

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

Reserved on: 23.04.2014

Date of Decision: 19.09.2014

+ **CM (M) No.1368/2010 & CM No.19368/2010**

HARPAL SINGH Petitioner

Through: Mr. R.M. Bagai, Adv.

Versus

ASHOK KUMAR & ANR. Respondent

Through: Mr. G.P. Thareja with Mr. Sanjay Khanna,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition impugns an order dated 21.08.2010 passed by the learned Additional District Judge (North) in Execution No. 213 of 2009 whereby the objections filed on behalf of the JD under Section 47 of CPC challenging the very basis of the judgment and decree were dismissed.

2. A suit for permanent injunction was filed by the respondents herein in the year 2000 for restraining the defendants therein from interfering with the peaceful enjoyment of the land and further restraining them from objecting to the plaintiffs raising a boundary wall or from dispossessing them from the suit premises without due process of law. The petitioner's case is that the

respondents had earlier filed a suit for permanent injunction bearing No. 469/2002 which was dismissed by the Civil Judge on 14.02.2005 on the ground that the suit was barred under Section 185(1) of the Delhi Land Reform Act, 1954 since the suit property was situated in a rural area and was an agricultural land. It is submitted that thereafter, the respondents had filed another suit bearing No. 1/06/05 apropos the same land and the relief which was prayed for in the earlier suit, was prayed for in this suit also. This suit, however, was decreed ex parte in favour of the plaintiff/respondent.

3. The learned counsel for the petitioner submits that the subsequent suit did not disclose dismissal of the earlier suit. Since, it amounted to concealment of material facts; the decree would be bad in law. He further submits that the Civil Judge would have no jurisdiction to pass the decree in the circumstances since such a suit is barred under Section 185(1) of the D.L.R. Act. He further contended that there is no notification of urbanisation of the land in question. He relied upon the cases of *Sh. Balbir Singh v. Pt. Pehlad*, AIR 1988 Del 312; *Chandrika Misir v. Bhaiya Lal* (1973) 2 SCC 474 and *Sunder Dass v. Ram Parkash*, (1977) 2 SCC 662 in support of his contentions.

4. The learned counsel for the petitioner, Mr. Bagai submits that in the first instance, the Trial Court lacked jurisdiction to pass the decree which is being sought to be set aside in this petition because the earlier suit was dismissed as not maintainable under Section 185 of the Delhi Land Reforms Act, 1954 and the subsequent suit in respect of the same land was not maintainable. He submits that in the absence of any challenge to the earlier judgment of 14.02.2005, it had attained finality.

5. The learned counsel for the respondent, Mr. Thareja submits that the present petition is not maintainable since the decree which is being sought to be executed has attained finality and an appeal alone would lie, if so preferred.

6. Mr. Thareja further submits that the suit was filed under Section 6 of the Specific Relief Act for possession of the premises of the suit property. He submits that the present petitioner/defendant had already admitted in the WS that he was never in possession of the premises. Mr. Thareja relied upon a decision of this Court in ***N.B. Singh (HUF) vs. Perfexa Solutions Pvt. Ltd.* (2009) 159 DLT 729** which held that a property ceases to be an agricultural property if it is not used for agricultural purposes. The aforesaid judgment had relied upon an earlier judgment of this Court in ***Ram Lubbaya Kapoor v. J.R. Chawla and Others*, 1986 RLR 432** which held that any land before it can be termed as “land” for the purpose of Delhi Land Reforms Act, 1954 must be held or occupied for purposes connected with agriculture, horticulture or animal husbandry, etc. and if the land is not used for said purposes, it ceases to be land for the purpose of Delhi Land Reforms Act, 1954. It has been further held that a Bhumidhar is bound, not only to retain possession of his land but also use it for specified purposes at all material times if he is to continue to be a Bhumidhar. However, Mr. Bagai, the learned counsel for the petitioner relied upon the case of ***Balbir Singh*** (supra) which held that the jurisdiction of a Civil Court is clearly barred by Section 185 of the Delhi Land Reforms Act for possession of the agricultural land. In ***Sunder Dass v. Ram Parkash*, (1977) 2 SCC 662**, it was held that where the decree is a nullity for lack of inherent in the court

passing it, its invalidity can be questioned any time, even in execution or in collateral proceedings. The learned counsel for the respondent, Mr. Thareja finally relied upon the decision of this Court in ***Nilima Gupta v. Yogesh Saroha & Ors* 156 (2009) DLT 129** which held that once the agricultural land loses its basic character of ‘agricultural land’ and changes hands several times and gets converted into an authorised/unauthorised colony by dividing it into plots, the disputes of plot holders cannot be decided by the revenue authorities. These disputes have to be decided by the Civil Courts. The Civil Courts would have the jurisdiction to entertain suits of plaintiffs/petitioners under Section 6 of the Specific Relief Act.

7. The impugned order reasoned that the Delhi Land Reforms Act, 1954 would be applicable only to agricultural land. But in the present case, the Decree Holder had shown electricity bills pertaining to the same Khasra number and the Court also considered that most rural lands in Delhi have become urbanised and private unauthorised colonies have mushroomed on agricultural lands. Therefore, in fact, the said land had lost its character of agricultural land. Besides, the suit was filed under Section 6 of the Specific Relief Act for declaration and possession along with injunction and other consequential reliefs. The executing Court found that the objector had not shown as to how the said suit was not maintainable. It relied upon the dicta of the Supreme Court in ***Hira Lal Patni v. Sri Kali Nath*, AIR 1962 SC 199** which held that “*the validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking inherent jurisdiction in the sense that it could not have seizing of the case because the subject matter was wholly foreign to its jurisdiction or that*

the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it. But in the instant case there was no such inherent lack of jurisdiction.”

8. This Court notices that the suit for possession under Section 6 of the Specific Relief Act had clearly averred that there was a huge construction being carried out in the colony and no activity of agriculture was being carried out there. The objections raised in the petition under Section 47 of CPC had already been disposed off vide order dated 23rd February, 2010. Therefore, the petitioner would be debarred from raising further objections under Section 47 of the Code.

9. This Court is of the view that insofar as the property's character was changed because of unauthorised constructions, as averred in the suit and as the suit was decreed ex parte, any party aggrieved by the said decree would have to pursue his/her remedy as per law in an appeal. The Executing Court rightly cannot override the decree which has attained finality. The proceeding under Delhi Land Reforms Act, 1954 deals only with agricultural land, but insofar as the suit property has changed its character from agricultural land to unauthorised colony because of a boundary wall having been raised, and other alleged constructions in the neighbourhood, which development was not contested by the present petitioner, therefore, it cannot be said that the decree was obtained by fraud. Insofar as the petitioner-objector/defendant had ample opportunities to contest the suit, which was not so done, it cannot be said that the decree was based upon

fraud. Therefore, reliance upon the precedents, as cited by the learned counsel for the petitioner is misplaced. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J.

SEPTEMBER 19, 2014/acm