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

% **Date of Decision: 15.12.2015**

+ **RSA 101/2015 and C.M. No.4410/2015**

RAJINDER PRASAD & ORS Appellants

Through: Mr. I.S. Dahiya, Advocate.

versus

MUKESH & ORS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the order dated 09.02.2014 passed by the first appellate court, namely, learned Additional District Judge (Central)-11, Delhi, in RCA No. 19/12 whereby the said first appeal preferred by the appellant/plaintiff has been dismissed, and the order dated 22.08.2005 passed by the trial court, namely, the Civil Judge, Delhi, in suit No. 495/04, rejecting the plaint under Order 7 Rule 11 CPC, has been upheld.

2. The plaintiffs/appellants filed the suit to seek the relief of declaration and permanent injunction against the defendants. A decree of declaration was sought to declare that the plaintiffs as absolute owners of the suit land measuring 17 bighas and 8 ½ biswas forming part of khewat No. 177 to 179,

khatauni No. 695 to 696 in village Bawana, Tehsil and District Delhi, as shown in Fard Khatauni of the year 1984-85. The plaintiffs also sought delivery of possession of the said property from the defendants. An injunctive relief was sought to restrain the defendants from selling, transferring, alienating or mortgaging or cultivating the suit property or taking any compensation of any portion of the suit property being acquired by the government in respect of land admeasuring 17 bighas 8 ½ biswas in village Bawana comprising khasra No. 22, 30 to 33.

3. The case of the plaintiffs was that late Shri Harphool, son of Bhola, owned and possessed 34 bighas and 17 biswas agriculture land forming part of khewat No. 177 to 179, khatauni Nos. 695 to 698 in village Bawana, Tehsil and District Delhi. In this regard, reliance was placed on *jamabandi* of the year 1936-37. The plaintiffs claimed that Harphool had two sons, namely, Hira and Kishan Lal. Both of them died during the life time of Harphool. Kishan Lal died issueless. Hira was survived by his three sons, namely, Risale, Mauji and Zile. The plaintiffs claimed that Zile, son of Hira, was given in adoption according to law with complete ceremonies to one Dhanpat son of Sukh Dev in the year 1932 when Zile was hardly five years of age. Zile died on 12.12.1978. The plaintiffs claimed that on account of his adoption, Zile ceased to have any interest in the estate of his natural grandfather Harphool, or his natural father Hira. Consequently, the entire estate of the grandfather Harphool comprising of 34 bighas and 17 biswas land in village Bawana, was inherited by his only surviving grandson, namely, Risale. The plaintiffs claimed that the mutation of the entire land ought to have been carried out in favour of Risale. The plaintiffs

stated that Risale was illiterate and addicted to intoxicants. The plaintiffs also claimed that the factum of adoption of Zile was kept totally concealed by the said Zile. The plaintiffs claimed that Zile took advantage of the evil habits of his elder brother Risale. The plaintiffs claimed that Zile fraudulently and in a clandestine manner, took advantage of the weakness of Risale. He kept secret his adoption by Dhanpat throughout his life, and this information was not made known to Risale. The plaintiffs stated that Zile got mutated the entire suit land of Harphool in his name and in the name of Risale equally. The plaintiffs further stated that Zile played a fraud with Risale when he fraudulently got executed a registered sale deed dated 15.02.1972, of the entire share of his brother Risale - which was 17 bighas and 8 ½ biswas, for a petty amount of Rs. 12,000/-. According to the plaintiffs, Risale had only mortgaged the said valuable land. The plaintiffs stated that the market value of the land admeasuring 17 bighas and 8 ½ biswas, in the year 1972, was Rs. 2 lakhs. Risale could not have sold the ancestral land without legal necessity. The plaintiffs claimed that Risale thought his life was bona fide believing that he had mortgaged his land to Zile for a petty amount of Rs. 12,000/-, but he had no money to get the same redeemed. Consequently, the possession and control of the half share of Risale i.e. land admeasuring 17 bighas 8 ½ biswas remained with Zile as mortgagee throughout his life. The plaintiffs stated that they also remained under bona fide belief that the said land stood mortgaged by their father to Zile. However, they did not have the money to get the same redeemed. The plaintiffs stated that the youngest son of Risale, Ajit Singh, after attaining the age of majority in the year 1996, made enquiries about the land of his father, when the fraudulent sale deed got executed from his father Risale

