57

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

Reserved on: 25.02.2016
Pronounced on: 23.03.2016

\+ CM(M) 31/2014, CM APPLs. 612-613/2014

SITA DEVI ..... Petitioner

\+ CM(M) 32/2014, CM APPLs. 614-615/2014

SANJEEV KUMAR AGGARWAL ..... Petitioner

\+ CM(M) 33/2014, CM APPLs. 622-623/2014

JAI KISHAN ..... Petitioner

\+ CM(M) 34/2014, CM APPLs. 624-625/2014

RAJESH GAUBA ..... Petitioner

\+ EX.F.A. 22/2013, CM APPLs. 13642-43/2013

SMT RAJNI DARGAN ..... Appellant

\+ EX.F.A. 25/2013, CM APPL. 14868/2013

SMT NARINDER KAUR & ANR ..... Appellant

\+ EX.F.A. 29/2013, CM APPLs. 16807-08/2013

KULBIR SINGH & ANR ..... Appellant

\+ CM(M) 1085/2013, CM APPL. 16017/2013

SURENDER SINGH & ORS ..... Petitioner

\+ CM(M) 751/2013, CM APPL. 11549/2013

VIJAY KUMAR ..... Petitioner

\+ CM(M) 752/2013, CM APPL. 11558/2013

SMT SHASHI JAIN ..... Petitioner

Signature Not Verified
Digitally Signed
By:AMULYA

+ CM(M) 870/2013, CM APPL. 13282/2013

BRIJ MOHAN & ORS ..... Petitioner

+ CM(M) 951/2013, CM APPL. 14380/2013

SHRI GOPESHWAR KUMAR ..... Petitioner

+ RFA 429/2013, CM APPLs. 14067 to 69/2013

GOPESHWAR KUMAR ..... Appellant

Through: Mr.Anil Kr. Chunduru and Mr. Neeraj Kumar, Adv. for petitioners in CM(M) 1085/2013.

Mr. Ramakant Tripathi for Mrs. Anita Gupta, Adv. for petitioners in CM(M) 951/2013 and 429/2013

Mr. Sunder Khatri, Advs. for petitioners CM(M) 751/2013 and CM(M) 752/2013

Mr. Abhilesh Arora, Adv. for appellant in EX.F.A. 25/2013

Mr. Kameshwar Gumber, Adv. for appellant in EX.F.A. 29/2013.

Mr. Abhijat and Mr. Harsh Hari Haran, Advs. for appellant in EX.F.A. 22/2013.

Mr. Tarun Sharma and Ms Garima Gupta, Advs. for petitioners in CM(M) 31/2014 to 34/2014.

59

Mr. Sudhir Kumar Sharma, Adv.for petitioner in CM(M) 870/2013.

Versus

RADHA PARK PLOT HOLDER WELFARE ASSOCIATION (REGD) & ORS

...Defendant/Respondent

Through: Mr. Kirti Uppal, Senior Advocate with Mr. R.S. Saini and Mr. Anshumaan Sahni, Advs. for Respondents No. 1 to 263 in CM(M) 951/2013 and RFA 429/2013

Mr. R.S. Sahni, Adv. for respondents in CM(M) 31/2014 to 34/2014, EX.F.A. 22/2013, EX.F.A. 25/2013, EX.F.A. 29/2013, CM(M) 1085/2013, CM(M) 751/2013, CM(M) 752/2013,CM(M) 870/2013 and RFA 429/2013.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. By this common order, the aforementioned Regular First Appeal (RFA), three Executive First Appeals (EFAs) and nine Civil Miscellaneous (Mains) [CM (M)] are being disposed off.

2. These petitions arise out of an order dated 02.02.2011, passed in Civil Suit No. 01/2010 (old suit number 2324/1989, hereinafter referred to as the "impugned order") which declared the partition order dated 09.03.1983 passed by the Court of Revenue Assistant apropos the suit lands as null and void; it also declared illegal and set aside the subsequent sale deeds of the suit lands executed by defendant Nos. 1 to 5 in favour of defendants 7 to 82. All the nine CM(M) petitions and the three of the EFA petitions challenge a subsequent order dated 07.06.2013 passed in Execution Case No. 108/2011 whereby the Learned Trial Court was pleased to dismiss the objections filed by the petitioners herein against the execution of the impugned order. The RFA directly challenges the impugned order.

3. In the suit, the plaintiffs had claimed that they had purchased the suit lands, essentially agricultural, comprising various *khasras* situated in the Revenue Estate of Village Kadipur, Delhi from the original owners/*bhumidars* (defendant No. 1 to 4) who had represented to the plaintiffs that the lands can be developed into a colony known as Rajdhani Park, Delhi replete with facilities of roads, parks, schools, hospitals, shops etc. The plaintiffs, through their respective registered sale deeds, purchased the suit land comprising of Khasra No. 643(2-08), 644(2-16), 645(4-16), 646(4-16), 647 min.(East)(3-03), 667(4-16), 666(4-16), 668(4-16), 665(2-08), 664(4-16), 710(4-16), 711(4-16), 712(4-16), 713 min(West)(2-08), 715(4-16), 718 min(South) (4-12), 695(4-16), 694(4-16), 698(4-16), 713(2-10), 714(4-16), 660(4-16), 659(4-16), 655(2-08), 654(4-09), 652 min(0-12), 653(4-07), 651(4-16), 648 min(4-09), 647 min(1-17), 649 min (4-05), 650 min(4-17), 656min(4-09), 657(2014),

658min(5-19), 716 min(6-07), 717(6-18) and 718 min(0-04); the lands were demarcated into plots by fixing bricks on the corners of the plots and by putting plot numbers as well as sign boards. The plaintiffs claimed ownership through respective registered sale deeds pertaining to the suit lands and claimed to have been in exclusive and peaceful possession of the said lands. It was claimed that some plaintiffs had even raised boundary walls and had also started construction thereon but most of them, owing to distance from their place of residence, did not carry out any construction.

