

* **HIGH COURT OF DELHI : NEW DELHI**

1. **CM(M) No. 947/2010 & CM No. 13139/2010**

% Judgment reserved on: 1st September, 2010

Judgment delivered on: 30th September, 2010

1. Sh. Prabhjot Singh & Anr.
S/o Sh. Teja Singh,

2. Sh. Balbir Singh
S/o Sh. Gurjit Singh
R/o Village Behat, Tehsil Bilaspur,
District Rampur,
U.P.

....Petitioners.

Through: Mr. M.S.Vinayak with
Mr. Deepak, Advocates.

Versus

1. Col. (Retd.) Hargobind Singh
S/o late Gurbaksh Singh
R/o House No. 1394, Sector-33C,
Chandigarh.

2. Sh. Hargursaran Singh
S/o late Gurbaksh Singh
R/o Village Behat, Tehsil Bilaspur
District Rampur,
U.P.

....Respondents

Through: None

2. **CM (M) No. 948/2010 & CM No. 13146/2010**

1. Smt. Namrata Chandi
D/o Sardar Hargursharan Singh
Through her attorney Sh.Harbans Singh
Son of Inder Singh

R/o Village Behat, Tehsil Bilaspur
District Rampur, U.P.

.....Petitioner
Through: Mr. M.S.Vinayak with
Mr. Deepak, Advocates.

Versus

1. Smt. Amrinder Kaur
D/o Sh. Hargobind Singh
Address for service
R/o House No. 1394, Sector-33C,
Chandigarh.

2. Sh.Hargursaran Singh
S/o late Gurbaksh Singh
R/o Village Behat, Tehsil Bilaspur
District Rampur,
U.P.

.....Respondents
Through: None

3. **CM (M) No. 950/2010 & CM No. 13168/2010**

1. Sh. Manjeet Singh
S/o Sh. Jagir Singh
2. Sh. Balbir Singh
S/o Sh. Gurdeep Singh

(Both represented through
Sh. Teja Singh son of Sh. Gurdit Singh
R/o Village Behat, Tehsil Bilaspur
District Rampur, U.P.

....Petitioners

Through: Mr. M.S.Vinayak with
Mr. Deepak, Advocates

Versus

1. Col. (Retd.)Sh. Hargobind Singh
S/o late Gurbaksh Singh
R/o House No. 1394, Sector-33C,
Chandigarh.

2. Sh.Hargursaran Singh
S/o late Gurbaksh Singh
R/o Village Behat, Tehsil Bilaspur
District Rampur,
U.P.

....Respondents

Through: None

4. **CRP No. 134/2010 & CM No. 13095/2010**

Hargursharan Singh Major,
S/o Sh. Sardar Gurbaksh Singh,
R/o Village Bihta, Tehsil Bilaspur
District Rampur, U.P.

....Petitioner

Through: Petitioner in person

Versus

1. Col. Sh. Hargobind Singh
Through attorney Parminder Kaur,
R/o House No. 1394, Sector-33C,

Chandigarh. Respondent
No.1

2. Prabhjot Singh Major,
S/o Sh. Tej Singh,
R/o Village Bihta, Tehsil Bilaspur
District Rampur,
U.P. ...Respondent No.2

3. Balbir Singh Major,
S/o Sh. Gurjit Singh,
R/o Village Bihta, Tehsil Bilaspur
District Rampur,
U.P. Respondent No.3

Through: None

5. **CRP No. 135/2010 & CM No. 13097/2010**

Hargursharan Singh Major,
S/o Sh. Sardar Gurbaksh Singh,
R/o Village Bihta, Tehsil Bilaspur
District Rampur, U.P. Petitioner

Through: Petitioner in person

Versus

1. Col. Sh. Hargobind Singh
Through attorney Parminder Kaur,
R/o House No. 1394, Sector-33C,
Chandigarh. Respondent No.1

2. Mangit Singh Major,
S/o Sh. Jagir Singh,
R/o Village Behait, Tehsil Bilaspur

District Rampur,
U.P.

