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

% Judgment delivered on: 20.04.2015

+ **FAO (OS) 190/2015 & CM No.7047/2015 (stay)**

RAGHBIR & ORS.

.... Appellants

versus

PURAN KUMAR CHUG & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellants : Mr Sudhir Kumar Sharma, Advocate
For the Respondents : None.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No.7048/2015 (exemption)

Exemption is allowed subject to all just exceptions.

FAO (OS) 190/2015 & CM No.7047/2015 (stay)

1. The appellants are aggrieved by the order dated 25.02.2015 passed by a learned Single Judge of this Court in IA 3555/2011 which was an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 filed by the appellants/defendants seeking rejection of the plaint on the

ground that the relief claimed therein was barred by Section 33 of the Delhi Land Reforms Act, 1954. By virtue of the impugned order/judgment, the learned Single Judge has rejected the said application. One of the circumstances which led to the rejection was that the application was moved in 2011 (on 17.11.2011 to be precise), whereas the suit had been filed in 2008 and the written statement had also been filed in 2008 itself and the ground sought to be taken in the application under Order VII Rule 11 did not even find mention in the written statement. It was therefore felt by the learned Single Judge that the application under Order VII Rule 11 had been filed at a belated stage and was an abuse of the process of the Court.

2. That apart, and more importantly, the learned Single Judge came to the conclusion that no ground had been made out for rejecting the plaint under Order VII Rule 11 CPC. The suit had been instituted by the respondents seeking specific performance of an Agreement to Sell dated 14.03.2008 whereby the appellants/defendants had agreed to sell 4 Bighas 10 Biswas of land in Village Mukund Pur to the respondents/plaintiffs for a total sale consideration of Rs76,50,000/- and in respect of which a sum of Rs10,00,000/- had already been paid to the appellants/defendants.

The case of the respondents/plaintiffs was that the appellants/defendants had failed to get the sale deed executed on one pretext or the other and they were trying to resile from the said agreement.

3. The plea that was raised by the appellants in their application under Order VII Rule 11 was that the plaint ought to be rejected on the ground that the reliefs claimed are barred under Section 33 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as the said Act). Section 33 of the said Act reads as under:-

"33. Restriction on transfers by Bhumidhar.- (1) No bhumidhar shall have the right to transfer by sale or gift or otherwise any land to any person, other than a religious or charitable institution or any person in charge of any such Bhoodan movement, as the Chief Commissioner may, by notification in the Official Gazette, specify, where a result of the transfer, the transferor shall be left with less than eight standard acres in the Union territory of Delhi.

Provided that the Chief Commissioner may exempt from the operation of this section, the transfer of any land made before the 1st day of December, 1958, if the land covered by such transfer does not exceed one acre in area and is used or intended to be used for purposes other than those mentioned in clause (13) of Section 3.

(2) Nothing contained in sub-section (1) shall preclude the transfer of land by a Bhumidhar who holds less than eight standard acres of land, if such transfer is of the entire land held by him;

Provided that such Bhumidhar may transfer a part of such land to any religious or charitable institution or other person referred to in sub-section (1).

Explanation.- For the purposes of this section, a religious or charitable institution shall mean an institution established for a religious purpose or a charitable purpose, as the case may be. "

4. It is the case of the appellants that they own 36 Bighas 4 Biswas of land. Out of which 4 Bighas 10 Biswas had been agreed to be sold as per the Agreement dated 14.03.2008. It is specifically stated that if the transfer of 4 Bighas 10 Biswas of land takes place, the appellants would be left with less than 8 standard acres of land which is not permissible under Section 33 of the said Act.

5. In order to appreciate this submission of the learned counsel for the appellants, it would be necessary to analyse Section 33 of the said Act which has been extracted above. Sub-section (1) stipulates that no *Bhumidar* has a right to transfer by sale or gift or otherwise any land to any person (except to religious and charitable institutions etc.) where the result of the transfer would leave the transferor with less than 8 standard acres in the Union Territory of Delhi. This means that if a *Bhumidar* owns land in excess of 8 standard acres in the Union Territory of Delhi and he transfers a part of that land, the said transfer would be void in case

he is left with less than 8 standard acres in the Union Territory of Delhi after the transfer takes place.

6. Sub-section (2) of Section 33 stipulates that nothing contained in sub-section (1) shall preclude the transfer of land by a *Bhumidar*, who holds less than 8 standard acres of land, if such transfer is of the entire land held by him. According to the learned counsel for the appellants, their case is covered under sub-section (2) of Section 33. According to them, the extent of the land owned by the defendants is 36 Bighas 4 Biswas as would be evident from a copy of the *Khatauni* of the year 1997 which is a document which was annexed alongwith the plaint as Annexure P-1. It is the case of the appellants that 8 standard acres translate to approximately 39 Bighas 2 Biswas. Therefore, according to the appellants, they hold less than 8 standard acres of land. The consequence of this, in the context of sub-Section (2) of Section 33, would be that either the appellants could have transferred the entire holdings of 36 Bighas 4 Biswas or none at all and, therefore, the transfer of only 4 Bighas 10 Biswas was barred by law.

7. A reference was also made by the learned counsel for the appellants to a complaint filed by the respondents/plaintiffs with the

DCP, Outer Delhi with regard to the cancellation of the No Objection Certificate by the Tehsildar. According to the learned counsel for the appellant, a copy of the complaint was annexed with the plaint as Annexure P-6. The said complaint, according to the learned counsel for the appellants, indicates that the subject land was non-transferable.

8. We have examined the impugned order as also taken note of the contents of the plaint and documents annexed thereto including the said Annexures P1 and P6 which have been specifically referred to by the learned counsel for the appellants. On going through the same and without looking at the averments contained in the written statement or any document filed on the part of the defendants, it is not possible for us to conclude that the appellants hold less than 8 standard acres in the Union Territory of Delhi and that the land referred to in the *Khatauni* of the year 1997 was the only land owned by the appellants/defendants. Therefore, going by the plaint and the documents filed alongwith the plaint it cannot be concluded that the appellants/defendants hold less than 8 standard acres of land in the Union Territory of Delhi. It can also not be concluded that after the sale of 4 Bighas 10 Biswas of land, as contemplated under the Agreement to Sell in question, the

appellants/defendants would be left with less than 8 standard acres of land in the Union Territory of Delhi. Therefore, we are in agreement with the observations and conclusion of the learned Single Judge to the following effect:-

“The averments in the plaint disclose that although the land which was agreed to be sold by the defendant to the plaintiff is 4 Bighas 10 Biswas but it nowhere establishes the submission of the defendant that in such an eventuality, the defendants would be left with less than 8 standard acres of land.”

9. As a result, upon reading the plaint and the documents alongwith the plaint alone, it cannot be concluded that the relief sought by the respondents/plaintiffs is barred under Section 33 of the said Act. The learned Single Judge has not committed any error in rejecting the application under Order VII Rule 11 CPC.

10. The appeal is dismissed.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

APRIL 20, 2015
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