* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **<u>RFA No. 178/2018</u>**
\+ **<u>RFA No. 179/2018</u>**

% **Reserved on: 16th February, 2018**
Pronounced on: 22nd February, 2018

<u>RFA No. 178/2018</u>

BADAL & ORS. ..... Appellants
Through: Mr. Praveen Suri, Advocate.

versus

M/s NIRANJAN PROPTECH PVT. LTD. & ORS. ..... Respondents

<u>RFA No. 179/2018</u>

BADAL & ORS. ..... Appellants
Through: Mr. Praveen Suri, Advocate.

versus

M/s NIRANJAN PROPTECH PVT. LTD. & ORS. ..... Respondents

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

To be referred to the Reporter or not?

<u>VALMIKI J. MEHTA, J</u>

<u>C.M. No.5970/2018 (for exemption) in RFA No. 178/2018</u>
<u>C.M. No.6055/2018 (for exemption) in RFA No. 179/2018</u>

1. Exemptions allowed subject to just exceptions.

C.Ms. stand disposed of.

C.M. No.5971/2018 (for delay) in RFA No. 178/2018
C.M. No.6056/2018 (for delay) in RFA No. 179/2018

2. For the reasons stated in the applications the delays of 7 days in re-filing the appeal are condoned.

C.Ms. stand disposed of.

RFA No. 178/2018 and C.M. Appl. No. 5969/2018 (for stay)
RFA No. 179/2018 and C.M. Appl. No. 6054/2018 (for stay)

3. These Regular First Appeals under Section 96 of the Code of Civil Procedure, 1908 (CPC) are filed impugning the judgment of the Trial Court dated 21.8.2017 by which the Trial Court has dismissed the suits filed by the appellants/plaintiffs for declaration, cancellation and injunction with respect to agreement to sell dated 31.1.2005 entered into by the appellants/plaintiffs with respect to land admeasuring 10 Bighas 17 Biswas in RFA No. 178/2018 and 9 Bighas 18 Biswas and 12 Biswanis in RFA No. 179/2018. The total land which is subject matter of the appeals is land comprised in 22 Bighas and 5 Biswas of Mustatil No. 60, Kila No. 4/3 [1-12], 7[4-8], 8[4-16], 12[4-9], 13 Min [4-2], 18 min, [1-4], 23 Min [0-12], 26 Min. [0-5], 28[0-17] situated in the Revenue Estate of

Village Bijwasan , Tehsil Vasant Vihar, New Delhi. For the sake of reference facts of RFA No. 178/2018 are stated.

4. The appellants/plaintiffs filed the subject suit for declaration, cancellation and injunction seeking cancellation of the agreement to sell dated 31.1.2005 executed between the appellants/plaintiffs and the respondent nos. 4 and 5/defendant nos. 4 and 5 and for cancellation also of the consequent sale deed dated 14.12.2007 executed by the respondent no.2/defendant no. 2 as attorney of the appellants/plaintiffs in favour of the respondent no.1/defendant no. 1. Admittedly, appellants/plaintiffs entered into an agreement to sell dated 31.1.2005 with the respondent nos. 4 and 5/defendant nos. 4 and 5/Sh. Abhay Aggarwal and Sh. Sudhir Kumar Makkar of land measuring 10 Bighas and 17 Biswas for a total sale consideration of Rs. 22,60,000/-. Pursuant to the subject agreement to sell, a General Power of Attorney dated 31.1.2005 was executed by the appellants/plaintiffs in favour of the respondent nos. 2 and 3/defendant nos. 2 and 3/Smt. Meena Aggarwal and Smt. Charu Makkar for the respondent nos. 2 and 3/defendant nos. 2 and 3 to execute the sale deed. It was pleaded that the agreement to sell

entered into was void because of Section 33 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as 'the Act') inasmuch as this Section provides that in case a person after selling of the land which is the subject matter of agreement to sell has balance land remaining with him which is less than 8 standard acres, then the agreement to sell is illegal. Appellants/plaintiffs claim that they revoked the General Power of Attorney through the Deed of Revocation dated 10.4.2007 and also sent a legal notice dated 15.4.2007 to the respondents/defendants. It is pleaded that the respondent no. 2/defendant no. 2 had in spite of the revocation of General Power of Attorney executed the sale deed dated 14.12.2007 in favour of respondent no. 1/defendant no. 1 and therefore the subject suit was filed seeking the following reliefs:-

> "PRAYER:
> 1. To pass a decree of declaration in favour of the plaintiffs and against the defendants declaring that the sale deed dated 14.12.2007 executed by the defendant no.2 as alleged in Attorney of the plaintiff in favour of the defendant no.1 is void and illegal.
> 2. To pass a decree of cancellation in favour of the plaintiffs and against the defendants cancelling the aforesaid sale deed dated 14.12.2007 executed by defendant no.2 as alleged Attorney of plaintiffs in favour of defendant no.1.
> 3. To pass a decree of cancellation in favour of the plaintiffs and against the defendants declaring agreement to sell dated 31.1.2005 executed between the plaintiffs and the defendant nos. 4 and 5 is void and ineffective.

