

Sunita Vs. Ranbir Singh and ors

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SooperKanoon Citation : sooperkanoon.com/1028358

Court : Delhi

Decided On : Sep-18-2013

Judge : Rajiv Sahai Endlaw

Appellant : Sunita

Respondent : Ranbir Singh and ors

Advocate for Def. : Mr. Madan Lal Sharma, Mr. Varun Nischal

Advocate for Pet/Ap. : Mr. R.K. Saini, Ms. Minal Sehgal

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

18. h September, 2013 % + CS(OS) 1411/2010 SUNITA Through: Plaintiff Mr. R.K. Saini and Ms. Minal Sehgal, Advocates. Versus RANBIR SINGH & ORS Through: Defendants Mr. Madan Lal Sharma and Mr. Varun Nischal, Advocates for D - 1, 3(a) & 3(b). CORAM :HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J.

I.A. No.15375/2010 (of D-1, 3(a) & 3(b) u/O 7 R-11 CPC).

1. The plaintiff has instituted the present suit for partition of, (i) industrial plot bearing Khasra No.143/217 (0-06); (ii) residential plot bearing Khasra No.142/274 (2-02); (iii) agricultural land bearing Khasras No.88/22 (4-16), 92/2 (3-06); and, (iv)

residential built up house in old abadi area bearing municipal No.317, measuring 300 sq. yds., all situated in the revenue estate of Village-Kanjhawala, Delhi, pleading:(a). that Shri Sher Singh father of the plaintiff and the defendants no.1,2&4 to 6 and grandfather of the defendants no.3(a) & 3 (b) was the owner/bhumidhar of agricultural land and residential plots in the revenue estate of Village-Kanjhawala, Delhi; (b). that consolidation proceedings started in this revenue estate by Notification in the year 1983; during the consolidation, in lieu of his previous land the said Shri Sher Singh was allotted the industrial plot, residential plot and agricultural land aforesaid; (c). that Shri Sher Singh was also having a residential built up house in old abadi area bearing municipal No.317, measuring 300 sq. yds.; (d). that Shri Sher Singh expired on 8th August, 1999 leaving the plaintiff and the defendants no.1 to 6 as heirs and as such each of the plaintiff and the defendants no.1 to 6 has a 1/7 th share each in the aforesaid properties; (e). that originally succession of agricultural land in Delhi was governed by the Delhi Land Reforms Act, 1954 (Reforms Act); that by Notification of consolidation under Section 14 of East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 (Consolidation Act) as extended to Delhi, the operation of the Reforms Act was suspended; (f). that Hindu Succession Act, 1956 (Succession Act) was amended w.e.f. 9th September, 2005 resulting in taking away of protection granted to the Reforms Act; and, (g). that as per the Master Plan of Delhi w.e.f. 7 th February, 2007 i.e. MPD-2021, Village-Kanjhawala falls in Zone-N and Zonal Plan thereof was notified on 11th June, 2010 which makes it clear that there is no land therein which is meant for agriculture and for which reason also the provisions of the Reforms Act are not applicable thereto. and claiming partition and separate possession of her 1/7th share.

2. The applicants/defendants no.1, 3 (a) & 3 (b) seek rejection of the plaint on the grounds:(i). that the suit has been filed in respect of agricultural land governed by the provisions of the Reforms Act and this Court has no jurisdiction in view of the bar contained in Section 185 of the Reforms Act to the jurisdiction of the Civil Court; (ii). that the suit properties are covered within the definition of landas provided under Section 3(13) of the Reforms Act; besides the properties have their nucleus to the agricultural land/holding of which Shri Sher Singh was the bhumidhar; (iii). even otherwise under Section 25 of the Consolidation Act, land

owner shall have the same rights in the land allotted to him in pursuance to the scheme of consolidation as he had in the original holding; (iv). that the amendment w.e.f. 9th September, 2005 to the Succession Act is prospective in operation, the succession to the estate of Shri Sher Singh opened on his death on 8 th August, 1999 and was governed by Section 50 of the Reforms Act and whereunder the defendants no.1 to 3 being the only male heirs of Shri Sher Singh were entitled to inherit and became the joint and co-bhumidhars thereof and the plaintiff and the defendants no.4 to 6 being the daughters of Shri Sher Singh have no right in the estate of Shri Sher Singh; (v). that in Mutation Case No.2473/2008 titled as Ranbir Singh Vs. Sunita the suit land was ordered to be mutated in the name of the defendants no.1 to 3 only who have been recorded as bhumidhars thereof and the said order has attained finality and cannot be allowed to be circumvented or indirectly challenged as is being sought to be done by the suit; (vi). that under Section 55 of the Reforms Act only the recorded bhumidhar is entitled to claim partition before the Revenue Assistant and the Civil Court has no jurisdiction; (vii). that admittedly consolidation proceedings are continuing and partition of agricultural land subject matter of consolidation stands suspended under Section 32 of the Consolidation Act; (viii). that the Master Plan and the Zone Development Plan prepared in exercise of powers under Sections 7 & 8 of the Delhi Development Act, 1957 provides for guidelines for future development and do not supersede, repeal or override the provisions of the local law i.e. the Reforms Act; (ix). the land continues Commissioner by to be appropriate agricultural till the Notification notifies Chief the acquisition of the land and which has not been done; (x). that thus the plaintiff and the defendants no.4 to 6 have no right, title or interest in the properties of which partition is sought; and, (xi). that the defendants no.1 to 3 only are the recorded joint bhumidhars and the plaintiff and the defendants no.4 to 6 being married daughters of Shri Sher Singh are out of possession and the suit is not properly valued for the purposes of Court Fees and jurisdiction.

