

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

+ **RSA No. 44/2012**

% **Reserved on: 23<sup>rd</sup> September, 2016**  
**Pronounced on: 28<sup>th</sup> September, 2016**

SHRI ISHWAR SINGH DECD. THROUGH LRS. & ORS. .... Appellants  
Through: Mr. V.K.Mishra, Advocate.  
versus

SHRI SURAJ BHAN & ANR. .... Respondents  
Through: None.

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

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

**VALMIKI J. MEHTA, J**

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellants/defendants impugning the Judgment of the First Appellate Court dated 3.1.2012 by which the first appellate court reversed the judgment of the trial court. The Trial Court vide its Judgment dated 1.3.2001 had dismissed the suit for declaration and injunction filed by the respondents/plaintiffs with respect to the suit land being 1/4<sup>th</sup> share of land comprised in Khasra no. 57/23/1(2-6), 24(4-10), 25(4-16), 67/1(4-8), 10(4-16), 11(4-16), 68/6(4-9), and 15(4-9) admeasuring 34 bighas and 10 biswas situated in the Revenue Estate of village Lampur, Delhi. As a result of

the impugned judgment of the first appellate court, the suit of the respondents/plaintiffs has been decreed.

2. By the suit the respondents/plaintiffs sought declaration of invalidity of the *ex parte* Mutation Order dated 20.5.1996 of the revenue authority in favour of appellants/defendants which was passed without any notices being issued to the respondents/plaintiffs. By the mutation order the appellants/defendants succeeded in showing the suit land in their names as legal heirs of their father Sh. Khazan Singh. Injunction was also prayed in the suit by the respondents/plaintiffs against the appellants/defendants from transferring the suit land to any third person or causing any illegal interference in the peaceful possession of the suit land with the respondents/plaintiffs.

3. The facts of the case are that the respondents/plaintiffs pleaded that Sh. Khazan Singh, father of the appellants/defendants was the owner of the suit land. On 10.10.1990 Sh. Khazan Singh transferred his bhumidari and title rights in the suit land to the father of the respondents/plaintiffs, namely, Sh. Karam Singh. With respect to the transfer, Sh. Khazan Singh executed the usual documents being the agreement to sell/Ex.PW1/1, general power of attorney/Ex.PW1/2, receipt (registered before the Sub-Registrar)/Ex.PW1/3 and Will (registered before the Sub-Registrar) Ex.PW1/4. Under these documents Sh. Karam Singh the father of the respondents/plaintiffs received possession of

the suit land from Sh. Khazan Singh the father of the appellants/defendants. It was further pleaded in the plaint that the appellants/defendants illegally and without knowledge of the respondents/plaintiffs, and without notice to the respondents/plaintiffs, got the share of Sh. Khazan Singh mutated in their names in the revenue record vide mutation serial no. 457 dated 20.5.1996 and which order was illegal. It was then pleaded that respondents/plaintiffs only came to know about the Mutation Order on 25.1.1997 when they obtained copy of khatauni of the year 1989-1990 pertaining to the suit land. It is further pleaded in the plaint that there could not be mutation order of the suit land in favour of the appellants/defendants because the father of the appellants/defendants had transferred his bhumidari rights to the father of the respondents/plaintiffs under the documentation dated 10.10.1990 and which also transferred possession of the suit land to Sh. Karam Singh after receiving the valuable consideration of Rs.1,25,000/-. Accordingly, in the suit, the following reliefs were prayed:-

“(a) A decree for declaration may be granted in favour of the plaintiffs and against the defendants to the effect that the mutation of inheritance sanctioned in favour of the defendants vide case No.NT(N) M-611/95-96 dated 20-5-96 entered at Serial No. 457 pertaining to the 1/4<sup>th</sup> share of Bhumidari rights of Khazan Singh son of Bharat Singh in favour of the defendants in respect of the land forming part of Khasra Nos. 57/23/1(2-6), 24(4-10), 25(4-16), 64/1 (4-8), 10(4-16), 11(4-16), 68/6(4-9) and 15(4-9) situated in the revenue estate of Village Lampur Delhi is fraudulent, wrong and illegal and is liable to be cancelled and it does not effect the rights of the plaintiffs in any manner.

