* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RSA 255/2015**

Reserved on: 17.02.2016
Date of decision: 23.03.2016

SUBHADARA ..... Appellant
Through: Mr.Vipin K. Singh, Advocate

versus

SURENDER SINGH & ORS ..... Respondents
Through: Mr.A.S. Chandhiok, Senior Advocate with Ms.Yamini Khurana, Mr.B.S. Mathur, Mr.Rajat Mathur & Mr.Mahavir Singh, Advocates for R1 to R4.

\+ **RSA 256/2015**

SUBHADARA ..... Appellant
Through: Mr.Vipin K. Singh, Advocate

versus

RAVINDER SINGH & ORS. ..... Respondents
Through: Mr.A.S. Chandhiok, Senior Advocate with Ms.Yamini Khurana, Mr.B.S. Mathur, Mr.Rajat Mathur & Mr.Mahavir Singh, Advocates for R1 to R4.

\+ **RSA 259/2015**

SUBHADARA ..... Appellant
Through: Mr.Vipin K. Singh, Advocate

versus

VIJENDER SINGH & ORS. ..... Respondents

Through: Mr.A.S. Chandhiok, Senior Advocate with Ms.Yamini Khurana, Mr.B.S. Mathur, Mr.Rajat Mathur & Mr.Mahavir Singh, Advocates for R1 to R4.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

CM Appl.No.12760/2015 in RSA No.259/2015

Exemption granted subject to all just exceptions.

Application stands disposed of.

Caveat No.743/2015 in RSA No.259/2015

Mr.B.S.Mathur, learned advocate has appeared for the respondent Nos.1 to 4.

The caveat is discharged.

RSA 255/2015, 256/2015 & 259/2015

1. All the appeals are taken up together and a common judgment is being passed.

2. The appellant has challenged the judgment and order dated 04.04.2015 passed by the Additional District Judge, (North) Rohini Courts, Delhi in RCA Nos.58/2014, 59/2014 and 60/2014 whereby the judgment and decree dated 14.08.2014 passed by the Trial Court in Suit Nos.298/11, 299/11 and 300/11 dismissing the suit under Order VII Rule 11 CPC has been upheld and affirmed.

3. The appellant is the sister of respondents No.1, 2, 3, 5 and 6 and daughter of respondent No.4; respondents No.1 to 3 being her real brothers whereas respondents No.5 and 6 are her real sisters.

4. The appellants and the respondents are legal representatives of late Tek Chand Mann, who was a Bhumidar with respect to land falling in various khasra numbers detailed in part (2) of the plaint. Aforesaid late Tek Chand Mann died on 13.10.2002 intestate.

5. The appellant filed a suit No.299/11 for the following reliefs:

> *"(i) Declaring the sale deed dated 18.01.2000 alleged to be executed by Sh.Tek Chand in favour of the defendant no.1 in respect of the land bearing khasra no.5/22/2 min (0-4), 17/2min(0-11), 17/3(4-15), 17/9min(0-11), 17/8(4-14), 17/26(0-2). 48/13min(4-8) total land measuring 15 bighas 5 biswas situated in the revenue estate of village Iradat Nagar @ Naya Baas, Delhi which is registered as registration no.716, Addl. Book no.1 Vol. No.931 on pages 34-37 registered on 21.01.2000 in the Office of Sub-Registrar VI-A, Pitampura, Delhi as Null & Void being having no effect upon the rights of the Plaintiff.*
>
> *(ii) Declaring the Mutation Report bearing No.M-1049/99-2000 dated 03.04.2000 effected on 26.05.2000 and Mutation Report No.M-1026/2003-04 dated 26.05.2004 effected on 10.06.2004 as illegal and Null & Void being having no effect upon the right of the Plaintiff.*
>
> *(iii) Restraining the defendant no.1 his agents, associates from dispose off/sale and to create third party interest in respect of the land measuring No.5/22/2min(0-4), 17/2min(0-11), 17/3(4-15), 17/9min(0-11), 17/8(4-14), 17/26(0-2), 48/13min(4-8), total land measuring 15 bighas 5 biswas situated in the revenue estate of village Iradat Nagar @ Naya Baas, Delhi and Khasra no.239(1-3) and 267(0-19)*

