

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

+ **RSA 88/2009**

Date of Decision: February 11, 2010

MANOJ KUMAR & ANR. Appellants

Through: Mr. Abhishek Singh with
Mr. Amit Bhalla, Advocate.

versus

GAYASI RAM & ORS. Respondents

Through: Nemo.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM APPL. 9488/2009 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM APPL. 9489/2009 (Delay)

There is delay of 22 days in filing the appeal. For the reasons stated in the application, it is allowed. Delay in filing the appeal is hereby condoned.

RSA 88/2009

1. Plaintiffs (appellants herein) filed a suit for permanent injunction seeking restrain orders against defendant Nos. 1 to 7 and defendant Nos. 8 to 10 from carrying out mutation of land bearing Khasra No.28/1 (0-08), 28/2 (0-12), 30 (4-18), 51/1 (2-0), 51/2 (3-15), 52 (1-15) and 82 (2-09) total measuring 15 Bighas 17 Biswas, situated within the Revenue Estate of Village Gadaipur, New Delhi, on the basis of illegal Sale Deeds executed in favour of defendants No. 8 and 9.
2. In brief, case of the plaintiffs is that suit property belonged to one Shri Kale Ram, great grandfather of the appellant. Shri Kale Ram was survived by three sons and three daughters. All the three daughters relinquished their share in the property in favour of Shri Giasi Ram, defendant No.1 (respondent herein). Shri Shyam Lal and Shri Ram Bal, the other sons of Kale Ram also relinquished their share in favour of Giasi Ram. The entire land was sold in the year 1996 to respondent

Nos. 8 and 9 by way of multiple Sale Deeds, some of which remained unregistered. Purchasers filed a writ petition seeking directions for registration of un-registered Sale Deeds. In the writ petition and other legal proceedings, plaintiffs sought impleadment but they failed and their prayer was rejected upto the Supreme Court.

3. On the pleadings of the parties, trial court framed a preliminary issue on 11.02.2009 as below:-

“Whether the suit is barred by Section 41 (H) of the Specific Relief Act, 1963.”

4. Trial court vide its order dated 12.02.2009 rejected the plaint under Order 7 Rule 11 CPC observing that as per Section 41 (h) of the Specific Relief Act (hereinafter referred to as ‘Act’) efficacious relief was available to the plaintiffs and since they did not seek efficacious remedy of declaration for declaring the impugned Sale Deeds as null and void, the relief of injunction was not available to the plaintiffs because of provisions of Section 41 (h) of the Act. The trial court observed:-

“Section 41 (h) of the Specific Relief Act provides that an injunction cannot be granted when

equally efficaciously relief can certainly to be obtained by any other mode of proceeding except in case of breach of trust. The plaintiff has other efficacious remedy of declaration which has not been prayed in this suit. In other words the suit for preliminary injunction, simpliciter is not maintainable in view of the clear cut provision of section 41 (h) of Specific Relief Act.”

5. Plaintiffs lost their first appeal vide impugned order dated 16.03.2009.
6. In the present appeal, plaintiffs have suggested formulation of substantial question of law in para one of the appeal.
7. Mr. Abhishek Singh, learned counsel for the plaintiffs has argued that Trial Court as well as the Appellate Court went wrong when they rejected the plaint of the plaintiffs without deciding the case on merits. It is further argued that relief of declaration was not required to be sought as it was in built in the relief of permanent injunction sought by the plaintiffs. He has urged that there is no legal bar in filing the suit even if hit by the said provisions of the Act and the courts below have not correctly interpreted and applied the provisions of Section 41 (h) of the Act to the facts and circumstances of the case.

Therefore, substantial question of law are required to be formulated and adjudicated upon. To support his submission, he has relied upon '*K.Thakshinamoorthy & Anr. Vs. State Bank of India, AIR 2001 Madras 167*'.

