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

+ RFA 815/2015, 818/2015, 821/2015 and 822/2015

JEET SINGH Appellant
Through: Mr. S.B.S. Vashistha, Advocate

versus

DASHRATH YADAV Respondent
SHIV SHANKAR Respondent
RADHEY SHYAM Respondent
MOTI CHAND MAHTO Respondent
Through: Mr. M.M. Aggarwal, Advocate

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

ORDER
% **16.02.2017**

1. In the present four appeals, the appellant/plaintiff has assailed a common order dated 15.07.2015, passed by the learned trial court, allowing four separate applications filed by the respondents/defendants under Order VII Rule 11 CPC and rejecting the plaints in all the four suits for possession instituted by him against the respondents/defendants, all residents of Khasra No. 36/23, 36/24, 36/17 and 38/18, Delhi, on the ground that the said suits are barred under Section 185 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as '**the Act**').

2. With the consent of the parties, RFA 815/2015 is treated as the lead matter and for the sake of convenience, the facts of the said appeal are being noticed.

3. In July, 2014, the appellant/plaintiff had instituted a suit for possession against the respondent/defendant, calling upon him to hand over vacant peaceful possession of a parcel of land measuring 67 sq. yards comprised in Khasra No.36/23 (4-16), situated in the revenue estate of village Rani Khera. The plaintiff has stated in the plaint that he is a “*co-Bhumidar/owner*” of the subject land; that Khasra No. 36/23 was acquired alongwith other landholdings belonging to him vide Award No.8/2005-06 dated 12.07.2005, made by the Land Acquisition Collector, District North-West, Kanjhawala; that in the year 2006, the respondent/defendant had encroached upon the subject land and had raised a temporary construction thereon despite objections raised by the appellant/plaintiff. After the Award was made, the appellant/plaintiff stopped undertaking cultivation activity on the land under the *bonafide* impression that possession thereof had been taken over by the Government.

4. Subsequently, the respondent/defendant and some others had filed a writ petition in this Court, registered as W.P.(C) 4260-89/2006 against the government agencies stating inter alia that they were residents of an unauthorized colony, known as Bhagya Vihar situated in village Rani Khera, Delhi and seeking regularization of the said colony under Section 48 of the Delhi Land Reforms Act. Further, a prayer was made in the said petition for quashing of the Notification dated 21.03.2003, issued by the Land Acquisition Collector under Section 4 of the Act. Vide order/judgment dated 22.03.2006, the aforesaid writ petition was disposed of alongwith the connected petitions asking for similar relief with directions to the respondent therein to consider the representation of the petitioners under Section 48 of the Land Acquisition Act.

5. The appellant/plaintiff claims that he came to know about passing of the aforesaid order in the connected petitions in the year 2006 itself. He states that he was not paid any compensation in respect of the acquired Khasra No.36/23, 36/24, 36/17 and 38/18 for the reason that they form a part of the unauthorized colony, commonly known as Bhagya Vihar. To substantiate the said submission, the appellant/plaintiff has filed a copy of the Kabza Karwahi in respect of the land, subject matter of Award No.8/2005-06, which specifically states that the aforesaid Khara Nos. were found to be built up on the spot and therefore, possession was not taken over. In para 5 of the plaint, it has been averred that one Shri Madhav Ray had entered into an Agreement to Sell with the appellant/plaintiff and other co-Bhumidars for purchasing the subject Khasra Nos. but he had failed to pay the entire sale consideration. At the same time, Shri Madhav Ray had executed certain documents in favour of the respondents/defendants and some other persons by carving out plots from the subject landholding. Raising a grievance that though the respondent/defendant had no right, title or interest in the subject land, he had raised a temporary construction, the appellant/plaintiff had served upon him a legal notice, calling upon him to hand back the possession of the subject land to him. The respondent/defendant however failed to give a reply. Asserting that he is a co-owner of the subject land and therefore entitled to seek recovery from the respondent/defendant, the present suit for possession came to be instituted by the appellant/plaintiff in the trial court in the year 2014.

6. Summons were issued in the suit on 20.03.2014 and appearance was entered by the respondent/defendant on 22.04.2014. In the written statement, the respondent/defendant raised several preliminary objections, including a

general objection with regard to the lack of jurisdiction of the court to entertain the suit. It is considered necessary to reproduce the relevant averments made by the respondent/defendant in para 3 of the written statement, which are as follows:-

3.It is submitted that the defendant has raised the construction over the suit property after purchasing the same in the year 2006 and prior to the award. The photographs shows and depicts the true and real position of the suit property and the defendant has the valid documents such as ration card, election I. card, electricity meter etc. alongwith title documents. It is further submitted that the children of the defendant are studying in the school nearby the suit property.”