came to notice. He then obtained certified copy of the bogus sale deed dated 15.02.1972 and filed suit No. 206/97 against the three sons of late Zile, who had died. The said suit was pending. The plaintiffs stated that during the pendency of the said suit, on further probe, the plaintiffs learnt about the adoption of Zile by Dhanpat son of Sukh Dev and, consequently, they learnt that Zile ceased to have any legal right, title or interest in the property of his natural grandfather. The plaintiffs stated that Zile kept his adoption in utter secrecy from his brother and kept getting benefits of the entire suit property of his grandfather Harphool measuring 34 bighas and 17 biswas, half as the grandson and other half having purchased the share of Risale in a fraudulent manner. The plaintiffs stated that they came to know about the fraud played by Zile when they obtained the certificate from the school authorities, dated 20.01.2000 wherein the name of the father of late Zile was given as Dhanpat son of Sukh Dev. Accordingly, an application under Order 6 Rule 17 CPC was moved in the earlier suit No. 206/97. The application for amendment - to seek a declaration of adoption in respect of Zile, was disallowed on the ground that this is a new cause of action on 24.01.2004. It was stated that the dismissal of the said application under Order 6 Rule 17 gave a cause of action to the plaintiffs to file the present suit. The plaintiffs sought a decree of declaration that they be declared as the absolute owners of the entire suit land measuring 17 bighas 8 ½ biswas forming part of khewat No. 177 to 179, kihatauni No. 695 to 696 in village Bawana, Tehsil and District Delhi, whose number after consolidation was 127/128, shown in Fard khatauni of the year 1984-85 on the basis that they inherited the same from their great grandfather late Shri Harphool. Consequential relief of possession was sought in respect of the said land from the defendant. The plaintiff also

sought injunctive relief in respect of the suit land.

4. The defendants moved an application under Order 7 Rule 11 CPC on the premise that the relief sought in the suit was barred under Section 185 of the Delhi Land Reforms Act (for short, ‘ DLR Act’) and that the suit was barred by limitation. It was also contended that the value of the subject matter of the suit was beyond the pecuniary jurisdiction of the court. The trial court allowed the said application by the order dated 28.02.2005. The trial court held that, admittedly, the suit property is agricultural land and the plaintiff is seeking a declaration of title with regard to the same with possession and permanent injunction against creation of third party interest in the suit property by the defendants. The suit property is in possession of the defendants and mutation has been done in their names in the revenue record. The plaintiffs were, in effect, seeking relief of ejectment of the *bhumidhars* from their agricultural land. The trial court held that the plaintiffs were seeking declaration in their favour as *Bhumidhars* of the suit property, which stands in the name of the defendants. For the said relief, the plaintiff has to approach the revenue courts to seek a declaration that they are *Bhumidhars*, and only then defendants may be ejected from the suit property. Even the relief of possession of agricultural land can be granted by the revenue courts and the civil court has no jurisdiction to declare the plaintiffs title as a *Bhumidhar* in respect of agricultural land. Even if the suit land was mortgaged by their father – as claimed by the plaintiffs, even then, remedy is provided under Sections 13 and 15 of the DLR Act, and the reliefs are pertaining to Schedule I of Section 185 of the DLR Act. Even if it were to be assumed that the plaintiffs have right in the suit property, and the

defendants are in unauthorized occupation thereof, the remedy of the plaintiffs lies in seeking a declaration under Section 84 of the DLR Act which can be done by the Revenue Court. On this premise, trial court held that the suit was barred by Section 185 of the DLR Act and the civil court had no jurisdiction.

5. On the aspect of limitation, the trial court held that the limitation for seeking possession is prescribed by Article 65 of Schedule to the Limitation Act. The land was ostensibly sold by the father of the plaintiff to the father of the defendant on 15.02.1972. However, the suit had been filed in the year 2004. Consequently, the same was barred by limitation. Even if the claim that the suit property had been mortgaged were to be accepted, the limitation for redemption was 30 years which lapsed in the year 2002. The trial court held that the dispute is about 68 years old, as the mutation was done in favour of Zile in the year 1935.

6. Even on the aspect of pecuniary jurisdiction, the trial court held that the admitted position was that 2 acre land was acquired by the government for over Rs. 22 lacs. The plaintiff was seeking reliefs of declaration and possession. The said reliefs had to be valued *ad valorem*. The suit property was over 17 bighas and the value thereof was far in excess of the pecuniary jurisdiction of the trial court. Consequently, the plaint was rejected under Order 7 Rule 11 CPC.

