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

Date of decision: 4th August, 2021

+ **RSA 59/2021 & CM APPLs. 24034-24035/2021**

MASTER DHEERAJ LAKRA & ORS. Appellant

Through: Mr. Sanjay Aggarwal, Advocate.
versus

CHHOTO DEVI & ANR. Respondents

Through: Ms. Shobhana Takiar, Standing
Counsel for DDA/R-2.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present second appeal has been filed challenging the impugned order dated 12th February, 2019, as well as order dated 16th May, 2020, by which, order dated 12th February, 2019 has been upheld by the Appellate Court.
3. The brief background of this case is that a suit for declaration, permanent and mandatory injunction was filed by the legal heirs of late Mr. Aman Kumar in respect of property bearing no. No. 40/14/1(0-4), 14/2(4-12), 13(4-16), 17/2/(4-15), 18(4-16), 19(4-16), 40/15/1/1(3-12), 16/1/2(1-06) and 16/3/1(1-04), Ranhaula, Delhi. The case of the Plaintiffs/Appellants (*hereinafter*, "*Plaintiffs*") is that they acquired knowledge of the sale of this land from one Mr. Braham Singh who came to their house on 10th October, 2014 and informed them that Defendant No.1/Respondent No.1 (*hereinafter*, "*Defendant No.1*") had entered into an agreement with him for selling the

plot which was allotted to Defendant No.1 by the DDA. The further case of the Plaintiffs is that a sale deed was executed on 18th August, 1984, which is stated to have been signed by one Mr. Eman Kumar in favour of Defendant No.1, but their father was Mr. Aman Kumar. Hence, the plea taken is that the sale deed itself is fake and fabricated.

4. The relief sought in the suit for declaration, permanent and mandatory injunction is as under:

“a) A decree of permanent injunction be passed against the defendants, its agents, associates and any other relatives restraining thereby from allotting the alternative plot in favour of the defendant No.1 or processing it further or creating any third party interest in the suit property.

b) A decree of mandatory injunction be passed against the defendants, its agents, associates and any other relatives directing thereby from allotting the alternative plot in favour of the plaintiffs and cancelling the allotment of the alternate plot in favour of the defendant No.1 if it has been done already.

c) A decree of declaration be passed against the defendants, its agents, associates and any other relatives, declaring the Sale Deed bearing registration No.7598 in Addl Book No.1, Volume No.4437 on pages 111 to 112 on 18.08.1984 of the property in question null and void.

d) Any other order(S) which the Hon'ble Court deem proper and adequate in the facts and circumstances of the case be passed in favour of the Plaintiffs and against the defendants.”

5. After the written statement was filed, in the replication an objection was taken that the sale is in violation of the provisions of Section 33 of the

Delhi Land Reforms Act, 1954. The judgment/decreed came to be passed on 12th February, 2019. The following issues were framed by the Trial Court:

- “1. Whether the suit is barred by period of limitation? OPD***
- 2. Whether there is no cause of action in favour of the plaintiff to file the present suit? OPD***
- 3. Whether the plaintiffs are entitled for the decree of permanent injunction as prayed for? OPP***
- 4. Whether the plaintiffs are entitled for the decree of mandatory injunction as prayed for? OPP***
- 5. Whether the plaintiffs are entitled for the decree of declaration as prayed for? OPP***
- 6. Relief”***

6. In respect of the first issue, the Trial Court held that the suit is barred by limitation on various grounds. Firstly, the sale deed which was challenged was executed on 17th August, 1984 and it was not disputed that it was owned by the father of the Plaintiffs. Even if the cause of action is acquired in 1984, the suit is barred by 30 years. Further, it was also argued that the name of Mr. Aman Kumar @ Mr. Eman Kumar having signed as Mr. Eman Kumar was incorrectly shown in the sale deed. However, this issue was decided in favour of Defendant No.1. Insofar as Issue No.5 is concerned, the Court holds that Mr. Eman Kumar @ Mr. Aman Kumar, was not a planted person as the onus to establish this plea was on the Plaintiffs, which the Plaintiffs could not discharge. Insofar as the objection under Section 33 of the Delhi Land Reforms Act, 1954 is concerned, the Court held that the said plea was only taken in the replication and in any event, the sale deed is not hit by Section 33. The relevant portion of the order reads as under:

“Section-33 of the Delhi Land Reforms Act:-

(1) No Bhumidhar 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 exempt from the operation of this section, the transfer of any land made before the 1st day of December, 1958, if the land covered by such transfer does not exceed one acre in area and is used or intended to be used for purposes 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 Bhumidhar who holds less than eight standard acres of land, if such transfer is of the entire land held by him;

Provided that such Bhumidhar 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 purposes 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.”

Plaintiffs have nowhere clarified as to whether the sale by their father to the said Ms. Dayawanti was done prior to the sale to defendant no.1. In the absence of a clear pleading and evidence to this effect the possibility of sale of 11 Bigha 12 Biswas to Ms. Dayawanti before the sale to defendant no.1 cannot be ruled out. If it is deemed that the sale to Ms. Dayawanti was done prior to the sale deed challenged

in the present case, it emerges that after the aforesaid sale of 11 Bighas 12 Biswas the deceased father of the Plaintiffs was left with 32 Bighas 8 Biswas which is less than Eight (8) standard acres and thus the sale of entire holding by the father of the plaintiffs to defendant no.1 shall be entitled to exemption U/S 33 Sub Section-2 DLR Act. Thus, as the plaintiffs have not clearly stated that their father had sold his property partly to defendant no.1 before sale of 11 bighas 12 biswas to Ms. Dayawanti, it cannot be said that the sale deed under challenge is violative of Section 33. ... ”

In view of these findings, the suit of the Plaintiffs was dismissed.

7. The Appellate Court has also upheld this judgment of the Trial Court vide order dated 16th May, 2020 and has held that the suit is not barred under Section 33 of the Delhi Land Reforms Act, 1954 and it is barred by limitation.

8. The submission of Mr. Aggarwal, Id. counsel appearing for the Plaintiffs is that the replication would form part of the pleadings and the objection of Section 33 of the Delhi Land Reforms Act, 1954 was taken in the replication itself. He submits that this is a clear legal issue which deserves to be adjudicated in the second appeal.

9. Ms. Takiar, Id. counsel appearing for the DDA submits that the sale had taken place way back in 1984. Till 2003, the father of the Plaintiffs was alive. He never took any action to renege on the sale deed or to seek any such declaration and the suit was filed only in 2015. The government had acquired the land in 1996 and Defendant No.1 was recommended for an alternate plot in 1996 itself. It is after the death of the Plaintiffs' father and much later in time i.e., in 2015, that the challenge is sought to be made. She

submits that the suit is hopelessly barred by limitation and the Trial Court has rightly dismissed the suit.

10. This Court has considered the matter. Irrespective of the objection under Section 33 of the Delhi Land Reforms Act, 1954, the Trial Court's clear finding on record is that the suit is hopelessly barred by limitation. The sale having taken place in 1984 and the land having been acquired by the Government in 1996, the suit is barred. The fact that during the life time of the father, he never challenged the sale deed executed in favour of defendant no.1 shows that the entire challenge by the family members now is a complete after-thought. Moreover, the prayer in the plaint is itself a complete give away inasmuch as the main prayer is for allotment of the alternate plot. It appears that the children of the original seller wish to, in some manner, create obstructions in the allotment of the alternate plot in favour of the purchasers and have chosen to file this suit in 2015 i.e., almost 30 years after the initial sale took place.

11. Under these circumstances, it is held that there is no substantial question of law that arises in this appeal. The orders of the trial court and the appellate court do not warrant any interference. The appeal is liable to be dismissed and it is accorded accordingly. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 4, 2021
dj/T