7. Further, on merits, the respondent/defendant stated that the appellant/plaintiff is neither the owner, nor in possession of the subject land as he had already sold his share to Shri Madhav Ray, who had in turn sold the subject land to him on receiving the entire sale consideration.

8. After the pleadings were completed in the suit, five issues were framed by the trial court on 06.09.2014. At that stage, the respondent/defendant did not request the trial court to frame any issue with regard to the maintainability of the suit instituted by the plaintiff. The parties were called upon to file their list of witnesses and affidavits by way of evidence. The appellant/plaintiff filed the list of witnesses and three of the witnesses cited by him were examined in the year 2014-15. On 18.5.2015, the respondent/defendant filed an application under Order VII Rule 11 CPC claiming *inter alia* that the plaint was liable to be rejected as the suit instituted by the appellant/plaintiff was barred under the provisions of Section 185 of the Delhi Land Reforms Act. The said application was allowed by the trial court under the impugned judgment wherein it has been

held that the averments made in the plaint reveal that the suit property remains agricultural land and it could not have been converted into a residential plot and given the said position, the revenue authorities are exclusively vested with the jurisdiction to try and entertain the said suit under the Delhi Land Reforms Act. As a result, the plaint was rejected on the ground that the suit was barred under Section 185 of the Act.

9. Learned counsel for the appellant/plaintiff assails the impugned judgment on the ground that the trial court has completely overlooked the averments made in the plaint and has ignored the fact that an unauthorized colony had come up on the subject land and merely because the same was not declared as urbanized land under Section 507 of the Delhi Municipal Corporation Act, would not be a ground to oust the jurisdiction of the civil court. In support of the aforesaid submission, reliance is placed on the decision in the case of Anand J. Datwani vs. Ms. Geeti Bhagat Datwani and Ors., reported as **2013 IV AD (Delhi) 703**.

10. Per contra, learned counsel for the respondent/defendant asserts that the pleadings in the plaint show that the appellant/plaintiff has described himself as a co-Bhumidar of the subject land, and the implied inference is that the said land is agricultural in nature. Further, from a perusal of the documents exhibited during the course of evidence, including the Khatoni extracted from the revenue records filed and proved by the appellant/plaintiff himself, it is apparent that the said land has not been declared as Abadi land. He states that unless and until the Land Acquisition Collector takes over the possession of the land, the provisions of Delhi Land Reforms Act shall continue to apply and in those circumstances, the plaint has rightly been rejected in view of the provision of Section 9 of the CPC

read with Section 185 of the Delhi Land Reforms Act.

11. The Court has heard the arguments advanced by learned counsels for the parties, perused the impugned judgment and carefully examined the record. The issue raised in the instant case as to whether the land subject matter of the present suit, falls under the definition of ‘Land’, as contemplated under the Act and whether the provision of Section 185 would be attracted to oust the jurisdiction of the civil court.

12. Before proceeding to examine the pleadings in the suit and the documents on record, it is relevant to note that the Delhi Land Reforms Act, 1954 was legislated over sixty years ago with the object of modifying the *zamindari* system and to unite the then existing Punjab and Agra Systems of tenancy laws. The preamble of the Act reads as follows:-

“An Act to provide for modification of zamindari system so as to create an uniform body of peasant proprietors without intermediaries, for the unification of the Punjab and Agra systems of tenancy laws in force in the State of Delhi and to make provision for other matters connected therewith.”

13. It is thus evident that the Act was enacted to govern agricultural land in the Union Territory of Delhi, with such exceptions as contemplated in Section (1) thereof. It is also pertinent to refer to the definition of “*land*” under Section 3(13) of the Delhi Land Reforms Act, which is reproduced herein below:-

“(13) “land” except in Sections 23 and 24, means land held or occupied for purpose connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming and includes:

- (a) buildings appurtenant thereto,*
- (b) village abadis,*
- (c) grovelands,*

(d) lands for village pasture or land covered by water and used for growing singharas and other produce or land in the bed of a river and used for casual or occasional cultivation, but does not include- land occupied by building in belts or areas adjacent to Delhi town, which the Chief Commissioner may by a notification in the Official Gazette declare as an acquisition thereto.”