(b) As a consequential relief the defendants may be restrained under the decree of permanent injunction at the instance of the plaintiffs from making transfer by way of sale or otherwise any portion of the aforesaid land on the basis of the aforesaid mutation of inheritance in favour of any third person by causing any illegal interference in the peaceful possession of the plaintiffs.

(c) The costs of the suit and any other relief which the Hon'ble Court may deem fit and proper under the circumstances of the case may also be granted to the plaintiffs against the defendants."

4. Appellants/defendants contested the suit and pleaded lack of jurisdiction of the civil court to decide the matter in view of the bar contained in Section 185 of the Delhi Land Reforms Act, 1954. Appellants/defendants also pleaded that they are no more the owners of the suit land as the suit land is already sold by them, but, no details whatsoever were given in the written statement of the alleged transferees (and even not given till date). No details have even been given of the sale deed in favour of third person. It was then pleaded by the appellants/defendants that the suit was barred under Section 33 of the Delhi Land Reforms Act. It was further pleaded that the father of the appellants/defendants Sh. Khazan Singh has never transferred the suit land to the respondents'/plaintiffs' father Sh. Karam Singh and that the documents dated 10.10.1990 are forged and fabricated. It is further pleaded that Sh. Khazan Singh being only a co-owner of the land, since no partition had taken place with the other co-owners, hence Sh. Khazan Singh was not entitled to transfer the suit land to the father of the respondents/plaintiffs namely Sh. Karam Singh. Appellants/defendants also denied that the possession was ever transferred from Sh. Khazan Singh to Sh. Karam Singh, and therefore, it is pleaded that neither Sh. Karam Singh nor the respondents/plaintiffs could take any benefit of

Section 53A of the Transfer of Property Act, 1882. The suit was accordingly prayed to be dismissed.

5. After pleadings were completed, the trial court on 13.9.1999 framed the following issues:-

- “1. Whether suit is barred u/s 185 of Delhi Land Reforms Act as prayed?  
OPP
2. Whether plaintiff is entitled to the decree of declaration as prayed?  
OPP
3. Whether plaintiff is entitled to the equitable relief of permanent injunction as prayed? OPP
4. Relief.”

6. Trial court as per its judgment held that the suit was barred under Section 185 of the Delhi Land Reforms Act because respondents/plaintiffs by the suit were seeking to get declaration in their favour of bhumidari rights under Sections 11 and 13 of the Delhi Land Reforms Act and therefore, the suit was barred under Section 185 of the Delhi Land Reforms Act, inasmuch as, disputes under Sections 11 and 13 had to be decided because of entry no.4 in the schedule by the court of the Revenue Assistant. Trial court also held that the respondents/plaintiffs could not take benefit of the Will of Sh. Khazan Singh in favour of Sh. Karam Singh inasmuch as Sh. Khazan Singh died on 11.1.1994 and which is a later date than the date of death of Sh. Karam Singh who died earlier on 9.10.1991. Trial court also held that since there was no partition, and Sh. Khazan Singh was only an undivided co-owner of the land which was sold

to Sh. Karam Singh, hence without partition the suit property could not have been transferred by Sh. Khazan Singh to Sh. Karam Singh. Trial court further held that respondents/plaintiffs have failed to prove that possession of the suit land was delivered to Sh. Karam Singh (and which continued with them), because, not only the property was not partitioned, but also for the additional reasons that the witness PW2 Sh. Subhash Chand on behalf of respondents/plaintiffs could not identify possession of which portion of the entire undivided land was given under the documentation dated 10.10.1990 by Sh. Khazan Singh to Sh. Karam Singh. Accordingly, the trial court held that neither the respondents/plaintiffs nor their father Sh. Karam Singh were in possession of the suit land, and hence, they could not take benefit of Section 53A of the Transfer of Property Act.

