

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

+ **RFA No.621/2003**

% **5th March, 2012**

ASHOK KUMAR & ORS. Appellant
Through: Mr. R.K. Anand, Advocate with
Mr. S.B. Sharma, Advocate and
Mr. Chetan R. Anand,
Advocate.

Versus

SMT. MUNNI DEVI & ORS. Respondents
Through: None.

+ **RFA No.14/2004**

DARSHAN SINGH & ORS. Appellants
Through: Mr. Dalip Kumar Dhayani,
Advocate.

Versus

LATE SH. RULIYA SINGH & ORS. THROUGH L.RS.
..... Respondents
Through: Mr. Jaiveer Chaudhary,
Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? Yes

VALMIKI J. MEHTA, J (ORAL)

RFA No.621/2003

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 17.5.2003 dismissing the suit for declaration and injunction filed by the appellants/plaintiffs. The impugned judgment holds that the suit ought to have been filed before the Revenue Courts under the Delhi Land Reforms Act, 1954 (hereinafter referred to as 'the Act') and not before the Civil Court whose jurisdiction was barred as per Section 185 of the Act.

2. The facts of the case are that the appellants/plaintiffs claimed to have purchased the subject agricultural land by means of registered sale deeds and got themselves recorded as bhumidars/owners of the land. The land which is the subject matter of the dispute is as under:-

“i. Shri Ashok Kumar is the Bhumidar of agricultural land measuring 6 Bighas and 18 biswas, mustail no.73, killa no.9(2-2), 12 (4-16), situated in village Nizampur, Rasidpur, Tehsil & District Delhi.

ii. Shri Davender Kumar is the Bhumidar of agricultural land measuring 07 bighas, 13 biswas, bearing Khasra no.69/7, min (4-04) & 69/14 min (3-09) situated in village Nizampur, Delhi.

iii. Shri Amit Ratawal is the Bhumidar of land measuring 12 bighas 17 biswas bearing Khasra no.69/6 (4-

08), 69/7(0-4), 69/14 min. (0-14), 69/15 min (1-16), 70/10/2 (2-15), 70/11/1 (3-00), in village Nizampur, Delhi and,

iv. Shri Sumit Ratawal is the Bhumidar of land measuring 12 bighas 17 biswas, bearing Khasra No.69/14, min (0-13), 69/15 min. (3-00), 69/16 (4-12), 69/17 (4-08) and 69/26 (0-04) in the revenue estate of Nizampur, Delhi.”

On 25.2.2001, when plaintiff No.2 visited the suit land, he found some strangers and on enquiry they told him that they had been offered this land for sale by defendant No.2-Sh. Shiv Raj Singh Verma. The strangers also informed that they have been shown mutation of the said land in favour of defendant No.2. The plaintiffs/appellants thereafter made enquiries and it transpired that the defendant No.1-Smt. Munni Devi forged a General Power of Attorney of the plaintiffs which did not bear the signatures of the plaintiffs, and on the basis of this forged General Power of Attorney she had executed a sale deed of the subject land in favour of the defendant No.2. The defendant No.2 has thereafter sold the land to the wife of defendant No.4 i.e. defendant No.3 by means of a registered sale deed dated 28.2.2001. The defendant No.4 was the ACP of the area who was stated to have been in collusion with the defendants.

3. Legal heirs of defendant No.1(defendant No.1 being deceased) did not appear and were proceeded exparte. Defendant

Nos.2 to 4 contested the suit and inter alia pleaded that the suit was barred under Section 185 of the Act and the Civil Courts had no jurisdiction to grant the reliefs as prayed for.

4. The trial Court has held that the Civil Courts had no jurisdiction to decide the suit by observing as under:-

“16. The short question arises for consideration-

Whether Civil Courts have jurisdiction to grant the relief prayed for?

Before proceed further it has become essential to examine the relevant provision of Delhi Land Reforms Act. Section 185 of the Delhi Land Reforms Act is reproduced as under:-

“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, taken 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 7 in the proceedings 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.

