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

% *Date of Judgment: 10.02.2011*

+ **RSA No. 98/2010 & CM Nos.8921/2010 & 264/2011**

HUKMI (DECEASED) THROUGH LRS Appellant
Through: Mr. Maneshwar Dayal, Sr.
Advocate with Mr. Om Prakash
Sharma, Advocate.

Versus

NATHU & OTHERES Respondents
Through: Mr. N.S. Vashisht, Advocate for
respondent No. 2.
Mr. L.K. Garg, Advocate for
respondents No. 3 to 7.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

For orders, see file of RSA No. 54/2010.

INDERMEET KAUR, J.

FEBRUARY 10, 2011

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

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Date of Judgment: 10.02.2011

+ **RSA No.54/2010 & CM Nos. 4970/2010 & 263/2011**
RSA No. 98/2010 & CM Nos.8921/2010 & 264/2011

HUKMI (DECEASED) THROUGH LRS Appellant
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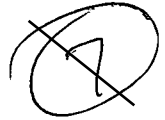
1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1 These two appeals have impugned the judgment and decree dated 17.11.2009 which had endorsed the findings of the trial Judge dated 04.10.1993 whereby the two suits filed by the plaintiff seeking permanent injunction and declaration to the effect that he is the owner of the suit land (1 bigha 10 biswas comprised in Khasra No. 994, Village Karala, Delhi) as also that the Consolidation Proceedings rendered in the year 1975-76 are inoperative and not binding upon the plaintiff had been dismissed.

2 Two suits i.e. Suit No. 391/1980 and Suit No. 90/1981 had been filed by the plaintiff. The first suit was a suit for permanent injunction. Contention of the plaintiff was that the plaintiff and

defendants No. 1 & 2 had entered into a partnership for carrying
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on the business of grinding in the suit premises. Machinery worth Rs. 18,000/- had been purchased for the said purpose. It was agreed between the parties that this business would be carried out from the suit premises. The plaintiff had constructed a factory on this suit land at his own cost. The business continued for three years; since it was not profitable; partnership was dissolved in 1975. A sum of Rs.10,000/- each was paid to defendants No. 1 & 2 in full and final settlement of the shares of the said defendants; it was agreed that the suit land would fall to the share of the plaintiff and it was thereupon relinquished in favour of the plaintiff who is the owner and in possession of the land since then. The defendants under the agency of Consolidation Officer had made efforts to grab the land of the plaintiff which is illegal. The suit land does not fall within the definition of 'land' as defined in Section 2 (d) of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the 'said Act'). The plaintiff is in continuous and uninterrupted possession of the suit land since last 30 years and his title has matured. The orders of Consolidation Officer dated 12.12.1979 affirmed by the Settlement Officer on 06.08.1980; thereafter by the Additional Collector on 29.12.1980 are illegal and ultravires. A decree of permanent injunction had been prayed restraining the defendants from interfering the peaceful possession of the plaintiff. These were averments in the first suit. Suit No. 391/1980 was filed against the defendants seeking a declaration to the effect that the order of the Consolidation Officer, the Settlement Officer and the Additional Collector (as aforementioned) be declared null and void.

3 The contention of the defendants was that in terms of the



Consolidation Proceedings which were carried out in Khasra No. 994, the land has fallen to the share of defendant No. 1 and the plaintiff has seized to have any title or right on any part over the aforementioned Khasra; it was never developed by the plaintiff; the partnership and the alleged business carried out by the parties was specifically denied. The contention was that the suit land is covered by the Delhi Land Reforms Act, 1954 and in terms of the said Act, defendant No. 1 has already been delivered possession of the suit land by the Field Kanugo in terms of the orders of the Consolidation Officer which have been upheld; jurisdiction of the Civil Court is barred.

4 The following issues were framed in the first suit:-

1. *Whether the suit is not maintainable in view of Sections 44 and 16 of the East Punjab Consolidation Act? OPP*
2. *Whether the land in dispute fell into the share of the plaintiff? if so what are its right and interest thereto? OPP*
3. *Whether the plaintiff has perfected his titled over the land in dispute by adverse possession? OPP*
4. *Whether the order of Consolidation Officers is inoperative and not binding for the grounds stated in para 12 of the plaint? OPP*
5. *Whether the plaintiff has lost his possession and so the suit has become infructuous? OPD*
6. *Whether the suit is not maintainable because of the pendency of another suit for declaration and injunction? OPD*
7. *Whether the plaintiff is entitled to the injunction prayed for?*

5 The following issues were framed in the second suit:-

1. *Whether the orders dated 29.09.1980 of No. 5, 6 & 7 are illegal, void, without jurisdiction? OPP*
2. *Whether the Ptr. is entitled for injunction prayed for? OPP*

3. *Whether the suit is within limitation? OPD*
4. *Whether the suit is barred u/o 2 rule 2 CPC? OPD*
5. *Whether the suit bad for misjoinder of parties? OPD*
6. *Whether the suit is bad for want of notice under Section 80 CPC? OPD*
7. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
8. *Whether the jurisdiction of the civil Court is barred under Section 44 of the Consolidation Act? OPD.*
9. *Relief.*

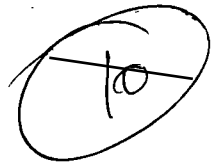
6 Oral and documentary evidence had been led by the respective parties. In the first suit, issues No. 1, 2 & 4 were the crucial issues. In the second suit, issues No. 1 & 8 were relevant.

