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

+ RSA 390/2006

% **20th January, 2014**

RAM NATH MALIK Appellant
Through Mr. Rahul Rohtagi, Advocate

versus

TULSI NATH MALIK & ORS. Respondents
Through Mr. Joginder Sukhima, Mr. Shailendra
Babbar, Advocates for respondent Nos. 5 & 6.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This regular second appeal impugns the judgment of the Appellate Court dated 08.09.2006 by which the Appellate Court dismissed the appeal against the judgment of the trial court dated 16.11.1999 which dismissed the suit of the appellant-plaintiff. Appellant-plaintiff is hence the appellant in this second appeal. Appellant-plaintiff has since died and is now represented by his widow.

2. I must state that the issues in the present case would have become difficult to understand inasmuch there are nine different khasra/Revenue Field Members and separate facts constituting various causes of action were pleaded by the plaintiff for these Khasra numbers, however, I note that the Appellate Court indeed had done a very thorough job in categorizing the lands under separate categories and thereafter discussing the issues as per lands under category-II & category-III which were in dispute. The necessary findings with respect to this land in category-II & category-III have thereafter been given.

3. So far as category-II land is concerned being Khasra No. 22/1/2, the Appellate Court has given the necessary conclusions in paras 7.1 to 8.2 of the impugned judgment after crystallizing the issue in the last line of para 6.0 as to whether appellant-plaintiff was in possession of the suit land for claiming injunction. These paras 7.1 to 8.2 read as under :

“7.1 Plaintiff’s claim rests upon the fact that he is in individual possession of land comprising Khasra No. : 22/19/2 (3-4), 22/20 (4-16) (being category-I of land), 18 Biswa from land comprising No. : 22/1/2 (being category-II of land) by virtue of family settlement in the year 1985, besides cultivatory possession of land comprising in category-III. Let us scrutinize the record, whether there was any partition and he came into exclusive possession of such land by virtue of such partition.

7.2. Witnesses PW-2 Smt. Pushpa Malik (wife of appellant’s brother late Sh. H.L. Malik) and DW-1 Sh. Laxman Dass Malik (respondent no. 2) deposed on the point of partition. However,

PW-2 has given inconsistent statement as on the one hand she says, she was disclosed by the appellant about partition and on the other hand she states that respondents do not want partition; she also deposed that he husband had applied to the Tehsildar in the year 1976 for partition but there was no outcome and lastly the land is still joint. Accordingly to the D.W.1 there was no family partition of the properties and property inclusive of land comprising in category-II, above. Whereas, the appellant/plaintiff opposed that there was a partition and it was got recorded. However, this fact has not been proved. Hence, there is no evidence to suggest that appellant came into exclusive possession of land comprising the Khasra No. : 22/19/2 (3-4), 22/20 (4-16), and area 18 Biswa out of land comprising Khasra No. : 22/1/2 by way of family partition in the year 1985.

8.1. If we read the entire record consolidatedly, in para 14 of the original plaint or in the evidence, the cause of action was narrated as if there is threatening in respect of the land comprising in Khasra No. : 22/2 and 22/9 or land comprising Khasra No. : 22/1/2 from the side of respondents 1 to 4 alike respondents 5 & 6. The appellant maintains that cultivatory possession of land described in category-I and Category-III above, still subsist with the appellant but appellant's own record speaks otherwise. The appellant had given/allowed respondent No. 3 to cultivate land comprising Khasra No. 22/2 (4-16) and had also given/allowed the respondent no. 4 to cultivate land comprising Khasra No. : 22/9 (4-16) (out of category-II of land) and respondents 3 & 4 had given physical, vacant possession of such land comprising khasra nos. 22/2 & 22/9 to respondent no. 6. The respondents maintain that the land comprising Khasra No. : 22/2 (4-16), 22/9 (4-16) was actually belonging to Sh. Om Prakash, Bhim Sen, Har Narain and Jetha Nand and they had sold their ownership/title to respondent no. 6 by way of Sale Deed dated 23.01.1989. Witness DW-3 Mukesh Sharma, Patwari deposed that the impugned land comprising Khasra No. : 22/2 and 22/9 is recorded in the name of respondent no. 6 on physical inspection at the spot. The appellant was inquired if there was manipulation of Revenue record, as alleged, whether any steps

were taken by him to get it rectified or corrected, but he submitted, neither any legal action was initiated nor any steps were warranted or taken to rectify the same Respondents' witness D.W.3 Mukesh, when appeared in the witness box, was also not cross examined on the point of manipulation of the revenue record. To say, the aforementioned Om Prakash, Jetha Nand, Har Narain and Bhim Sen had sold the land comprising Khasra No. : 22/2 (4-16), 22/9 (4-16) (i.e. out of land of category III) to respondent no. 6 for a consideration by way of sale deed and respondents 3 & 4 or respondents 1 to 4 gave its physical possession to respondent no. 6, consequent to sale of the property to respondent No. 6.