7. The first appellate court has reversed the judgment of the trial court by observing that since bhumidari rights under the Delhi Land Reforms Act were transferable, hence, in view of the transfer of bhumidari rights under the documentation dated 10.10.1990 by Sh. Khazan Singh to Sh. Karam Singh, it was in fact for the appellants/defendants to get declaration of the bhumidari rights and not otherwise by the respondents/plaintiffs as was wrongly so held by the trial court. The first appellate court also held that undivided share can always be sold, and therefore, on this ground trial court erred in holding that

there was no valid transfer or title under the documentation dated 10.10.1990. It was also held by the first appellate court that since under the documentation dated 10.10.1990 possession was delivered by Sh. Khazan Singh to Sh. Karam Singh, hence, Sh. Karam Singh and respondents/plaintiffs were entitled to benefit of Section 53A of the Transfer of Property Act. The first appellate court also held that mutation in favour of the appellants/defendants on the basis of inheritance was therefore liable to be cancelled. Accordingly, the respondents/plaintiffs were held entitled to the reliefs prayed for in the suit and the first appellate court allowed the appeal by passing the following operative para 8 of its judgment:

“8. **Relief:-** In view of the above findings on issues no.1,2 and 3, instant appeal is allowed and impugned judgment of Ld. Trial Court is hereby set aside as the same is against the facts and law. Suit of the plaintiff is hereby decreed in favour of plaintiffs and against the defendants declaring that mutation of inheritance sanctioned in favour of the defendants vide case no.NT(N) M-611/95-96 dated 20.5.96 entered at serial no. 457 pertaining to the 1/4<sup>th</sup> share of bhoomidari rights of Khazan Singh s/o Bharat Singh in favour of defendants in respect of the land forming part of khasra no.57/23/1(2-6), 24(4-10), 25(4-16), 64/1(4-8), 10(4-16), 11(4-16), 68/6(4-9) and 15(4-9) situated in the revenue estate of village Lampur Delhi is wrong, null and void and accordingly the sale of suit land by the defendants to third party is also declared null and void. The revenue officials will do the needful within two months from the date of this judgment for correcting the entries. Decree sheet be prepared. Trial court record be sent back alongwith copy of the judgment. Appeal file be consigned to record room.”

8. Learned counsel for the appellants/defendants has argued before this Court the following aspects:-

(i) The suit was barred under Section 185 of the Delhi Land Reforms Act and this was rightly so held by the trial court, but wrongly reversed by the first appellate court. On this aspect in addition to the provision of Section 185 of the Delhi Land Reforms Act counsel for the appellants/defendants also sought to draw benefit of various provisions of the Delhi Land Revenue Act, 1954 including Section 83 thereof which bars filing of a civil suit with respect to issue of formation of record of rights.

(ii) The Agreement to Sell dated 10.10.1990 executed by Sh. Khazan Singh in favour of Sh. Karam Singh was illegal and void because the said agreement to sell does not bear signatures of the buyer Sh. Karam Singh. It was further argued as a supplement to this argument that the agreement to sell in fact is in the nature of a sale deed and therefore since it is not registered, it is of no effect.

(iii) The Will of Sh. Khazan Singh will not operate in favour of Sh. Karam Singh, inasmuch as, Sh. Karam Singh died earlier on 9.10.1991 whereas the testator Sh. Khazan Singh died later on 11.1.1994, accordingly, the Will Ex.PW1/4 dated 10.10.1990 cannot be used by the respondents/plaintiffs to claim title to the suit land.

(iv) Neither Sh. Karam Singh nor respondents/plaintiffs were ever in possession of the suit land and therefore the respondents/plaintiffs are not



entitled to declaration and benefit of Section 53A of the Transfer of Property Act.

(v) Since mutation has been affected in favour of the appellants/defendants, therefore, various rights flow to the appellants/defendants and against the respondents/plaintiffs, whereby, not only the suit filed by the respondents/plaintiffs is barred but appellants/defendants are the owners of the suit land.

(vi) Since Sh. Khazan Singh was only an undivided owner and hence he could not have transferred the suit land under the documentation dated 10.10.1990 to Sh. Karam Singh.

(vii) Section 33 of the Delhi Land Reforms Act prohibited transfer by a bhumidar rights of his land, and therefore, the transfer of title by documentation dated 10.10.1990 executed by Sh. Khazan Singh in favour of Sh. Karam Singh, is an illegal and void transaction.

9. All the arguments urged on behalf of the appellants/defendants do not have any substance and are rejected for the reasons contained hereinafter.

10(i) Firstly, it is required to be noted that the bar under Section 185 of the Delhi Land Reforms Act only applies in case the legal proceedings are of such a nature which are covered under Sections contained in Column 2 of

Schedule I of the Delhi Land Reforms Act. Section 185 of the Delhi Land Reforms Act reads as under:-

**“185. Cognizance of suits, etc., under this Act. -** (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 in the Code of Civil Procedure, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.