4. Meanwhile, unbeknownst to the plaintiffs, defendant Nos. 1 to 5 allegedly concealed the earlier sale transaction with the plaintiffs and fraudulently obtained an order of partition on 09.03.1983 in case No. 224/RA/81 from the Court of Revenue Assistant. Admittedly, the plaintiffs were not impleaded in those proceedings. Pursuant to the said order of partition from the Court of Revenue Assistant, the suit lands were sold to defendant nos. 7 to 84, through sale deeds pertaining to the individual defendants, as shown in Annexure 2 to the plaint. It was the plaintiffs' case that defendant Nos. 1 to 5 and 7 to 84 had connived to defraud and cause wrongful loss to the plaintiffs.

5. It was the plaintiffs case that when the defendants encroached upon the plaintiffs' lands in March-April, 1984, the plaintiffs came to know of the allegedly fraudulent partition order; the plaintiffs founded the plaintiff no.1. association viz. 'Radha Park Plot Holder Welfare Association' and filed a suit to seek remedies against their illegal dispossession of the suit lands. Written Statements on behalf of certain

defendants were filed whereas the other defendants neither appeared nor filed any written statements and were thus proceeded ex-parte.

6. In all, 14 issues (13+1) were framed and all of them were returned in favour of the petitioners except issue No. 6(a), which was *'whether the suit is barred by limitation against defendant No.84 on his impleadment? OPP* (framed vide order dated 29.11.2004).

7. The sale deeds in favour of the plaintiffs were denied by the defendants. They also denied that possession of the suit lands had been handed over to the plaintiffs or that it was restored to them in March, 1992. They also denied that the order of the Court of Revenue Assistant in favour of respondent Nos. 1 to 5 was obtained illegally or fraudulently. The defendants claimed that they had no knowledge of any prior sale of the suit lands to the plaintiffs and that they were innocent, *bona fide* purchasers against valuable consideration; that they were put in possession of the suit property by the owners hence no cause is made out against them by the plaintiffs. They also questioned the maintainability of the suit by the plaintiffs as they claimed that the suit lands belong to individual members and not to the society.

8. It is seen from the judgment that subsequently, the individual claimants/plaintiffs were also impleaded.

9. Regarding the veracity of the sale deeds filed by the plaintiffs, the Trial Court, after examining the original sale deeds, concluded that no evidence was led to show that the sale deeds executed in favour of the plaintiffs by the original owners were void and that nothing existed on

record to prove that there was any dispute regarding the sale deeds in favour of the plaintiffs prior to the institution of the suit. The Trial Court also observed that defendant Nos. 7 to 84 who had purchased the suit lands and had stated that they had no knowledge of the earlier sale deeds; that since the original owners had sold the suit lands to the plaintiffs, it was upon them to disclose so before the learned Court of Revenue Assistant; that the original owners not only withheld relevant information but also falsely deposed before the Court of Revenue Assistant resulting in the partition order being passed. The Trial Court concluded that the said action was, therefore, fraudulent and that an order of partition obtained by fraudulent means is *non est* and open to challenge. Hence, there was no bar to challenge the partition order seeking declaration of sale deeds of defendant No. 7 to 84 as null and void.

10. The Trial Court observed that the original owners had already sold the suit lands to the plaintiffs way back in 1973-74 and had subsequently, with the intention to defraud the legal owners, filed the suit for partition before the Court of Revenue Assistant; that notice was never served upon the plaintiffs although some of the members had already got mutated ownership of the lands purchased by them in their names; that the original owners had not filed any written statement nor appeared to cross examine the plaintiffs' witnesses, leaving the plaintiffs' testimony un-rebutted thus proving the issue on the basis of the evidence available on record. The Trial Court therefore concluded that defendant Nos. 1 to 5 had played fraud upon the Court of Revenue Assistant.

64

11. The contention of defendant Nos. 7 to 84, to the effect that no fraud was played by them in obtaining the partition order dated 09.03.1983, was accepted by the Trial Court for the reason that their sale deeds were executed after 1983 and hence they could not be presumed to have known about the previous sale transactions, before the Revenue Assistant, as they were neither parties nor witnesses in those proceedings. The Trial Court held that any order obtained fraudulently is null and void and *non est* in the eyes of law. Accordingly, the order dated 09.08.1983 was declared null and void. Consequently, the Trial Court also ordered that the subsequent sale deeds executed in favour of defendant Nos. 7 to 84 were illegal and liable to be set aside.