4. To pass a decree of cancellation in favour of the plaintiffs and against the defendants cancelling the agreement to sell entered into between the plaintiffs and defendant nos. 4 and 5.
5. To pass a decree of declaration in favour of plaintiffs and against the defendants that the power of attorney dated 31.5.2005 executed by the plaintiffs in favour of defendant nos. 2 and 3 is void and ineffective.
6. To pass a decree of cancellation in favour of the plaintiffs and against the defendants cancelling the power of attorney dated 31.1.2005 executed by the plaintiffs in favour of the defendant nos. 2 and 3.
7. To pass a decree of perpertual injunction in favour of the plaintiffs and against the defendants restraining the defendant no.1 from dispossessing the plaintiffs from the suit land i.e suit land measuring 10 Bighas and 17 Biswas out of the agriculture land/property forming part of Mustatil No. 60, Kila No. 4/3 (1-12), 7(4-8), 8(4-16), 12(4-9), 13 Min. (4-2), 18 Min (1-4), 23 Min (0-12), 26 Min (0-5), 28 (0-17) situated in the Revenue Estate of Village Bijwasan, Tehsil Vasant Vihar, New Delhi or creating third party interest over the same."

5. Respondents/defendants contested the suit and took up various defences for dismissing of the suit. Suit was pleaded to be by barred by limitation and without any cause of action. It was pleaded that by the agreement to sell dated 31.1.2005 the appellants/plaintiffs had agreed to sell the suit land in favour of respondent nos. 4 and 5/defendant nos. 4 and 5 and had executed the General Power of Attorney and Special Power of Attorney in favour of respondent nos. 2 and 3/defendant nos. 2 and 3 who are the wives of respondent nos. 4 and 5/defendant nos. 4 and 5. It was pleaded that the appellants/plaintiffs have received the entire sale consideration under the agreement to sell and had executed the receipt-*cum*-possession

letter in favour of the respondent nos. 4 and 5/defendant nos. 4 and 5. It was pleaded that the case set up of the agreement to sell being barred by Section 33 of the Act is false because from the revenue record it is seen that appellants/plaintiffs had sold all the land which was owned by them, and, that therefore the bar under Section 33 of the Act did not come into play. The only remaining land (total land was owned jointly by the appellants/plaintiffs with one minor Manoj) after the agreement to sell went through would be about 1 Bigha and 2 Biswas of land, and which land was not under the ownership of appellants/plaintiffs but in the ownership of the minor Manoj, and which land was not the subject matter of the agreement to sell.

6. After pleadings were complete the following issues were framed by the trial court:-

> "(i) Do the plaintiffs establish that the sale deeds in question are void as being contrary to the provisions of the Delhi Land Reforms Act? .....OPP
> (ii) Are the plaintiffs entitled to decree for cancellation of Sale Deeds, that are the subject matter of the said suits?
> (iii) Are the plaintiffs entitled to decree and/or injunctive reliefs, as claimed?
> (iv) Relief"

7. Parties agreed that no oral evidence is required to be led and that the Court can decide the issues in terms of the documents filed by the parties and the law as applicable.

8. Trial court has held that Section 33 of the Act did not render void the subject agreement to sell because it was found that whatever land the appellants/plaintiffs had was sold under the agreement to sell and the only remaining land is 1/20th share of the minor Manoj who was not a party to the agreement to sell. Trial court has referred to the fact that Khasra Girdwari of the year 2008-09 i.e after the agreement to sell was entered into does not show the appellants/plaintiffs as owners/*bhoomidars* of any land and the only balance land is shown of minor Manoj who was the owner of 1/20th share. Trial court has also referred to the report filed by the Revenue Officials/*Patwari* showing that in the column of the name of the owner/*bhoomidar* the name of the appellants/plaintiffs was expunged and the name of the successor/transferee was there. This report of the *Patwari* is dated 21.4.2008. Accordingly, trial court has held that the agreement to sell was not hit by Section 33 of the Act. The relevant

discussions of the trial court as contained in the following paras of the impugned judgment read as under:-