(2) Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid.

(3) An appeal shall lie from the final order passed by a court mentioned in column 3 to the court or authority mentioned in column 8 thereof.

(4) A second appeal shall lie from the final order passed in an appeal under sub-section (3) to the authority, if any, mentioned against it in column 9 of the Schedule aforesaid.”

(ii) In case the subject matter of the suit is not covered under any of the Sections contained in Column 2 of Schedule I of the Delhi Land Reforms Act, the suit would not be barred. A reference to Column 2 of Schedule I of the Delhi Land Reforms Act shows that there is no entry in the same by which disputes between a bhumidar and his transferee or between the successors-in-interest of bhumidar and the successors-in-interest of the transferee can be decided as to whether or not there did or did not take place a valid transfer of bhumidari rights by a bhumidar in favour of the transferee. Therefore in view of the fact that there is no provision of the Delhi Land Reforms Act for deciding the disputes by the revenue authorities in case there is dispute or transfer of title of the bhumidar to the transferee, the jurisdiction of the civil court is not barred

because suit of the nature such as the present is not covered under any of the Sections in Column 3 of Schedule I of the Delhi Land Reforms Act.

(iii) Argument of the counsel for the appellants/defendants that the present suit will be covered under Sections 11 and 13 of the Delhi Land Reforms Act is misconceived because provisions of Sections 11 and 13 deal with conferring of bhumidari rights on the limited class of persons as stated in these Sections on the commencement of the Delhi Land Reforms Act and this is clear from the plain language of Sections 11 and 13 which talk as to how different land holders and tenure holders are conferred bhumidari rights. The said Sections 11 and 13 of the Delhi Land Reforms Act read as under:-

**“Section 11**

**11. Declaration of *Bhumidari* rights in favour of proprietors and superior class of tenants, compensation and land revenue. -**

(1) Subject to the provisions of section 10, the Deputy Commissioner shall declare as Bhumidhars persons holding the following lands, namely: -

- (a) *khudkasht* land or a proprietor's grove in the tracts to which the Punjab tenancy Act, 1887, was applicable or *sir* land or *khudkasht* land or a proprietor's grove in the tracts to which the Agra Tenancy Act, 1901, was applicable;
- (b) land held by occupancy tenant under section 5 of the Punjab Tenancy Act, 1887, with right of transfer by sale; and
- (c) land held under *Patta Dawami* or *Istamrari* by tenants with right of transfer by sale.

[(2) For the purposes of sub-section (1), the Deputy Commissioner shall take into consideration the entries in the revenue records which shall be presumed to be correct unless the contrary is proved:]

Provided that where land held as *khudkasht* by a proprietor belonging to any of the categories of persons referred to in sub-section (2) of section 10 has been before the commencement of this Act, let out to another person by or on behalf of such proprietor within six months of the commencement of this Act and

after giving an opportunity to the tenant of being heard, shall declare such land to be the proprietor's *khudkasht* for purposes of this section.

(3) While making a declaration under clauses (b) and (c) of sub-section (1), the deputy Commissioner shall order the occupancy tenant or the *Pattadar* to deposit in Government Treasury an amount equal to four times the land revenue as ascertained in sub-section (4) for the area of which he is declared as *Bhumidhar* as compensation thereof. If he fails to deposit the amount within six months of the date of declaration, the same shall be realized as arrears of land revenue. The amount deposited or so realized shall be disbursed to the proprietor under the order of the Revenue Assistant.

(4) Every person, who is declared as *Bhumidhar* under this section, shall, with effect from the commencement of this Act, be liable to pay to the Government for land, held by him as such, on account of land revenue, an amount which shall proportionately correspond to the land revenue payable immediately before the commencement of this Act for the area in respect of which he is declared *Bhumidhar*, with due regard to the class of soil comprised therein, together with the cesses and local rates.

