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

+ **CONT.CAS(C) 477/2020**

S K BASSI & ORS.

.....Petitioners

Through: Mr. Ajit Kumar Sinha, Senior Advocate with Mr. Srijan Sinha, Mr. Naveen Soni and Mr. Deborah Serto, Advocates.

versus

SH JASBIR SINGH SOLANKI & ORS.

.....Respondents

Through: Mr. Rajesh Yadav, Senior Advocate with Mr. Sunil Chauhan, Ms. Vatsala Chauhan and Ms. Ruchira, Advocates.

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+ **RFA 911/2016**

S K BASSI & ORS

.....Appellants

Through: Mr. Ajit Kumar Sinha, Senior Advocate with Mr. Srijan Sinha, Mr. Naveen Soni and Mr. Deborah Serto, Advocates.

versus

JASBIR S SOLANKI & ORS

.....Respondents

Through: Mr. Rajesh Yadav, Senior Advocate with Mr. Sunil Chauhan, Ms. Vatsala Chauhan and Ms. Ruchira, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

12.03.2025

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RFA 911/2016 and CM APPL. 46682/2022, 17718/2023 and 2257/2024

1. This Regular First Appeal is preferred on behalf of the Appellants challenging the impugned judgment and decree dated 15.07.2016 passed by the learned Trial Court in Civil Suit bearing No. CS DJ ADJ 53/2016 titled '*S.K. Bassi and Ors. versus Jasbir Singh Solanki and Ors.*' Appellants No. 1 to 3 were Plaintiffs before the Trial Court while Respondents No. 1 to 9



were Defendants No. 1 to 9 before the Trial Court. On 22.09.2017, during the pendency of this appeal, Appellants had given up their claims against original Defendants No. 5 and 6 and as per amended memo of parties dated 24.11.2017, Respondents No. 1 to 4 are original Defendants No. 1 to 4 while Respondents No. 5 to 7 are Defendants No. 7 to 9. For the sake of convenience, parties are hereinafter referred to by their litigating status before the Trial Court.

2. Factual matrix to the extent necessary and relevant is that the aforementioned suit concerns a piece of land measuring 2 Bighas 10 Biswas, in Khasra No. 228, situated in the revenue estate of Village Dindarpur, Tehsil Nazafgarh, New Delhi. Claiming that father of Plaintiffs No. 1 and 2, late Sh. P.L. Bassi and Plaintiff No. 3 jointly purchased the suit land from Defendants No. 3 to 9 vide registered Sale Deed dated 28.11.1996 for a total sale consideration of Rs.3 lacs and also asserting that possession was with the Plaintiffs, they sought a decree of permanent injunction against Defendants No. 1 and 2 alleging that there were threats of dispossession. Plaintiffs also sought decree of declaration for declaring them as sole and absolute owners of suit land along with decree of possession for restoration of part possession. Additionally, Plaintiffs also sought decree of declaration that General Power of Attorney dated 28.11.1996 and/or any other GPA/Sale Deed executed subsequently on the basis of the said GPA be declared as null and void.

3. Defendant No. 1 in his written statement raised a preliminary objection to the maintainability of the suit in a Civil Court on the ground that the suit land was agricultural land and suit was thus barred by provisions of Section 185 of the Delhi Land Reforms Act, 1954 ('1954



Act'). On merits, it was pleaded that Defendants No. 3 to 9 were recorded *Bhumidars* of total land measuring 4 Bighas 16 Biswas in Khasra No. 228, out of which they had sold land measuring 2 Bighas 10 Biswas to the father of Plaintiffs No. 1 and 2 and Plaintiff No. 3 jointly on 28.11.1996 and transferred the remaining land measuring 2 Bighas 6 Biswas along with some other land to Sh. Randhir Singh on the same day and Randhir Singh had carved out a colony in and around the suit land called 'Shyam Vihar, Phase-II'.

