

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

% Date of judgment: 05.05.2011

+ **R.S.A.No.301/2007 & CM No. 16431/2007**

REV SINGH

.....Appellant
Through: Mr. Satish Kumar Verma,
Advocate.

Versus

RISHI PAL & OTHERS

.....Respondents
Through: Mr. K.K. Aggarwal, Advocate
for respondent No. 3

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)

1. This appeal has impugned the judgment and decree dated 27.9.2007 which has endorsed the finding of the trial judge dated 24.5.2005 whereby the suit filed by the plaintiff Rev Singh seeking permanent injunction against the defendant with a prayer that the defendant be restrained from dispossessing the plaintiff from plot measuring 200 sq. yards and 75 sq. yards (as depicted in the site plan) in khasra No.170, Village Sabhapur, Tehsil Seelampur, District North East Shahadara, Delhi (hereinafter referred to as

the suit property) had been dismissed. Plaintiff claimed himself to be the recorded bhumidar of the aforementioned suit property. He had carved out plots and sold them to some purchasers. Plaintiff had retained two plots measuring 200 sq. yards and 75 sq. yards for himself. He had made boundary wall of bricks around the said plots. Defendants being influential persons in collusion with the police threatened to dispossess the plaintiff. Present suit was accordingly been filed.

2. Defendant no.1 and 2 were proceeded ex parte. Defendant no.3 was the only contesting defendant. It was stated that the plaintiff has not come to the court with clean hands. Defendant no.3 has purchased a plot measuring 150 sq. yards from the son of the plaintiff namely Bharat Singh who had represented himself to be the owner of the property having an equal share being a coparcener in the ancestral land. The sale consideration had been received by him. Physical possession of the said plot had been handed over to the contesting defendant. Further contention was that the defendant had also filed a suit against the plaintiff and his son as both were creating a hindrance in the construction of the boundary wall which was purported to be made by the defendant no.3.

3. On the pleadings of the parties, the following five issues

were framed:

1. Whether suit of plaintiff is maintainable in its present form? OP Parties
2. Whether suit of plaintiff is barred under Section 14(H) and (I) of the Specific Relief Act or u/o 7 r 11 CPC? OP Parties.
3. Whether jurisdiction of this Court is barred under Section 185 of the Delhi Land Reforms Act? OP Parties.
4. Whether plaintiff is entitled to a decree of permanent injunction as prayed for? OPP
5. Relief.

4. Oral and documentary evidence was led. The site plan produced by the plaintiff and proved as Ex.PW-1/1 had been adverted to. Khatoni Ex.PW-1/2 for the year 1986-86 was not relied upon as it was not a certified copy. Site plan was also ignored as the maker of the document i.e. the architect has not come into witness box. Court was of the view that the plaintiff himself admitted that he had sold a portion of Khasra No.170 by carving out plots; further plaintiff had also not given the details of the said purchasers; plaintiff had failed to prove his case. Suit was dismissed.

5. This was affirmed in first appeal. Court was of the view that what the plaintiff was actually seeking was a declaration of his bhumidari rights which was barred under Section 185 of the Delhi Land Reforms Act 1954 (hereinafter referred to as the DLRA). Suit was not maintainable; the first appellate court had returned

the following finding:

7. Even though the trial court decided issues no.1, 2 and 3 in favour of the appellant but reading of the plaint goes to show that the appellant basically wants a declaration that he is a bhumidhar in respect of the two plots which he allegedly retained for himself after carving the plots out of his hand by selling others. According to the written statement filed by the third respondent had sold the suit plots to them through his son Shri Bharat Singh thus, the prayer made by the appellant to seek an injunction order is virtually a prayer for declaration as bhumidhar of the suit property which relief can always be obtained by the appellant by approaching Revenue Authority and in fact cannot be granted to the Civil Judge. Moreover, the averments made in the plaint goes to show that the appellant is left with no legal right even to be the bhumidhar of the property which he says has been recorded in his name in the Khatoni. The acts of the appellant falls under the provisions of section 33 and 44 of the Delhi Land Reforms Act and deprives him of his status of Bhomidar and cast a cloud over his title. In fact, the relief which is sought for by the appellant in fact is a relief of declaration in the garb of a suit for injunction. Dealing with the similar situation our own High Court in the case of Ram Karan & Others VS. Jagdeep Rani reported in 79 (1999) DLT 305 held as under:-

“I am of the considered opinion that the present suit is barred under the provisions of Section 185 of the Delhi Land Reforms Act as the issues raised in the present suit could be effectively decided by the Revenue Court and the jurisdiction of this Court is barred under the provisions of Section 185 of Delhi Land Reforms Act. The plaintiffs in the present suit claim a right to the suit property as a Bhoomidar which right is denied on the ground that the plaintiffs have sold out their rights in the suit land. The rights, if any, of the plaintiffs in respect of the suit land are under cloud, and therefore, for all practical purposes the plaintiffs are seeking for a declaration of their right as a Bhoomidar and also seeking for a declaration of their possession in respect of the suit land. There is apparently a dispute as to possess of the agricultural land and therefore, such dispute as to possession of agricultural land could be effectively adjudicated upon and decided under the provisions of Delhi Land Reforms Act, remedy being under Section 84 read with Item no. 19 of the First Schedule. All the reliefs claimed by the plaintiffs, therefore, in the present suit are within the competent jurisdiction of the Revenue Assistant where a suit is pending and this Court has no

jurisdiction to entertain this suit in view of the provisions of Section 185 of Delhi Land Reforms Act.