### **Section 13**

**13. Bhumidhari rights in other cases.** - (1) On the commencement of this Act, the Deputy Commissioner shall also declare the following classes of tenants as *Bhumidhars*, who shall, with effect from the same date, have all the rights and be subject to all the liabilities conferred or imposed upon *Bhumidhars* under this Act, namely:

- (a) a rent free grantee or a grantee at favorable rate of rent;
- (b) an ex-proprietary tenant in Shahdara Circle;
- (c) an occupancy tenant, except those under section 5 of the Punjab Tenancy Act, 1887;
- (d) a non-occupancy tenant, who pays rent at revenue rates with or without *Malikana*;
- (e) a tenant of *sir* or a sub-tenant declared as non-occupancy tenant under section 10 or 12;
- [(f) a tenant of or over twelve years in Shahdara Circle and a non-occupancy tenant in any part of the Union territory of Delhi other than a non-occupancy tenant referred to in clause (d);]
- (g) a tenant grove-holder; and
- (h) a holder of *Patta Dawami* or *Istamrari* without any right to sell.

(2) Every person who, after the commencement of this Act, is admitted to land as *Bhumidhar* or who acquires *Bhumidhari* rights under any provisions of this Act, shall have all the rights and be subject to all the liabilities conferred or imposed

upon *Bhumidhars* under this Act with effect from the date of admission or acquisition, as the case may be.”

(iv) By the Delhi Land Reforms Act ownership of the land vested in the State and different classes of owners, and tenure holders became bhumidars/tenants and assamis/sub-tenants of the land which is the subject matter of the Delhi Land Reforms Act under the State. Reliance placed upon Sections 11 and 13 on behalf of the appellants/defendants is misconceived for the reason that these sections do not talk of deciding disputes as to transfer by a bhumidar in favour of the transferee, and therefore disputes of the nature in the present suit as to whether or not a bhumidar had or had not transferred his rights in his land to the transferee could not have been decided by the competent authority under the Delhi Land Reforms Act.

(v) As already stated above, Sections in Column 2 of Schedule I of the Delhi Land Reforms Act do not contain any entry with respect to a matter of declaration as to whether or not transfer of title took place by one bhumidar in favour of the buyer/transferee of the land owned by the bhumidar. Therefore, this argument of the appellants/defendants is rejected that suit is barred because of Section 185 of the Delhi Land Reforms Act.

(vi) Learned counsel for the appellants/defendants then sought to place reliance for the argument of the bar of the suit upon different provisions of the

Delhi Land Revenue Act, although there is no such defence laid in the written statement, no such issue framed, and no such argument raised before the two courts below, and therefore, on this short ground itself this argument urged on behalf of the appellants/defendants is liable to be and accordingly rejected. However, I have in the interest of justice and equity allowed the appellants/defendants to argue this aspect taking this argument to be a legal argument only. Section 83 of the Delhi Land Revenue Act reads as under:-

“83. **Matters excepted from cognizance of civil courts,** - No persons shall institute any suit or other proceeding in the civil court with respect to any of the following matters:-

- (a) the arrangement of Patwaris' halkas;
- (b) claims by any person to any of the offices mentioned in section 13 or 14 or to any emolument or fees appertaining to such office, or in respect of any injury caused by his exclusion therefrom, or claims by any person to nominate persons to such offices;
- (c) the formation of the record of rights or the preparation, signing, or attestation of any of the documents contained therein, or the preparation of the annual register.”

(vii) Even on merits this argument urged of the suit being barred under Section 83 of the Delhi Land Revenue Act is without any basis and in order to appreciate this it is necessary to understand that the Delhi Land Reforms Act only deals with an aspect of collection of land revenue and therefore for demarcation of different lands belonging to different owners which are the subject matter of different provisions of the Delhi Land Reforms Act and which includes issues of settlement of boundary disputes, maintaining of registers with respect to the records of rights i.e mutation in the name of different

