

Ashok Kumar Tyagi & Ors vs.sanjay Tyagi & Ors

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Court : Delhi

Decided On : Sep-07-2018

Appellant : Ashok Kumar Tyagi & Ors

Respondent : Sanjay Tyagi & Ors

Advocate for Def. : Mr. D.V. Khatri, Mr. Sourav Roy

Advocate for Pet/Ap. : Ms. Smita Maan

Judgement :

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

7. h September, 2018 RSA2902017 & CM No.45884/2017 (for stay) ASHOK KUMAR TYAGI & ORS Through: Ms. Smita Maan, Adv. Appellants SANJAY TYAGI & ORS Versus

... RESPONDENTS

Through: Mr. D.V. Khatri, Adv. for R-1 to 3. Mr. Sourav Roy, Adv. for R-4.
CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW1 This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 18th July, 2017 in RCA/DJ/60874/2016 of the Court of Additional District Judge (ADJ)-05, West]. of dismissal of First Appeal under Section 96 of the CPC preferred by the four appellants / plaintiffs and respondent no.4/plaintiff against the judgment and decree [dated 14th January, 2015 in Suit No.287/2012 of the Court of Civil Judge-III, West]. of rejection under

Order VII Rule 11(a) CPC of the plaint in the suit filed by the four appellants / plaintiffs and respondent no.4 / plaintiff against the respondents no.1 to 3 / defendants.

2. This appeal came up first before this Court on 18th December, 2017 when the counsel for the respondents no.1 to 3 / defendants appeared on advance notice and accepted notice and the suit court record was requisitioned. The respondent no.4 / plaintiff appeared in person before this Court on 20th March, 2018 and stated that he was unable to afford an advocate. Vide order dated 20th March, 2018, Mr. Sourav Roy, Advocate RSA No.290/2017 Page 1 of 15 was requested to assist the respondent no.4 / plaintiff as an advocate and the appeal posted for today.

3. Today, Mr. Sourav Roy, Advocate for the respondent no.4 / plaintiff states that the respondent no.4 / plaintiff Pardeep Tyagi has instructed him to state that the respondent no.4 / plaintiff though had instituted the suit from which this appeal arises but had not wanted to prefer the first appeal and did not sign the memorandum of first appeal or the vakalatnama in favour of the advocate.

4. Needless to state that the counsel for the appellants / plaintiffs controverts.

5. However, need to adjudicate the aforesaid controversy is not felt inasmuch as irrespective of whether the respondent no.4 / plaintiff had preferred the first appeal or not, as per the statement made today of respondent no.4 / plaintiff, he is not wanting to challenge the judgment and decree of rejection of plaint. Thus, the respondent no.4 / plaintiff, even in the event of the appeal succeeding, would not be entitled to participate further in the suit as a plaintiff and his name shall stand struck off from the array of plaintiffs in the suit.

6. The counsel for the appellants / plaintiffs and the counsel for the respondents no.1 to 3 / defendants have been heard and the suit court record perused.

7. The appellants / plaintiffs and the respondent no.4 / plaintiff instituted the suit from which this appeal arises, pleading that (i) the grandfather of the plaintiffs and the defendants viz. Sahi Ram was an agriculturist and owned and possessed

agricultural land in village Hastal and Rajapur Khurd, New Delhi, besides a house in the village; (ii) the entire agricultural holding of RSA No.290/2017 Page 2 of 15 village Rajapur Khurd was owned and possessed by villagers in Hastal, as in village Rajapur Khurd there was no independent abadi in existence; (iii) before the commencement of the Delhi Land Reforms Act, 1954 (Reforms Act), Sahi Ram aforesaid was the khud khist in respect of the entire agricultural land owned and possessed by him; (iv) consolidation proceedings were commenced in the years 1952 and 53 in respect of both the villages under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 and during the repartition proceedings along with other land, the land comprised in Khasra Nos.23/2, 8, 15/17, 2

and 4 situated in village Rajapur Khurd was allotted in the name of Sahi Ram; (v) at the time of commencement of the Reforms Act, the said land was shown in the revenue record as Banjar Kadim land and on the basis of the entries in the revenue record, the said land was vested in Gaon Sabha of village Rajapur Khurd under Section 7 of the Reforms Act; however, Gaon Sabha never came into possession of the said land which remained in cultivatory possession of Sahi Ram and though the land in the revenue records was in the name of Gaon Sabha as bhumidhar but in the remarks column of the same revenue records, the cultivatory possession was shown of Sahi Ram; (vi) in or about 1973, Gaon Sabha of village Rajapur Khurd instituted proceedings under Section 86A of the Reforms Act against Sahi Ram, for ejectment of Sahi Ram from the said land; (vii) the Revenue Assistant, vide order dated 27th April, 1973 rejected the said petition of the Gaon Sabha inter alia on the ground that Sahi Ram had been in continuous possession of the said land and the land vested in Sahi Ram; (viii) Gaon Sabha never filed any appeal or revision against the order dated 27th April, 1973; (ix) Sahi Ram remained in possession of the land and died on 15th RSA No.290/2017 Page 3 of 15 November, 1979 leaving the parties to the suit as his male heirs; (x) after the death of Sahi Ram, the parties to the suit came into joint cultivatory possession of the land and were continuing to enjoy joint cultivatory possession of the land; (xi) that the estate of Sahi Ram had not been partitioned till the institution of the suit; (xii) all the land of Sahi Ram in village Hastal, upon the demise of Sahi Ram, was mutated in the names of parties to the suit or their predecessor and they had been

