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HIGH COURT OF DELHI AT NEW DELHI

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RSA No.274/2007

Decided on : 12th April, 2013

RAGHUBIR SINGH & ORS. Appellants
Through: Mr.K.K.Jha, Advocate.

Versus

MAUJI RAM & ORS. Respondents
Through Mr.Sanjay Rathi, Advocate

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellants against the judgment dated 28.7.2007 passed by the learned ADJ by virtue of which the first appeal filed by the appellant was dismissed.
2. I have heard the learned counsel for the appellants as well as learned counsel for the respondents.

3. The main contention of the learned counsel for the appellants is that the regular second appeal involves a substantial question of law as to whether the civil court has the jurisdiction to entertain the suit itself in view of Section 185 of the Delhi Land Reforms Act, 1954(hereinafter referred to as the 'Act'). He has sought to place reliance on case titled *Hatti Vs. Sunder Singh* **1970(2) SCC 841** and *Rajender Singh Vs. Vijay Pal @ Jai Pal & Ors.* **JT 2008 (6) SC 67**.
4. The learned counsel for the respondents has refuted the contention and stated that no question of law is arising from the present regular second appeal, much less, the substantial question of law. It has been stated that there is a concurrent finding returned by the two courts below that the bar of Section 185 of the Act does not apply to the case of the appellants because of the fact that the land in question is abadi land.
5. In addition to this, it has been stated that this objection was given up by the appellants before the first appellate Court.
6. In this regard, my attention has been drawn to the judgment of the first appellate Court wherein this fact is recorded.

7. The learned counsel has placed reliance on the Division Bench judgment in *Ram Kishore Vs. Jai Singh & Ors.* **187 (2012) DLT 37 (DB)** and *Gyanender Singh Vs. Narain Singh & Ors.* **190(2012) DLT 469** wherein it has been held that the bar u/S 185 of the Act would apply only to the partition of such lands which constitute holding of a Bhumidari and not to abadi lands in a village.
8. I have carefully considered the submissions made by the learned counsel for the parties and gone through the judgments cited by them.
9. Briefly stated the facts of the case are that the respondent no.1/Mauji Ram (hereinafter referred to as ‘plaintiffs’) had filed a suit for possession of abadi land. It was alleged that the abadi land in village Kanjhawala was partitioned by metes and bounds by a decree passed in a partition suit bearing nos.648/1936, 62/1938 decided on 15.5.1940 by the sub-Judge, Delhi. In the suit for possession, it was averred that according to the decree and khatauni, the name of the plaintiff no.1, his father Kanwal Singh and predecessor in interest along with the plaintiffs 2 to 4 and defendants 22 to 29 were entered in Khatauni. It was alleged that

the defendant Nos.1 to 21(who are appellants before this Court) had encroached upon a portion of land measuring 500 sq. yds. in khasra No.256 owned by the plaintiffs to the east and north of 256 (Alif) and had built temporary structures and are still in possession. Accordingly, the suit was filed.

10. The defendants/appellants who were the tenants had filed their written statement and contested the claim of the plaintiffs/respondents. On the pleadings of the parties, the following issues were framed:-

(i) Whether the suit of the plaintiff is barred by time? OPD

(ii) Whether the suit of plaintiff is barred vide objection No.1? OPD

(iii) Whether the defendants as claimed are in adverse possession of the suit land/property? OPD

(iv) Whether the suit is barred by the principles of estoppel and acquiescence?

(v) Whether the suit is bad under the provisions of Order 7 Rule 11 CPC?

(vi) Whether the suit is not properly valued for purposes of court fee and jurisdiction?

(vii) Whether this court has no jurisdiction in view of the provisions of DLR Act?

(viii) Whether the plaintiffs are entitled to the relief prayed for?

(ix) Relief.

11. The parties adduced their respective evidence and so far as issue no.7 is concerned, which is relevant for our purpose, to the effect as to 'whether the Court has no jurisdiction in view of the provisions of Delhi Land Reforms Act', this issue was dealt in detail by the trial court and a finding was returned to the effect since the suit was for possession of abadi land and the abadi land continue to belong to or held by the proprietor, tenant or other person even after the passing of the Act, and therefore, the suit for possession of the abadi land was maintainable.
12. The trial court vide judgment dated 7th May, 2004 decreed the suit for possession in favour of the plaintiffs/respondents. The defendants/appellants herein feeling aggrieved, filed the appeal against the said impugned judgment which was heard by the learned ADJ. It has been recorded in the order of the ADJ that the appellants during the course of arguments had given up the plea

with regard to the jurisdiction of the court to entertain and adjudicate the matter with regard to the possession in view of Section 185 of the Act. The appeal of the appellants was dismissed on merits.

13. Still not feeling satisfied, the present appeal has been filed raising the only question with regard to the jurisdiction contending that Section 185 of the Act bars the jurisdiction of Civil court and therefore, the suit for possession filed by the plaintiffs/respondents could not have been entertained. Reliance in this regard has been placed on the judgment of the Supreme Court in Hatti's case (supra) to contend that in terms of Section 185 of the Act, the Civil Court's jurisdiction is barred.
14. There is no doubt about the fact that Section 185 of the Delhi Land Reforms Act, clearly bars the jurisdiction of the civil court in respect of the suit which are detailed in the Schedule-I attached to the Act. If one sees the said Schedule, the jurisdiction of civil court is barred only in respect of the suit for partition or possession of Bhumidari rights or a holding. Since in the instant case, the suit

for possession is in respect of the abadi land, the same is not barred by the provisions of the Delhi Land Reforms Act.

15. The judgments of the Division Bench of this Court in Ram Kishore's case (supra) and Gyanender Singh's case (supra) clearly deals with this issue and states that the abadi lands in a village do not constitute holding and accordingly, they are not governed by Section 185 of the Act.
16. In view of the aforesaid legal position, I am of the view that the present regular second appeal does not raises any substantial question of law and accordingly, the same is dismissed.

V.K. SHALI, J.

APRIL 12, 2013
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