bhumidars/owners of the land. With respect to the disputes as to mutation there are provisions in the Delhi Land Revenue Act for the same being decided including appeals filed before the competent authority. However, it is noted that the record of rights or mutation in the revenue records does not confer any title and there is no such provision in the Delhi Land Reforms Act whereby merely on account of mutation in the revenue record/record of rights, the same will lead to finality of ownership being conferred to the person in whose name the revenue records exist. Mutation record is only the record as to the persons who claim ownership and Section 83 of the Delhi Land Revenue Act gives finality to mutation, but, Section 83 does not provide that the question of title stated in the mutation record cannot be decided by the civil courts. Therefore, even taking that the Delhi Land Revenue Act would apply with respect to finality of the mutation in favour of the appellants/defendants, however, mutation does not confer any title, and I am taking the present suit as not for cancelling of the mutation order in favour of the appellants/defendants, but the suit as a suit in the nature of one which seeks grant of injunction in favour of the respondents/plaintiffs by their asserting their title rights in the suit land by virtue of documentation dated 10.10.1990, and also that since the respondents/plaintiffs are owners and in possession of the suit land, they would hence be entitled to injunction to restrain appellants/defendants from interfering in the lawful possession of the respondents/plaintiffs of the suit land. Therefore,

neither there is any bar with respect to the civil court deciding the issue of transfer of title/bhumidari rights because no such provision exists in the Delhi Land Reforms Act or the Delhi Land Revenue Act, nor in any case, mutation order confers finality to any title on any land with respect to which mutation is ordered, and hence, the issue in the present suit of respondents/plaintiffs and their predecessor-in-interest Sh. Karam Singh having title in the suit land can be decided by the civil court because there is no bar to the civil court to decide the same.

11. Accordingly, I hold that there is no bar of jurisdiction of a civil court to decide the issue of transfer of title of a bhumidari to a transferee as there is no provision in the Delhi Land Reforms Act or in the Delhi Land Revenue Act for deciding disputes with respect to transfer of title and that mutation would not confer finality of title, noting the aspect that the respondents/plaintiffs being entitled to cancel the mutation order issued in favour of the appellants/defendants is not being considered for grant of relief to the respondents/plaintiffs.

12. Another incidental argument to the final argument was that the agreement to sell is in fact a sale deed and therefore is bad because of lack of registration, but this argument is liable to be rejected because no doubt in one para there is talk of transfer of title, however, the entire contents of the entire set



of documentation Ex.PW1/1 to Ex.PW1/4 have to be read as a whole and when this is so done it is very clear including from the heading of Ex.PW1/1 that this agreement is only an agreement to sell and not a sale deed. Accordingly, the argument of the appellants/defendants that the agreement to sell Ex.PW1/1 is a sale deed is incorrect and rejected. It is also finally in this regard relevant to note that the agreement to sell Ex.PW1/1 was not intended to be a sale deed otherwise there was no requirement of executing the general power of attorney Ex.PW1/2 for executing the sale deed and the other connected documents.

13. The next argument urged on behalf of the appellants/defendants that the Agreement to Sell Ex. PW1/1 dated 10.10.1990 is illegal because it is not signed by the buyer Sh. Karam Singh, is an argument wholly without substance because it is not the law that an agreement to sell has to be signed by the buyer before the same is taken as valid. In fact, even a sale deed can only be signed by the seller. An agreement to sell need only be signed by the proposed seller and need not be signed by the proposed buyer is no longer *res integra* and this is so held by the Supreme Court in the judgment in the case of ***Alka Bose Vs. Parmatma Devi and Others, (2009) 2 SCC 582***. This argument urged on behalf of the appellants/defendants is thus rejected.

14. As regards the argument urged on behalf of the appellants/defendants that the respondents/plaintiffs cannot place reliance upon

the Will Ex.PW1/4 to claim transfer of title because Sh. Khazan Singh died after Sh. Karam Singh, I agree with the same, and this is because the evidence led on behalf of the respondents/plaintiff did not show that the Will Ex.PW1/4 has been proved, by deposing that the Will was signed in the presence of attesting witnesses and the attesting witnesses signed in presence of the testator. However, even if there is no Will Ex.PW1/4 yet, the other documents Ex. PW1/1 to Ex. PW1/3 give benefit to the respondents/plaintiffs and their father Sh. Karam Singh of having title rights in the suit property in view of the provision of Section 53A of the Transfer of Property Act and which issue is immediately dealt with hereinafter.

