unequivocally held that the suit of the plaintiff for declaration of title and permanent injunction is not covered under the specific matters enumerated in Schedule I of the Act and that a bare perusal of Section 185 makes it clear that the scope of the said Section is confined to only such matters as are enumerated in Column 7 of Schedule I of the Act.

Paragraph 7 of the judgment, which is apposite, reads as follows:-

*“7. A bare perusal of Section 185(1) makes it clear that this saves only those cases which are mentioned in Col.7 of Schedule I of the Act. Thus, the scope of Section 185(1) is confined to the specific matters enumerated in the said schedule. It is well settled that jurisdiction of a Court primarily depends upon the allegations made in the plaint and not upon allegations in the written statement, and it is the cause of the action which determines the jurisdiction of a Court. The expression “cause of action” means every fact which will be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment. (Mohd. Khalil Khan v. Mehbood Ali Khan, AIR 1949 P.C. 78). Section 34 of the Specific Relief Act provides that any person entitled to a legal character, or to any right as to any property may institute a suit against any person denying or interested to deny, his title to such character or right, and the Court may in its discretion make such declaration. The plaintiff has not filed the present suit for declaration of Bhumidhari rights in respect of the land. **The tenor of the plaint shows that the plaintiff has filed this suit for declaration of his title to the suit (? land) on the ground that he had purchased it from its owner. It is well established that a Revenue Court is not competent to decide title in respect to an***

agricultural land. Thus, the present suit of the plaintiff for declaration of title and permanent injunction is not covered under specific matters enumerated in Schedule I of the Act and, therefore, the Civil Court has jurisdiction to entertain the present suit.”

23. In a subsequent judgment ***Sankalchan Jaychandbhai Patel and Ors. vs. Vithalbhai Jaychandbhai Patel and Ors.*** reported in ***1996 VII AD (SC) 721***, where the Supreme Court was dealing with Section 11 of the Bombay Revenue Jurisdiction Act and examining the question as to whether the provisions of the said Section expressly or by necessary implication prohibited the civil court from entertaining the suit filed by the respondent based on title, the Supreme Court arrived at the following conclusion:-

“6. A reading of the section would clearly indicate that there is a prohibition on the Civil Court to entertain any suit against the Government, on account of any act or omission of any Revenue Officer, unless the plaintiff first proves that he previously brought it by way of an appeal before the competent authority and within the time prescribed. Without availing of that remedy, he cannot present the suit against the State. The question is: whether Section 11 applies to the inter se claim of the private parties? It would be seen that learned single Judge has construed Section 11 of the Bombay Revenue Jurisdiction Act, and concluded that Section 11 prohibits entertainment of the suit between private parties unless the plaintiff has exhausted right of appeal or revision prescribed therein and available to him before he resorts to the suit challenging the order passed by the Revenue Officer. A reading of Section 11 does not indicate any prohibition on private parties inter se to avail of

the remedy of a suit provided under the Code of Civil Procedure, 1908 [CPC]. Section 9 of CPC does not expressly or by necessary implication, prohibit the jurisdiction of the civil Court to entertain the suit based on title.

7. *It is settled law that mutation entries are only to enable the State to collect revenues from the persons in possession and enjoyment of the property and that the right, title and interest as to the property should be established de hors the entries. Entries are only one of the modes of proof of the enjoyment of the property. Mutation entries do not create any title or interest therein. Therefore, the view taken by the learned single Judge, with due respect, is not correct in law. The civil suit is clearly maintainable. The High Court rightly granted injunction restraining the appellants from alienating the land. Even otherwise, Section 52 of the Transfer of Property Act Lis pen dense always stands in the way of purchaser of the land subject to the result in revision.”*

24. To conclude, in view of the provisions of Section 41 of the Delhi Land Revenue Act and the aforesaid enunciation of the law by this Court and by the Supreme Court, the present suit is clearly maintainable. The reliance placed by the learned counsel for the respondent on Section 266 of the Indian Succession Act is, in my view, entirely misplaced. A bare perusal of Section 266 shows that Section 266 deals with the District Judge's power as to grant of probate and letters of administration, but it is settled law that the grant of probate is not necessary in Delhi [See **Behari Lal vs. Karam Chand**, AIR 1968 Punjab 108, **Aishwarya Dev Chand Katoch vs. T.N. Properties Pvt. Ltd.**, 133 (2006) Delhi Law Times 89 and **Om Prakash Kohli vs. Rani Prakash Kohli**, 2002 III AD

(Delhi) 1083]. This apart, the reliance placed by the respondent's counsel on the case of **Chiranjilal Shrilal Goenka (supra)** is also misplaced. Admittedly in the instant case, the appellants are not claiming any right on the basis of any will and it is inconceivable that the appellants could have instituted a proceeding in the probate court for obtaining a negative declaration. Issues No.1 and 2 were, therefore, in my view, erroneously decided by the learned trial court. As a necessary consequence thereof, no findings were returned by the learned trial court on issues No.5, 6 and 7 and the matter was disposed of by holding that the appellants were not entitled either to the relief of declaration or permanent injunction or any other relief whatsoever. The suit of the appellants was thus dismissed as not maintainable.

25. This Court having come to the conclusion that the suit in the present case is maintainable, it is deemed appropriate to remand the matter back to the trial court for returning its findings on the remaining issues after examining the evidence adduced by the parties in support of their respective title to the bhumidhari rights claimed by them. In view of the fact that considerable time has elapsed since the institution of the suit on 06.07.2000, the learned trial court is requested to expedite the hearing on the remaining issues, i.e., Issues No.5, 6 and 7 and to return its findings thereon latest within three months from the date of the receipt of this order. The trial court records be sent back to the

trial court through a special messenger. Parties are directed to appear before the trial court on 8th March, 2010 when the trial court shall fix the matter for hearing on the remaining issues. Pending further orders from the trial court, the respondent No.1 shall continue to maintain status quo in respect of the 1/5th share of Shri Pehlad in the suit property as it exists.

RFA No.141/2005 and CM No.3637/2005 stand disposed of accordingly.

REVA KHETRAPAL, J.

February 04, 2010
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