...Respondent No.2

3. Balbir Singh Major,
S/o Sh. Gurjit Singh,
R/o Village Behait, Tehsil Bilaspur
District Rampur,
U.P.

....Respondent No.3

Through: None

6. **CRP No. 136/2010 & CM No. 13098/2010**

Hargursharan Singh Major,
S/o Sh. Sardar Gurbaksh Singh,
R/o Village Bihta, Tehsil Bilaspur
District Rampur, U.P.

....Petitioner

Through: Petitioner in person

Versus

1. Smt. Amrinder Kaur
Col. Sh. Hargobind Singh
Through attorney Parminder Kaur,
R/o House No. 1394, Sector-33C,
Chandigarh.

....Respondent No.1

2. Colonel Sarvajit Singh Thind,
S/o Sh. Avtar Singh Thind,
R/o Village Bihta, Tehsil Bilaspur
District Rampur,
U.P.

...Respondent No.2

3. Namrita Chandi,
D/o Sh. Hargursharan Singh,
R/o Village Bihta, Tehsil Bilaspur
District Rampur,
U.P.

....Respondent No.3
Through: None

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

By this common judgment, above said six petitions are being disposed of, since common question of law and facts are involved in these petitions.

2. Brief facts are that, Col. Hargobind Singh Major, respondent herein (plaintiff in the trial court) through his attorney Smt. Parminder Kaur (his wife), filed a suit for declaration and permanent injunction against Prabhjot Singh Major, Balbir Singh Major and Hargursharan

Singh Major, on the ground that he is recorded as land holder cultivator having transferrable rights of the cultivated land plot No. 1/5, area 32 bighas, 11 biswa, 12 biswansis, Gatha no.4 area 12 Biswa, Gatha No.5 area 13 Biswa, Gatha No.9/1, area 2 Bighas, Gatha 22/55 area 6 Biswa, 8 Biswansis, Gatha No. 1/67, Area 1 bigha 4 biswa, total numbers 6, total area 37 bighas, 7 biswa, rent 229 rupees 45 paise per year situated in village Bihta, Bilaspur, District Rampur.

3. It is further stated that he transferred area of 9 Bighas, 12 Biswa out of Gatha No. 1/5 Rent Rs. 60/- per year to Kumari Amrinder Kaur, his daughter. It is further averred that his name is entered in the records, as land holder cultivator having transferable rights of the cultivated land, Plot No. 1/5, Area 5.813 hec. Gatha no. 4 area 152 hec. Gatha no. 5 Area 164 hec. Gatha no. 9/1 area 506 hec. Gatha no. 22/55 area. 081 hec., Gatha 1/67 area 34 hec., total numbers is 6, total area 7.020, rent Rs.169.45 p per year and is in actual possession.

4. It is further stated that he appointed Sh. Hargursaran Singh, as his Attorney, vide Power of Attorney, dated 03.04.1970 for the management of the aforesaid lands. However, Sh. Hargursaran Singh started deriving undue benefits of being attorney and as such Power of Attorney in his favour was revoked, by executing document dated 29.07.95 and the said document of revocation was executed in Sub Registrar Office, Amritsar. Intimation of the same was given to Sh. Hargursaran Singh by registered A/D, letter dated 31.07.1975 and also to Sub Divisional Magistrate, Bilaspur, District Rampur (U.P.) As such, since 1975, Sh. Hargursaran Singh is no more his attorney and was not in any way authorized to do any legal act or execute any document on his behalf.