4. It was further pleaded in the written statement that since the agricultural land had been put to non-agricultural use, proceedings were initiated under Section 81 of the 1954 Act in 1995 and land vested in Gaon Sabha vide order dated 13.05.1998 passed by SDM, Najafgarh, New Delhi. It was also stated that Plaintiffs never approached the Revenue Authorities for mutation in their favour basis the sale deed and only few days prior to institution of the suit, they obtained a favourable order from SDM, Najafgarh, whereby vesting order dated 13.05.1998 was set aside on the ground that the land was agricultural land and suit land was recorded in the name of the Plaintiffs. Contrary to this position, present suit was filed on 31.10.2006 pleading that the suit land was non-agricultural, which was a misrepresentation. It was also pleaded that Defendant No. 1 did not encroach on the portion of land purchased by Plaintiffs and he was in peaceful possession of his own plot measuring 1000 sq. yds. purchased by way of GPA, Agreement to Sell, affidavit, receipt and Will etc. all dated 01.08.2001 from Sh. G.S. Sidhu.

5. In the replication, Plaintiffs averred that suit was maintainable as the land was a non-agricultural land and thus the bar under Section 185 of 1954



Act did not come into force. It was reiterated in the replication that the suit land fell in a colony named Shyam Vihar, Phase-II in respect of which Delhi Government had issued a provisional certificate for regularisation and therefore, provisions of 1954 Act were inapplicable.

6. Defendant No. 2 did not file any written statement and in fact, he was proceeded *ex parte*. Defendants No. 3 to 9 raised preliminary objection to the maintainability of the suit in their joint written statement echoing the case of Defendant No. 1. On merits, the stand was that soon after execution of the sale deed in favour of Sh. P.L. Bassi and Plaintiff No. 3, they realised that the sale deed was void being violative of 1954 Act and thus returned the entire sale consideration, which was duly accepted back. It was asserted that possession of the suit land always remained with Defendants No. 3 to 9 and Plaintiffs have no concern with the land.

7. Based on the pleadings of the parties, learned Trial Court settled the following issues on 25.02.2008:-

“1. Whether the suit is not maintainable on account of Section 45 or any other provision of the Delhi Land Reforms Act, 1954?

2. Whether Sale Deed dated 28th November, 1996 relied upon by the plaintiffs is void, illegal or enforceable for the reasons mentioned by defendants 3 to 7 and 9 in their written statement?

3. Whether the plaintiffs prove their entitlement and possession of the suit land for the purpose of entitlement to a decree of permanent injunction, as claimed?

4. Relief, if any.”

8. Plaintiffs examined 10 witnesses to prove their case. Defendant No. 1 entered the witness box as DW-1 and examined 5 more witnesses while Defendants No. 3 to 9 did not lead any evidence. Learned Trial Court decided issue No. (i) with respect to maintainability of the suit in favour of the Defendants and against the Plaintiffs and held that the suit was not



maintainable in view of the bar contained in Section 185 of the 1954 Act. Having held that the suit was not maintainable, the Trial Court, however, proceeded to decide the remaining issues on merit and finally dismissed the suit.

9. Learned Senior Counsel for the Plaintiffs essentially raises two issues for consideration before this Court. Firstly, it is urged that having decided the issue of maintainability of the suit against the Plaintiffs, Trial Court ought not to have entered into adjudication of the merits of the case on other issues. Secondly, it is urged that the reliefs sought in the suit clearly show that Plaintiffs had in prayer clause (d) sought a decree of declaration, declaring the General Power of Attorney dated 28.11.1996 as null and void along with any other GPA/Sale Deed executed subsequently on the basis of the said GPA since Plaintiffs were the owners and in possession of the suit land on the basis of a sale deed, however, no issue was framed on this aspect. On the decision of the Trial Court with respect to issue No. (i), learned Senior Counsel submitted that the issue was wrongly decided against the Plaintiffs inasmuch as the suit land was not an agricultural land and therefore was not hit by the bar of Section 185 of 1954 Act.