8. Ld. Counsel for the appellant has relied upon the following authorities in support of his contention, that in the present case, the trial court ought to have granted injunction as prayed for. The authorities are:

- i) AIR 1971 SC 2320
- ii) DRG 1991 (21) 48
- iii) 1974 DLT Vol. X 227.

I have considered the aforesaid judgments. At the outset, I may observe that the judgments delivered in Hatti Vs. Sunder Singh (supra) does not help the appellant. In so far as the second judgment is concerned in the present case, the appellants having lost their legal rights even to be recognized as bhumidar on account of having occupy different plots out of the land of which they claimed to be bhumidar. Thus, the second judgment also does not come to rescue. Similarly, the judgment delivered in the case of Mam Raj Vs. Ram Chander is also not applicable to the facts of this case. Since the suit of the appellant is barred u/s 185 of the Delhi Land Reforms Act the appeal filed by the appellant is dismissed for the reasons stated above with no orders as to cost.

6. This is a second appeal. It has been admitted and on 08.11.2010, the following substantial question of law was formulated:

Whether the finding in the impugned judgment dated 27.9.2007 holding that the suit of the appellant is barred under Section 185 of the Delhi Land Reforms Act was a perverse finding? If so, its effect?

7. On behalf of the appellant, it has been urged that the judgment suffers from a perversity; a suit for injunction is maintainable before civil court; the prayer in the plaint is only seeking an injunction; it was not on the question of title; the defendant has also failed to show that he had purchased this

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property from Bharat Singh purported son of the plaintiff. It is pointed out that even otherwise Bharat Singh had no right or title in the suit property; he could not have sold it to the defendant. It is pointed out that the impugned judgment dismissing the suit of the plaintiff on the ground that the suit is barred under Section 185 of the DLRA is a perversity; reliance upon the judgment of Ram Karan & others Vs. Jagdeep Rai & Sons 79 (1999) DLT 305 is misplaced. For all the aforementioned reasons, the impugned judgment is liable to be set aside.

8. Arguments have been rebutted. It is pointed out that the bar of Section 185 of DLRA is operational; the Court below had rightly relied upon the judgment of Ram Karan to hold that the suit is barred u/a 185 of the DLRA.

9. Record has been perused. In the plaint it is categorically stated that the plaintiff is the recorded bhumidar of the suit property; he has carved out plots and sold them to other persons; he is in actual physical possession of the suit property; threats were extended to the defendant; suit for injunction was accordingly filed.

10. In the written statement these averments have been refuted. It is stated that the physical possession of the suit property is with the defendant; suit land had been purchased by the defendant

from Bharat Singh (the son of the plaintiff) by documents GPA, Will and receipts; defendant is not entitled to any relief; further objection was that the suit is barred under Section 185 of DLRA.

11. The trial Judge dismissed the suit of the plaintiff on merits. The trial Judge was of the view that the plaintiff has failed to show that he is owner of the suit land entitling him to the relief as claimed by him. The khatoni for the years 1985-1986 Ex. PW-1/1 and the site plan Ex. PW-1/2 had been examined. The legal issue had however been decided in favour of the defendant; the impugned judgment had examined only the legal issue. Vide dealing with issues No. 2 to 4, the court was of the view that the suit is barred under Section 185 of the DLRA. The finding in the impugned judgment has been noted supra. The court was of the view that the plaintiff was actually seeking a declaration to the effect that he be declared bhumidar; only if he gets the status of a bhumidar recognized would he be entitled to the relief of injunction; such a relief was not maintainable before the civil court; revenue court alone had the jurisdiction to deal with this issue. Reliance upon the judgment of Ram Karan was in the right context. In that case, a Bench of this Court had held that where the title of the plaintiff is under a cloud, for all practical purposes

the plaintiff, is seeking a declaration of his right as a bhumidar which issue could be decided only by the revenue court; in that case also, the plaintiff had claimed himself to be a bhumidar which had been disputed by the defendant. In the present case as well, the title of the plaintiff is not clear; he claims himself to be a bhumidar and recorded owner of the suit land. This has been disputed by the defendant in his written statement wherein his categorical version is that the suit land has been sold to him by the son of the plaintiff and he is in possession of the same. Such a dispute could only be decided by the revenue court. The impugned judgment rightly recorded this. No perversity has been pointed out.

12. Substantial question of law is answered accordingly in favour of the respondent and against the appellant. There is no merits in this appeal. Appeal as also pending application are dismissed.

INDERMEET KAUR, J.

MAY 05, 2011

A/ss