

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

+ RSA No. 252/2013
% **15th January, 2014**
SURESH BALA & ORS Appellants
Through: Mr. B.S.Mann, Advocate.

VERSUS

RAMPAL Respondent
Through:

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

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This regular second appeal impugns the judgment of the appellate court dated 20.7.2013 by which the appellate court set aside the judgment of the trial court dismissing the suit as being not maintainable in the civil court in view of Section 185 of the Delhi Land Reforms Act, 1954. The case of the appellants before this court, and who were the defendants in the suit, is that Section 185 of the Delhi Land Reforms Act is a complete bar to the maintainability of the suit. Reliance is placed on behalf of the appellants upon a judgment of a Division Bench of this Court in the case of ***Om Prakash & Ors. Vs. Govt. of NCT of Delhi & Ors.*** LPA No.81/2012 decided on 11.9.2012.

2. At the outset, it must be stated that the civil courts' jurisdiction is barred by virtue of Section 185 of the Delhi Land Reforms Act only if the proceedings before the civil court are either in form or in substance such/those proceedings which are found in any of the entries in Schedule-I to the Delhi Land Reforms Act. Schedule-I of the Delhi Land Reforms Act contains a total of 9 columns for each of the entries. The third column is the description of the proceedings, however, what is more important is column-2 because description of the proceedings are only those as are relatable to the specific sections which are mentioned in column-2 of Schedule-I. Putting it in other words description of the nature of the proceedings in column-3 does not have independent existence which is to be conclusive of the nature of the proceedings and the nature of the proceedings in column-3 have also to be the proceedings which are subject of the specific sections in column-2 of the same entry. I have had an occasion to extensively examine this aspect in the judgment in the case of *Ashok Kumar & Ors. Vs. Smt. Munni Devi & Ors.* RFA 621/2003 decided on 5.3.2012 wherein I have held that by virtue of Section 185 only those proceedings cannot be tried by civil court if such proceedings necessarily fall within any of the entries read with sections as contained in Schedule-I of the Delhi Land Reforms Act. The relevant

observations as contained in the said judgment are in paras 5 to 7 and which read as under:-

“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.”

3. Another judgment on this aspect delivered by me is in the case of ***Subash Chand Vs. Gaini Ram & Ors.*** RFA 167/2008 decided on 24.5.2012 wherein I have held that reliefs claimed in the suit fall into two types of classes. One type of reliefs which in form and substance with its cause of action, are those falling within any one or more of the entries in schedule-I of the Delhi Land Reforms Act i.e nature of the proceedings are those as per both the description and the sections, then, qua such reliefs and causes of action civil courts cannot try the suit. However, second type of proceedings are those which to the extent of causes of action and reliefs are such that they do not fall in form and substance under the description of the proceedings and the sections as contained in the entries to Schedule-I of the Delhi Land Reforms Act and in such cases qua those reliefs and causes of action the suit is maintainable in civil courts. In the said judgment I have

referred to the relevant paras of *Ashok Kumar's case (supra)* in para-3.

Paras 4 to 7 of the judgment in the case of *Subash Chand (supra)* read as under:-

“4. The plaintiff in the present suit contains the following prayer clauses:-

“(i) Declare the plaintiff owner/Bhumidar of the land Khasra No.10/22/1 (1-22), 22/2 (0-12), 15/2/2 (0-12).

(ii) Directs the defendants to vacate the land in question and handover the peaceful possession of the said land.

(iii) Restore the land to its original position and remove the encroachment.

(iv) Pay the pendite lite mesne profits.

(v) Restrain the defendant from alienating/construction in the property in question.

(vi) And/or pass any other orders as the Hon'ble court deem fit and proper.”

5. So far as the entitlement to possession is concerned, the reliefs claimed would be governed by Serial No. 19 (iii) of the Schedule I of the Act which provides for filing of a suit by a bhumidar against a person occupying the land without title and for damages. This entry reads as under:-

Sl. No.	Section of the Act	Description of suit application and other proceedings	Period of Limitation	Time from which period begins	Proper Court fees	Court of original jurisdiction	Court of Ist Appeal	Court of 2 nd Appeal
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19.	84	Suit for ejectment of a person occupying land	Three years	From the date of issue of the prescribed declaration	As in the Court Fee Act,	Do	Do	

		without title and damages		form to the tenure holder or the sub-tenure holder concerned	1870			
		(i) by a Bhumidhar declared under Chapter III of the Act or by an Asami falling under Section 6 of the Act where such unlawful occupant was in possession of the land before the issue of the prescribed declaration form						
		(ii) by a Gaon Sabha where the unlawful occupant was in possession of the land before the constitution of Gaon Panchayat	Do	From the date of constitution of Gaon Panchayat under Section 151	As in the Court Fee Act, 1870	Revenue Assistant	Deputy Commissioner	
		(iii) by a Bhumidhar, Asami or Gaon Sabha in any other	Do	From the 1st of July following the date of occupation	Do	Do	Do	

When in the present suit, the appellant/plaintiff claims the reliefs of possession and damages, qua these reliefs the suit will not be maintainable in the Civil Court as the same are covered by Serial No.19 in the Schedule I read with Section 84 of the Act.