> *situated in the Lal Dora at Village Iradat Nagar @ Naya Baas, Delhi being joint property of the Plaintiff & Defendants."*

6. The case of the appellant is that after the death of late Tek Chand Mann, she and the respondents became co-owners/co-Bhumidars with respect to the suit land. In the year 2009, while applying for a loan, the appellant obtained a copy of the khatauni of the land and it was only then that she learnt that the mutation of the land has been carried out in favour of respondents No.1, 2 and 3 on 26.05.2014. It was averred in the plaint that the appellant was kept in dark and the mutation authorities were not made known the fact that the appellant along with other respondents, also had become co-owners/co-bhumidars on the death of late Tek Chand Mann. It was further learnt that the land in question was transferred by way of sale deed in favour of respondents No.1, 2 and 3 on 18.01.2000.

7. Respondents No.1, 2 and 3 preferred an application under Order VII Rule 11 CPC seeking dismissal of plaint on the ground that from the statement in the plaint itself, the suit was barred by the Delhi Land Reforms Act and the Law of Limitation.

8. The respondents No.1, 2 and 3 drew the attention of the Trial Court to the fact that their predecessor, late Tek Chand Mann, died on 13.10.2002. The suit property was transferred in the name of respondents No.1, 2 and 3 in the year 2000 and the land was mutated in their names on 26.05.2004. Admittedly, such information was obtained by the appellant on 17.03.2009 when she had obtained the khatauni of the ancestral/agricultural land.

9. It was submitted on behalf of the respondents No.1, 2 and 3 that the suit land was governed by the provisions of Delhi Land Reforms Act and section 50 of the Delhi Land Reforms Act provides for the general order of succession from males.

Section 50 of the Delhi Land Reforms Act reads as follows:

> ***50. General order of succession from males.*** *– Subject to the provisions of Sections 48 and 52, when a Bhumidhar or Asami being a male dies, his interest in his holding shall devolve in accordance with the order of the succession given below:*
> *(a) Male lineal descendants in the male line of the descent :*
> *Provided that no member of this class shall inherit if any male descendant between him and the deceased is alive:*
> *Provided further that the son or sons of a predeceased on how lowsoever shall inherit the share which would have devolved upon the deceased if he had been then alive;*
> *(b) Widow*
> *(c) Father*
> *(d) Mother, being a widow;*
> *(e) Step mother, being a widow;*
> *(f) Father's father*
> *(g) Father's mother, being a widow;*
> *(h) Widow of a male lineal descendant in the male line of descent;*
> *(i) unmarried daughter;*
> *(j) Brother, being the son of same father as the deceased;*
> *(k) Unmarried sister;*
> *(l) Brother's son, the brother having been a son of the same father as the deceased;*
> *(m) Father's father's son;*
> *(n) Brother's son's son;*
> *(o) Father's father's son's son;*
> *(p) Daughter's son.*

10. Thus, it was submitted that respondents No.1 to 3 were the only successors of late Tek Chand Mann as they were the only male lineal descendants in the male line of the descent.

11. The Trial Court was of the view that the suit had been filed primarily because of the amendments in Hindu Succession Act, 1956, which came in the year 2005 whereby sub-section (2) of section 4 of the Hindu Succession Act, 1956 was deleted and the changed provisions were introduced, for the purposes of succession, in the Delhi Land Reforms Act with equal rights and status to wife and daughters along with the sons; but such benefit could not have accrued to the appellant as the transaction had taken place prior to the amendment of the Hindu Succession Act which did not have retrospective application.

12. The Trial Court held the suit to be barred by limitation as it was not filed within three years of the accrual of the cause of action, which arose on the death of late Tek Chand Mann on 13.10.2002, when the suit could have been filed within a period of three years from the aforesaid date. Consequently, the application under Order VII Rule 11 CPC was allowed and the suit was dismissed.

13. The First Appellate Court, after noticing the provisions of Order VII Rule 11 CPC upheld and affirmed the dismissal of the suit.

14. The appellant thereafter preferred the present Second Appeal wherein the verdict of both the Courts below with respect to the agricultural lands were more or less accepted by the appellant. However, with respect to two of the plots which fell in Lal Dora, the appellant claimed to be the rightful inheritor of the property as the

land in the Lal Dora was not subject to the application of the Delhi Land Reforms Act. The appellant has also raised an additional ground that since the issue of limitation is a mixed question of fact and law, therefore, the suit could not have been rejected under Order VII Rule 11 CPC.