5. It is further averred that Sh.Hargursaran Singh in collusion with Prabhjot Singh Major and Balbir Singh Major (Defendant no.1 and 2 in the trial court) executed a forged fabricated Registered Sale Deed dated 07.01.96, in their favour without having any right or authority,

by posing himself as a General Attorney of Hargobind Singh. It is further averred that these persons instituted a mutation case no. 229 of the year 1996 in the Court of Tehsildar, Bilaspur and procured mutation order dated 07.03.96 and Hargobind Singh came to know about all the conspiracies, through the record keeper on 16.05.02. Accordingly, Hargobind Singh sought the following reliefs:-

- a) that by a declaratory decree of this court it should be declared in favour of the plaintiff and against the defendants that the alleged sale deed dated 7.1.96 which is delineated on the Book No.1 volume 534/537 page 60/387-390 A.D.H.B.-1, of the office of Sub-Registrar Bilaspur, Distt. Rampur, of which they should make entry in the aforesaid records.
- b) that a decree of permanent injunction should be issued by this court in favour of the plaintiff and against the defendants to the effect that the defendants themselves or in any other way or medium shall not interfere with the possession of the plaintiff over the disputed lands.”

6. Petitioners filed an application under Order 7 Rule 11 of Code of Civil Procedure (for short as 'Code') for rejection of the plaint on the ground that the suit filed in the Civil Court is not maintainable in view of Section 229-B, 229-D and 331 of 'The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950' (for short as 'Act') as well as on the ground that Hargobind Singh has not sought the relief for possession and mere declaration under Section 34 of the Specific Relief Act is not maintainable.
7. Trial Court, vide its order dated 5th April, 2010, dismissed the applications filed by petitioners.
8. Petitioners by way of present Petitions have challenged the impugned order.
9. It is contended by Sh. M.S.Vinayak, Advocate (on behalf of three petitioners) that Hargobind Singh has filed the Civil Suit in respect of agricultural land situated in Tehsil Bilaspur, District Rampur (U.P.), which is governed by provisions of the Act, which is

a complete code in itself. The jurisdiction of Civil Court is barred under Section 331 of the Act.

10. It is also contended that relevant entries no.24 & 34 of Schedule-II annexed with the Act, prescribes the appropriate remedy with regard to the suit for declaration and permanent injunction.

11. It is further contended that it is settled proposition of law that a person not being recorded tenure holder seeking cancellation of the sale deed on the ground of fraud and impersonation has to approach the revenue court for seeking a declaration of right and status as tenure holder and relief of cancellation of deed shall be redundant. On the contrary, the recorded tenure holder has the remedy before the civil court seeking declaration with regard to the validity of the sale deed on the ground of fraud, impersonation etc.

12. Lastly, it is contended that petitioner vide mutation order are the recorded tenure holder/bhumidar of the suit land. This fact has been admitted by Hargobind Singh in his reply that he has handed over the possession to the purchasers who are cultivating the suit

land. Thus, Hargobind Singh is out of possession of suit land and as such Civil Court has no jurisdiction to try the present suit.

13. In support, learned counsel for petitioners cited following judgments:-

a) Chandrika Misir and another vs. Bhaiyalal, AIR 1973 SC 2391 and

b) Kamla Prasad and others vs. Krishna Kant Pathak and other, [2007 (102) RD 378].

14. Sh. Hargursharan Singh (petitioner in three Petitions) argued himself. He advanced his arguments on the same lines as advanced by Sh. M.S.Vinayak, Advocate for other Petitioners.

15. Relevant provisions in this case are, Sections 229-B, 229-D and 331 of the Act, which read as under:-

“229-B. Declaratory suit by person claiming to be an asami of a holding or part thereof. – [(1) Any person claiming to be an asami of a holding or any part thereof, whether exclusively or jointly with any other person, may sue the landholder for a declaration of his rights as asami in such holding or part, as the case may be]

(2) In any suit under sub-section (1) any other person claiming to hold as asami under the landholder shall be impleaded as defendant.

(3) The provisions of sub-sections (1) and (2) shall *mutatis mutandis* apply to a suit by a person claiming to be a [bhumidar] [***] with the amendment that for the word “landholder” the word “the State Government and the [Gaon Sabha] are *substituted* therein.]