12. The defendants are the present petitioners/appellants in this bunch of cases while the original plaintiffs have been arrayed as respondents

13. The petitioners claim that sometime around May, 2012, some persons attempted to enter upon the suit lands, which were in their possession, and started claiming right, title and interest therein. They were shocked when they were shown the impugned judgment and decree. On further investigation, they found that a judgment dated 02.02.2011 had been passed by the Civil Court and that execution proceedings vide Execution Petition No. 108/2011 had already been initiated. The petitioners then filed objections under Section 47 of the CPC against the impugned judgment in the said execution proceedings. The objections were dismissed by the learned ADJ vide order dated 07.06.2013 resulting in the nine CM (M) petitions and the three EFA petitions.

65

14. It is the petitioners' case that the Civil Court did not have jurisdiction to try the suit and pass the impugned decree because it concerns agricultural land/*bhumidari* rights as mentioned in column nos. 2 & 3 of Schedule I of Delhi Land Reforms Act, 1954 and that the jurisdiction of Civil Courts is thus specifically barred. In support of their contention the petitioners rely upon the dicta of the Supreme Court in *Hatti vs. Sunder Singh* (1971 SCR (2) 163)

> *"8. The High Court, in this connection, referred to Section 186 of the Act under which any question raised regarding the title of any party to the land, which is the subject-matter of a suit or proceeding under the First Schedule, has to be referred by the Revenue Court to the competent Civil Court for decision after framing of an issue on that question. Inference was sought to be drawn from this provision that questions of title could be competently agitated by a suit in the Civil Court, as the jurisdiction of the Civil Court was not barred. It appears to us that there is no justification for drawing such an inference. On the contrary, Section 186 envisages that questions of title will arise before the Revenue Courts in suits or proceedings under the First Schedule and, only if such a question arises in a competent proceeding pending in a revenue Court, an issue will be framed and referred to the Civil Court. Such a provision does not give jurisdiction to the Civil Court to entertain the suit itself on a question of title. The jurisdiction of the Civil Court is limited to deciding the issue of title referred to it by the Revenue Court. This clearly implies that, if a question of title is raised in an application for declaration of Bhumidari rights under item 4 of Schedule I of the Act, that question will then be referred by the Revenue Assistant to the Civil Court; but a party wanting to raise such a question of title in order to claim Bhumidari right cannot directly*

66

approach the Civil Court. The Act is a complete Code under which it is clear that any one, wanting a declaration of his right as a Bhumidar, or aggrieved by a declaration issued without notice to him in favour of another, can approach the Revenue Assistant under item 4 of the First Schedule and this he is allowed to do without any period of limitation, because he may not be aware of the fact that a declaration has been issued in respect of his holding in favour of another. A declaration by a Gaon Sabha of the right of any person can also be sought without any period of limitation. If there is dispute as to possession of agricultural land, the remedy has to be sought under section 84 read with item 19 of the First Schedule. All the reliefs claimed by the respondent in the present suit were, thus, within the competent jurisdiction of the Revenue Assistant, and the Civil Court had no jurisdiction to entertain the suit."

15. The petitioners contend that they had purchased the suit lands and were in actual peaceful physical possession thereof; that the name of the appellants were duly mutated in the revenue records without any objection or dispute being raised before the revenue authorities; that under the express provision of Sections 33 and 81 of DLR Act, the Court of Revenue Assistant had exclusive jurisdiction to adjudicate apropos agricultural land in the National Capital Territory of Delhi; therefore if anybody was aggrieved by the order of the Court of Revenue Assistant, the same could be impugned by way of an appeal before the Deputy Commissioner as per Schedule I of DLR Act. Other contentions regarding bar of limitation, non-joinder of parties, forged GPA, doctrine of misrepresentation etc. were also raised by them against the suit.

16. It is further contended that with respect to the question of title, which would arise as a consequence of any issue being raised before the Revenue Assistant, the matter could be referred to the Civil Court under Section 186 of the DLR Act; that the Civil Court lacked inherent jurisdiction to pass the decree and that hence it is *void ab initio* and that such decree could be challenged at any stage even in execution or collateral proceedings. In this regard, reliance was placed upon the dicta of the Supreme Court ***in Balvant N. Viswamitra and Ors. vs. Yadav Sadashiv Mule (dead) through Lrs. and Ors. 2004 8 SCC 706*** held as follows:

> *"9. The main question which arises for our consideration is whether the decree passed by the trial court can be said to be 'null' and 'void'. In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such detect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings."*

17. It is also the petitioners' case that the Executing Court did not adjudicate on the issue of jurisdiction on the ground that this had already

been decided by the Civil Court. Furthermore, the Executing Court failed to appreciate that several of the petitioners were not even impleaded as parties in the proceedings despite being recorded as tenure holders and having sale deeds in their favour.

