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Subhadara vs.vijender Singh & Ors

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Court : Delhi

Decided On : Dec-16-2016

Appellant : Subhadara

Respondent : Vijender Singh & Ors

Judgement :

$~1 to 3 * IN THE HIGH COURT OF DELHI AT NEW DELHI + REVIEW PET. 380/2016 in RSA2592015 Date of Decision:

16. 12.2016 SUBHADARA Through: Mr.Vipin K. Singh, Advocate .....

... Petitioner
versus VIJENDER SINGH & ORS Through: None. .....

... RESPONDENTS
+ REVIEW PET. 390/2016 in RSA2552015 SUBHADARA Through: Mr.Vipin K. Singh, Advocate .....

... Petitioner
versus SURENDER SINGH & ORS. Through: None. .....

... RESPONDENTS
+ REVIEW PET.389/2016 in RSA2562015 SUBHADARA Through: Mr.Vipin K. Singh, Advocate .....

... Petitioner

versus RAVINDER SINGH & ORS. Through: None. .....

... RESPONDENTS
CORAM: HON'BLE MR. JUSTICE ASHUTOSH KUMAR ASHUTOSH KUMAR, J.

(ORAL) Rev.Pet. Nos.380/2016, 390/2016 & 389/2016 Page 1 of 11 CM Appln.30880/2016 in Rev.Pet.380/2016; CM Appln.31675/2016 in Rev.Pet.390/2016; & CM Appln. 31672/2016 in Rev.Pet.389/2016 1.

2. Exemptions allowed, subject to all just exceptions. The applications stand disposed of. CM Appln.30882/2016 in Rev.Pet.380/2016; CM Appln.31677/2016 in Rev.Pet.390/2016; & CM Appln. 31674/2016 in Rev.Pet.389/2016 1. The present applications are for condonation of delay in filing the review petitions.

2. For the reasons stated in the applications, the delay in filing the review petitions is condoned.

3. The applications stand disposed of. CM Appln.30881/2016 in Rev.Pet.380/2016 CM Appln.31676/2016 in Rev.Pet.390/2016; & CM Appln. 31673/2016 in Rev.Pet.389/2016 1. The present application are for condonation of delay in re-filing the review petitions.

2. For the reasons stated in the applications, the delay in re-filing the review petitions is condoned.

3. The applications stand disposed of. Review Petition 380/2016, 390/2016 & 389/2016 1. Heard Mr Vipin Kumar Singh, the learned counsel for the revisionist.

2. The revisionist/petitioner seeks review of the composite judgment dated 23.03.2016 passed in RSA Nos.255/2015, 256/2015 Rev.Pet. Nos.380/2016, 390/2016 & 389/2016 Page 2 of 11 and 259/2015 whereby the judgment and decree dated 14.08.2014 passed by the Trial Court and the judgment and order dated 04.04.2015 passed by the First Appellate Court, dismissing the suit of the revisionist/petitioner under Order VII Rule 11 of the CPC, has been upheld and affirmed.

3. The petitioner is the daughter of one late Tek Chand Mann who died intestate on 13.10.2002. The consistent case of the revisionist/petitioner has been that behind her back and without informing her, the property which was left behind by her late father was wrongly appropriated by respondent nos.1, 2 & 3 who are her real brothers. It was only in the year 2009, while applying for a loan that the revisionist/petitioner could learn about the property in question having been mutated on 26.05.2004 after the agricultural land was transferred by sale deed in favour of the respondent nos.1, 2 & 3 in the year 2000. The subject land was transferred to the respondent nos.1, 2 & 3 in accordance with Section 50 of the Delhi Land Reforms Act which provides for the general order of succession in case of the death of a male Bhumidar or Asami.

4. The present review petition has been premised on the ground that the lands falling in extended Abadi or Lal Dora would not be governed by Section 185 of the Delhi Land Reforms Act, 1954 and therefore the suit could not have been dismissed under Order VII Rule 11 as well as that the issue of limitation, being a mixed question of law and fact, should have been addressed by the Second Appellate Court. Rev.Pet. Nos.380/2016, 390/2016 & 389/2016 Page 3 of 11 5. In support of this contention, Mr Singh, the learned counsel for the revisionist/petitioner, has drawn the attention of this Court to two judgments wherein, as argued by Mr Singh, it has been held that the lands falling in extended Abadi or a non-agricultural land would not be governed by the provisions of Section 185 of the Delhi Land Reforms Act.

6. The relevant portions of the judgment referred to by the learned counsel for the petitioner from the RFA (OS) No.59/2009 are as hereunder: 10. Learned counsel for the appellant does not dispute the proposition that pertaining to agricultural lands governed by the Delhi Land Reforms Act, 1954, a suit for partition would lie before the Revenue Assistant and no a Civil Court.

11. The learned Single Judge has held that lands which were not agricultural in nature and buildings on said lands would be liable to be partitioned at a Civil Court, but has restricted the same to only one property i.e. property listed at Item No.6 as per Annexure-A.