“**[229. D. Provision for injunction.]**—[(1) If in the course of a suit under the provisions of Sections 229-B and 229-C, it is proved by an affidavit or otherwise—

(a) that any property, trees or crops standing on the land in dispute is in danger of being wasted, damaged or alienated by any party to the suit; or

(b) that any party to the suit threatens or intends to remove or dispose of the said property, trees or crops in order to defeat the ends of justice, the Court may grant a temporary injunction and where necessary, also appoint a receiver.]

(2) Nothing in sub-section (1) shall apply to a suit filed under sub-section (4-D) of Section 122-B.]”

“331. 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 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application or

proceedings mentioned in Column 3 thereof [,] [or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application:]

[Provided that where a declaration has been made under Section 143 in respect or any holding or part thereof, the provisions of Schedule II insofar as they relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.]

[*Explanation* – If the cause or action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical to that which the revenue court would have granted.]

[(1-A) Notwithstanding anything in sub-section (*i*), an objection, that a court mentioned in Column 4 of Schedule II, or, as the case may be, a civil court, which had no jurisdiction with respect to the suit, application or, proceeding, exercised jurisdiction with respect thereto shall not be entertained by any appellate or revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.]

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

(3) An appeal shall lie from any decree or from an order passed under Section 47 or an order of the nature mentioned in Section 104 of the Code of Civil Procedure, 1908 (V of 1908) or in Order 43, Rule 1 of the First Schedule to that Code passed by a court mentioned in column No.4 of Schedule II to this Act in proceedings mentioned in Column 3 thereof to the court or authority mentioned in column No.5 thereof.

(4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree, passed in an appeal under sub-section (3), to the authority, if any, mentioned against it in column 6 of the Schedule aforesaid.]”

16. As per averments made in the plaint, Hargobind Singh has been entered in the records as land holder cultivator having transferable rights of the cultivated land and is only actual physical possession.

17. In **Kamla Prasad (supra)**, the case of plaintiff therein, as per plaint was;

“that he was not the sole owner of property and defendants No.10 to 12 who were proforma defendants, had also right, title and interest therein”.

18. It was in that context Supreme Court observed;

“That in our opinion both the courts below were right in holding that such a question can be decided by the revenue court in a suit instituted under Section 229-B of the Act.”

19. It was also laid down in **Kamla Prasad (supra)** that;

“Civil Court will have the jurisdiction for the declaration of sale deed as null and void if prima facie the title of plaintiff is not under cloud and in such circumstances the plaintiff is not required to seek declaration of his title to the land and on the other hand if the title of the plaintiff is under cloud then the plaintiff is required to seek declaration of his title in the revenue court and the suit will not be maintainable in the Civil Court.”

20. In the present case, Hargobind Singh has categorically stated in the plaint, that he is in actual physical possession of the suit property. Thus, prima facie his title is not under cloud and he does not require any declaration of his title to the land. He can seek cancellation of sale deed only in the civil court on the ground of fraud or impersonation. Admittedly, power of attorney executed in favour of Hargursharan Singh, was revoked on 29.7.1975. Whereas,

Hargursharan Singh by posing himself as General Attorney of Hargobind Singh got the sale deed registered on 7.1.1996, when on that date Sh.Hargursharan Singh had no right or authority, by virtue of which he could have got registered the sale deed on 7.1.1996, since he was no more the General Attorney of Hargobind Singh.

21. In *Mewa and others vs. Baldeo*, AIR 1967 Allahabad 358, it was observed:-

“It is well settled that every suit of a civil nature lies in a civil court unless it is expressly barred by statute. What has, therefore, to be seen is, what is the bar created by the U.P. Zamindari Abolition and Land Reforms Act in respect of such suits which would normally be filed in civil courts. The only bar that exists in the U.P. Zamindari Abolition and Land Reforms Act is S.331. The relevant part of the section which creates the bar is in the following words:

“No court other than the court mentioned in column 4 of Schedule II shall take cognizance of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.”

