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

Reserved on: 19.10.2015
Pronounced on: 09.02.2016

\+ CS(OS) 494/2011

SUKH RAM & ORS ..... Plaintiffs
Through: Mr. Sajan K. Singh & Ms. Sangeeta Singh, Advs.

Versus

RAMESH CHANDRA AGGARWAL & ORS..... Defendants
Through: Mr. Sanjay Manchanda, Adv. for D-1.
Mr. Sudhanshu Singh for Mr. V.K. Tandon, Adv. for D-2 & 3.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. The plaintiffs are permanent residents of the Rajokari village where they have their ancestral property. It is the plaintiffs' case that his father Late Shri Duli Chand, was the bhumidar of 1/25th share of the land bearing Khasra number 1917(4-16), 1922(5-06), 1923(4-16), 1927(4-16), 1928(4-16), 1933(4-16), 1934(3-04) of Khata no. 195/190 and Khasra number727/1(2-07) and 985min(0-15) of Khata no. 197/192 (hereinafter referred to as the 'suit property') situated within the revenue estate of the abovementioned village; after the death of Shri Duli Chand, the petitioners, being his legal heirs, became *bhumidar* of the land and continued to hold its possession;

however, they did not get the land mutated in their name, that in April 2008, defendant No.1 approached the plaintiffs and offered to purchase the properties bearing Khasra numbers 1927(4-16), 1928(4-16), 1933(4-16) and 1934(3-04) for a consideration of Rs.9,00,000 to be paid to each of the plaintiffs; the plaintiffs, being told that they were signing the release deeds for the abovementioned 4 properties, were hurriedly made to sign certain documents; the plaintiffs later realised that defendant no.1 had applied for mutation of the entire land on the basis of an alleged will executed by Shri Duli Chand; the plaintiffs filed their objections in the pending mutation proceedings, before the Revenue Assistant and sought to have the mutation proceedings stayed. They also initiated criminal proceedings against defendant no.1.

2. It is further the plaintiffs' case that Late Shri Duli Chand had neither executed any will nor registered a proper sale deed during his lifetime; that defendant no.1 has forged certain documents in order to cheat the plaintiffs out of their right in the suit property; that defendant no.1 had started construction of a boundary wall, road and buildings on the suit property. Being aggrieved by these actions of defendant no.1, the plaintiffs were pleased to file this suit.

3. Five issues were framed on 14th February, 2013 of which issue Nos. 3 and 4 are to be taken up as preliminary issues, they read as under:-

> *"iii) Whether the jurisdiction of this court to entertain the relief claimed as barred under Delhi Land Reforms Act, 1954? OPD-1*
>
> *iv) Whether the claim for declaration is barred by Section*

34 of the Specific Relief Act, 1963? OPD"

4. The learned counsel for the parties have been heard on the maintainability of the suit on the aforesaid issues. The plaintiff contends that prayers (a) and (aa) seek declaration and cancellation, which read as under:

> *"(A) a decree of declaration for the Release-Deed Registration no.4251 in additional book no. 1, Vol. No. 4349 on page 143 to 152 on dated 02.05.2008 for the Khasra no. 1917 (4-16), 1922(5-06), 1923(4-16), 1927(4-16), 1928(4-16), 1933(4-16), 1934(3-04) and another Release deed registration no. 4252 in additional book no. 1 Volume No. 4349 on pages 153 to 163 on dated 02.05.2008 for the Khasra number 727/1 (2-07) and 985 (0-15) all situated in village Rajokari, Tehsil Vasant Vihar, New Delhi and Special Power of attorney for mutation vide registration no.1660 in additional book no. 4 Vol. No.1277 on page no. 57 to 58 on dated 02.05.2008 in favour of defendant no.1's own persons namely Sh. Vijender Singh s/o Late Sh. Rattan Lal r/o D-85, Freedom Fighter Colony, Neb Sarai, New Delhi and Sh. Ashish Kapoor s/o Sh Ashok Kapoor r/o 12/12, Subhash Nagar, New Delhi be declared illegal, null and void and not conveying any right, title or interest of any nature in favour of the defendant no. 2.*
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> *(AA) a decree of declaration that Will executed by the father of the plaintiffs registered as document no. 4751 Book No. III Volume No. 721 pages No. 186 to 187 registered on 24.04.1997 be declared illegal, null and void and not conveying any right, title or interest of any nature in favour of the defendant No.1.*

5. In effect, the plaintiffs seek annulment of a registered Release Deed dated 2nd May, 2008 and declaration that the Will dated 24.4.1997 is null and void. The learned counsel for the plaintiffs submits that this Court has jurisdiction to entertain the suit and that the reliefs sought can be adjudicated only by this Court and not by the Revenue Assistant or through any process available under Delhi Land Reforms Act, 1954; that Prayers (b) and (c) are only consequential reliefs seeking mandatory injunction; that the plaintiffs are not seeking any *bhumidari* rights in the property nor determination of ownership in it; that in consonance of the dicta of this Court in ***Ashok Kumar vs. Munni Devi,*** **(2010) 129 DRJ 476**, which held that the Revenue Assistant under the Delhi Land Reforms Act, 1954 has no jurisdiction to entertain a suit for declaration, injunction or cancellation of the sale deed, the Revenue Assistant would have no jurisdiction to entertain the present suit.