NOTES

The matter in respect of which the jurisdiction of Civil Courts is ousted are only those matters mentioned in Sch.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. In the suit

in which permanent injunction is claimed on the basis of succession to Bhumidari rights by virtue of a will, such a suit is not covered by any entry in column 3 of Sch.I and thus DLR Act does not either expressly or impliedly bar the present suit.

17. I am not impressed upon the contentions of the plaintiffs that they are entitled to seek declaration of proprietary rights in respect of the suit properties simply for the reason that the jurisdiction of the Civil Court is limited to decide the issue of title refer to it by the Revenue Courts. It is clearly implied that if the question of title is raised in an application for declaration of Bhumidari rights under the Items 4 of Schedule (i) of the Act that question will then whether refer by the Revenue Assistant to the Civil Court, but a party wanting to raise such a question of title in order to claim proprietary rights/bhumidari rights cannot directly approach the Civil Courts. The Act is a complete code and the Civil Court has no jurisdiction to entertain a suit in view of Section 185 of the Delhi Land Reforms Act.

18. In the matter titled as “HATTI VS. SUNDER SINGH, reported in AIR 1970 (S.C) 2320”, it has been observed that the Civil Court has no jurisdiction to entertain a suit in view of Sec.185 of the Delhi Land Reforms Act. The Hon'ble Supreme Court has also observed that the Delhi Land Reforms Act is a complete Code and Civil Court has no jurisdiction to entertain a suit in which the plaintiff alleging that he is the proprietor of the suit lands asked for the declaration that he is entitled to the Bhimidari rights in respect of the suit land. It was also held in the judgments Hatti's case that all the three reliefs which were asked by the respondents in his suit were within the competent jurisdiction of the Revenue Assistant under the Provisions of the Act. It was observed at page 844, 846 and 847 that:

“The Act is a complete Code under a declaration of his rights as a Bhumidar, or aggrieved by a declaration issued without notice to him in favour of another, can approach the Revenue Assistant under Item 5 of the First Schedule and this he is allowed to

do without any period of limitation, because he may not be aware of the fact that a declaration has been issued in respect of his holding in favour of another. A declaration by a Gaon Sabha of the right of any person can also be sought without any period of limitation. If there is dispute as to possession of agricultural land, the remedy has to be sought under Section 84, read with Item 19 of the First Schedule.

.....

.....

Section 6, 11, 13 and 154 of the Act read together thus show that after the Act came into force, proprietors of agricultural land as such ceased to exist. If any land was part of a holding of a proprietor he became a bhumidar or an Asami whereupon the rights of the proprietor in that land ceased. Lands, which are not holding of either the Proprietor or any other person, vest in the Gaon Sabha. In the case of Proprietors their rights in the holdings which, under the definition, must have been either Sir, or Khudkasht at the commencement of the Act. If it was not Sir or Khudkasht of a Proprietor, it would not be his holding and consequently, such land would vest in the Gaon Sabha under Section 154, the result of which would be extinguished.”

19. In Hatti’s case (supra), it has been further observed that:

“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, take cognizance of any suit, application or proceedings mentioned in Column 3 thereof.”

20. In order to appreciate the controversy reference can well be made to the relevant portions of the decision in the case of Hatti’s (supra). Indeed the Hon’ble Supreme Court hold that jurisdiction of the Civil Court is barred U/s. 185 of the Delhi

Land Reforms Act. The findings returned are:

“6..... The jurisdiction of the Civil Court is clearly barred by Section 185 of the D.L.R.A. read with the various items of the First Schedule mentioned above. If a Bhumidar seeks a declaration of his right, he has to approach the Revenue Assistant by an application under item 4 while, if a Gaon Sabha wants a clarification in respect of any person claiming to be entitled to any right in any land it can institute a suit for a declaration under item 28 and the Revenue Assitant can make a declaration of the right of such person.”