12. Suffice would it be to state that there is no clarity with respect to properties listed at serials No.5, 7, 8 and 9, on the subject whether said plots were within the abadi or the extended abadi. We clarify, as and when consolidation is effected in a village, some part of existing agricultural lands are brought within the abadi and are allotted for non-agricultural operations. These lands would Rev.Pet. Nos.380/2016, 390/2016 & 389/2016 Page 4 of 11 prima facie be outside the purview of a suit for partition before the Revenue Assistant.

13. Thus, holding that the appellant would be permitted to amend the plaint by highlighting the nature of the land as per serials No.5, 7, 8 and 9 of Annexure-A and if it is pleaded that said land is non-agricultural land, suit for said lands would be maintainable, and in respect of land described in Annexure-B noting that with respect to lands at serials No.4, 5, 7 and 8 wherein it is stated that said lands are within the Lad Dora, declaration sought for said lands would also be maintainable for adjudication before the learned Single Judge, we dispose of the appeal setting aside the impugned decision as aforesaid, but clarify that with respect to other lands which admittedly are agricultural lands, necessary relief has to be sought before the Court of Revenue Assistant. 7. The other judgment referred to is RFA No.459/2005. The relevant paragraphs read as hereunder:

3. A reference to the impugned judgment shows that the Trial Court has referred to the definition of land as contained in Section 3(13) of the Delhi Land Reforms Act, 1954 and has held that all types of lands, i.e. whether they are residential/abadi lands or agricultural lands, are subject matter of the Delhi Land Reforms Act, 1954, and therefore the suit in Civil Court is barred under Section 185 of the Delhi Land Reforms Act, 1954. The relevant observations of the Trial Court in this regard read as under: Rev.Pet. Nos.380/2016, 390/2016 & 389/2016 Page 5 of 11 8. Section 3(13) of the Delhi Land Reforms Act provides as under: Section 3(13) Definition: In this Act, unless the context otherwise requires: (13) Land Except in Section 23 and 24, means land held or occupied for purposes connected with agriculture, horticulture, or animal husbandry including pisciculture and poultry farming and includes: a) Buildings appurtenant thereto. b) village abadis, c) Gravelands, d) lands for village pasture or land covered by water and used for growing sigharas and other produce or land in the bed of a river and used for

casual or occasional cultivation. But does not include---- Land occupied by building in belts of areas adjacent to Delhi town and New Delhi town, which the Chief Commissioner may by a notification in the official Gazette declare as an acquisition thereto.

10. It was held in the case law reported as 39 (1989) DLT58(in the matter of Kasturi (Dead) by LRs. Vs. Gaon Sabha) that in respect of the land which is defined u/s 3(13) Delhi Land Reforms Act, the civil court has no jurisdiction. Similarly, in the case law reported as 1983 Delhi 216 the same ratio was applied and it was held that where ever the jurisdiction of the civil court is barred specifically u/s 185 of the Delhi Land Reforms Act, the civil court has no jurisdiction.

11. Further, in the case law reported as 42 (1990) DLT44it was held that the land occupied by buildings also falls within the definition of Abadi land. The land which falls within the definition of Section 3(13) of Delhi Land Reforms Rev.Pet. Nos.380/2016, 390/2016 & 389/2016 Page 6 of 11 Act, is a land of village Abadi and that it excludes only that land which is occupied by buildings in belts of areas adjacent to Delhi town and New Delhi town, which the Chief Commissioner, may by notification in the official Gazette declare as acquisition thereto, meaning thereby that there should be a notification by the Chief Commissioner in respect of buildings or in respect of the land occupied by buildings adjacent to Delhi town and New Delhi town of the village abadi and only then they could be taken out from the ambit of the provisions of Delhi Land Reforms Act. the jurisdiction of 12. It is, therefore, clear that once the and sought to be partitioned in the suit falls within the ambit of section 3(13) of the Delhi Land Reforms Act, the jurisdiction of the civil court is clearly barred u/s 185 of Delhi Land Reforms Act. And when is specifically barred, the preliminary issue stated herein above is required to be answered against the plaintiff and in favour of the defendants. The preliminary issue (i.e., issue no.1) is, accordingly, answered against the plaintiff and in favour of the defendants. the civil court The Trial Court, in my opinion, has clearly 4. misdirected itself inasmuch as though all lands defined under Section 3(13) are the subject matter of the Delhi Land Reforms Act, 1954, however, a suit for partition, only of the nature comprised in Section 55 of the said Act, has to be filed before the