14. The aforesaid definition of the word, “land” bespeaks of land occupied for the purpose of agriculture, horticulture, animal husbandry, pisciculture, poultry farming and includes buildings appurtenant thereto, village abadis, grovelands, village pasture or land covered by water. Section 185 of the Act, which is a non-obstante clause, bars the jurisdiction of civil courts to entertain a suit in respect of land governed by the provisions of the Delhi Land Reforms Act.

15. For passing an order under Order VII Rule 11 CPC a provision invoked by the respondent/defendant for seeking rejection of the plaint, the court is required to examine the pleadings in the suit as a whole, including the documents filed alongwith the plaint. First and foremost, it is relevant to note that in the memo of parties, the appellant/plaintiff has furnished the address of the defendant as “*Plot No.33, Bhagya Vihar, Part II, Rani Khera, Delhi*” and in his written statement, the respondent/defendant has admitted to the fact that he is residing at the said premises. This fact is also apparent on a reading of the affidavit filed in support of the written statement and the averments made in para 3 of the reply on merits in the written statement, where the respondent/defendant has categorically stated that he has raised a construction on the subject land after purchasing the same in the year 2006 and has in his possession, valid documents, such as ration card, Election

I-card, electricity meter alongwith title documents pertaining to the said plot.

16. The records further reveal that alongwith the written statement, the respondent/defendant has filed photographs of the subject plot which shows that a two storied building has been raised thereon. The respondent/defendant has also filed photocopies of his Election I-card, PAN card, driving license, electricity bills and a set of sale documents in respect of the subject land, including an Agreement to Sell dated 04.06.2003, GPA, affidavit, will, possession letter etc. all executed in his favour by Shri Madhav Ray. The respondent/defendant admits to the fact that he alongwith other residents in the area had filed a writ petition in the High Court for seeking regularization of the colony, known as Bhagya Vihar situated in village Rani Khera, Delhi. The appellant/plaintiff has filed a copy of the order dated 22.03.2006 passed in the said writ petition alongwith the memo of parties, where the respondent/defendant has been arrayed as petitioner No.7 and the address mentioned against his name is the very same address as mentioned by the appellant/plaintiff in the memo of parties of the suit.

17. It has already been noticed above that in para 3 of the plaint, the appellant/plaintiff has specifically stated that the respondent/defendant had raised a temporary construction on the subject land which assertion has not been denied by the respondent/defendant. In para 6, it has been averred that the appellant/plaintiff and the other Bhumidars were not paid any compensation by the government authorities in respect of the land, subject matter of Khasra No.36/23, 36/24, 36/17 and 36/18, for the reason that an unauthorized colony had come up on the subject Khasra Nos. due to which the authorities decided not to take over possession thereof. In para 11, it has been averred that the cause of action to institute the suit had arisen in the

year 2006, when the respondent/defendant had raised an unauthorized construction in the form of a temporary shed on the suit property. The said position has been admitted by the respondent/defendant in the written statement.

18. The pleadings in the plaint when read conjointly with the documents filed by the appellant/plaintiff, particularly, the order dated 22.03.2006 passed in W.P.(C) 4260-89/2006 make it manifest that no agricultural activity was being undertaken on the subject plot. In similar circumstances, in the case of Anand J. Datwani (supra), where the plaintiff therein had filed a suit for partition, declaration and permanent injunction in respect of farm land situated in village Rangpuri and the defendant had taken a plea that merely because the land had been constructed upon and is being used for residential purposes, it would not cease to fall within the definition of the word, “*land*” under the provisions of the Delhi Land Reforms Act and that the jurisdiction of the civil court is barred by virtue of Section 185 of the Delhi Land Reforms Act and lastly, that only on a notification being issued under Section 507 of the Delhi Municipal Corporation Act, would the land cease to be treated as agricultural land, it was conclusively held by a learned Single Judge of this court that once the land in question is not being used for any of the purposes contemplated under the Delhi Land Reforms Act, it ceases to be ‘agricultural land’ and is no longer to be governed by the Delhi Land Reforms Act. The said view was expressed in the following words :-