21. Later on the Hon’ble Supreme Court went to hold that if question of title arises, the Revenue Court can refer the matter to the Civil Court but can not entertain the suit directly. It was held in paragraph No.7:-

“7..... On the contrary, Section 186 envisages that question of title will arise before the Revenue Courts in suits of proceedings under the First Schedule and, only if such a question arises in competent proceedings pending in a Revenue Court, an issue will be framed and referred to the Civil Court. Such a provision does not give jurisdiction to the Civil Court to entertain the suit itself or a question of title. The jurisdiction of the Civil Court is limited to decide the issue of title referred to it by the Revenue Court. This clearly implies that, if a question of titles is raised in an application for declaration of Bhumidari rights under item 4 of Schedule-I of the Act, that question will then be referred by the Revenue Assitant to the Civil Court, but a party wanting to raise such a question of title inorder to claim Bhumidari right can not directly approach the Civil Court.”

22. It is undisputed fact that the names of the plaintiffs have been earlier recorded in the Revenue Record as Bhumidars/owners of the property in dispute. It is not in dispute that the plaintiffs are seeking the decree of declaration

to the effect that they are the owners of the agricultural land. The contentions of the plaintiffs are that the defendants in connivance with the Revenue staff by manipulations of records got the entries anti-dated with a view to cheat and defraud the plaintiffs of their valuable rights. It is admitted position of the fact that the plaintiffs have preferred an appeal U/s. 64 of the Delhi Land Revenue Act against the order of Mutation defendant 05.06.2000, which is pending adjudication before the Court of Deputy Commissioner (North Wst), Khanjawala, Delhi. Not only this, an order of status-quo has also been passed by the Ld. Deputy Commisisoner (North West) in favour of the plaintiffs and against the defendant no.1 and 2.

It needs to be noticed that the said appeal has yet not been disposed of. If the facts of the case are examined in the light of the judgments of the Apex Court as well as of our own High Court (supra), it makes clear that Civil Courts have no jurisdiction. Section 83 of the Act protects right of a landholder in case of land being under the fact of misuse. Section 84 of the Delhi Land Reforms Act procedure for ejectment of the persons occupying the land of Gaon Sabha without title. Section 74 of the Delhi Land Reforms Act provides that land to Asami for the purpose of reclamation is granted initially for five years and subsequently he may be conferred a status of "Bhumidar" by Revenue Assistant after due enquiry and procedure.

Admittedly, the Civil Courts have no jurisdiction to adjudicate the question of Bhumidari/proprietorship right. In explanation of Section 186 of the Delhi Land Reforms Act 1954 has clearly indicated that a plea regarding the title to the land, which is clearly untenable and intended solely to oust the jurisdiction of the Revenue Court shall not be deemed to raise a question regarding the title to the land within the meaning of this Section.

Section 186(2) of the Act provides that the Civil Court, after reframing the issue, if necessary, shall decide such issue only and return the record together with its finding thereon to the revenue Court which submitted it and further Section 186(3) of the Act provides that the Revenue Court shall then proceed to decide the suit, accepting the finding of the

Civil Court on the issue referred to it.

23. Section 104 of the Delhi Land Reforms Act lays down the procedure for declaratory suit and shall be tried by the Revenue Assistant, thus, the Act is a complete code, under which it is clear that any person wanting declaration of his right as a Bhumidari can approach the Revenue Assistant under Item IV of the First Schedule. All the reliefs claimed in the present suit are within the competent jurisdiction of the Revenue Assistant.

24. So far as the second part of the prayer is concerned, same is also beyond the cognizance of the Civil Court for the reasons, an injunction for status-quo order has already been passed by the Ld. Deputy Commissioner (North West), Kanjhawala, New Delhi, in an appeal filed on behalf of the plaintiffs U/s. 64 of the Delhi Land Revenue Act and also in view of the law laid-down by our own High Court in the judgment “36 (1988), D.L.T. 428,” which is as under:-

“(i) Code of Civil Procedure, 1908- Order 39 Rules 1 and 2---Interim Injunction-Petitioner in possession of land, threatened to be dispossessed for distributing the land to landless persons---Suit that petitioner could not be a dispossessed without due process of law--- Respondents pleaded that land in dispute owned by respondents and petitioner were only trespassers—No declaration obtained by the petitioner that they are “Bhumidar” from revenue Court—Injunction refused—First appeal to Senior Sub-Judge also dismissed—Revision—Whether injunction correctly refused—Yes.”