18. Mr. Abhijat, learned counsel for the petitioners, contends that partition of agricultural lands can be done only under Entry 7 of Schedule 1 of the DLR Act; that once the partition has been done, the appeal would lie before the Deputy Commissioner concerned and not before any other authority or Court. Entry 3 concerns proceedings regarding regaining possession, whereas Entry 19 of the Schedule concerns suits for ejectment. Relying upon the case of *Gaon Sabha of Lado Sarai v. Jage Ram* (ILR 1973 Delhi 984) he further contends that the principal relief sought in the suit has to be seen. He submits that if the relief was primarily for declaration of title, then the partition would have to be disturbed first; therefore, the only remedy available to the respondent is before the Court of Revenue Assistant. Mr. Abhijat further contends that by virtue of lack of inherent jurisdiction of the Civil Court, the doctrine of *lis pendens* would not be applicable as the decree was void ab initio. Relying upon the case of *Balvant N. Visvamitra v. Yadav Sadashiv Mule*, (supra) he submits that the validity of such a decree can be challenged at any stage - even during execution or collateral proceedings. He submits that the impugned judgment and decree had been obtained by the respondents by misrepresenting the facts and circumstances underlying the subject matter and also by suppressing material facts and documents. He refers to documents on record to show that the name of the appellant was duly mutated and recorded in the revenue records and that no

objection regarding the same was ever raised, nor was an Order 39 Rule 1 and 2 application made by the respondents between the years 1989 and 2009.

19. Mr. Abhijat further submits that it is well settled that the suit lands are covered under Sections 33 and 81 of the Delhi Land Reforms Act and thus jurisdiction with respect to the suit lands, which is essentially agricultural land, lies solely with the Court of the Revenue Assistant. He submits that the impugned order suffers from defect and error on account of non-joinder of a necessary party since Shri Bhanu Ram and Smt. Rupinder Bedi, whom he represents (in Ex.F.A.22/2013), were neither impleaded as parties in the suit nor were summons sent to them.

20. The learned counsel relied upon *Jage Ram's* case (supra) which held:

> *"(4) We may observe at the outset that in all the cases the question which has arisen for decision is whether a civil court has jurisdiction to try a suit in respect of land under the Delhi Land Reforms Act, 1954. Under Section 185(1) of the Delhi Land Reforms Act the civil court has no jurisdiction. Section 185(1) reads as under:- , "185(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 i n the Code of Civil Procedure, 1908, take cognizance of any suit, application, or proceeding mentioned in column 3 thereof."*
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> *(5) The question regarding the maintainability of a suit in a civil court under the Delhi Land Reforms Act has been settled by the Supreme Court in Haiti v. Sunder Singh. In that case the appellant Hatti was declared a Bhumidar of some land belonging to the*

respondent under Section 13 of the Delhi Land Reforms Act No 8 of 1954 (hereinafter referred to as the Act). The respondent instituted a suit in the civil court claiming three reliefs. The first relief was for a declaration that the declaration of bhumidari issued in the name of the appellant with respect to the land in dispute was wrong, illegal, without jurisdiction, ultra vires, void and ineffective against the respondent. The second relief was that the respondent be declared to be entitled to bhumidari rights under Section 11 of the Act. The third relief was for possession of the land. The suit was brought on the allegation that the respondent was the owner of the land, while the appellant had no rights in it. The case of the respondent was that the appellant had wrongly been granted the declaration under Section 13 of the Act that he was bhumidar when he had no rights as a tenant in the land at all. The main defense on behalf of the appellant was that he was a non-occupancy tenant and he was entitled to the declaration of his bhumidari rights. Among other issues, one issue raised by the appellant was that the civil court had no jurisdiction to entertain the suit in view of the provisions of Section 185 of the Act. The trial Court held that the jurisdiction of the civil court was not barred. A decree for possession was granted in favor of the respondent. The High Court also held that the jurisdiction of the civil court was not barred. On appeal the Supreme Court reversed the decree passed by the High Court and held that the civil courts had no jurisdiction to try the suit.

(6) Their Lordships of the Supreme Court examined the provisions of the Act and came to the conclusion that the Act was a complete Code and the Civil court had no jurisdiction in view of Section 185(1) of the Act to entertain a suit in which the plaintiff, alleging that he is the proprietor of the suit land, asks for the

declaration that he is entitled to bhumidari rights in respect of the said land. It was held that all the three reliefs which were asked by the respondent in his suit were within the cortlpetent jurisdiction of the Revenue Assistant to grant under the provisions of the Act. Their Lordships observed at page 846:-

"THE scheme of the Act appears to be that, initially, a declaration of Bhumidari right can be granted under Section 11 or Section 13 without calling for objections and without hearing contesting parties in favor of the person who appears to the revenue authorities to be entitled to the declaration on the basis of the records maintained by them. Thereafter, any person aggrieved and claiming bhumidari rights is expected to move an application before the Revenue Assistant who is to adjudicate upon the rights after following the usual judicial procedufe. The order made by the "Revenue Assistant in such a proceeding will then have to be given effect to and would over-ride the declarations earlier issued in accordance with the Rules. This shows that any person, who is aggrieved by a declaration of Bhumidari right issued in favor of another person, can appropriately seek his remedy by moving an application before the Revenue Assistant under Item 4 of the First Schedule, whereupon, if he succeeds, he will obtain a declaration that he is the Bhumidar. Such a declaration will automatically supersede the declaration issued by the authorities in accordance with the Rules without any adjudication of rights and without notice to interested parties."

