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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 370/2016 & IA No.8864/2016 (u/O XXXIX R-1&2 CPC)**
NANAK CHAND & ORS Plaintiffs
Through: Mr. Yeeshu Jain, Adv.
Versus
SAMAY SINGH & ANR Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.11.2018

1. The three plaintiffs viz. (i) Nanak Chand, (ii) Avar Singh and (iii) Mukesh have instituted this suit against the two defendants viz. (1)(a) Savitri, (b) Kanchan @ Kusum (c) Anita, (d) Chanchal, (e) Sunil and (f) Neeraj, being the heirs of defendant no.1 Samay Singh, and (2) Dharam Veer, for recovery of possession of land measuring 1 Bigha 14 Biswas of Khasra No.905/442 in village Saboli, Delhi, claimed to be in the ownership of the plaintiffs and in illegal use and occupation of the defendants, and for recovery of *mesne profits* and injunction.
2. The suit came up first before this Court on 28th July, 2016 and since then is being repeatedly adjourned without summons thereof being ordered to be issued.
3. The suit was listed last on 12th November, 2018, when also the counsel for the plaintiffs sought adjournment. Making it clear that no further adjournment shall be granted, the suit was adjourned to today.
4. It is evident from a reading of the plaint and the documents that the suit is governed by the provisions of Delhi Land Reforms Act, 1954. It has

thus been enquired from the counsel for the plaintiffs, whether not the jurisdiction of this Court, being a Civil Court, is barred by the provisions of the Reforms Act.

5. The counsel for the plaintiffs states that there is no bar because there is no provision for suing in the Revenue Courts for recovery of possession.

6. Attention of the counsel for the plaintiffs is drawn to Section 84 (read with Schedule I, serial No.19) of the Reforms Act which is as under:

“84. Ejectment of persons occupying land without title. -- (1) A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and –

(a) Where the land forms part of the holding of a Bhumidhar or Asami without the consent of such Bhumidhar or Asami, or

(b) Where the land does not form part of the holding of a Bhumidhar or Asami without the consent of the Gaon Sabha, shall be liable to ejectment on the suit of the Bhumidhar, Asami or Gaon Sabha, as the case may be, and shall also be liable to pay damages.

(2) Where any person against whom a decree for ejectment from any land has been executed in pursuance of a suit under sub-section (1) re-enters or attempts to re-enter upon such land otherwise than under authority of law, he shall be presumed to have done so with intent to intimidate or annoy the person in possession or the Gaon Sabha, as the case may be, within the meaning of section 441 of the Indian Penal Code.”

7. The counsel states that a suit under Section 84 of the Reforms Act can be filed only by a Gaon Sabha.

8. However, neither does a reading of Section 84 of the Reforms Act nor a reading of Serial no.19 of Schedule I of the Reforms Act indicates so.

9. The counsel for the plaintiffs then states that the plaintiffs have not been recorded as *bhumidar* with respect to the land of which possession is sought.

10. If the plaintiffs have not been recorded as *bhumidar*, it is not understandable as to what right they can have of recovering possession from the defendants. The Reforms Act did away with the concept of ownership of agricultural land and brought in the concept of only two rights / title with respect to agricultural land i.e. either as *bhumidar* or as *asami*. The plaintiffs, without being *bhumidar*, cannot claim any rights, even if claim transfer of title in their favour as is claimed. Reference in this regard can be made to ***Hatti Vs. Sunder Singh*** (1970) 2 SCC 841, ***Nathu Vs. Hukam Singh*** AIR 1983 Del 214 and ***Gaon Sabha Vs. Nathi*** (2004) 12 SCC 555. The remedy of the plaintiffs is to, first on the basis of deed of title, have themselves declared as *bhumidar* and proceedings wherefor will also lie under the Reforms Act before the Revenue Courts and thereafter or simultaneously therewith seek ejectment of the defendants claimed to be in unauthorized occupation of the land.

11. The counsel for the plaintiff states that the Revenue Authorities are refusing to carry out mutation of *bhumidari* rights in the name of the plaintiffs.

12. If the plaintiffs are aggrieved by such refusal of the Revenue Authorities, their remedy is against the said refusal and cannot file this civil suit.

13. The Reforms Act having recognized only *bhumidari* and *Asami* rights with respect to agricultural land and having done away with the ownership rights and having provided modes for declaration of *bhumidari* rights, the Reforms Act and its provisions cannot be given a go bye, by claiming ownership rights and recovery of possession before the Civil Court.

In fact, the counsel for the plaintiffs has himself handed over a copy of the judgment in *Nanak Chand Vs. Raja Rakesh* (2012) 191 DLT 454, filed by the plaintiffs and in which, though the suit for injunction with respect to same land governed by the Reforms Act was held to be maintainable in the Suit Court but a suit for declaration of rights was held to be not maintainable.

14. The counsel for the plaintiffs then contends that the subject land has been urbanized and the provisions of the Reforms Act do not apply thereto and seeks passover to show a notification in this regard. However, the counsel for the plaintiffs admits that it is not so pleaded in the plaint and no document is filed in that respect.

15. The suit, as filed is not found to be maintainable and the plaint is rejected. The plaint having been rejected, if the plaintiffs find that they are entitled to approach the Civil Court for the reliefs claimed, would have a right to file again but on the condition that the plaintiffs, along with the fresh proceedings if any filed in the Civil Court, file a copy of this order.

16. The plaint is rejected.

17. The counsel for the plaintiffs now states that the plaintiffs have paid court fees of Rs.2,25,000/- on this suit.

18. Though the plaintiffs have consumed the time of this Court but it is ordered that a Certificate entitling the plaintiffs to, out of court fees paid, receive refund of Rs.2,00,000/- be issued and handed over to the counsel for the plaintiffs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 28, 2018/‘gsr’..

CS(OS) 370/2016

Page 4 of 4