6. So far as the other reliefs which are claimed in the suit for declaration of ownership of the appellant/plaintiff by having purchased the bhumidhari rights from defendant Nos.1 to 4 and injunction to restrain the defendants from making any construction on the property in question and further alienating the same, learned counsel for the respondents could not point out any entry in Schedule I of the Act which covers such reliefs for the suit to be filed in the Court of the concerned Revenue Assistant and the consequent bar of the Civil Court under Section 185 of the Act. Since there is no provision in Schedule I of the Act with respect to the suit for declaration of ownership on account of having purchased the bhumidhari rights by means of a sale deed, and for injunction restraining the person in possession from making any construction in the suit property or alienating the same, I hold that qua these reliefs there would be no bar of the Civil Court under Section 185 of the Act, and the suit will have to continue so far as the cause of action and the reliefs with respect to declaration of ownership of the appellant/plaintiff alongwith reliefs of injunctions against making any construction on the property in question or alienating the same. Any doubt that the Court of Revenue Assistant does not have jurisdiction to determine the question of title/ownership of land is made clear from Section 186 of the Act which provides that even in a suit which has to be filed before the Court of Revenue Assistant in terms of Schedule I of the Act, if such a proceeding involves question of title, then, the Court of Revenue Assistant will refer the issue/question of title of the suit land to a competent Civil Court for decision unless the issue/question of title has already been decided earlier by a competent Civil Court. As already repeatedly stated above in the suit, one of the aspects pertains to the title of the suit land.

7. In view of the above, appeal is partially allowed. Impugned judgment of the trial Court to the extent it holds that the Civil Courts are barred from entertaining the subject suit is set aside to the extent that the Civil Court will have jurisdiction with respect to the cause of

action and reliefs claimed with respect to declaration of ownership and injunction against alienation and construction on the suit property, and which are subject matter of prayer clauses (i) and (v) in the suit. So far as the reliefs of possession and mesne profits are concerned, the Civil Courts will not have jurisdiction and the suit to that extent will not be maintainable before the Civil Court.

4. The facts of the present case show that the respondent-plaintiff in the plaint pleaded that he was the adopted son of Sh. Badle. Sh. Badle was admittedly the owner/bhumidhar of the suit land. Respondent-plaintiff claimed that the defendants had wrongly got executed documents being registered sale deed dated 25.7.96 and the power of attorney dated 21.4.1995 from his adopted father Sh. Badle, and therefore, relief of declaration was prayed for these documents as being null, void and inoperative. Mandatory injunction has also been sought for direction to the defendant nos. 1 and 2 in the suit, appellants no.1 and 2 herein, for getting the General Power of Attorney and the sale deed cancelled from the office of the sub-Registrar. Perpetual injunction was/is also sought to restrain the defendants from dispossessing the plaintiffs. The following are the prayer clauses in the suit plaint:-

“(a) Pass a decree of declaration in favour of the plaintiff and against the defendants thereby declaring the GPA dated 21.4.1995 and sale deed dated 25.07.1996 executed qua suit land as null and void, inoperative and ineffective.

(b) Pass a decree of mandatory injunction in favour of the plaintiff and against the defendants no.1 and 2 thereby directing them to get the GPA dated 21.04.1995 and sale deed dated 25.07.1996 and other related documents qua suit land, if any, cancelled from the office of Sub-Registrar concerned.

(c) pass a decree of perpetual injunction in favour of the plaintiff and against the defendants above named thereby restraining the defendants, their legal heirs, successors, assigns, agents employees, representatives etc. from forcibly dispossessing the plaintiff from suit land i.e land comprised in Rectangle No. 69, Killa No.12, admeasuring 4 Bighas and 16 Biswas i.e one Acre situated in the revenue estate of village Jonapur, Tewhsil Mehrauli, New Delhi (as depicted in Aks Sizra attached with the plaint) without due process of law.”