(7) Their Lordships further held that Sections 6, 11, 13 and 154 of the Act read together show that after the Act came into force, proprietors of agricultural

land as such ceased to exist. There can be no suit by any person claiming to be a proprietor because the Act does not envisage a proprietor as such continuing to have rights after the commencement of the Act. Dealing with the argument that Section 186 of the Act provides for the decision of a question raised regarding the title of any party to the land by a civil court on a reference to the Revenue Court their Lordships said:- "THE High Court, in this connection, referred to Section 186 of the Act under which any question raised regarding the title of any party to the land, which is the subject-matter of a suit or proceeding under the First Schedule, has to be referred by the Revenue Court to the competent civil court for decision after framing an issue on that question. Inference was sought to be drawn from this provision that questions of title could be completely agitated by a suit in the civil court, as the Jurisdiction of the Civil Court was not bar-red. It appears to us that there is no justification for drawing such an inference. On the contrary, Section 186 envisages that questions of title will arise before the "Revenue Courts in suits or proceedings under the First Schedule and, only if such a question arises in a competent proceeding pending in a Revenue Court, an issue will be framed and referred to Civil Conn. Such a provision does not give jurisdiction to the Civil Court to entertain the suit itself en a question of title. The jurisdiction of the Civil Court is limited to deciding the issue of title referred to it by the Revenue Court. This clearly implies that, if a question, of title is raised in an application for declaration of Bhumidari rights under Item 4 of Schedule I of the Act, that question will then be referred by the Revenue

Assistant to the Civil Court; but a party wanting to raise such a question of title in order to claim Bhumidari right cannot directly approach the Civil Court."

(8) The question of maintainability of the suit again arose for decision before their Lordships of the Supreme Court in Mukhfaria etc.Vs. Rama Shankar etc. Civil Appeals Nos. 987, 988 and 989 of 1967, decided on August 8, 1972. In those appeals the respective appellant was the defendant in each of the suits from which those appeals arose, The following reliefs were prayed for:- (1) A declaratory decree to the effect that Bhumidari declaration mentioned in para 10A regarding said land in the name of the defendant is illegal, ultra vires, void against the plaintiff be passed in plaintiff's favor against the defendant. (2) A decree for possession of the agricultural land with damages; and (3) for costs.

(9) The question for decision which arose in the suits was whether the civil court had jurisdiction to grant the reliefs prayed for. The trial ' court decreed the plaintiff's suit. The first appellate court affirmed that decision. The second appellate court summarily dismissed the appeal. The Letters Patent Appeal was also dismissed. The appeals were brought in the Supreme Court after obtaining special leave.

(10) Their Lordships held that the point which had arisen for decision in the appeals was governed by the rule laid down by the court in the case of Hatti (supra). It was held that the civil court had no jurisdiction to entertain a suit of the type with which their Lordships were concerned in those three

appeals. It was contended by the appellant's counsel that the decision in Haiti's case (supra) required reconsideration. After hearing the counsel at length their Lordships were not satisfied that the decision required reconsideration. In the result the appeals were allowed and all the suits were dismissed.

(11) In deciding the ten appeals we will bear in mind the decision to the Supreme Court in the case of Haiti (supra) as in all these appeals we have to determine whether the civil courts had jurisdiction to entertain the suit brought in each of the cases.

(12) It is settled law that jurisdiction with reference to the subject-matter of a claim, as in the case of other kinds of jurisdiction, depends upon the allegations in the plaint and not upon the allegations in the written statement, nor upon those which may ultimately be found true. Such allegations may, after the trial, be held to be unfounded and in that case, the suit will be dismissed, not because the court has no jurisdiction, but because the allegations on which it was based are found to be untrue. The question of maintainability of a suit is also governed by the same principles and must be dealt with on the footing of the allegation in the plaint being correct. The plaintiff cannot, by merely so drafting his prayers to exclude or include relief which can or cannot be granted by a court, confer on the court jurisdiction to try the suit. It is necessary in each case to consider what the cause of action in the plaint is and what is the substantive relief which the plaintiff would be entitled to if he succeeds in the suit, in order to determine whether the court has jurisdiction, irrespective of what prayers the draftsman has thought fit to put in the plaint. The

substance of the relief and not the mere form in the plaint has to be looked to. In deciding the point of maintainability of a suit the allegations in the plaint alone have to be considered. It is the allegation in the plaint which determine jurisdiction. To discover the real nature of the suit the plaint has to be looked at and plaint has to be read as a whole and in doing so the court must look at the substance of the plaint and not its outward form only. In each of ten appeals, therefore, we will take into account the substance of the suit in order to determine the nature of the claim made and reliefs sought.

(13) We may now deal with the decisions of D.K. Kapur, J. which are referred to in the referring order of Sachar, J. and which we have mentioned in the beginning of our judgment.

(14) R. S. A. 199-D of 1964 decided on August 27, 1971 (Gaon Sabha of village Lado Sarai v. Risal Singh) is another decision of the learned single Judge which was cited before us and was relied upon by Mr. S.S. Dalal. In this case the appeal was filed by the Gaon Sabha of village Lado Sarai and arose out of a suit brought by Risal Singh, respondent, claiming that the order of the revenue Assistant placing the land in suit in L.R. Form No. 2 and then vesting it in the Gaon Sabha was without jurisdiction, void and not binding on the plaintiff. The suit initially instituted by the plaintiff was in relation to Khasra Nos. 333, 361, 372 and 373. The trial Court decided in favor of the plaintiff regarding Khasra No. 333, but with regard to the other three Khasra Nos. the trial court came to the conclusion that they were waste lands being ghair mumkin pahad and banjar qadim. The trial court held