7 Section 2(d) of the said Act defines land. It reads as under:-

"'Land' means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture, or for pasture and include the sites of building and other structures on such land."

8 Khasra Girdawari of the year 1953-54 produced by the plaintiff had been examined wherein the land was shown as 'Banjar'; One biswas was referred to as 'Ghair Mumkin Makan'; testimony of PW-1, PW-2, PW-4, PW-5 & PW-7 had been adverted to coupled with the Khasra Girdawari (as noted hereinabove) to hold that it could not be stated that there was any factory at the said land. The Consolidation Proceedings in the aforementioned Khasra had admittedly been taken place in the year 1975-76 whereby the land including the suit property was distributed amongst various occupants. This scheme had stood confirmed by the order of the Consolidation Officer on 12.12.1979 which had been affirmed in appeal by the Settlement Officer on 06.08.1980; thereafter

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reaffirmed by the Additional Collector on 29.12.1980.

9 Section 16 (2) of the said Act reads as under:-

"When the scheme is (confirmed) under section 20 of the land so allotted to the occupancy tenant and the landlord shall notwithstanding anything to the contrary contained in the Tenancy Act in force in the Estate or Mahal concerned or in any other law for the time being in force, be held by each of them respectively in full right of ownership and the right of occupancy in the land allotted to the landlord shall be deemed to be extinguished."

10 Section 44 of the said Act which is also relevant reads as follows:-

"No civil Court shall entertain any suit instituted or application made, to obtain a decision or order in respect of any matter which the Chief Commissioner or any officer is, by this Act, empowered to determine decide or dispose of."

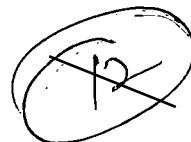
11 A coupled reading of Section 16(2) and Section 33 clearly shows that the jurisdiction of the civil Court in respect of any matter which the Chief Commissioner or any officer is, by this Act, empowered to determine is barred. It was these statutory provisions which had weighed in the minds of the trial court as also the first appellate court to draw a conclusion that the suit filed by the plaintiff is barred; the civil court has no jurisdiction to entertain the suit.

12 Learned counsel for the appellant has submitted that on 22.12.2007, the High Court had remanded the matter back to the trial court to dispose of the appeal on merits. It is submitted that the impugned judgment dated 17.11.2009 had addressed itself only the issue of jurisdiction; it was incumbent upon the Court to have decided each and every issue which had been framed by this Court.

This by itself amounts to perversity and calls for an interference. For this proposition, reliance has been placed upon AIR 2007 Himachal Pradesh 11 Prithvi Raj Jhingta & Anr Vs. Gopal Singh & Anr. This judgment has no application to the factual scenario in the instant case. Order XIV Rule 2 (2) in fact gives powers to the Court to deal with an issue of law and to try it first if it relates either to (a) jurisdiction of the Court or (b) a bar to the suit created by any law for the time being in force; settlement on other issues may be postponed.

13 The impugned judgment had held that the jurisdiction of the Court is barred under Section 44 of the said Act; thereafter it was no longer incumbent upon the Court to have tried the case on merits and to go into the details of the matter; jurisdictional issue is an issue which goes to the root of the matter and when the root itself having become uprooted; further scrutiny of the evidence was not required.

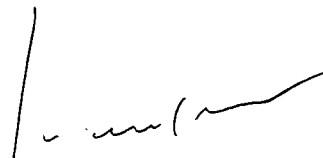
14 Reliance placed upon by the learned counsel for the appellant (2002) 6 SCC 416 Dhruv Green Field Ltd. Vs Hukam Singh & Ors. for the proposition that the jurisdiction of a civil Court would be retained despite an express or implied bar if the order or action complained of is a nullity is misplaced. In the instant case, it is not in dispute that the proceedings of the Consolidation Officers are dated 21.12.1979 which was affirmed by the Settlement Officer on 06.08.1980 and thereafter reaffirmed by Additional Collector on 29.12.1980. Remedy available to the plaintiff under the said Act had stood exhausted. Thereafter, he had also filed a writ petition under Article 227 of the Constitution of India which had been withdrawn on the same day with



permission to take appropriate legal remedy. The impugned judgment has correctly recorded that the forum of a civil proceedings was not the correct forum. Jurisdiction of the civil court to deal with the contentions raised by the plaintiff that he had become owner of the land because of his uninterrupted possession since last 30 years and the orders of the Consolidation Officer, Settlement Officer and Additional Collector are null and void could not have been gone into or scrutinized by a Civil Court in view of the express bar of Section 44 of the said Act.

15 There is no merit in these appeals. No substantial question of law has arisen

Appeals as also pending applications are dismissed.



INDERMEET KAUR, J.

FEBRUARY 10, 2011

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