5. When we read the prayer clauses alongwith columns 2 and 3 as contained in Schedule-I of the Delhi Land Reforms Act, it is clear that neither in form nor in substance any of the reliefs which are claimed fall in columns 2 and 3 of Schedule-I of the Delhi Land Reforms Act, 1954. There is no entry in Schedule-I with any related section for passing of any decrees as claimed in the suit for declaration or mandatory injunction for cancellation of title documents executed by a bhumidar in favour of another person on the ground that such title documents are hit by fraud. Of course, at this stage, I hasten to add that I am not commenting in any manner on the merits of the matter as to whether the case of the plaintiff is correct or it is a false case set up, and this aspect has to be necessarily decided in the suit. For the present I am only examining the suit plaint on the face of it because the

suit plaint was rejected by the trial court under Order 7 Rule 11 CPC because the civil court was said to have lacked jurisdiction in view of Sections 185 and 186 of the Delhi Land Reforms Act.

6. Once none of the prayer clauses alongwith the relevant causes of action with respect to validity or otherwise of the transfer of title in the suit land by means of sale deed and power of attorney are the subject matter of any of the sections contained in column-2 of Schedule-I then merely because there is some similarity of description in column-3 for the prayers in the suit, the same will not make the suit as a suit for falling within any of the relevant entries and the sections in column-2 of Schedule-I of the Delhi Land Reforms Act as observed in the cases of *Ashok Kumar (supra)* and *Subash Chand (supra)*. It is necessary that the suits have to be suits which fall within the specific sections mentioned in column-2 and general description contained in column-3 cannot be allowed to be determinative of the issue because the nature of proceedings in column-3 is only and only relatable to the sections which are specified in column-2 of Schedule-I of Delhi Land Reforms Act.

7. Therefore, it is clear that none of the reliefs which are prayed for in the present suit alongwith the causes of action fall in any of the sections contained in column-2 of Schedule-1 of the Delhi Land Reforms Act.

Though in entry-4 there is a description of declaration of bhumidhari rights, however, I refuse to agree to the arguments urged on behalf of the appellants that the suit in the present case is in fact for declaration of bhumidhari rights and would therefore fall in that entry-4 because the description of the suit contained in column-3 of entry-4 of declaration of bhumidhari rights is necessarily relatable to the sections which are specified with respect to entry-4 in related column-2 of entry-4 and in column-2 of the entry no section has been pointed out to me which deals with the causes of action and reliefs which are claimed in the present suit. Therefore, it is a misconceived argument which is urged on behalf of the appellants that the suit in question falls in entry-4 of Schedule-I of the Delhi Land Reforms Act.

8. Reliance placed on behalf of the appellants on the judgment of a Division Bench in the case of *Om Prakash (supra)* is not applicable because the facts in the case show that original proceedings themselves were initiated with respect to challenge to mutation before the revenue authorities. Disputes as to mutation were between the legal heirs of the original owner/bhumidar and with respect to devolution of title by means of will of the deceased owner/bhumidhar of the lands. On account of the disputes existing between the legal heirs of the original owner, there were disputes as to mutation and with respect to such issues ultimately the matter reached the

Division Bench of this Court in LPA No.81/2012 and it is in such circumstances, the Division Bench has made observations in para 18 as under:-

“18. Though the Schedule 1 to the Reforms Act does not refer to disputes as to mutation which, as aforesaid, are within the domain of the Revenue Act but refers to dispute as to declaration of bhumidhari rights. Where mutation is claimed on the basis of title and such claim is disputed, it would tantamount to declaration of bhumidhari rights and would be within the domain of the proceedings mentioned in the Schedule 1 to the Reforms Act.”

9. The aforesaid observations are therefore limited to the aspect of disputes inter se legal heirs in revenue proceedings with respect to the mutation by devolution on account of death of the original owner/bhumidhari. In the present case, however, the issue in question has nothing to do with mutation and with respect to which no reliefs are asked for in the suit and the disputes are as to validity or otherwise of the documents being the sale deed dated 25.7.1996 and General Power of Attorney dated 21.4.1995. Such disputes in my opinion do not fall in the disputes with respect to mutation. With all humility I would also say that in the judgment of *Om Prakash (supra)* though there is reference to Schedule-I of the Delhi Land Reforms Act there is no discussion as has been given by me in the judgments in the cases of *Ashok Kumar (supra)* and *Subash*

Chand (supra) by co-relating the description of the proceedings in column-3 with sections as specified in column-2 of the Schedule-I, and only in which/such circumstances, the jurisdiction of the civil court is barred, and not otherwise.

10. In view of the above no substantial question of law arises in this appeal to be entertained inasmuch as the issues are no longer *res integra* in view of the judgments in the cases of ***Ashok Kumar (supra)*** and ***Subash Chand (supra)*** as stated above.

11. The appeal is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 15, 2014
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VALMIKI J. MEHTA, J.