that the land did not form part of the holding of the plaintiff and, therefore, vested in the Gaon Sabha by virtue of Section 7 and 154 of the Delhi Land Reforms Act. The learned single Judge took the view that the word 'holding' used in explanation to Section 7(1) of the Act which defines waste land is used as denoting the property owned by a proprietor and not in the same sense as in the definition section. The learned Judge summed up his conclusions as follows:- "Till the land is used for agriculture it is not land within the meaning of the definition and the Act does not apply to it. Hence, if the land happens to be mountanous or sub-mountanous i.e. Ghair mum kim pahar or happens to be Banjar Qadim or Banjar Jadid i.e. not under cultivation then the proprietor remains the owner thereof. It is only when the land is used for agriculture or for a purpose subservient to agriculture that the land came within the definition of land as given in section 3(13) of the Act and it is only at that stage that the provisions of the Act become applicable to it."

....

(70) On the allegations made in the plaint it is abundantly clear that the plaintiff's claim in substance is that he has bhumidari rights in the suit land and the vesting order is contrary to law. As such, such a suit could not be brought in the civil court by reason of section 185(1) of the Act. In the result, the appeal of Gaon Sabha is allowed. The judgments and decrees of the courts below are set aside. The suit of the plaintiff-respondent is dismissed as being incompetent. In view of the fact that the question involved in all the ten appeals was one relating to

jurisdiction, we think that the proper order will be to leave the parties to bear their own costs throughout in all the appeals."""

The petitioners also relied upon the dicta in *Ashok Kumar vs. Munni Devi (2012 (129) DRJ 476)* wherein it was held that:

"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.

...

9. By the impugned judgment, the suit filed by the appellants/plaintiffs for declaration, injunction and possession was dismissed by holding that the Civil Courts do not have jurisdiction.

The reliefs of declaration, injunction and possession were claimed on the ground that original owner-Sh. Inder Singh never executed a General Power of Attorney in favour of wife of Sh. Ruliya Singh, and on the basis of which Power of Attorney, the wife of Sh. Ruliya Singh is stated to have executed a sale deed in favour of Sh. Ruliya Singh. Sh. Ruliya Singh is the father of defendant Nos.2 to 4. 10. I have given detailed reasoning while disposing of RFA No.621/2003 and have held that unless the suit falls within the columns 2 and 3 of the Schedule I of the Act, the jurisdiction of the Civil Court is not barred. The suit such as the present claiming injunction, declaration of illegality of the sale deed executed allegedly on the basis of a fabricated General Power of Attorney and for repossession of the land, is not covered under any of the Sections mentioned in column 2 of the Schedule I. The jurisdiction of the Civil Court therefore will not be barred under Section 185 of the Act. I must once again reiterate that nothing contained in todays judgment is a reflection on the merits of the case of either of the parties, and I am not touching upon the merits of the matter. The present judgment only decides the issue that there is no bar to the jurisdiction of the Civil Courts by virtue of Section 185 of the Act."

21. On behalf of the respondents, Mr. Kirti Uppal, learned Senior Advocate, contends that the order of the Court of Revenue Assistant was bad in law; that insofar as defendant No.1 to 5 have fraudulently obtained the order of partition dated 09.03.1983, the Civil Court could always adjudicate upon it. He submits that the sale deeds were not disputed by the original sellers. He contends that indeed, apropos issue No. 9 the

learned Civil Court had recorded that there was no dispute regarding the sale deeds in favour of the plaintiffs, hence there was no occasion for the suit being referred to the Court of Revenue Assistant. The learned counsel relies upon the judgment of this Court in *Mansa Ram v. Tilak and Anr*[1], wherein it was observed that fraud of any nature, in any circumstance, must be adjudicated in trial before a Civil Court. The judgment read as follows:

> *"13. The Full Bench of the Allahabad High Court in Ram Padarath vs. Union of India, 1989 AII WC 290 was ceased of a suit for cancellation of a sale deed and permanent injunction on the ground that the sale deed has been executed by impersonation and that the plaintiff was the tenure holder in possession of the land. The Bench held that the Civil Courts will have jurisdiction in a suit for cancellation of documents where, it is a suit for cancellation of document simplicitor with no declaration of title. The Constitution Bench decision in Ram Padarath (supra) case was upheld by the Supreme Court in Smt. Bismillah vs. Janeswar Prasad & Ors, (1990) 1 SCC 207. In the said case, a suit for cancellation of the document and possession was filed where the Apex Court held that the Civil Court would have jurisdiction to decide the issue as the sale deed requires to be set aside before the plaintiff is entitled for possession and other consequential reliefs. The Supreme Court in Shri Ram & Anr. vs. Ist Additional District Judge & Ors., (2001) 3 SCC 24 approving the Ram Padarath (supra) case held that a tenure holder*

1

in possession can file a suit in Civil Court for cancellation of a sale deed on the ground of fraud or impersonation, as prima facie the title of the recorded tenure holder is not under cloud.

14. Recently, the Supreme Court in Horil vs. Keshav & Anr., (2012) 5 SCC 525 has expanded the scope in case of the jurisdiction of the Civil Court to decide the issue of fraud and has held that the Civil Courts can entertain suit even in regard to decrees or orders passed in suit or proceedings under different statute or tribunal of limited jurisdiction."