3. The plaintiff has filed a reply to the application and to which a rejoinder has been filed by the applicants/defendants no.1, 3(a) & 3 (b).

4. The counsels have been heard.

5. The contention of the counsel for the applicants/defendants is that the suit insofar as for partition of industrial plot, residential plot and agricultural lands is not maintainable for the reason of Section 32 of the Consolidation Act. It is contended that the suit only qua the residential house is maintainable.

6. Section 32 of the Consolidation Act bars commencement of any proceedings under Part (F) of Chapter 3 of the Reforms Act and which includes a proceeding for partition, after a notification under Sub-section 1 of Section 14 of the Consolidation Act has been issued. It further provides that where such proceedings were commenced before the issue of the said notification, even then they are to remain in abeyance during the pendency of the consolidation proceedings. The argument of the counsel for the applicants/defendants is that this suit was filed after the commencement of consolidation proceedings in Village-Kanjhawala and which are still pending. It is further contended that though in the consolidation proceedings an industrial plot and a residential plot in lieu of agricultural land have been provisionally allotted but till the consolidation is concluded, the said allotment will remain provisional only. It is yet further contended that though on conclusion of consolidation proceedings the industrial plot and the residential plot shall cease to be so governed but till then shall continue to be governed by the Reforms Act in view of Section 25 of the Consolidation Act. It is yet further argued that the agricultural land even after conclusion of consolidation shall be continued to be governed by the Reforms Act Section 185 whereof bars jurisdiction of Civil Court qua suit for partition.

7. Upon being asked to show that the land is governed by the Reforms Act, the counsel for the applicants/defendants has invited attention to para 9 of the plaint where the plaintiff has admitted the land being governed by the Reforms Act and the notification under Section 14 of the Consolidation Act having been issued.

8. The counsel for the applicants/defendants upon being asked to show admission by the plaintiff of the consolidation proceedings still pending, has drawn attention to para 7 of the reply filed by the plaintiff to this application where the plaintiff has admitted that the consolidation proceedings are still going on.

9. The counsel has thus argued that the present suit for partition can lie only with respect to the residential house.

10. The counsel for the plaintiff has fairly admitted that as far as the agricultural land is concerned, owing to the bar of Section 185 of Reforms Act, this civil suit will not lie. He has however contended that the bar of Section 32 of the Consolidation Act would not apply vis--vis industrial plot and residential plot, allotment whereof has become final and of which possession also has been given and merely because the consolidation proceedings qua the village are pending would not be a ground for holding the civil suit qua them to be not maintainable specially when the counsel for the applicants/defendants also concedes that on conclusion of consolidation proceedings, these two are not to be covered by the Reforms Act.

11. The counsel for the applicants/defendants in rejoinder has contended that consolidation proceedings commenced in the village in the year 1983 and possession of the industrial plot and residential plot was delivered to the predecessor of the parties on 5th May, 1998 and he died on 8th August, 1999 and the mutation of the agricultural land and the industrial plot and the residential plot was carried out in the name of the sons of the deceased on 9th September, 2008 and which has become final. It is argued that the agricultural land, industrial plot and residential plot continue to be governed by the Reforms Act till conclusion of the consolidation proceedings, i.e. when notification mentioned in the proviso to Section 3(13) of the Reforms Act is issued by the Chief Commissioner. He further contends that under the Reforms Act, the inheritance was only of the males and not of the females; that thus on 8th August, 1999 when the common predecessor died, the agricultural land as well as the industrial plot and residential plot were governed by the Reforms Act and the question of inheritance of any share therein by the daughters does not arise.

12. I may notice that since then vide judgment rendered in *Nirmala Vs. Government of NCT of Delhi* 170 (2010) DLT 57.(DB), Section 50 of the Reforms Act prescribing inheritance only in favour of the males has been held to be bad owing to the amendment w.e.f. the year 2005 of the Succession Act. However,

Section 50 of the Reforms Act can be said to be bad only w.e.f. the amendment of the year 2005 of the Succession Act.

13. The question which thus falls for consideration is as to the inheritance qua industrial plot and residential plot before the consolidation proceedings are concluded. The counsel for the applicants/defendants in this regard has relied on Subhash Chand Aggarwal Vs. Union of India 2011 VIII AD (Delhi) 338 (DB) particularly to paras 21, 22 and 23 thereof.