7. The first appellate court concurred with the said findings of the trial court in the impugned order. The first appellate court also observed that the plaintiffs have claimed that the mutation of the suit property in the name of

Zile Singh was wrong. The said mutation could be challenged by the plaintiffs before the Revenue Court because such a declaration was maintainable only before the Revenue Court and Civil Court has no jurisdiction and its jurisdiction was barred under Section 185 of the Delhi Land Reforms Act. Similarly, the relief of possession in the agricultural land could be sought under Section 84 of the Delhi Land Reforms Act before the court of Revenue Assistant. The first appellate court also observed - while dealing with the submission of the appellants/plaintiffs that the main dispute involved in the suit is regarding the adoption of Zile Singh and which could be adjudicated only by a civil court, that no relief in relation to the said adoption of Zile had been sought in the plaint. The plea of the plaintiffs that Zile Singh had committed fraud upon the father of the plaintiffs, which fraud was discovered by the plaintiffs on 20.01.2000-when they obtained the school certificate of Zile Singh showing his father's name as Dhanpat, was also held to be of no avail since the limitation for filing the suit for declaration on the basis of discovery of fraud was three years from the date when the said fraud was discovered i.e. 20.01.2000, whereas the suit had been filed only on 07.08.2004. Consequently, the first appeal of the appellants was also dismissed.

8. The submission of Mr. Dahiya, learned counsel for the appellants, is that the courts below were not right in concluding that the reliefs sought in the suit were barred under Section 185 of the DLR Act. In support of his submissions, he placed reliance on *Suresh Balal & Ors. Vs. Rampal* 2014(1) Rajdhani Law Reporter 304. Mr. Dahiya submits that even though the relief of declaration qua the adoption of Zile by Dhanpat was not sought

in the suit, the court is not precluded from granting the same. In this regard, he placed reliance on the judgment of the Patna High Court in ***Raghubar Dayal Prasad Vs. Ramekbal Sah*** AIR 1986 Patna 78 wherein the Division Bench held in the context of Order 7 Rule 7 CPC that it has the definite object of avoiding unnecessary multiplicity of suits in cases where relief can be granted on the facts and in the circumstances of a particular case even if not so distinctly pleaded nor a relief sought on such facts. The court is not powerless to grant relief on the facts. Mr. Dahiya has also placed reliance on the judgment of the Supreme Court in ***Ram Chandra Singh Vs. Savitri Devi & Ors.*** 2003(8) SCALE 505 to submit that misrepresentation itself amounts to fraud. He submits that Zile misrepresented before the authorities that he is the son of Hira and on that basis got half of the property mutated in his name.

9. Having heard learned counsel for the appellant and perused the orders passed by the trial court and the first appellate court and considered the decisions relied upon by Mr. Dahiya, I am of the view that there is absolutely no merit in the present appeal and the two courts below have rightly rejected the plaint by invoking Order 7 Rule 11 CPC, as the suit was not only clearly barred under Section 185 of the DLR, Act but also is miserably barred by limitation. The mutation in favour of Zile and Risale in respect of half share each in the entire property left by Shri Harphool took place in the year 1935. Risale, it is informed by Mr. Dahiya, was the elder brother of Zile, did not assail the said mutation during his life time. A perusal of the plaint shows that the plaintiffs have made some fantastic claims which are only to be narrated, to be rejected. The plaintiffs stated

that Zile was merely 5 years of age when he was adopted. Risale was his elder brother. The plaintiffs claimed that Zile kept his adoption by Dhanpat under wraps and Risale was not aware of the same despite being his elder brother. Such a plea cannot be accepted. The plaintiffs have verified the contents of the plaint on the basis of their knowledge. Plaintiff No. 1 Rajinder Prasad, the eldest of the plaintiffs was born in the year 1954, as informed to this court. It is, therefore, not even possible to accept that plaintiffs', or any of them, was aware of the so called concealment of his adoption by Zile from his elder brother Risale. Pertinently, when the sale deed was executed by Risale in favour of Zile, on 15.02.1972, plaintiff No. 1 was nearly 18 years of age, if not more.