6. Refuting the said contentions, Mr. Manchanda, the learned counsel for defendant No.1 submits that the property has already been mutated in favour of defendant No.1; therefore, as far as the land revenue record is concerned, the title has already been recognized by the State. He further states that revenue records reflect since way-back 2009 that possession of the suit property has been recorded in favour of defendant No.1. The revenue record is the primary document of evidence with respect to title and possession of an agricultural land. He submits that when the revenue record shows that a party is in possession of the land concerned, the person aggrieved with such an entry can seek a correction thereof as per

rules. He relies upon the dicta of this Court in ***Phoolwati vs. Ram Dei, 150 (2008) DLT 108*** which held as under:-

> *"Possession of agricultural land goes with title and the Revenue Records. Revenue Records are prepared in respect of the agricultural land on the basis of physical verification by Patwari. If one is aggrieved by the entries in Revenue record, the remedy is provided under Delhi Land Reforms Act for correction of record, for regaining possession, for ejectment of transfer, etc. The Civil Court is not only barred from entertaining such claims, but is bound to honour the revenue records as correct. Any amount of oral pleadings cannot be considered by Civil Court in respect of possession over the agricultural land, contrary to record. If this is allowed, anybody can fabricate evidence in respect of his possession, create some witnesses and file a civil suit in a Civil Court. It is for this reason that law has specifically barred filing of civil suits in respect of agricultural land and has provided an elaborate procedure under revenue laws and only Revenue Authorities have been given power to decide the issues in respect of the agricultural land."*

7. The learned counsel further submits that, therefore, the determination of possession is to be made under the Delhi Land Reforms Act; that the appropriate forum for carrying out such exercise would be the Revenue Courts. He further relies upon the ratio in ***Ram Niwas vs. Pitamber Singh and Ors., 2008 102 DRJ 81 (DB)*** in which identical issues were considered which read as under:

> "1. Whether late Smt. Mishri Devi executed a

valid and legal Will dated 18.11.1971 ? (OPD1)
...
3. Whether the sale deeds executed by defendant No. 1 in favour of defendants No. 2 to 6 on 25.07.1996 are null and void and illegal? (OPP)"

While relying upon the Supreme Court decision in ***Hatti vs. Sunder Sing*** **(infra),** the Court held that proceedings would have to be initiated before the Revenue Court and in such a proceeding, if a question arises with regard to title, such issue would be framed and referred to the Civil Court.

Para 8 of ***Ram Nivas*** (**supra**) reads as under:

> ***"8.*** *when the aforesaid observations of the Supreme Court are read in conjunction with the provisions of Section 186 of the Act, which was interpreted in the said decision, it is established that the Civil Court would have no jurisdiction to try and decide directly in respect of matters of title. In such cases, proceeding has to be initiated before the Revenue Court and in such a proceeding, if a question arises with regard to title, the said issue would be framed and referred to the Civil Court."*

8. The aforesaid reasoning was based on the dicta of ***Hatti vs. Sunder Singh, 1971 SCR (2) 163 which noted***:

> *"7. 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 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 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."*

9. The learned counsel for the defendant No.1 further submits that it is not the plaintiff's case that the documents which are sought to be declared null and void are fraudulent and *non est;* that prior to filing of the suit, the plaintiffs had sought for mutation before Revenue Assistant where the plaintiff had admitted in the Release Deed that their grievance was that they were not being paid requisite consideration amount with respect to two portions of land, khasra Nos. bearing No.727/1 and 985, whereas the plaintiffs have now sought to set out a case of both the Release Deeds being declared illegal, null and void. He also relies upon the order of the Tehsildar apropos the suit property, which records *inter alia*:

> "2. LRs of Sh. Bharru Singh have submitted that the mutation of land in question be carried out in favour on the basis of Birasat. Further in their statement, the LRs i.e. Sh. Sukh Ram, Bijender, Ravi Kumar and Karamvir (all sons of Sh. Bharru Singh) has clarified that they have no objection on mutation of land 1/25 part of kh. No.1917, 192, 1923, 1923, 1928, 1932 and 1934 on the basis of Will, but they have objection on mutation of land 1/25 part of Khas No.727, 984 (4-16) & 985 (5-5), which have been wrongly mentioned in the Regd. Will which was executed by their father in favour of Sh. Ramesh Chand Agarwal.
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> 3. Mrs. Raj Bala & Mrs. Shakuntala, both daughters of late Sh. Bharru Singh have also submitted that objection on the basis that, they are

the co-sharers of the land in question and the mutation should not be done in favour of applicant at this stage. It is worth mentioning that Hindu Succession Act is not applicable in the instant case thus their objection is not sustainable."