10. Learned Senior Counsel for the Defendants submits that it is not open to the Plaintiffs to take a stand that the suit land is a non-agricultural land having taken a contra stand before the Revenue Authorities. It is urged that proceedings under Section 81 of 1954 Act regarding land falling in Khasra No. 228, Village Dindarpur, including suit land were initiated by Gaon Sabha in 1995 which culminated in passing of order dated 13.05.1998 by SDM, Najafgarh, whereby entire land got vested in Gaon Sabha. Plaintiff No. 1 appearing as PW-1 admitted that an application Ex.PW-1/D1 was filed



by the Plaintiffs seeking setting aside of the order, wherein it was clearly mentioned in paragraph 11 that they had never used the land for non-agricultural purposes and were continuing to use the suit land for agricultural purposes. The application was supported by affidavit of PW-1 and in his cross-examination, he admitted his signatures on the application and the affidavit. Based on this representation, SDM vide order dated 23.10.2006 set aside the earlier order dated 13.05.1998 and land was divested from Gaon Sabha and Plaintiffs regained *Bhumidari* rights over the suit land. Having taken a favourable order from SDM, present suit was filed in 8 days taking a contradictory stand that the suit land was non-agricultural. Plaintiffs cannot blow hot and cold and misrepresent before the Court. Mr. Yadav, learned Senior Counsel submits that the issue of maintainability was rightly decided by the Trial Court *albeit* he does fairly concede that having decided that the suit was not maintainable, Court ought not to have decided the case on merits on the remaining issues.

11. Before proceeding further, it would be relevant to note at this stage that the village in question, where the suit land is situated, has been urbanised by a Notification issued under Section 507 (a) of Delhi Municipal Corporation Act, 1957 ('1957 Act'). In light of this development, Defendants agree that the only remedy available with the Plaintiffs to seek declaration, injunction and possession lies before a Civil Court as of today and if filed, a suit would be maintainable. On the second issue raised by learned Senior Counsel for the Plaintiffs that no issue was framed on prayer (d) in the plaint and an additional issue be framed at this stage, Mr. Yadav learned Senior Counsel submits that he has no objection to an additional issue being framed but at the same time draws the attention of the Court to



the evidence led on the aspect of GPA dated 28.11.1996 and submits that evidence was in fact led by both sides and therefore if the Court is inclined to frame an additional issue, no further opportunity should be granted to lead evidence on this issue and the Trial Court should proceed to hear arguments on merits as the *lis* is pending since 2006.

12. Heard and considered.

13. As a matter of fact and record, Village Dindarpur has been urbanised. In light of this development, Defendants agree that the only remedy available to the Plaintiffs will be to file a civil suit. In these peculiar circumstances, it would be in the interest of justice and the parties that the suit is remanded back instead of relegating the Plaintiffs to file a fresh suit considering the *lis* is ongoing from 2006.

14. Accordingly, with the consent of the parties to the *lis*, the case is remanded back to the Trial Court for further proceedings. Following additional issue is settled for consideration by the Trial Court:-

‘Whether the General Power of Attorney dated 28.11.1996 and any other GPA, sale deed executed subsequently on the basis of the said GPA is null and void in light of the stand of the Plaintiffs in the plaint? OPP’

15. As agreed, parties will not lead further evidence on the additional issue since evidence has been led on this aspect and the learned Trial Court shall proceed to hear final arguments and deliver the judgment in accordance with law, without being influenced by the order passed by this Court.

16. It is made clear that this Court has not expressed any opinion on the merits of the case.

17. Appeal along with pending applications is disposed of in the aforesaid terms.



CONT.CAS(C) 477/2020 and CM APPLs. 9324/2021 and 13681/2022

18. In light of the order passed in appeal, no order is required to be passed in the contempt petition and the same is closed.
19. Pending applications also stand disposed of.

JYOTI SINGH, J

MARCH 12, 2025
B.S. Rohella/shivam