25. The Hon’ble Supreme Court has also observed in the case Hatti’s (supra) that Section 186 does not give jurisdiction to the Civil Court to entertain the suit itself on a question of title. In fact, it will appear from Section 186 that the legislature the control on the Revenue Courts to decide the suit accepting the findings of the Civil Court on the issue refer to it under Sub-Section (i). Reading Section 186 R.(a)(4) to give the irresistible conclusion is that any person, who wants to challenge the

correctness of the entries in the Land Reforms forms has first to apply to the Revenue Assistant and it is for the Revenue Assistant to direct the said person to file a regular suit. The aggrieved party, who in this case will either be a Bhumidar or a Asami cannot directly approach the Civil Court, but has to apply to the Revenue Assistant U/s. 8 and he will then be directed by the Revenue Assistant to file a regular suit in a Civil Court.

No doubt the findings of the Civil Court is made binding on the Revenue Assistant, who shall then decide the suit accepting the findings of the Civil Courts on the question regarding the title of any property to the land. It will, therefore, appear that both the reliefs claimed by the plaintiff, firstly, that they are the owner/Bhumidars of the agricultural land secondly restraining the defendants permanently from transferring or part with possession of the property in dispute are within the competent jurisdiction of the Revenue Assistant to determine and a Civil Court cannot approach directly by an aggrieved person.” (underlining added)

5. In my opinion, the trial Court has fallen into a grave error in holding that the Civil Courts did not have jurisdiction in view of Section 185 of the Act. Section 185 has already been reproduced above and which Section shows that the Revenue Courts have jurisdiction to try such suits which are mentioned in columns 2 and 3 of the Schedule I of the Act, and it is only with respect to such suits that the jurisdiction of the Civil Courts will be barred. The sections and type of the suits which are mentioned in columns 2 & 3 of the Schedule I of the Act, do not cover suits such as the subject suit for declaration, injunction and for cancellation of a sale deed/power of

attorney on the ground of the same having been forged and fabricated. Such causes of action/reliefs of declaration and injunction which pertain to invalidity of the title documents which are said to have been got executed on the basis of a forged and fabricated General Power of Attorney are not covered under any of the Sections under columns 2 & 3 of Schedule I and they can be thus decided by a Civil Court. A reference to columns 2 and 3 of Schedule I of the Act shows that in none of the sections or the description of suits, mentioned in columns 2 and 3 of the Schedule I respectively, the subject suit would be covered. The only sections which can be said to be somewhat related to the issues/causes of action/reliefs in the suit are Sections 13 and 104. Section 13 pertains to an application to regain possession after bhumidhari rights are got declared and for which period of limitation is one year from the commencement of the Act. The Act commenced in the year 1954 and the subject suit for declaration and injunction cannot be said to be pertaining to Section 13 of the Act, and also because no declaration of bhumidhari rights envisaged under Section 13 is in issue in the subject suit. Therefore, the subject legal proceedings are not covered under serial No.3 of the Schedule I which pertains to Section 13, being an application to regain possession. So far as the Section

104 is concerned which is the subject matter of serial No.28 of the Schedule I, the said section pertains to a declaratory suit which is filed on behalf of Gaon Sabha against a person claiming entitlement to any right to the land which is the subject matter of the Act. Obviously, the subject suit filed by the private persons is not a suit for declaration, covered by Section 104.