8. I find no force in the submissions of the learned counsel for the plaintiffs.
9. True that suit for perpetual injunction in respect of immoveable property is maintainable without declaration of title. However, court is required to take into consideration the entire averments contained in the plaint. Relief of injunction as sought by the plaintiffs in the case was to restrain Respondent Nos. 1 to 7 from effecting mutation of the suit land in favour of Respondent Nos. 8 and 9. It is settled principle of law that mutation of a property in the name of a person per se does not create any title of the person in whose name the property is mutated. Though plaintiffs have sought perpetual injunction for restraining respondents from getting the suit land mutated in their names, the fact remains they did not challenge the legality and validity of the Sale Deeds vide which Gayasi Ram sold the land to Respondent Nos.2 to 10 by executing separate Sale Deeds. Unless declaration to the

fact that the Sale Deeds executed by Gayasi Ram were null and void, relief of perpetual injunction as claimed by the plaintiffs is of no consequence. Plaintiffs have also sought perpetual injunctions against the Govt. Agency responsible for registration of Sale Deeds. The concerned Govt. official in no circumstance can be restrained from mutating the property in favour of holder of a valid Sale Deed. As pointed out above, plaintiffs did not challenge validity of the Sale Deeds nor sought any such declaration for the same.

10. Relief of perpetual injunction can be granted to the plaintiffs only if no other efficacious remedy is available. In this case efficacious remedy available to the plaintiffs was to seek declaration that the Sale Deeds executed by Respondent No.1 in favour of Respondent Nos. 2 to 9 were not valid and without authority. The relief of perpetual injunction as claimed was a relief so available to the plaintiffs as a consequential relief. It was only if the impugned Sale Deeds were declared as null and void that the relief of perpetual injunction could have been granted to the plaintiffs.
11. It is noted that respondent Nos. 8 and 9 have already filed a writ petition seeking directions to the Registrar to register the

un-registered Sale Deeds executed in their favour by respondent No.1.

12. In view of my discussion as above, it is concluded that the Trial Court as well as the Appellate Court rightly applied provisions of Section 41 (h) of the Act to the facts and circumstances of the case.
13. Question of maintainability of the suit can be considered by the court, after pleadings are complete, on framing of a preliminary issue. Order 14 Rule 2 (2) CPC permits the court, if it is of the opinion, that the case or any part thereof can be disposed of on a issue of law only, it may try that issue first if that issue relates to the jurisdiction of the court or bar to the suit created by any law for the time being in force. In that case, court is within its power to postpone the settlement of other issues until after that issue has been determined. The trial court framed a preliminary issue and proceeded to decide the same within the purview of law. Since court was of the opinion that the suit was barred under the law, it rightly rejected the plaint without settlement of other issues.
14. *K.Thakshinamoorthy's case (supra)* is of no help to the plaintiffs. In the said case an application under Order 7 Rule

11 CPC was filed by the defendants seeking rejection of the plaint on the grounds that it did not disclose any cause of action. In the said case, State Bank of India had filed a suit for permanent injunction for restraining the defendants from alienation/selling the scheduled properties or to create any charge over the same. It was under these circumstances that the court observed that Specific Relief Act is only an equitable and common relief or remedy and does not deal with any cause of action and therefore plaint cannot be rejected on the ground that the relief sought for in the suit cannot be granted under the provisions of the Act, especially when element of fraud on the part of defendant is also alleged by the plaintiff.

15. Hence, in view of the settled principle of law enshrined in Order 14 Rule 2 CPC and Section 41 (h) of the Act, no substantial question of law needs formulation. Though attempt has been made to formulate a substantial question of law pertaining to the applicability of Section 22 of the Delhi Land Revenue Act, but no such question arises as no mutation of the land in suit was made by the Tehsildar in favour of Respondent Nos. 2 to 9 in the revenue records at the time

when the suit was filed.

16. Hence, I find no merits in the appeal, the same is accordingly dismissed.

**ARUNA SURESH
(JUDGE)**

FEBRUARY 11, 2010
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