

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

Pronounced on: 24th November, 2014

+ **CS (OS) 735/ 2011**

JAGMAL

..... Plaintiff

Through: Ms. Smita Maan, Adv.

versus

RAMESH CHAND AGGARWAL AND ORS.

..... Defendants

Through: Mr. Aditya Chandra, Adv. for D-1 and D-10.

Mr. Pankaj Vivek, Adv. with

Mr. Anupriya Singh, Adv. for D-2.

Mr. Rajesh Yadav, Adv. for

D-7, 8, 9, 11 and 12.

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CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

IA No. 9211/ 2011 (Order VII Rule 11 CPC) in CS (OS) 735/ 2011

1. By virtue of this application, Defendant no. 2 lays challenge to the jurisdiction of this Court to entertain the present civil suit. The contention raised by the Plaintiff is that for the purpose of deciding maintainability of the suit, only the pleadings in the suit are to be considered. In the plaint, the Plaintiff has himself claimed that the

land, the subject matter of the suit is an agricultural land covered by the provisions of the Delhi Land Reforms Act, 1954 (the Act of 1954).

2. This suit for permanent injunction has been filed by the Plaintiff against the Defendants seeking restraint upon the Defendants through its agents *etc.* from carving out any unauthorised colony from the suit land. Relying on the provisions of Sections 81, 83 and 185 of the Act of 1954 and the judgment of this Court in *Anil Kumar and Anr. v. B.R.B. Constructions Pvt. Ltd. and Ors.*, CS (OS) No. 1332/ 2007 decided on 14.05.2008, the contention of the learned counsel for Defendant no. 2, which is supported by the other Defendants is that the jurisdiction of the Civil Court to entertain such a suit for injunction is barred.
3. On the other hand, the learned counsel for the Plaintiff places reliance on *Pradeep Kumar Sharma and Anr. v. Smt. Shanta Sharma @ Shanti and Ors.*, CS (OS) No. 1920/ 2011, decided on 22.01.2013 and *Ramesh Chander Aggarwal v. Ram Pal*, FAO No. 240/ 2006, decided on 12.01.2010 to contend that the such a suit is maintainable before this Court.

4. Before adverting to the relevant case law, it would be apposite to go into the basis for filing the instant suit and the ground led by the Plaintiff.
5. It is the case of the Plaintiff that he is an agriculturist by profession and is the co-owner and in possession of 1/ 36th share of land forming part of various *khatas* out of total land of 74 *bighas* and 16 *biswas*, situated in the revenue estate of village Rajokari. Paras 2 to 9 of the plaint reads as under:-

“2. That the defendants are also co-owners in the above suit land. The suit land is governed by the provisions of Delhi Land Reforms Act, 1954 and same can be used for the purpose permitted under the said Act. The said Act is a complete code in itself the right and liability of the parties are controlled and governed by the said Act. The said Act places certain restriction on the bhoomidar in respect of the use and enjoyment of the said lands.

3. That there has been no partition in the suit land till date between the plaintiff, defendants and its other co-owners, the suit land can be partitioned under the provisions of said Act by restoring to section 55 of the said Act. The mode of partition of the land has been prescribed in section 57 of the said Act. Since no co-owner of the suit land has an area 8 standard acre or more, it is not partible under the said Act.

4. That it is relevant here to point out that the plaintiff is in actual physical cultivator possession upto

the extent of his 1/36th share in the suit land and using the same for agricultural purpose with the consent of the other co-owners for the convenience of between cultivation and similarly the other co-owners of the suit land are also using and cultivating the portion of the suit land with the consent of plaintiff. Every co-owner have his right over the every inch of the suit land as same has not been partitioned.

5. That the defendants who claim to be the developer of the land are engaged in the business of carving out the unauthorized colony in the Union Territory of Delhi. It is submitted that the defendants are not the original bhoomidars of the suit land, but they have purchased the part of the suit land from the other co-owners who were the original bhoomidars of the suit land. The defendants are not agriculturist by profession, the defendants have purchased the part of the suit land with the intention to carve out the unauthorized colony therein.

