

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

+ **RFA No.497/2005**

% **27th March, 2012**

GYANENDER SINGH Appellant
Through: Mr. N.S. Dalal with Mr. Adilya Bhadoo &
Mr. D.P.Singh, Advs.

VERSUS

NARAIN SINGH & ORS. Respondents
Through: None.

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

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the Regular Board of this Court since 19.3.2012. No one appears for the respondents although it is 2.45 P.M. I have heard counsel for the appellant and after perusing the record am proceeding to dispose of the appeal.

2. 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 7.5.2005 dismissing the suit filed for

partition and permanent injunction on the ground that the Civil Courts have no jurisdiction by virtue of Section 185 of the Delhi Land Reforms Act, 1954, i.e. the suit should have been filed before the Court of Revenue Assistant and not before the Civil Court.

3. A reference to the impugned judgment shows that the Trial Court has referred to the definition of land as contained in Section 3(13) of the Delhi Land Reforms Act, 1954 and has held that all types of lands, i.e. whether they are residential/abadi lands or agricultural lands, are subject matter of the Delhi Land Reforms Act, 1954, and therefore the suit in Civil Court is barred under Section 185 of the Delhi Land Reforms Act, 1954. The relevant observations of the Trial Court in this regard read as under:-

“8. Section 3(13) of the Delhi Land Reforms Act provides as under:

Section 3(13)

Definition: In this Act, unless the context otherwise requires:

(13) “Land “Except in Section 23 and 24, means land held or occupied for purposes connected with agriculture, horticulture, or animal husbandry including pisciculture and poultry farming and includes:

- a) Buildings appurtenant thereto.
- b) village abadis,
- c) Gravelands,
- d) lands for village pasture or land covered by water and used for growing sigharas and other produce or land in the bed of a river and used for casual or occasional cultivation.

But does not include----

Land occupied by building in belts of areas adjacent to Delhi town and New Delhi town, which the Chief Commissioner may by a notification in the official Gazette declare as an acquisition thereto.

10. It was held in the case law reported as **39 (1989) DLT 58** (in the matter of **Kasturi (Dead) by LRs. Vs. Gaon Sabha**) that in respect of the land which is defined u/s 3(13) Delhi Land Reforms Act, the civil court has no jurisdiction. Similarly, in the case law reported as **1983 Delhi 216** the same ratio was applied and it was held that where ever the jurisdiction of the civil court is barred specifically u/s 185 of the Delhi Land Reforms Act, the civil court has no jurisdiction.

11. Further, in the case law reported as **42 (1990) DLT 44** it was held that the land occupied by buildings also falls within the definition of Abadi land. The land which falls within the definition of Section 3(13) of Delhi Land Reforms Act, is a land of village Abadi and that it excludes only that land which is occupied by buildings in belts of areas adjacent to Delhi town and New Delhi town, which the Chief Commissioner, may by notification in the official Gazette declare as acquisition thereto, meaning thereby that there should be a notification by the Chief Commissioner in respect of buildings or in respect of the land occupied by buildings adjacent to Delhi town and New Delhi town of the village abadi and only then they could be taken out from the ambit of the provisions of Delhi Land Reforms Act.

12. It is, therefore, clear that once the and sought to be partitioned in the suit falls within the ambit of section 3(13) of the Delhi Land Reforms Act, the jurisdiction of the civil court is clearly barred u/s 185 of Delhi Land Reforms Act. And when the jurisdiction of the civil court is specifically barred, the preliminary issue stated herein above is required to be answered against the plaintiff and in favour of the defendants. The preliminary issue (i.e., issue no.1) is, accordingly, answered against the plaintiff and in favour of the defendants.”