Revenue Assistant. As per Schedule 1 read with Section 185, of the Delhi Land Reforms Act, 1954, it is clear that the suit for partition which is subject matter of the Schedule 1 at serial no.11 is a suit for partition of a holding of a Bhumidar. The expression holding is Rev.Pet. Nos.380/2016, 390/2016 & 389/2016 Page 7 of 11 defined in Section 3(11a) of the Act to mean Sir or Khudkasht lands only. Khudkasht land is defined under Section 3(12A) to mean self-cultivated land by a proprietor either by himself or by his servants or by hired labour, i.e. agricultural lands which have not been let out to a tenant. Sir lands are also basically self owned and self-cultivated lands. The expression Sir is not defined in the Delhi Land Reforms Act, 1954, however, since the Delhi Land Reforms Act actually is an amalgam of different provisions/aspects of Land Reforms Acts which were prevalent in Delhi in 1954 when the Delhi Land Reforms Act, 1954 was passed, therefore, the definition of Sir lands will have to be seen from the Uttar Pradesh Land Revenue Act, 1901. As per Section 3(12) & (13) of the Uttar Pradesh Land Revenue Act, 1901, Sir land is defined as basically self owned and self-cultivated land. Therefore, Sir or Khudkasht lands are actually cultivable lands and therefore basically agricultural lands where cultivation takes place. Therefore, lands in village abadi, though would be the subject matter of Section 3(13) of the Act, however, the same would not fall within the definition of holding as contained in Section 3(11a) of the Delhi Land Reforms Act, 1954. Once, the land is not part of a holding of a Bhumidar, the same cannot be the subject matter of a partition suit under Section 55, and therefore, would not fall under serial No.11 of Schedule 1 of the Act, and consequently, there would be no bar of a Civil Court to try and decide such suits for partition allegedly because of the bar in Section 185 of the Act. Rev.Pet. Nos.380/2016, 390/2016 & 389/2016 Page 8 of 11 5. Reference to the suit plaint shows that the lands which were the subject matter of the suit for partition and permanent injunction were as under:-

"5. That the plaintiff and defendant are co- parceners of ancestral land bearing property/plot No(s):-

"A. I) 80 measuring 3 Biswas =150 sq.yds. II) 81 measuring 8 Biswas = 400 sq.yds - III) 82 measuring 2 Bigha 02 Biswas. IV) 62 measuring approximately 60 sq.yds. share out of it. All situated in Lal Dora of revenue estate of Village Mungeshpur

Delhi-39. I) B. II) A plot measuring 100 sq.yds. allotted by Panchayat (Gram Sabha) to the defendant no.1. land out of Khewat Agricultural No.77, Khara No.51/18/1, 23, 6
total measuring 14 bighas 17 Biswas, share in this land situtated in the revenue Village of Mungeshpur, Delhi-39. estate 6. A reference to para 5 of the plaint shows that except the land which is stated in para 5(B)(II), all other lands are non-agricultural/non-cultivable lands, i.e. they are abadi lands falling in Lal Dora. Therefore, so far as the suit for partition is concerned, the same can continue except for the land which is the subject matter of para 5(B)(II) of the plaint, and only which latter land is agricultural/cultivable land which will fall in the definition of a holding under Section 3(11a) of the Act. Rev.Pet. Nos.380/2016, 390/2016 & 389/2016 Page 9 of 11 8. The judgments cited by the revisionist/petitioner is of no avail for the reason that the suits filed by the revisionist/petitioner was for a declaration of the sale deed in favour of respondent nos.1, 2 & 3 as null and void and having no effect upon the rights of the plaintiff/petitioner as well as for restraining the defendants and their agents from disposing of or selling or creating a third party interest in the said property. There is no averment in the plaint of the revisionist/petitioner that the land falling in the extended Abadi area is a non-agricultural land. In that view of the matter, the revisionist/petitioner cannot claim that the two plots of land falling in the Lal Dora area namely Khasra no.239(1-3), 267(0-19) in village Iradat Nagar @ Naya Bas, Delhi, do not fall in the category of holding as defined under Section 3(13) of the Delhi Land Reforms Act, 1954.

9. This Court while disposing of the second appeal filed by the revisionist examined the provisions of Sections 185 & 186 along with Section 8 of the Delhi Land Reforms Act and came to the conclusion that the jurisdiction of the civil court is clearly barred and the reliefs claimed by the revisionist/petitioner could be granted only by the Revenue Court.

10. Needless to state that the revisionist/petitioner has not claimed any title over the property but has only sought declaration of the sale deed in favour of the respondent nos.1, 2 & 3 being null and void.

11. The judgments cited by the revisionist/petitioner are with respect to the non-agricultural land falling in extended Abadi/Lal Dora area which is not the assertion of the revisionist/petitioner. The plaint Rev.Pet. Nos.380/2016, 390/2016 & 389/2016 Page 10 of 11 can be rejected under Order VII Rule 11 of the CPC where from the statement in the plaint, it would appear that the suit is barred by any law.

12. On this score alone, the plaint of the revisionist/petitioner is liable to be dismissed.

13. True it is that the question of limitation involves a mixed question of law and fact but in this case, the issue was not required to be adjudged as the jurisdiction of civil court itself is barred with respect to the lands over which provisions of Delhi Land Reforms Act, 1954 are applicable.

14. The grounds raised in the present revision petition do not fall within the four corners of the scope of revision and appears to be merely in the nature of grounds of appeal against the judgment passed by the Second Appellate Court.

15. No good ground, therefore, has been raised for review of the judgment impugned.

16. The revision petitions, being without substance, are dismissed. ASHUTOSH KUMAR, J DECEMBER16 2016 ab Rev.Pet. Nos.380/2016, 390/2016 & 389/2016 Page 11 of 11

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