10. On the basis of the said order the Revenue Assistant, on 5.12.2008, recorded as under:

> "Case called out counsel for applicant present. One of the objector Sh. Sukh Ram S/o Bharru present certified copies of release deed signed by all the objectors is placed on case file No.69/RA/2008 u/s 83 of DLR Act. In the proceedings on the case file, the objector stated that money for two Kh. Nos. has not been received by him. It is requested that further date be given, so that his counsel can represent his case. The proceedings in case No.61/RA/2008 clearly established following:
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> 1. the objectors have surrendered all the right also with respect to Kh. No.727/1 (12-7) and 985 Min (0-15).
> 2. The original will of Bharru was not challenged by objectors as take (VV).
> 3. Issue of non-payment of money by RC Aggarwal or for two Kh. No.727/1 (2-07) and 985 min (0-15), has not been established by objectors as the receipt is not placed on file despite being asked for the same.
> 4. File (VV) report clearly recommends non-grant of mutation in favour of daughters of deceased Sh. Bharru.
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> In view of the above I am of clear opinion that:
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> 1. Mutation with respect to 1/25 share in Khs No.984 (4-16), 1919 (4-16), 1922 (5-06), 1923 (41-6),

> 1927 (4-16), 1928 (4-16), 1933 (4-16), 1934 (3-0) is hereby granted
>
> 2. Mutation with respect to 1/25 share in Kh. No.727/1 (2-07), 985 (5-05) has an unresolved issue of non-payment. The document however shows complete transfer, and the original applicant states that entire amount was given and whole share was purchased. As receipt of the transfer by way of release deed was not produced by objection, same needs to be seen by the Civil Court. The counsel for applicant furnished the bank statement dated 29.9.08. In view of the above, I hereby order that the objects may approach the civil court within a period of 3 months, get appropriate orders passed, and then Tel (VV) shall grant mutation with respect to above orders in consonance with it, if the objection fails to get any relief within a period of 3 months (including interim relief of Teh (VV) shall mutation the above mentioned Kh Nos on the name of applicants.
>
> Announced on open court.
>
> File be sent to The (VV) for information."

11. The learned counsel further submits that the plaintiffs seek to speak in two voices simultaneously; in the first instance, they did not object to the Will insofar as the Will bequeaths on them some part of the suit land, i.e. khasra Nos.1917, 192, 1923, 1923, 1928, 1932 and 1934. However, this Will is objected to insofar as it seeks to transfer and or bequeath 1/25th part of khasra Nos.727, 984 (4-16) & 985 (5-5) to other parties.

12. After considering the aforesaid submission what emerges is that in the proceedings before the Revenue Assistant, the plaintiff

had objected to the mutation of the suit property in favour of the defendant. The mutation proceeding relates to recording of *bhumidari* rights. Whatever be the decision of the Revenue Asssistant in that proceeding, could be impugned in appeal by the aggrieved party under the provisions of the Delhi Land Reforms Act,1954. The order cannot be impugned before a Civil Court.

13. The dicta in ***Ram Niwas vs. Pitamber Singh and Ors.*** (supra) & ***Hatti vs. Sunder Singh*** (supra) clearly lay down that the issue of declaration of *bhumidari* rights, as per S. 186 of the Delhi Land Reforms Act, could only be taken up by the Revenue Court. If a question of title arises in an application for *bhumidari* rights, the said issue will be framed and will be referred to a competent Civil Court. The plaintiff has admitted to the validity of the Will and the Release Deed and therefore once the documents are admitted and there is no question of seeking their annulment in part. The plaintiff's dispute regarding the Release Deed has been on account of non-payment of certain amounts contemplated in it. Therefore, the Release Deed itself cannot be challenged or sought to be annulled in these proceedings. If at all a case could be made out, it would only be with respect to the non-payment of the amount, for which a recovery suit would be maintainable but the present suit is not maintainable because it seeks to enforce *Bhumidari* rights for which the appropriate court for determining the issue would be the Revenue Court.

14. In view of the aforesaid reasoning, the suit is not maintainable on account of lack of jurisdiction. In case of any claim to title in the

land, it will be open to the plaintiffs to raise an issue before the Revenue Court for reference of the same for determination by the Civil Court concerned, after due consideration of the pleadings and contentions.

15. The suit is not maintainable and is accordingly dismissed. No orders as to costs.

NAJMI WAZIRI, J

FEBRUARY 09, 2016