15. I have considered the rival contentions aforesaid. The counsel for the plaintiff has admitted that the suit in so far as for partition of agricultural land bearing Khasra No.88/22 (4-16), 92/2 (3-06) is concerned is not maintainable before this Court. The plaint in so far as seeking relief of partition thereof is thus admittedly liable to be rejected.

16. As far as the industrial plot and the residential plot are concerned, the bar contained in Section 32 of the Consolidation Act is found to be absolute and is not found to be permitting any exemption qua allotments which have become final. Section 32 prohibits commencement of any proceeding including for partition, after the Notification under Section 14(1) is issued and during the pendency of the consolidation proceedings. Admittedly the Notification under sub Section 14(1) with respect to the Revenue Estate of Village-Khanjawala in which the properties are situated was issued way back in the year 1983 i.e. prior to the demise of Shri Sher Singh on 8th August, 1999. The plaintiff has further in reply to the application under Order 7 Rule 11 admitted that the consolidation proceedings are still going on in this revenue estate of Village Khanjawal.. The said admission leaves no manner of doubt that the consolidation proceedings are pending. The consolidation proceedings are with respect to the entire revenue estate and cannot be said to be pending with respect to some of the holdings and concluded qua other holdings in the same revenue estate. Though there is no provision in the Consolidation Act, as to when the consolidation proceedings can be said to be concluded but Section 24 thereof provides that the scheme shall come into force and possession thereunder protected when persons entitled to enter into possession of holdings respectively allotted to them have so entered into

possession. It envisages entry into possession of all persons for the provision to have effect. It does not say any person entitled to enter into possession has entered possession. Indication that reference to pendency of consolidation proceedings is reference to proceedings for the entire revenue estate can also be had from different language used by the legislature while providing for execution of decrees for possession against land allotted on re-partition in Section 27A of the Act. The prohibition therein to execution of decree for possession is not during the pendency of consolidation proceedings as in Section 32 but only till repartition. From the different language used in the two sections of the statute it is evident that the bar in Section 32 cannot be read as only till re-partition and allotment in pursuance to such re-partition but till conclusion of consolidation proceedings with respect to the entire revenue estate. The suit for partition thus as far as the industrial plot and the residential plot are concerned is clearly barred by Section 32 of the Consolidation Act.

17. The counsel for the plaintiff has also been unable to rebut the contention aforesaid of the counsel for the applicants/defendants no.1,3(a) & 3 (b) that the industrial plot and the residential plot would under the provisions of Section 25 of the Consolidation Act and Section 3(13) of the Reforms Act continue to be governed by the provisions of the Reforms Act till the conclusion of the consolidation proceedings.

18. Once the industrial plot and the residential plot as on the date of institution of the suit are found to be governed by the Reforms Act, the bar of jurisdiction of the Civil Court under Section 185 of the Reforms Act, as applicable to the agricultural land would attach to the industrial plot and the residential plot also and the Court would not have jurisdiction to entertain the suit for partition with respect thereto.

19. No only so, under the Reforms Act, the plaintiff and the defendants no.4 to 6 being the married daughters of Shri Sher Singh had no right of inheritance to the properties governed thereby and the plaintiff and the defendants no.4 to 6 would not have any share therein for the said reason also.

20. Reliance by the counsel for the applicants/ defendants no.1, 3(a) & 3 (b) to the judgment of the Division Bench of this Court in Subhash Chand Aggarwal in this

context is also apposite.

21. Resultantly, the application for rejection of the plaint in so far as claiming the relief of partition of the agricultural land, industrial plot and the residential plot succeeds and the plaint in so far as claiming partition thereof is rejected.

22. However as admitted by the applicants/defendants no.1, 3(a) & 3(b) also, the suit in so far as for partition of the residential house supra is maintainable. However the plaintiff had valued her 1/7th share in all the properties together at Rs.31,50,000/- and it is not clear from the plaint as to what is the value of the residential house.

23. The same becomes relevant to determine whether this would be the Court of minimum pecuniary jurisdiction for entertaining the suit in so far as for the relief of partition of the residential house only.

24. In these circumstances instead of rejecting the plaint in toto, an opportunity is given to the plaintiff to if so desires file an amended plaint confining the relief of partition therein to the residential house only.

25. The application is disposed of CS(OS) 1411/2010, IA No.9133/2010 of the plaintiff under Order 39 Rules 1&2 and IA No.15376/2010 of the defendants no.1, 3(a) & 3(b) under Order 39 Rule 4 CPC.

26. A perusal of the order sheet shows that though the defendant no.2 and defendant no.4 were served but have failed to appear; they are proceeded against ex parte. The defendants no.5&6 have not been served till now.

27. The plaintiff to file amended plaint as aforesaid confining the relief for partition therein to the residential house only within two weeks with advance copy to the counsel for the defendants no.1, 3(a) & 3(b).

28. Issue summons of the suit with the amended plaint to be filed by the plaintiff to the defendants no.5&6 by all modes including dasti, returnable before the Joint Registrar on 9th December, 2013. RAJIV SAHAI ENDLAW, J SEPTEMBER 18 2013 pp..