15(i) The next argument of the appellants/defendants was that possession of the suit land was not delivered by Sh. Khazan Singh to Sh. Karam Singh, and therefore, neither injunction can be granted in favour of respondents/plaintiffs against dispossession nor can the documents Ex.PW1/1 to Ex.PW1/4 give any benefit of title rights to Sh. Karam Singh and the respondents/plaintiffs in the suit land. However, this argument also is without any basis because the documents Ex.PW1/1 to Ex.PW1/4 clearly talk of possession having been delivered by Sh. Khazan Singh to Sh. Karam Singh, and once that is so and more so because of Sections 91 and 92 of the Indian Evidence Act, 1872 Sh. Karam Singh as also the respondents/plaintiffs will be

entitled to the benefit of Section 53A of the Transfer of Property Act. While on this aspect, I would like to note that no argument is urged before this Court with respect to the documents Ex.PW1/1 to Ex.PW1/4 being forged and fabricated, however, even if that argument was urged, the same was liable to be rejected because in the evidence of DW1, the sole witness on behalf of the appellants/defendants, there is no deposition with respect to the documents Ex.PW1/1 to Ex.PW1/4 being forged and fabricated on account of the same not containing the thumb impression/signatures of Sh. Karam Singh. For the sake of convenience the entire examination-in-chief of DW1 Sh. Sukhbir Singh is reproduced hereunder:-

“DW1.Sh. Sukhbir Singh S/o Khazan Singh R/o Gaon Nahn, Distt. Sonipat  
On S.A.

The property in dispute is in joint possession of my father late Sh. Khazan Singh, Kapure, Surte and Phool Kumar. No partition has ever been took place regarding the property in question. My father late Khazan Singh has never sold the property in question or any part thereof to any body during his life time. Even now the property in question is in our joint possession and we are the co-owner of the property in question.

xxx counsel for the plaintiff

xxxxx”

(ii) Accordingly, this argument that respondents/plaintiffs are not in possession is rejected by also additionally noting that in law possession follows title and once title in the suit land stood transferred by Sh. Khazan Singh in favour of Sh. Karam Singh, since the property is only an open land, the

possession of the same would vest in the transferee title holder i.e the father and predecessor-in-interest of the respondents/plaintiffs namely Sh. Karam Singh.

16. Appellants/defendants then argued that since admittedly Sh. Khazan Singh was only a co-owner hence he could not have transferred the suit land to Sh. Karam Singh, but this argument is once again misconceived because there is no bar for a co-owner to transfer his undivided co-ownership interest.

17(i) The further argument that the possession could not be transferred by a co-owner is also without any basis because the possession has in fact been transferred and received by Sh. Karam Singh under the documents Ex.PW1/1 to Ex.PW1/4, and therefore, the only effect would be that possession of respondents/plaintiffs as also Sh. Karam Singh would be taken as exclusive possession of respondents/plaintiffs and Sh. Karam Singh but will be subject to the condition that as regards any partition which will have to be effected with the other co-owners of Sh. Khazan Singh, then, the possession will only be treated as a joint possession for and on behalf of all the co-owners of the land.

(ii) In my opinion, undue emphasis has been placed by the trial court on the aspect of the suit land not having been identified by the witness PW2, inasmuch as, ordinarily with respect to an open land possession follows title, and therefore, possession in law has to be taken as that of the

respondents/plaintiffs and their father Sh. Karam Singh with respect to the suit land.

18(i) The last argument urged by the appellants/defendants was that the transfer of bhumidari rights by Sh. Khazan Singh in favour of Sh. Karam Singh is hit by Section 33 of the Delhi Land Reforms Act. Section 33 of the Delhi Land Reforms Act reads as under:-

**“33. Restrictions on the Transfers by a 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 *Bhoo dan* movement, as the Chief Commissioner may, by notification in the Official Gazette, specify, where as 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.”

(ii) This argument of the appellants/defendants is also without substance inasmuch as Section 33 of the Delhi Land Reforms Act itself provides that transfer by a bhumidar is valid if the transfer is of the entire holding of the bhumidar, and it is undisputed that when Sh. Khazan Singh transferred rights in

the suit land to Sh. Karam Singh under the documents dated 10.10.1990, Sh. Khazan Singh transferred his entire holding to Sh. Karam Singh, and once that is so, the bar under Section 33 of the Delhi Land Reforms Act will not apply.

19. In view of the above, there is no merit in the second appeal, and the same does not raise any substantial question of law, and it is accordingly dismissed, leaving the parties to bear their own costs.

**SEPTEMBER 28, 2016**

ib/३१६

**VALMIKI J. MEHTA, J**