A reference to all other Sections which are the subject matter of column 2 of the Schedule I and the description of such suits under those sections as stated in column 3 of Schedule I shows that there is no section for filing of a suit of the nature of the suit in question. A reference to the column 2 and the description of the Sections in column 3 shows that the proceedings which are the subject matter of the Revenue Courts are those proceedings, which are with respect to either declaration of Bhumidhari rights (as distinguished from inter se dispute of claim of ownership/bhumidhari rights on account of transfer by title deeds/sale deeds including by forging a power of attorney), suits which are with respect to exchange of bhumidhari land or for partition of a bhumidhari land or suit for ejectment filed by an Asami or a suit for injunction or damage caused to a holding of a person etc etc. These suits which the Civil Courts are

barred from taking cognizance of are basically suits of a bhumidhar or Asami or Gaon Sabha and that too provided they are first of all the subject matter of the Sections which are stated in column 2 of the Schedule I.

6. Unless the suits are in substance, the suits which fall within the Sections as stated in column 2, the jurisdiction of the Civil Courts is not barred by virtue of Section 185 of the Act. No doubt Section 186 states that where a question of title is raised in any proceeding falling under column 3 of the Schedule I of the Act then such a proceeding has to be referred by the Revenue Court to a Civil Court to determine the question of title, however, it does not mean that suits where title is in question, and which suits are not the subject matter of columns 2 and 3 of the Schedule I, such suits have to be filed in the Revenue Courts. In fact, it is other way round that firstly the suits must in substance be the suits essentially covered under columns 2 and 3 of the Schedule I of the Act, and only thereafter if title of the land is in question then the Revenue Court will refer the issue of title to Civil Court, however, if the suits itself are not falling under columns 2 and 3 of Schedule I, for such suits jurisdiction of the Civil Court is not barred.

7. In view of the above, the impugned judgment wrongly dismissed the suit by holding that the Civil Courts had no jurisdiction and the jurisdiction was of the Revenue Courts. I must hasten to add that I have not expressed any opinion on the merits of the matter, for or against either of the parties, and the trial Court will decide the suit in accordance with law as per the cases urged and proved by the parties.

8. In view of the above, appeal is allowed. Impugned judgment and decree dated 17.5.2003 is set aside. It is held that the Civil Court had jurisdiction to decide the subject suit filed by the appellants/plaintiffs. Parties are left to bear their own costs. Parties to appear before the District & Sessions Judge, Delhi on 10th April, 2012 and on which date the District & Sessions Judge will mark the suit for disposal to a competent Court in accordance with law. Since the respondents/defendants have not been represented in this appeal, the trial Court will serve the respondents/defendants before proceeding ahead with the suit.

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9. By the impugned judgment, the suit filed by the appellants/plaintiffs for declaration, injunction and possession was dismissed by holding that the Civil Courts do not have jurisdiction.

The reliefs of declaration, injunction and possession were claimed on the ground that original owner-Sh. Inder Singh never executed a General Power of Attorney in favour of wife of Sh. Ruliya Singh, and on the basis of which Power of Attorney, the wife of Sh. Ruliya Singh is stated to have executed a sale deed in favour of Sh. Ruliya Singh. Sh. Ruliya Singh is the father of defendant Nos.2 to 4.

10. I have given detailed reasoning while disposing of RFA No.621/2003 and have held that unless the suit falls within the columns 2 and 3 of the Schedule I of the Act, the jurisdiction of the Civil Court is not barred. The suit such as the present claiming injunction, declaration of illegality of the sale deed executed allegedly on the basis of a fabricated General Power of Attorney and for repossession of the land, is not covered under any of the Sections mentioned in column 2 of the Schedule I. The jurisdiction of the Civil Court therefore will not be barred under Section 185 of the Act. I must once again reiterate that nothing contained in today's judgment is a reflection on the merits of the case of either of the parties, and I am not touching upon the merits of the matter. The present judgment only decides the issue that there is no bar to the jurisdiction of the Civil Courts by virtue of Section 185 of the Act.

11. Accordingly, the impugned judgment dated 25.7.2003 is set aside. Parties are left to bear their own costs. Parties to appear before the District & Sessions Judge, Delhi on 17th April, 2012 and on which date the District & Sessions Judge will mark the suit for disposal to a competent Court in accordance with law. Trial Court record be sent back so as to be available to the District & Sessions Judge on 17.4.2012.

VALMIKI J. MEHTA, J

MARCH 05, 2012

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