22. To buttress his contention that a suit would lie before the Civil Court and not before the Court of Revenue Assistant, he also relies upon the case of *Shri Ram and Another v. 1st Addl. Distt. Judge and Ors,* (2001) 3 SCC 24, wherein the Hon'ble Supreme Court held that a recorded tenure holder, i.e., a person whose name has been mutated and recorded in the revenue records, need not file a suit before the Revenue Court for cancellation of a void document because his title is *prima facie* valid. Such person can approach a Civil Court for this purpose. The relevant paragraph reads as follows:

"On analysis of the decisions cited above, we are of the opinion that where a recorded tenure holder having a prima facie title and in possession files suit in the civil court for cancellation of sale deed having obtained on the ground of fraud or impersonation cannot be directed to file a suit for declaration in the revenue court reason being that in such a case, prima facie, the title of the recorded tenure holder is not under cloud. He does not require declaration of his

81

title to the land. The position would be different where a person not being a recorded tenure holder seeks cancellation of sale deed by filing a suit in the civil court on the ground of fraud or impersonation. There necessarily the plaintiff is required to seek a declaration of his title and, therefore, he may be directed to approach the revenue court, as the sale deed being void has to be ignored for giving him relief for declaration and possession."

23. Apropos the question as to why no objection regarding jurisdiction was raised before the Civil Court, the petitioners state that most of them were not even party to the suit but were only objectors before the Executing Court in Execution No. 108 of 2011.

24. As per this tabular representation submitted by the petitioners, the following parties were objectors before the Executing Court:

"COMPARATIVE/CORRESPONDING CHART OF LITIGANTS:

Civil Suit No. 1/2010	*Execution No. 108/2011*	*CM(M) No.951/2013 & RFA 429/2013*	*Relation to proceedings*
Plaintiffs 1-263	*Decree Holder 1-263*	*Respondent 1-263*	*1st purchasers of land, bought before Suit of Partition was filed by original owners of land (Filed Civil Suit 1/10 when they realised, original owners had pursuant to seeking partition sold off land in question to 2nd*

			purchaser.
Defendants 1-5	Judgment Debtor 1-5	Respondent 264-268	Original owners of land in question.
Defendants 7-84	Judgment Debtor 7-84	Respondent 270-347	2nd purchasers of land, bought after suit for partition filed by original owners. (Civil suit decided in favour of 1st purchasers.)
Not party	Objector No.14 (Other Objectioners have also filed CM(M)/Ex. FA as below)	Petitioner	Part of 2nd purchaser of land/claiming from 2nd purchasers (i.e., claiming from Respondent 270-347 in present proceedings), not party to suit, but objected in execution taking exception of S.185 Delhi Land Reforms Act, 1954, that bars jurisdiction of a civil court and that he was not heard in suit.

LITIGANTS FROM OTHER CASES

Sl.No.	Case No.	Petitioner Name	Relation to proceedings below
1	CM(M) 951/2013	Sh.Gopeshwar Kumar [PET. Purchased land from Def. 61, 65, 70, 74, 80, 81 during pendency of suit]	Objector no.14 before Execution Court in Exec. 108/2011 Not Party in Suit NO.1/2010
2.	RFA 429/2013	Sh.Gopeshwar Kumar	Objector no.14 before Execution Court in Exec.108/2011

			Not Party in Suit No.1/2010
3.	*EFA 22/2013*	*Smt. Rajni Dargan* *[PET. Purchased land from Def. 4, 6, 7, 8, 13, 14, 38, 47, 48, 49, 57, 58, 72, 78, 79 during pendency of Suit]*	*Objector no.7 before Execution Court in Exec. 108/2011* *Not Party in Suit NO.1/2010*
4.	*EFA 29/2013*	*Sh. Kulbir Singh & Ors.* *[PET. Purchased land from Def. 1, 5, 25 during pendency of Suit]*	*Objector no.2 before Execution Court in Exec. 108/2011* *Not Party in Suit No.1/2010*
5.	*CM(M) 870/2013*	*Sh. Brij Mohan & Ors.* *[PET. Purchased land from Def. 6, 7, 9, 41, 42, 43, 44, 45 during pendency of Suit]*	*Objector no.10 before Execution Court in Exec. 108/2011* *Not Party in Suit No.1/2010*
6.	*CM(M) 33/2014*	*Sh. Jai Kishan Saini* *[PET. Purchased land from Def. 6 after passing of Decree]*	*Objector 17 and Defendant before Execution Court in Exec. 108/2011* *Defendant No.36 in Suit No.1/2010*
7.	*CM(M) 34/2013*	*Sh. Rajesh Gauba* *[PET. Purchased land from Def. 6]*	*Objector no.3 before Execution Court in Exec. 108/2011* *Not Party in Suit No.1/2010*
8.	*CM(M) 32/2014*	*Sh. Sanjeev Kumar Aggarwal* *[PET. gifted land by Sh. Devender Kumar after passing of Decree]*	*Objector no.1 before Execution Court in Exec. 108/2011* *Not Party in Suit No.1/2010 ~ Neither was Mr. Devender Kumar from whom Pet, has got land as Gift.*