15. Thus, in the present case, the claim of the appellant is limited to the land falling in Lal Dora in khasra No.239 (1-3), 267 (0-19) in Village Iradat Nagar @ Naya Baas, Delhi. The part of the land falling in the Lal Dora forms part of the land over which Bhumidari rights existed in favour of the father of the appellant admeasuring a total of 53 bighas and 2 biswas.

16. Learned counsel for the appellant submits that both the courts did not appreciate that there was a distinction between agricultural land and residential plots and, therefore, wrongly came to the conclusion that even for the land falling in the Lal Dora, Delhi Land Reforms Act would be applicable. It was submitted that the legal position is that the residential plots in Lal Dora of Village is not governed by Delhi Land Reforms Act, but only by personal law.

17. Learned counsel for the respondents, on the other hand, submitted that section 185 of the Delhi Land Reforms Act specifically excludes the jurisdiction of the civil courts. The Supreme Court in ***Hatti vs. Sunder Singh AIR 1971 Supreme Court 2320*** has held that the jurisdiction of the civil court is clearly barred under section 185 of the Delhi Land Reforms Act. If a Bhumidar seeks a declaration of his right, he has to approach the Revenue Court first. There could be no suit by any person claiming to be a proprietor because the Land

Reforms Act does not envisage a proprietor having continued rights after the commencement of the Act. Paras 6 & 7 of the aforestated judgment are as under:-

> ***"6.*** *Khanna, J., in the case of Lal Singh v. Sardara correctly interpreted the scope and purpose of the Rules under which forms of declaration of Bhumidari rights are issued, but, in our opinion, incorrectly inferred that, since there is effectual adjudication of rights by the Revenue Authorities while declaring Bhumidari rights, their declaration must be subject to the due adjudication of rights which, in the absence of anything to the contrary, can only be by a civil court. It is true that the declarations made by the Revenue Authorities without going through the judicial procedure are subject to due adjudication of rights; but such adjudication must be by an application under Item 4 of Schedule I and not by approach to the civil court. The jurisdiction of the civil court is clearly barred by Section 185 of the Act read with the various items of the First Schedule mentioned above. If a Bhumidar seeks a declaration of his right, he has to approach the Revenue Assistant by an application under Item 4, while, if a Gaon Sabha wants a clarification in respect of any person claiming to be entitled to any right in any land, it can institute a suit for a declaration under Item 28 and the Revenue Assistant can make a declaration of the right of such person. So far as suits for possession are concerned, we have already should earlier that Section 84, read with Item 19 of the First Schedule gives the jurisdiction to the Revenue Assistant to grant decree for possession, and that the suit for possession in respect of agricultural land, after the commencement of the Act, can only be instituted either by a Bhumidar or an Asami or*

the Gaon Sabha. 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. The First Schedule and Section 84 of the Act provide full remedy for suit for possession to persons who can hold rights in agricultural land under the Act.

***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 should be completely 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 lie 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."*

18. It would be apposite to refer to sections 185 and 186 of the Land Reforms Act.

"Section 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 (5 of 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 He 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.

Section 186 - Procedure when question of title is raised

(1) Notwithstanding anything contained in section 185, if in any suit or proceedings in column 3 of Schedule I, a 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 court, frame an issue on the question of the title and submit the record to the 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 refraining 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, 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."

19. The Delhi Land Reforms Act is a complete code in itself. Anyone who is desirous of a declaration of his right must approach the Revenue Assistant under Item No.4 of the First Schedule. What the

appellant/plaintiff is seeking in the instant case is declaration of her title as an owner and in possession of the suit property, albeit the property which falls in Lal Dora. The respondent/defendants have disputed her possession categorically stated that she has not been in possession of the suit property and that the suit preferred by her is time barred. The reliefs, therefore, claimed by the appellant/plaintiff would not be within the jurisdiction of the Civil Courts.