10. Mr. Dahiya has submitted that the present suit is premised on the adoption of Zile by Dhanpat. If that is so, the plaintiffs should have sought the relief of declaration qua the said adoption, which has not been done. Such a suit would have been barred by limitation had the said relief been sought when the present suit was filed as, even according to the plaintiffs, they learnt of the adoption in 2000, whereas the suit had been filed in the year 2004. The submission that the suit was filed after the application for amendment of Ajit Singh in relation to the amendment sought to assail the adoption had been disallowed, is of no avail. This is for the reason that the plaintiffs has not sought a declaration in respect of the said adoption of Zile in the present suit and the relief sought is, inter alia, only for a declaration to declare the plaintiffs as absolute owners of the suit property. If such a declaration could have been sought, the same could have been sought even without moving an amendment application or waiting for its disposal.

Reliance placed on the judgment of the Patna High Court in ***Raghubar Dayal Prasad*** (supra), in my view, is of no avail in the facts and circumstances of this case. That decision was rendered in the background that in the suit for arrears of rent and eviction filed by the plaintiffs against the defendant, the defendant in his defence, set up the plea of adverse possession. In this background, an issue was framed by the trial court with regard to acquisition of the defendant's title by adverse possession. The parties were aware of the said issue and led evidence on the plea of adverse possession set up by the defendant. Consequently, the High Court held that the defendant was not taken by surprise, and no prejudice has been caused to him as both parties had led evidence on the point. Reliance was also placed on Order 7 Rule 7 CPC and it was observed that this rule statutorily incorporates an equitable rule that relief could be granted in such cases, to the party concerned. The said rule has the definite object of avoiding unnecessary multiplicity of suits in cases where relief can be granted on the facts and in the circumstances of a particular case, even if not so distinctly pleaded nor a relief sought on such facts. The said decision cannot be invoked in the facts of the present case, for the simple reason, that the bedrock of the plaintiffs claim is premised on the alleged adoption of Zile by Dhanpat. Detailed pleadings have been made by the plaintiffs in his plaint with regard to such alleged adoption. In ***Raghubar Dayal Prasad*** (supra), the plaintiff had approached the court by claiming the defendant to be his tenant. The plea of adverse possession was raised in defence by the defendant. It was in this background that the said plea was crystallized as an issue; evidence of the parties recorded on the said issue and a finding returned. The same cannot be said about the present case. The plaintiff

cannot seek to take the defendants by surprise by not seeking the relief of declaration qua the adoption of Zile by Dhanpat, when that is the fundamental premise on which the plaintiff has sought relief in the suit.

11. The decision in ***Ram Chandra Singh*** (supra) is of no avail to the appellant. It is not the appellant's case that the so called fraud has been established before the court. In fact, it cannot even be said on reading of the plaint that the defendants or Zile had perpetuated a fraud by misrepresentation on the Court. The said decision, therefore, has no application to the present case.

12. So far as reliance placed on ***Suresh Bala & Ors.*** (supra) is concerned, before dealing with the said decision, I consider it appropriate to take note of the entries contained in column 3 of Schedule I to the DLR Act. The entries at serial Nos. 1 and 2 deal with an application by a mortgagor depositing mortgage money, and application by mortgagor or mortgagee or tenants to be declared Bhumidhar. Thus, if the claim of the appellants was that Zile had fraudulently purchased half share in the said property, whereas the intention of Risale was to only create a mortgage, the said relief squarely fall within Entries 1 and 2 of the Schedule 1. Entry 3 of Schedule I describes the suit/application and other proceedings as 'application to regain possession'. The plaintiffs have sought possession of the suit property from the defendants. Consequently, the said relief is also covered by Schedule I to the Delhi Land Reforms Act. The plaintiffs have also sought a declaration of their *bhumidhari* rights in respect of the suit property. The said relief is covered by Entry at serial No. 4 of Schedule I. Section 185 of the Delhi Land Reforms Act, inter alia, provides that, "*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.” Thus, the jurisdiction of the civil court is specifically barred in respect of proceedings mentioned in column 3 of Schedule I.

13. As noticed above, all the reliefs sought in the present suit squarely fall within the scope of reliefs covered by entries in column 3 of Schedule I. The reliefs sought by the plaintiff in **Suresh Bala & Ors.** (supra) were the following:

“(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.”

However, in the present case, no such relief has been sought by the plaintiffs. Consequently, this decision is also of no avail to the

plaintiffs/appellants.

14. For all the aforesaid reasons, the present appeal is dismissed with costs quantified at Rs. 10,000/- to be deposited with Friendicoes, 271 & 273, Defence Colony, Flyover Market (Jangpura Side), New Delhi – 110024. Costs be deposited in two weeks and receipt be filed before the court. Registry is directed to report compliance.

VIPIN SANGHI, J

DECEMBER 15, 2015

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