6. That the suit land can be used only for agricultural and related purposes. Section 22 of the said Act provides for the right of the bhoomidar to the exclusive possession of the land in his holding. It is provided that the land can be used for the purposes connected with agriculture, horticulture, animal husbandry, which include pisciculture and poultry farming and to make improvement. If any of the co-owners of the suit land use the land for any other purpose not permitted under the said Act or raises any construction without the permission of the concerned authorities, the proceedings u/s 81 of the said Act are liable to be initiated for the ejectment of bhoomidar on the suit of the Gaon Sabha for using the land for any purposes other than a purpose connected with agriculture, horticulture etc. The effect of

mis-user of the land and initiation of proceedings u/s. 81 of the said Act is that the land is taken out of the holding of the bhoomidar and vests in Gaon Sabha. In this view of the matter, the suit land shall only be used for agricultural and related purposes as permitted under the said Act.

7. That the right from the beginning, the defendants have been bent upon mis-using the land. Their intentions and efforts were always opposed and thwarted by the plaintiff. The plaintiff from very beginning is engaged in agricultural activity over the suit land for his and his family livelihood.

8. That the defendants having ulterior motives and malafide intentions started pressurizing the plaintiff to transfer his share in the suit land at a throw away price to them, but the plaintiff declined to accede to the said threats of the defendants.

9. That recently, the defendants in order to mis-use the part of the suit land have stored the building material i.e. bricks and dust over the land bearing Khasra No.978, 857/2 and 871/2 and have also engaged the labourers for digging the land with the intention to raise some unauthorized construction over the above said Khasra numbers which are a part of the suit land. The photographs which depict the picture of building materials stored by the defendants over the above said Khasra numbers and engagement of the labors by them for digging the land with the intention to raise the unauthorized constructions are attached herewith. The defendants have the ulterior motive behind this unauthorized construction to develop unauthorized colony therein.”

6. The grievance of the Plaintiff is that as per the provision of Section 81 of the Act of 1954, if a *bhumidar* or an *asami* misuses the land for purposes other than connected with agriculture, the land is liable to be vested in the *Gaon Sabha* and since the Plaintiff is a co-sharer/ co-*bhumidar* in respect of the entire land although his share is 1/ 36th and he is in possession of certain portions of the total land, the Plaintiff's land is also threatened to the action of its vesting in *Gaon Sabha*. Thus, to protect his rights, the Plaintiff has filed this suit.
7. In *Pradeep Kumar Sharma and Anr.* relied upon by the learned counsel for the plaintiff, a suit for declaration, possession and permanent injunction restraining the Defendants from creating any third party right with respect to the suit land and raising any construction thereon or changing the user thereof was filed. A contention was raised about maintainability of the suit before the Civil Court. In paras 16 and 17, the learned Single Judge observed as under:-

“16. Coming back to the application of the defendant No.1 under Order 7 Rule 11 of the CPC, the counsel for the plaintiff also does not controvert that the subject land is governed by the provisions of the Delhi Land Reforms Act, 1954. He however contends that the Delhi Land Reforms Act bars the jurisdiction of the Civil Court, as

this Bench is exercising, only qua the relief claimed in the plaint of declaration (which is inter alia a claim for declaration of bhumidari rights) and for the relief of possession. He states that insofar as the relief of declaration is concerned, he has already on 16.11.2012, on the basis of the statement of the counsel for the defendants no. 1 to 3 that the plaintiff no. 2 till then was the recorded owner of the land in question, given up the said relief. He further states that if the need for recovering possession arises, the plaintiff will institute appropriate proceedings before the Revenue Court under the provisions of the Delhi Land Reforms Act and the plaintiff as such does not press the relief of possession also.

17. The remaining reliefs of the plaintiff are for cancellation of documents dated 05.05.2011 and for permanent injunction restraining the other defendants from alienating, encumbering or parting with possession of the land or raising construction thereon or changing the user thereof. The said reliefs are admittedly not within the purview of the Revenue Courts under the Delhi Land Reforms Act. The plaint for the said reliefs thus cannot be rejected on the ground of the Delhi Land Reforms Act.”