> "Section 33 of the Act talks of restrictions on the sale transaction. Section 33 of the Delhi Land Reforms Act, 1954 reproduced herein as under:-
>
> "33. Restrictions on the Transfer by a Bhumidar :- (1) No Bhumidar shall have the right to transfer by sale or gift or otherwise any land to any person, other than a religious or charitable institution or any person in charge of any such Bhoodan movement, as the Chief Commissioner may by notification in the Official Gazette, specify, where 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 except from the operation of this section, the transfer of any land made before 1st day of December, 1958 if the land covered by such transfer does not exceed one acre and is used or intended to be used for purpose 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 Bhumidar who holds less than eight standard acres of land if such transfer is of the entire land held by him.
>
> Provided that such Bhumidar 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 purpose 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.
>
> 15. Bare reading of the provisions would show that there is a restriction imposed on the Bhumidar for transfer by sale or gift or otherwise any land to any person other than the religious or charitable institution etc. Whereas on result of transfer, the Bhumidar is left with less than 8 acres of land. This restriction in Sub Section (1) of Section 33 of the Act is subject to what is contained in Sub Section (2) of the said provision and it says that this restriction shall not comply where a Bhumidar, who holds less than 8 standard acres of land, transfers his entire holdings. <u>When plaintiffs, who are the Bhumidars and holding less than 8 standard acres of land, are transferring their entire holdings, there is no question of applicability of Section 33 of the Act. In this case, the plaintiffs were holding entire land of 22 Bhiga and 5 Biswas. The subject matter of the present case is land measuring 22 Bhiga and 5 Biswa, comprised in Mustail No. 60. Kila No. 4/3 [1-12], 7[4-8], 8[4-16], 12[4-9], 13 Min [4-2], 18 min, [1-4], 23 Min [0-12], 26 Min. [0-5], 28[0-17] situated in the Revenue Estate of Village Bijwasan , Tehsil Vasant Vihar, New Delhi. It is an admitted case of the plaintiffs that they were holding</u>

less than 8 standard acres of land. As per the documents, placed on record by the plaintiffs i.e. Khasra Girdawari of 2006-07, the name of plaintiffs i.e. Badal, Raghubir Singh Sube Singh and Bhoop Singh are shown as Bhumidar of the suit property with an equal share of 4/5 and the share of remaining plaintiffs namely Somvir, Dharmendra and Pappal is shown as 3/20 whereas the share of Manoj has been shown as 1/20. The Khasra Girdawari of the suit property to defendants, showing defendant no. 1 as Bhumidar and Manoj Kumar, s/o Mukhtiar as Bhumidar of 1/20 part. The property was sold out vide sale deed dated 14.12.2007 and the latest khasra Girdawari is of year 2008-09 which does not show any of the plaintiffs as a Bhumidar. Only Manoj is shown as Bhumidar who is the owner of 1/20 share. It shows that the plaintiffs have already sold out their entire share of land. This Khasra Girdawari of 2008-09 is filed on behalf of defendants and plaintiffs have given no objection to the authenticity of the same. Parties have already given their consent for the disposal of the matter without leading any evidence. That means documents filed by the parties are not in dispute.

16. Apart from this a Patwari report regarding mutation is already there on record which shows that description of the plaintiffs in the column of the Bhumidar whose name is to be expunged and in another column of the name of successor/transferee, the description of defendant no. 1 has been mentioned. This document is also appended with the report of Patwari which is itself is sufficient to show that the total land was sold out for consideration and record of mutation was accordingly carried out in the name of defendant no. 1. This report is dated 21.04.2008. Plaintiff has not disputed the mutation as well as the portion of Manoj left after the selling out of the property. The transaction with respect to the individual share of the plaintiffs was completed when they executed the sale deed. As per the Khasra Girdwari, no part of the share is reflected in the revenue record. Only 1/20th share of Manoj is left. He is having his own independent share which was not sold out at the time when plaintiffs had sold out their respective shares. Leaving the share of Manoj cannot be interpreted in a way that the suit land which was less than 8 acres was not sold entirely, it was a complete sale with respect to the independent share of the plaintiffs and all the plaintiffs were having share in the land less 8 acres. The undivided shares of all the plaintiffs cannot be taken up for the purpose of calculation of 8 acres of land. It is to be calculated only as per their individual shares since all the plaintiffs are the successor in a joint family property. The total land is of around 22 Bhiga and 5 Biswa, comprised in Mustatil No. 60, Kila No. 4/3 [1-12], 7[4-8], 8[4-16], 12[4-9], 13 Min [4-2], 18 min, [1-4], 23 Min [0-12], 26 Min. [0-5], 28[0-17] situated in the Revenue Estate of Village Bijwasan , Tehsil Vasant Vihar, New Delhi which was sold out through two different sale deeds dated 21.09.2007 and 14.12.2007 and two cases, with respect to the same, have been filed. As per the plaintiffs' own documents, plaintiff no. 1 to 4 are entitled to an

equal share of 4/5 in the suit property; plaintiff no. 5 to 6 are entitled to equal share of 3/20 in the suit property whereas Manoj has 1/20 share in the suit land.