84

9.	CM(M) 752/2013	Smt. Shashi Jain [PET. Purchased land from Def. 51, 52, 53, 54 during pendency of Suit]	Objector no.11 before Execution Court in Exec. 108/2011 Not Party in Suit No.1/2010
10.	CM(M) 31/2014	Smt. Sita Devi [PET. Purchased land from Def. 6 after passing of Decree]	Objector no.16 and Defendant before Execution Court in Exec. 108/2011 Defendant No.35 in Suit No.1/2010
11.	CM(M) 1085/2013	Sh. Surinder Singh & Ors. [PET. Purchased land from Def. 19, 20 during pendency of Suit]	Objector no.15 before Execution Court in Exec. 108/2011 Not Party in Suit No.1/2010
12.	CM(M) 751/2013	Sh. Vijay Kumar [PET. Purchased land from Def. 6 after passing of Decree]	Objector no.18 and Defendant before Execution Court in Exec. 108/2011 Defendant No.40 in Suit No.1/2010
13.	EFA 25/2013	Smt. Narinder Kaur & Ors. [PET. Purchased land from Sh. Anil Maheshwari and Sh. Adesh Verma after passing of Decree]	Objector no.4 before Execution Court in Exec. 108/2011 Not Party in Suit No.1/2010 ~ Neither were Sh. Anil Maheshwari and Sh. Adesh Verma from whom PET. has purchased land.
14.	CM(M) 308/2014	Sh. Tarsem Lal Verma	Dismissed in limine on 27/03/2014

25. Having considered the contention of the parties the Court notes that these petitions essentially seek the setting aside of the impugned order dated 2.22011 which has set aside the partition order of the

Revenue Assistant which recognized the right of defendant nos. 1 to 5 to sell the suit lands; as a consequence of which the suit lands were sold to defendant nos 7 to 84; they also seek the ancillary i.e. a declaration that the petitioners be declared as rightful owners of the suit property.

26. Entry No. 7 of Schedule 1 of the DLR Act, 1954 makes the Court of Revenue Assistant as the Court of original jurisdiction to adjudicate on an application for determination of the share of the lessor and partition of holding. It also stipulated that an appeal from such order would lie before the Deputy Commissioner. Under Entry 3 of the Schedule, application to regain possession would lie before the same Revenue Assistant and under Entry 19 a suit for ejection of a person occupying land without title or damages would also lie before the Revenue Assistant. The respondents, having been aggrieved by the partition order passed by the Revenue Assistant, ought to have impugned the order as per the provisions of the DLR Act before the Deputy Commissioner. The partition order cannot be the subject matter of adjudication by a Civil Court because jurisdiction has been specifically and exclusively conferred upon the Revenue Court regarding matters of *bhumidari* rights and possession of agricultural lands. The jurisdiction of other courts has been clearly ousted under Section 185(1) of the Act. Furthermore, section 186 of the Act provides the procedure to be followed when a question of title is raised. It reads as under:

> ***"186. Procedure when question of title is raised. –***
>
> *(1) Notwithstanding anything contained in section 185, if in any suit or proceeding mentioned in column*

3 of Scheduled I, question is raised regarding the title of any party to the land which is the subject matter of the suit or proceeding and such question is directly and substantially in issue the Court shall, unless the question has already been decided by a competent civil court for the decision of that issue only.

Explanation:- A plea regarding the title to the land which is clearly untenable and intended solely to oust the jurisdiction of the revenue court shall not be deemed to raise a question regarding the title to the land within the meaning of this section.

(2) The civil court, after reframing the issue, if necessary, shall decide such issue only and return the record together with its finding thereon to the revenue court which submitted it.

(3) The revenue court shall then proceed to decide the suit or , accepting the finding of the civil court on the issue referred to it.

(4) An appeal from a decree of a revenue court in a suit or proceeding in which an issue regarding title has been decided by a civil court under sub-section (2)shall lie to the civil court which having regard to the valuation of the suit has jurisdiction to hear appeal from the Court to which the issue of title has been referred."

27. The dicta in *Hatti vs. Sunder Singh* (supra) clearly lays down that the issue of declaration of *bhumidari* rights, as per S. 186 of the Delhi Land Reforms Act, can only be taken up by the Revenue Court. In view of the aforesaid discussion, it is clear that exclusive jurisdiction regarding i) partition of agricultural property, ii) application for declaration of

bhumidari rights, iii) application for regaining of possession and for iv) ejection of a person occupying the land without title, would only lie before the Court of Revenue Assistant. Therefore, when the statute itself clearly stipulates jurisdiction of another court, a Civil Court cannot assume the jurisdiction even if an order has been procured by alleged misrepresentation before or suppression of material facts from and/or by fraud played upon the Court of Revenue Assistant. Indeed jurisdiction of other courts has been specifically ousted by s.185 of the Act.

28. Therefore, insofar as the Civil Court lacked jurisdiction to set aside the order dated 08.03.1983 passed by the Court of Revenue Assistant, the impugned order and decree is without jurisdiction and is liable to be set aside. Accordingly, the impugned judgment and decree dated 2.2.2011 Civil Suit no.1/2010 is set aside. It would be open for the respondents to pursue remedies as may be available to them in law under the Delhi Land Reforms Act, 1954. The aforesaid petitions are allowed and disposed off in the above terms. No orders as to costs.

NAJMI WAZIRI, J

MARCH 23, 2015/acm/nrk/rtm