“26. Above discussion makes it amply clear that an agricultural land must be used for the agricultural purposes only if the Land Reforms Laws are to be made applicable and if it is not so used, it will cease to be an agricultural land. In the instant case, admittedly, the land in question has not been used for any purposes

contemplated therein under the Land Reforms Act, instead, the land has been built upon. Admittedly, two residential units have been constructed on the land in question out of which one is used by the parties as their residence and the other one was rented out and so far, the land has not been, in fact had never been used for the agricultural purposes. It is not the case of the defendants that they are carrying out any agricultural activity or any other allied permissible activity on the land in question. Therefore, as per the aforesaid reasoning and the view taken consistently by this court in number of judgments, the land in my considered view, has ceased to be an agricultural land and will no longer be governed by the provisions of the Delhi Land Reforms Act. Thus, the jurisdiction of civil court cannot be said to be barred by virtue of the provisions of section 185 of the Act.” (emphasis added)

19. The view expressed in the case of Anand J. Datwani (supra) was founded on observations made in the same context in the case of N.B. Singh (HUF) vs. Perfexa Solutions Private Ltd. reported as **159 (2009) DLT 729** and Nilima Gupta vs. Yogesh Saroha reported as **2009 (156) DLT 129**. In the case of Nilima Gupta (supra), the observations made in the para 5 are apposite and the relevant extract is reproduced herein below:-

“5. “..... The Delhi Land Reforms Act was not meant to decide the Civil Disputes of unauthorized colonies, which emerged on agricultural land. The hard reality of today is that though large chunks of land stand in the revenue record as “khasra numbers” but in fact the land has been converted into unauthorized/authorized colonies, where people have either built houses or have plots and civil disputes are arising day in and day out in respect of these plots. Sometimes, plots are sold twice, sometimes there are disputes regarding possession of plots, sometimes there are disputes regarding encroachment, sometimes there are disputes regarding invalid/valid sale of the plots. The Legislature while framing the Delhi Land Reforms Act had not envisaged these kinds of disputes to be referred to the Revenue

Authorities. A perusal of chart given in Schedule I pertaining to Section 185 itself shows that all disputes which are envisaged by the Delhi Land Reforms Act to be decided by the Revenue Assistant or Deputy Commissioner are those, which pertain to agricultural land and they are not those disputes which arise when agricultural land is converted into unauthorized colonies or authorized colonies. The Courts cannot be divorced from the ground realities and live in an imaginary world of jurisdiction. ***Once the agricultural land loses its basic character of ‘agricultural land’ and changes hands several times and gets converted into an authorized/unauthorized colony by dividing it into plots, the disputes of plot holders are not those, which can be decided by Revenue Authorities and these disputes have to be decided by the Civil Courts.***” (emphasis added)

20. In the instant case, it is not even the case of the respondent/defendant that the subject land is being put to use for any agricultural purpose. In fact, it is his own plea in the written statement that he is residing there alongwith his family members. Photographs evidencing the said position have been filed by the respondent/defendant alongwith the documents. He has also substantiated the said submission by placing on record copies of his ration card, Election I-card, electricity meter and title documents of the subject land, all of which amply demonstrate that no agricultural activity of any nature is being undertaken on the subject land.

21. This Court is of the opinion that in the light of the averments made by the appellant/plaintiff in the plaint and the documents filed on record by the respondent/defendant, by no stretch of imagination can it be urged that the subject land continues to retain its basic character of agricultural land. Once the land has been converted into an unauthorized colony and plots have been carved out and further, the plot holders like the respondent/defendant herein are using them for residential purpose, it is axiomatic that the subject land

loses its character of agricultural land. In these circumstances, the provisions of Delhi Land Reforms Act cannot be invoked by the respondent/defendant to oust the jurisdiction of civil courts as the land is clearly beyond the purview of the Act.

22. In view of the aforesaid facts and circumstances, this Court is of the opinion that the impugned judgment dated 15.07.2015 cannot be sustained as the findings returned by the trial court are contrary to the ground reality. The provisions of Delhi Land Reforms Act do not have any application to the subject land which has ceased to be agricultural land. As a result, it is held that all the four suits instituted by the appellant/plaintiff are maintainable. Accordingly, the appeals are allowed and the suits are restored to their original position. The parties are left to bear their own expenses.

23. List the suits before the learned trial court for conclusion of evidence and further proceedings on 28.04.2017. The parties shall appear before the learned trial court on the date fixed.

24. Trial court records be returned forthwith.

HIMA KOHLI, J

FEBRUARY 16, 2017

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