

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

+ **RFA No.508/2006**

% **18th April, 2012**

SMT. ANGOORI DEVI Appellant
Through: Mr. Dharambir,
General Power of Attorney of appellant in person.

versus

SHRI CHARAN SINGH Respondent
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 26.3.2012. No one appears for the respondent. I have, therefore, heard the attorney of the appellant, i.e. husband of the appellant and also perused the record. I am hence proceeding to dispose of the appeal.

2. The appellant herein is plaintiff in the Trial Court. She filed a suit for declaration and injunction claiming rights to the suit land admeasuring 4 bighas and 16 biswas falling in Khasra no.28/9, Village-

Daulatpur, Delhi. The subject suit has been dismissed by the impugned judgment by deciding the preliminary issues against the appellant/plaintiff.

The preliminary issues read as under:

“ISSUES:

1. Whether the present suit is not maintainable and this Court has no jurisdiction to try the present suit in view of Section 185 of Delhi Land Reforms Act, 1954 as claimed for by defendant in Preliminary Objection Nos. 2 & 5 of his written statement?
2. Whether the present suit is barred by the provisions of Specific Relief Act, 1963 and the Limitation Act, 1963, as claimed for by the defendant in his written statement?”
3. The Trial Court has held the suit to be barred under Section 185 of the Delhi Land Reforms Act, 1954 and has also held the suit to be barred under Section 34 of the Specific Relief Act, 1963 as the appellant/plaintiff had no legal character. It is also held that there was no obligation in favour of the appellant/plaintiff in order to claim the entitlement of injunction, and existence of this legal obligation is said to be a *sine qua non* in terms of Section 38 of the Specific Relief Act, 1963. The Trial Court has finally held that the rights of an Asami could not be transferred under the Delhi Land Reforms Act, 1954 and therefore the suit was not maintainable.
4. The rights of an Asami are those rights which rights are

contained in Section 6 of the Delhi Land Reforms Act, 1954. As per Section 32 of the said Act, interest of an Asami is not transferable except as expressly permitted by this Act, however, Section 42 of the Act says that where transfer is made in contravention of the provisions of the Act by an Asami then the transferee is liable to ejectment only on the suit of Gram Sabha or the landholder, meaning thereby an Asami who transfers land, himself cannot take action for ejectment of a person to whom he himself transferred the land.

5. In the present case, the appellant/plaintiff has put up a specific case of having purchased rights of the defendant who was an Asami by means of registered documentation dated 27.3.1996. Though the documents need not strictly confer ownership rights like sale deed, however, the rights are created with respect to land pursuant to doctrine of part performance under Section 53A of the Transfer of Property Act, 1882 and Section 202 of the Contract Act, 1872 as power of attorney has been given for consideration, and are valid as they are executed before 24.9.2001 when Act 48 of 2001, amending Section 53A of the Transfer of Property Act, 1882, came into force. It is clear from the record that neither the Gram Sabha nor the landholder has in terms of Section 42 of the Delhi Land Reforms Act, 1954 filed any suit for ejectment of the

appellant/plaintiff from the subject land and the dispute is only between the appellant/plaintiff who purchased rights in the suit land from the defendant who was an Asami, and the respondent/defendant.

6. So far as the bar of the suit under Section 185 of the Delhi Land Reforms Act, 1954 is concerned, I have recently had an occasion to consider this issue in *RFA No.621/2002* and *RFA No.14/2004* titled as *Ashok Kumar & Ors. vs. Smt. Munni Devi & Ors.* and *Darshan Singh & Ors. vs. Late Sh.Ruliya Singh & Ors. thr. LRs* decided on 5.3.2012, wherein I have held that unless the suits filed in the Civil Courts are such which fall within columns 2 and 3 of the Schedule I of the Delhi Land Reforms Act, 1954, the Civil Courts are not barred from deciding such suits. The relevant observations of the said judgments read as under:

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.”

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.

RFA No.14/2004

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.”