8. Consequently, an injunction against alienating, encumbering or parting with possession of the land or raising construction thereon or changing the user thereof till partition of the suit land was granted.
9. Similarly, in *Ramesh Chander Aggarwal v. Ram Pal (supra)*, an appeal was preferred against the order passed in an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908

(CPC). The relief claimed by the Plaintiff before the Trial Court in the said civil suit was that Defendants no. 1 to 9 had illegally transferred, alienated and sold their land in part in a piecemeal manner to Defendants no. 10 to 22 and that Defendants no. 10 to 22 had started raising boundary wall and construction which was in violation of the provisions of the Act of 1954. A plea was raised by the appellant/ Defendant that there was an oral partition which fact was denied by the Plaintiff/ Respondent. In para 18, the learned Single Judge extracted the conclusion reached by the Trial Court and while deciding the appeal, in para 19 held that there was no infirmity in the impugned order and thus, the learned Single Judge declined to interfere with the order passed by the Trial Court. Paras 18 and 19 of the report in *Ramesh Chander Aggarwal v. Ram Pal* are extracted hereunder:-

“18. Trial court in this regard observed;

“Admittedly plaintiff is having 1/16th share in the suit land and the said land is governed by the provisions of DLR Act. The suit land has not been partitioned by metes and bounds as has been alleged by the plaintiff in the plaint. Thus, the plaintiff has every right to file a suit for permanent injunction which is not governed under specific matters enumerated in Schedule I of the DLR Act and, therefore, the Civil Court has jurisdiction to entertain the present suit.”

19. No ambiguity or infirmity can be found in the impugned order and there is no reason to disagree with the above findings of the trial court.”

10. It may be mentioned that in both the cases *i.e. Pradeep Kumar Sharma and Anr. and Ramesh Chander Aggarwal*, the scheme of the Act of 1954 was not gone into by the learned Single Judge. The facts of the instant case are akin to the facts of *Anil Kumar and Anr. v. B.R.B. Constructions Pvt. Ltd. and Ors. (supra)*, wherein after noting the facts, the Trial Court extracted the provisions of Sections 81, 83 and 185 of the Act of 1954. The learned Single Judge observed that the reliefs sought were clearly within the exclusive jurisdiction of the Revenue Assistant and thus, the remedy before the civil court was barred. Consequently, the suit was dismissed being not maintainable before the Civil Court. It would be appropriate to extract Sections 81, 83 and 185 of the Act of 1954 hereunder for ready reference:-

“81. Ejectment for use of land in contravention of the provisions of this Act. - (1) A Bhumidhar or an Asami shall be liable to ejectment on the suit of the Gaon Sabha or the land holder, as the case may be, for using land for any purpose other than a purpose connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming, and also pay damages equivalent to the cost of works which may be

required to render the land capable of use for the said purposes.

Notwithstanding anything contained in sub section (1) the Revenue Assistant also may, on receiving information or on his own motion, eject the Bhumidhar or Asami, as the case may be, and also recover the damages referred to in sub-section (1), after following such procedure as may be prescribed."

83. Suit for compensation and repair of the waste or damage. - *Notwithstanding anything in section 81, the Gaon Sabha or the land holder may, in lieu of suing for ejectment sue*

(a) For injunction with or without compensation, or

(b) For the repair of the waste or damage caused to the holding.

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.

(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 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.”

11. In paras 9 to 14 of the report in *Anil Kumar and Anr. v. B.R.B. Constructions Pvt. Ltd. and Ors. (supra)*, the learned Single Judge held as under:-

“9. The reliefs claimed in the present case undeniably are injunctive in nature. Therefore, prima facie, the reliefs appear to be covered by Section 83(a). The question is whether the said provision is a supplementary, in aid of Section 81 as contended by the plaintiffs or an independent one as contended by defendants. In case of the former, the plaintiffs’ choice to maintain the proceedings is preserved. However, if it is held that Section 83 confers an independent power, then the suit may be barred by virtue of Section 185.