(6) In substance, therefore, the bar exists where a suit is filed in a civil court which is based upon a 'cause of action' in respect of which cause of action the plaintiff could get any relief by a proceeding in the revenue court. Therefore, the primary important thing to be observed in each case filed in civil court is, where an objection is raised as to its maintainability in a civil court, as to what is the cause of action for it, and whether on the basis of that cause of action any relief can be granted by the revenue court. If the cause of action is one in which the revenue court can give no relief then the suit is one which would lie in the civil court. If the cause of action is one in respect of which no relief can be claimed in the revenue court then the suit is maintainable in the civil court and once the suit is maintainable in the civil court then there is no bar in civil court granting all possible reliefs flowing from that cause of action. Consideration of individual reliefs divorced from cause of action is, therefore, wholly irrelevant.

(7) Applying this principle to the present case we find that the cause of action in the present case is that the plaintiff was, under fraudulent circumstances, induced to execute a sale deed of this property in favour of the defendants and the plaintiff wants that that sale deed be cancelled and his property be restored to him. In these circumstances the real cause of action of the plaintiff is the fraudulent act in obtaining the sale deed. The sale deed having been executed by the plaintiff himself, on account of fraud, as alleged by

him, is only a voidable document and is, therefore, valid and binding upon the plaintiff as long as it is not set aside. The title which has passed from the plaintiff to the defendants would continue to vest in the defendants as long as the sale deed is not cancelled and obviously as long as the sale deed is not cancelled no relief can be granted to the plaintiff either by way of declaring his title, because he has no title, or of delivering of property as long as he does not get back his title which he has sold by sale deed *Janki Kunwar v. Ajit Singh* (1888) ILR 15 Cal. 58 (PC). In these circumstances the revenue court can give no relief as long as the sale deed is not cancelled. It was contended on behalf of the defendants that the revenue court can give a declaration that the plaintiff is the owner because the sale deed was executed by fraud and the revenue court could also give possession. As stated above neither declaration nor possession can be given to the plaintiff as long as the sale deed is not cancelled.”

22. Supreme Court in *Smt. Bismillah vs. Janeshwar Prasad & Others* (1990) 1 SCC 207 has observed;

“It is settled law that the exclusion of the jurisdiction of the civil court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. The provisions of a law which seek to oust the jurisdiction of civil court need to be strictly construed. Section 331 of the Act has been the

subject of series of pronouncements of the High Court as to the circumstances and the nature of the suits in which its exclusionary effect operates. Distinction was sought to be drawn between the class of cases where the binding effect of a deed had had to be got rid of by an appropriate adjudication on the one hand and the class of cases in which a transaction could be said to be void in law where what the law holds to be void, there is nothing to cancel or set aside on the other. In the former case, it was held, a suit was cognizable by the civil court while in the latter, it was not, it being open to the statutory authority to take note of the legal incidents of what was non est.”

23. Since, title of Hargobind Singh is not under cloud and he is in possession, thus he is not required to seek declaration of his title of the land. Certainly, he can seek cancellation of the sale deed in Civil Court on the ground of fraud or misrepresentation. Moreover, when Hargobind Singh states that he is in actual physical possession of the suit property, under these circumstances he is not required to seek the relief for possession.

24. Under these circumstances, no illegality, infirmity or error can be found in the impugned order passed by the trial court.

25. Present petitions are thus not maintainable. Accordingly, all the above mentioned Petitions stand dismissed with costs of Rs.10,000/- (Rupees Ten Thousand only) in each case.

26. Petitioners are directed to deposit the costs with Registrar General of this court by way of cross cheque, within four weeks from today.

CM Nos.13139/2010, 13146/2010, 13168/2010, 13095/2010, 13097/2010 & 13098/2010 (stay)

27. Dismissed.

28. List for compliance on 1st November, 2010.

29. Copy of this judgment be placed in all the connected matters.

September 30, 2010
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V.B.GUPTA, J.