7. In the RFA No.621/2003 and RFA No.14/2004, dispute was with respect to the transfer of Bhumidari rights by means of documents such as those as found in the present case, and I have held in the judgment dated 5.3.2012 that the suits for declaration and injunction with respect to disputes of transfer of title of the lands can be decided by the Civil Courts.

8. A reference to the Schedule I of the Delhi Land Reforms Act, 1954 shows that there is no entry dealing with suits such as the present where a person claims to have derived the rights of an Asami and there are disputes between him and the Asami. One related entry is entry at Serial No.9 of the Schedule I of the Act which deals with suits of the nature to be filed by the Gaon Sabha or the landholder under Section 42 of the Act and which is for ejectment of a transferee of the lands. As are already stated above, there is no suit for ejectment of the appellant/plaintiff/transferee either by the Gram Sabha or by the landholder. The subject suit therefore is not a suit covered under Serial No. 9 of Schedule I of the Act. The other relatable entry is at Serial No.16 which deals with the suits for ejectment of Asami and present suit also does not fall in any of such category. Therefore, inasmuch as, there is not found any entry in the Schedule I of the Delhi Land Reforms Act, 1954, for suits such as the present, the Civil Court's jurisdiction was not barred under Section 185 of the Delhi Land RFA No.508/2006

Reforms Act, 1954. For the sake of completeness, I must also mention that there is no suit filed by the Gram Sabha under Section 104 of the Act and which could have been the subject matter of Serial No. 28 of Schedule I of the Act. Therefore, I hold that the jurisdiction of the Civil Courts was not barred.

9. So far as the issue of alleged lack of legal character in terms of Section 34 of the Specific Relief Act, 1963, is concerned and also lack of obligation in favour of the appellant/plaintiff by virtue of Section 38 of the Specific Relief Act, 1963, all that needs to be said is that if there is a valid transfer of the interest of the Asami in favour of the appellant/plaintiff, then the appellant/plaintiff would naturally have rights to such lands and would also be entitled to declaration of such rights and there would exist a legal obligation in his favour and which is an aspect to be decided after trial. At this stage, I would refer to Section 68(f) of the Delhi Land Reforms Act, 1954 which provides that the right of an Asami is extinguished when he has been deprived of possession and his right to recover the possession is barred by limitation:

“68. Extinction of the interest of an Asami.- Subject to the provisions of Section 51 and 52, the interest of an Asami in holding or nay par thereof shall be extinguished-

.....

(f) When he has been deprived of possession and his right to recover possession is barred by limitation.”

The attorney of appellant/plaintiff informs that no suit has been filed by Asami for possession of the suit lands, and which possession is with the appellant/plaintiff as the appellant/plaintiff received possession of the suit lands from the mortgagee of the suit lands, i.e. the mortgagee from the defendant, Sh.Charan Singh. Again this aspect will be examined after trial in the case.

10. In view of the above, the appeal is allowed by setting aside of the impugned judgment dated 25.5.2006. Trial Court will now hear and dispose of the suit in accordance with law. I may hasten to add that I have not pronounced finally on merits of the disputes between the parties and I have only held that the trial of the suit is not barred before Civil Courts inasmuch as the impugned judgment dismissed the suit on a decision on the preliminary issue. If it is ultimately found that the appellant/plaintiff has purchased rights in the suit lands, the appellant/plaintiff would be entitled to declaration and injunction in accordance with law, subject of course to appellant/plaintiff proving his case as pleaded in the plaint. Parties are left to bear their own costs.

11. Parties to appear before the District and Sessions Judge, Delhi

on 23.5.2012, and on which date, the District and Sessions Judge, Delhi will mark the suit for disposal to a competent Court in accordance with law. Since the respondent is not represented in the appeal, the concerned competent Court before proceeding ahead with the suit will issue notice to the respondent/defendant.

CM No.6730/2012(for directions)

12. This application is dismissed as not pressed with liberty to the appellant/plaintiff to file an appropriate application before the concerned competent Court to whom the matter has been remanded back.

VALMIKI J. MEHTA, J

APRIL 18, 2012
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