8.2. The appellant raised a question that Sale Deed was/were executed on 23.01.1989, as claimed by respondents but appellant's cause of action subsists prior to January, 1989 and it establishes his possession of the property but this plea does not sustain in the light of record as in the plaint there was stated to be threatening to the appellant/plaintiff or his restrain from approach to this land in the month of January, 1989. But as per endorsement in the Sale Deeds dated 23.01.1989, the NOC was already issued in December, 1988 and written statement was filed by the respondent on 23.02.1989 and it is an admitted case of appellant that possession of Khasra No. : 22/2, 22/9 of Category-III was given to respondents 3 & 4 respectively in the year 1983. In fact, the dispute pertains to property comprising in Khasra No. : 22/2, 22/9 of category-III and in respect of land comprising Khasra No. : 22/1/2 (18 Biswa) of Category-II but appellant failed to establish his possession or exclusive possession of land comprising Khasra No. : 22/2 or 22/9 since the same was given to respondent no. 3 and respondent no. 4 respectively, who had in turn gave the same to respondent no. 6" (underlining added)

4. A reading of the aforesaid paras shows that so far as category-II land is concerned, plaintiff-appellant claimed exclusive possession, however, this possession was neither shown in the revenue record nor as per physical

inspection of the spot which was done by DW-3 Mr. Mukesh Sharma, Patwari (a Revenue Officer). Therefore, the appellant-plaintiff failed to prove his possession and accordingly the suit for injunction was dismissed. It may also be noted that appellant-plaintiff failed to prove that by virtue of a family settlement, he came into cultivatory and exclusive possession of this category-II land. Appellant-plaintiff laid out a case of partition, however, this aspect of partition having been effected was not proved. Even on the aspect as to whether there could be manipulation of revenue record to show possession not of the plaintiff but of the relevant defendants, Appellate Court notes that DW-3, the Revenue Official was not even cross-examined as to any alleged manipulation of the revenue record and which record did not show possession of the appellant-plaintiff.

5. So far as the category-III land is concerned, of 18 biswas, the relevant findings and conclusions of the Appellate Court are contained in para 8.3 of the impugned judgment and para 8.3 reads as under :

“8.3. Now, land measuring 18 Biswa of Khasra No. : 22/1/2 remained the subject matter of adjudication. The appellant admits that this land of Category-II, falling in Khasra No. : 22/1/2 was the land initially belonging to the Central Government and then it was purchased by respondent no. 3. Thereafter a dispute arose between the respondent no. 3 and the respondent no. 6, the respondent no. 6 had taken possession of such land by way of execution of decree from High Court of Delhi, whereas the appellant submits that no exact date of particulars of the case has been furnished by the respondent no. 5 or

6. It is clarified that appellant admits in evidence that land comprising khasra no. 22/1/2 was purchased by respondent no. 3 from Rishal Singh. Further, during the course of trial a sum of Rs. 1,50,000/- was paid to the appellant but the same was stated to be done under coercion or pressure and documents were got executed by respondent no. 6 from the appellant by applying pressure. In the record of such agreement, receipt there was also narration about possession of disputed lands with the respondent no. 6 from the year January, 1989. Appellant's wife is one of the margin witnesses to such compromise. Had there been an agreement under coercion or pressure, the appellant was in a position to adduce the evidence but no evidence has been brought on record or to get examined appellant's wife. Therefore, the Trial Court has rightly returned the findings on issues." (underlining added)

6. The Appellate Court has rightly in this regard observed that the land initially belonged to the Central Government and respondent No. 3 and respondent No. 6 took possession of the land after decision of the earlier case against the Central Government and possession was taken in execution of the decree from the High Court. Appellate Court further notices that a sum of Rs. 1,50,000/- was paid to the appellant and which he states was done under coercion and pressure. However, the Appellate Court rightly notes that not only no evidence was brought on record with respect to coercion and pressure and actually appellant's wife (who is the present appellant) was in fact a marginal witness to the document of the compromise. Therefore, Appellate Court has arrived at a correct finding that the appellant-plaintiff had no claim even to the category-III land.

7. A second appeal under Section 100 lies only if there is a substantial question of law. Existence of substantial question of law is a *sine qua non* for entertaining a second appeal because this Court does not sit as a trial court or first Appellate Court. It is incumbent that not only question of law but substantial question of law must arise to show the illegality of the impugned order. No substantial question of law arises in the facts of the present case and the appeal is, therefore, dismissed with costs of Rs. 25,000/- in favour of respondent Nos. 5 & 6 herein.

JANUARY 20, 2014
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VALMIKI J. MEHTA, J