The calculation of Bhiga/Biswas in Delhi are as under:-

1*Acre*	=	*4 Bhiga 16 Biswas (4840 Sq. Yds.)*
1 Bhiga	=	*20 Biswas (1008.33 Sq. Yds.)*
1 Biswa	=	*20 Biswanis (1 Biswani=2.52 sq.yds)*

The suit land was 4.63 Acres. Even as per the Section 33 of the Delhi Land Reforms Act, 1954, the plaintiffs were holding less than 8 acres of land even prior to selling the suit land to defendant no. 1 and the plaintiffs had sold their entire land in favour of defendant no. 1 being the Bhumidar in their own rights in terms of Section 33 of the Delhi Land Reforms Act, 1954. Only 1/20th share of the minor was left out of the total land. Therefore, there remains no doubt that each and every plaintiffs, in their capacity of Bhumidar, sold out their entire land in acres in terms of Section 33 of the Delhi Land Reforms Act, 1954. This is not a case where plaintiffs were holding less than 8 acres of land and spared some land out of the same. Reliance is placed upon **Sardar Singh Vs. Additional District Magistrate & Ors. [55(1994) DLT 615].** (underlining added)

9. There is no illegality of any nature in the impugned judgment because bar under Section 33 of the Act would apply if the sellers under the agreement to sell after selling the suit land still would have with them land which is less than 8 standard acres whereas in the present case the entire land owned by the appellants/plaintiffs was sold, and therefore, by the very language of Section 33 of the Act the bar would not come into operation as no land of the appellants/plaintiffs remained after the subject agreement to sell was entered into.

10. I would also like to note that trial court has also referred to the fact that the bar under Section 33 of the Act would apply if the Delhi Land Reforms Act itself applies and trial court has held that the area of Village Bijwasan already stands urbanized in terms of the Notification dated 24.10.1994 issued under Section 507 of the Delhi Municipal Corporation Act, 1957. It may be noted that land is defined under Section 3(13) of the Act as rural land and once the land ceases to be rural land on account of issuing of notifications under the relevant Acts of urbanization, including by issuing a notification under Section 507 of the Delhi Municipal Corporation Act, the subject land ceases to be rural land which would be subject matter of the Delhi Land Reforms Act and once the Delhi Land Reforms Act itself did not apply therefore there did not arise the issue of applicability of Section 33 of the Act thereof. These relevant observations made by the trial court read as under:-

> "During the course of arguments on behalf of arguments on behalf of defendants it was argued that even otherwise provisions of Delhi Land Reforms Act are not applicable as the Village Bijwasan, Tehsil Vasant Vihar, South-West District, New Delhi has already been urbanized by issuing a notification no. F. 33/Engg/TP(DP)/11424/94 dated 24.10.1994 under Section 507 of the Delhi Municipal Corporation Act, 1957. The land was further notified by the central government under Section 22(1) of the Delhi Development Act, 1957 declaring the revenue estate village Bijwasan as a development area for being developed as per the area zonal plan which shows that by such undertaking, land will no longer remain the

> subject matter of the Delhi Land Reforms Act as the land has become the part of urbanization. Therefore, the suit land is not the subject matter of definition of 'land' under Section 3(13) of the Act in order to apply the provision of Delhi Land Reforms Act, 1954. The averments made by the counsel for the defendants is not at all tenable at this stage since he has not taken such objection in his written statement and objection taken at this stage is out of pleadings. Moreover, the discussion on this aspect has become irrelevant due to the reasons plaintiffs have failed to show that land was sold out to the defendants in contravention of Delhi Land Reforms Act. Therefore, plaintiffs have failed to establish that sale deeds in question are void, being contrary to the provisions of Delhi Land Reforms Act. Thus, plaintiffs are not entitled to the decree of cancellation of sale deeds.
>
> These issues are accordingly decided against the plaintiffs and in favour of the defendants".

11. Though, learned counsel for the appellants/plaintiffs sought to argue that bar under Section 33 of the Act applied but he was unable to show that what land the appellants/plaintiffs had remaining after the agreement to sell was entered into, and only in which situation would the bar under Section 33 of the Act apply, and nothing can be pointed out on behalf of the appellants/plaintiffs in the record of the trial court to show that after selling the land which is the subject matter of the agreement to sell, which land the appellants/plaintiffs had with them. As already stated above the only land left was the 1/20th share of the minor Manoj and who was not the seller under the subject agreement to sell and who was also not the

plaintiff in the suit. This argument of the appellants/plaintiffs is therefore rejected.

12. In view of the above discussion, I do not find any merit in these appeals and the same are hereby dismissed.

FEBRUARY 22, 2018 **VALMIKI J. MEHTA, J**
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