10. Section 81(1) enacts that the bhumidar would be liable to ejectment of the suit instituted at the behest of the Gaon Sabha or land owner as the case may be for using the land for purposes other than what are deemed agricultural (a term which is statutorily defined) under the Act. Section 81 (2) confers suo moto power upon the Revenue Assistant to seek direct ejectment and also recover damages, further to the power under Section 81(1). Textually itself, the machinery for ejectment is not exclusively set into motion by the Gaon Sabha; it can also be independently brought through a suit filed by the land owner. Undoubtedly, this provision spells out a larger relief. However, it is restricted in its scope, in that

it enables the land owner or the Gaon Sabha to file a suit for ejectment from the land in case the act complained of does not amount to agricultural use.

11. Section 83 beings with a non-obstante clause and makes express reference to Section 81. It enacts that the Gaon Sabha or the land owner may “in lieu of” seeing for ejectment, sue for injunction with or without compensation (clause (a)). It is now well settled that a non-obstante clause has to be given effect to in its own terms. In this case, Section 83 makes parliamentary intendment clearly beyond any shade of doubt i.e. that anything stated in Section 81 should not be construed as an impediment in regard to matters enacted in the latter provision. So viewed, the amplitude of the relief, claimed in Section 83 cannot be cut down in the manner suggested on behalf of the plaintiffs. Therefore, the expression “in lieu of” has also to be construed in its own terms as “instead” rather than in aid of the power under Section 81.

12. The above reasoning is also supported by Entry 18 to Schedule-I to Section 185 which enacts the bar to jurisdiction of the civil court. It reads as follows:

“suit for injunction or for the repair of the waste or damage caused to the holdings”

13. The reference for suit for injunction is cast the widest amplitude if this is read with Section 83. The nature of the reliefs which are available by provisions of Act have to be construed in a wide and liberal manner and not restrictively as suggested on behalf of the plaintiffs.

14. The Act is a complete code. It regulates agricultural holdings and spells out various categories of rights (bhumidari, Asami etc.) as well as condition for their recognition or grant. It creates and empowers a hierarchy of revenue authorities who have powers to administer its provisions. The Act is meant also to preserve agricultural use of land. The various actions which individuals can initiate include proceedings for declaration as well as partition. In this case, the title of the plaintiffs to the lands in their possession as joint owners is not questioned. Their alleged encroachment and threat to construct on the plaintiffs' portions, however, is sought to be enjoined. Having regard to the amplitude of powers under Sections 81 and 83, particularly the latter, the Revenue Assistant has exclusive jurisdiction to grant such relief."

12. Thus, the learned Single Judge held that the suit for injunction or for repair of the waste or damage caused to the holding is covered by the provisions of Sections 81, 83 and 185 of the Act of 1954 read with Entry 18 to Schedule-I and therefore, the Civil Court did not have any jurisdiction to entertain the suit.
13. It is urged by the learned counsel for the Plaintiff that since there is divergence of opinion in the judgments relied upon by the Plaintiff and the Defendants, the Court may deem it appropriate to make a reference for constitution of Larger Bench. I am, however, unable to agree with the contention raised on behalf of the Plaintiff.

14. The question was gone into in detail and the scheme of the Act discussed by the learned Single Judge in *Anil Kumar*. Therefore, the later judgments of the learned Single Judges in *Pradeep Kumar Sharma* and *Ramesh Chander Aggarwal* are *per incuriam* and shall be deemed to have been passed on the facts of those cases only, particularly when the earlier judgment in *Anil Kumar* was not considered by the learned Single Judges in *Pradeep Kumar Sharma* and *Ramesh Chander Aggarwal*. It is well settled by the Supreme Court in *UOI v. S.K. Kapoor, (2011) 4 SCC 589* that in case of conflict in the two judgments, the judgment rendered prior in time shall be taken as a binding precedent.
15. In view of this, I tend to agree with the contention raised on behalf of Defendant no. 2 that the Civil Court's jurisdiction to entertain the suit is specifically barred.
16. Consequently, the plaint is rejected.
17. Pending applications, if any, stand disposed of.

G.P. MITTAL
(JUDGE)

NOVEMBER 24, 2014/ vk