20. Section 8 of the Delhi Land Reforms Act reads as follows:-

> ***"8. Private wells, trees in abadi and buildings. -***
> *(1) All private wells in or outside holdings, all tanks, groves and all buildings situate within the limits of an estate belonging to or help buildings situate within the limits of an estate belonging to or held by a proprietor tenant or other person, whether residing in the village or not, shall continue to belong to or be held by such proprietor, tenant or person, as the case may be, on such terms and conditions as may be prescribed by the Chief Commissioner.*
> *(2) Trees planted by a person other than a proprietor of land other than land comprised in his holding shall continue to belong to or be held by such person on such terms and conditions as may be prescribed by the Chief Commissioner."*

21. This section protects the private wells and trees in abadi and buildings. The corresponding provision is Rule 5 under the DLR Rules. Only the private wells and trees which fall in the abadi and the buildings are protected under the order of the Chief Commissioner. Thus the legal position is that a person can be either a bhumidar or an Asami of an agricultural land in a village. He can also be an owner of

the property of the type which has been detailed in section 8 of the Act like private wells, trees, grooves and abadi, trees and buildings.

22. The appellant/plaintiff is seeking a declaration of ownership over a portion of the suit property. The Supreme Court has made it clear in Hatti (Supra) that the jurisdiction of Civil Court is limited only to deciding issues of title which are referred to it by the Revenue Court. This necessarily implies that if a question of title arises, the same will be referred by the Revenue Assistant to the Civil Court. The appellant could not have directly approached the Civil Court for declaration of title.

23. Learned counsel for the appellant has referred to a decision of a Bench of this Court rendered in ***Visa Agro Industries Pvt Ltd vs. Charan Singh and Ors, 2015 VII AD (Delhi) 516*** wherein the issue was whether a suit which related to title could be filed before the Civil Court or it could be dealt with by the Civil Court only on being referred by the Revenue Court. In the aforesaid case the respondents therein were seeking declaration of sale deed as null and void for the reason that the executants of such sale deeds were dead on the date when such sale deeds were purportedly executed. In the aforesaid context, the bench in the aforesaid decision held that a Revenue Court, under section 185 of the Act, would not be competent to adjudicate the validity of a sale deed which is challenged on the grounds of fraud. Thus, in the aforesaid case, there was no application of section 186 of the Act.

24. As has been earlier stated, the learned counsel appearing for the appellant has limited his argument to the land falling in Lal Dora area.

25. The suit preferred by the appellant is not maintainable under section 34 of the Specific Relief Act as mere suit for declaration and permanent injunction cannot lie in respect of property which is not partitioned by metes and bounds amongst co-sharers.

26. The definition of land under section 3(12) of the Delhi Land Reforms Act categorically defines as to what types and what kind lands are to be considered as land for the application of the provisions of Delhi Land Reforms Act. Any Lal Dora plot, whether in the old abadi or extended abadi, is covered under section 3(12) of the Act. Thus the provisions of Delhi Land Reforms Act are applicable to Lal Dora land as well and, in the first instance, the appellant could have approached the revenue courts only.

27. With respect to the prayer of annulment of mutation, the only remedy before the appellant was to prefer an appeal before the revenue courts.

28. The Trial Court as well as the Appellate Court were, therefore, right in holding that the suit is barred by limitation as it has not been filed within a period of three years from the date of death of her father or within three years from the date from which the mutation was carried out.

29. Order VII Rule 11 of the CPC provides for rejection of plaint under certain circumstances.

> *“**11. Rejection of plaint.-** The plaint shall be rejected in the following cases:—*
>
> *(a) where it does not disclose a cause of action;*

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
(d) where the suit appears from the statement in the plaint to be barred by any law;
(e) where it is not filed in duplicate;
(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

30. The Code mandates the rejection of a plaint if, amongst other things, the suit appears to be time barred under any law. The defence of a party may not be relevant for the purposes of rejection of a plaint under Order VII Rule 11 of the CPC. The suit filed by the appellant was not only time barred but was also hit by section 185 of the Delhi Land Reforms Act. The provision of section 186 of the Delhi Land Reforms Act does not come to the rescue of the appellant.

31. For the reasons aforestated, there are no merits in these appeals.

32. No substantial question of law has been raised by the appellant.

33. The same are, therefore, dismissed.

C.M.App.Nos.12735/2015, 12739/2015 & 12759/2015

1. In view of the second appeals having been dismissed, these application have become infructuous.

2. Applications are disposed of accordingly.

MARCH 23, 2016 **ASHUTOSH KUMAR, J**

ns/k