4. The Trial Court, in my opinion, has clearly misdirected itself

inasmuch as though all lands defined under Section 3(13) are the subject matter of the Delhi Land Reforms Act, 1954, however, a suit for partition, only of the nature comprised in Section 55 of the said Act, has to be filed before the Revenue Assistant. As per Schedule 1 read with Section 185, of the Delhi Land Reforms Act, 1954, it is clear that the suit for partition which is subject matter of the Schedule 1 at serial no.11 is a suit for partition of a “holding” of a Bhumidar. The expression “holding” is defined in Section 3(11a) of the Act to mean “Sir” or “Khudkasht” lands only. “Khudkasht” land is defined under Section 3(12A) to mean self-cultivated land by a proprietor either by himself or by his servants or by hired labour, i.e. agricultural lands which have not been let out to a tenant. “Sir” lands are also basically self owned and self-cultivated lands. The expression “Sir” is not defined in the Delhi Land Reforms Act, 1954, however, since the Delhi Land Reforms Act actually is an amalgam of different provisions/aspects of Land Reforms Acts which were prevalent in Delhi in 1954 when the Delhi Land Reforms Act, 1954 was passed, therefore, the definition of “Sir” lands will have to be seen from the Uttar Pradesh Land Revenue Act, 1901. As per Section 3(12) & (13) of the Uttar Pradesh Land Revenue Act, 1901, “Sir” land is defined as basically self owned and self-cultivated land. Therefore, “Sir” or

“Khudkasht” lands are actually cultivable lands and therefore basically agricultural lands where cultivation takes place. Therefore, lands in village abadi, though would be the subject matter of Section 3(13) of the Act, however, the same would not fall within the definition of “holding” as contained in Section 3(11a) of the Delhi Land Reforms Act, 1954. Once, the land is not part of a “holding” of a Bhumidar, the same cannot be the subject matter of a partition suit under Section 55, and therefore, would not fall under serial no. 11 of Schedule 1 of the Act, and consequently, there would be no bar of a Civil Court to try and decide such suits for partition allegedly because of the bar in Section 185 of the Act.

5. Reference to the suit plaint shows that the lands which were the subject matter of the suit for partition and permanent injunction were as under:-

“5. That the plaintiff and defendant are co-parceners of ancestral land bearing property/plot No(s):-

- | | | | | |
|---|------|---------------------------------------|---|---------------------------------|
| A | I) | 80 measuring 3 Biswas | = | 150 sq.yds. |
| | II) | 81 measuring 8 Biswas | = | 400 sq.yds – ½ share out of it. |
| | III) | 82 measuring 2 Bigha 02 Biswas. | | |
| | IV) | 62 measuring approximately 60 sq.yds. | | |

All situated in Lal Dora of revenue estate of Village Mungeshpur Delhi-39.

- B. I) A plot measuring 100 sq.yds. allotted by Panchayat (Gram Sabha) to the defendant no.1.
 II) Agricultural land out of Khewat No.77, Khara No.51/18/1, 23, 63/3 total measuring 14 bighas 17 Biswas, ½ share in this land situated in the revenue estate of Village Mungeshpur, Delhi-39.”

6. A reference to para 5 of the plaint shows that except the land which is stated in para 5(B)(II), all other lands are non-agricultural/non-cultivable lands, i.e. they are abadi lands falling in Lal Dora. Therefore, so far as the suit for partition is concerned, the same can continue except for the land which is the subject matter of para 5(B)(II) of the plaint, and only which latter land is agricultural/cultivable land which will fall in the definition of a “holding” under Section 3(11a) of the Act.

7. In view of the above, the Trial Court has erred in dismissing the suit as a whole. The suit for partition and injunction will therefore continue with respect to the properties, except the agricultural land which is mentioned in Para 5(B)(II) of the plaint.

8. Appeal is therefore partially allowed by setting aside the impugned order and restoring the suit to its original number so that the same can continue for partition of the properties mentioned in para 5 of the plaint except the property mentioned in para 5(B)(II) of the plaint.

9. Parties are left to bear their own costs. Appeal is disposed of
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accordingly.

10. Let the parties appear before the District and Sessions Judge, Delhi on 1.5.2012, and on which date, the District and Sessions Judge, Delhi will mark the suit to a competent Court, for disposal in accordance with law. The concerned Court to whom the suit is marked shall issue notice to the respondents/defendants before proceeding ahead with the suit.

VALMIKI J. MEHTA, J

MARCH 27, 2012
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