jointly enjoying the said land and selling the same; (xiii) the plaintiffs, in August, 2012 made a request to the defendants to partition the subject land at village Rajapur Khurd but the defendants avoided to do so; (xiv) however in August, 2012, the defendants for the first time in response to the said demand of the plaintiffs, contended that the plaintiffs had no right to the subject land and the defendant no.1 Sanjay Tyagi had already been declared bhumidhar with respect to the subject land; however no documents were shown; (xv) the plaintiffs even then were in joint possession of the subject land along with the defendants; (xvi) the plaintiffs, on making enquiry learnt that the defendant no.1 in the year 1994 had filed a petition under Section 85 of the Reforms Act and the Revenue Assistant / Sub-Divisional Magistrate (SDM) had vide order dated 12th October, 2000 declared the defendant no.1 as bhumidhar with respect to the subject land ad-measuring 5 bighas 15 biswas in village Rajapur Khurd; (xvii) the defendant no.1 in his petition under Section 85 of the Reforms Act relied on the order dated 27th April, 1973 and possession of Sahi Ram of the said land; however the defendant no.1 in the petition under Section 85 misrepresented being in exclusive possession of the land; (xviii) the defendant no.1, at the time of demise of Sahi Ram was 13 years old and a minor and could not have been in cultivatory possession RSA No.290/2017 Page 4 of 15 of the land; (xix) the appellants / plaintiffs, on making enquiries also learnt that in the petition under Section 85 of the Reforms Act so instituted by the defendant no.1, the revenue officials made a statement of the defendant no.1 only being in possession of the land and which statement was false; (xx) the defendant no.1 in the petition under Section 85 of the Reforms Act did not place any document to show his exclusive possession of the suit land; (xxi) after the demise of Sahi Ram, all his heirs i.e. the parties to the suit were entitled to the subject land; (xxii) the Revenue Assistant however in collusion and connivance with the defendant no.1 allowed the defendant no.1 to be declared as bhumidhar of the subject land; (xxiii) though the Gaon Sabha preferred an appeal before the Additional District Magistrate (ADM) against the order dated 12th October, 2000 allowing the petition of defendant no.1 under Section 85 of the Reforms Act and vide order dated 12th August, 2003 wherein the order dated 12th October, 2000 declaring the defendant no.1 to be the bhumidhar with respect to the said land was set aside inter alia reasoning that the name of the defendant

no.1 did not find mention in the revenue records and the statement of revenue officials was contrary to record; and, (xxiv) the defendant no.1 filed a second appeal against the order dated 12th August, 2003 before the Financial Commissioner and the Financial Commissioner vide order dated 3rd September, 2010, set aside the order dated 12th August, 2003 of the ADM in first appeal and restored the order dated 12th October, 2000 of the Revenue Assistant; (xxv) the order dated 12th October, 2000 of the Revenue Assistant had been obtained by defendant no.1 in clandestine manner by suppressing material fact and in collusion with revenue officials. RSA No.290/2017 Page 5 of 15 Thus, the appellants / plaintiffs in the suit, sought the reliefs of (a) declaration that the order dated 12th October, 2000 of Revenue Assistant / SDM in the petition filed by defendant no.1 under Section 85 of the Act and the judgment / order dated 3rd September, 2010 passed by learned Financial Commissioner were null and void and not binding upon the plaintiffs; (b) declaration that the parties to the suit, upon demise of Sahi Ram, had succeeded to the suit land; and, (c) permanent injunction restraining the defendants from selling, alienating or parting with possession of the suit land.

8. The respondents / defendants no.1 and 2 Sanjay Tyagi and Naresh Tyagi only contested the suit by filing a written statement. However, need to advert to the contents of the written statement is not felt as a preliminary issue as to the maintainability of the suit was framed in the suit and the Suit Court, vide order dated 14th January, 2000 supra, has rejected the plaint under Order VII Rule 11(a) of the CPC as not disclosing cause of action, reasoning that (a) under Order VI Rule 4 CPC, the plaintiffs were required to spell all the necessary particulars of fraud alleged; (b) that in the plaint, the averments of fraud and the facts of fraud had not been brought out clearly as required by Order VI Rule 4 of the CPC; (c) a perusal of the order dated 12th October, 2000 of Revenue Assistant / SDM showed that the defendant no.1 was found to be in cultivatory possession of the property after perusing all the record; (d) the appellants / plaintiffs had failed to disclose any fraud which vitiated the proceedings and orders of Revenue Assistant / SDM; (e) the fraud alleged by the appellants / plaintiffs did not qualify as fraud which would vitiate judicial proceedings; and, (f) the remaining reliefs sought by RSA No.290/2017 Page 6 of 15 the appellants / plaintiffs regarding declaration of

rights / interests in the subject land were beyond the jurisdiction of the Civil Court.

9. The first appeal preferred by the appellants / plaintiffs and purportedly by the respondent no.4 / plaintiff has been dismissed reasoning that the allegations of fraud were general and not specific as required by law and that though fraud is a mixed question of fact and law but the trial has to be based on pleadings and in the absence of specific pleadings, the appellants / plaintiffs and respondent no.4 / plaintiff could not lead any evidence beyond the pleadings.

10. Though the reasoning which prevailed with the Suit Court and the First Appellate Court for dismissal of the suit as aforesaid was of the plaint lacking in the pleadings qua fraud, on which first relief claimed in the plaint was premised, but I have de hors the same enquired from the counsel for the appellants / plaintiffs as to how a suit for declaration of an order of the revenue authorities, popularly known as the Revenue Courts, in exercise of powers under the Reforms Act, can be declared as null and void, even on the ground of fraud, by the Civil Court. It has further been enquired, whether not the Reforms Act is a complete code in itself and the remedies thereunder only have to be invoked by the appellants / plaintiffs for the rights if any in the said land. It has similarly been enquired, whether such suits for declaration of orders of other authorities under various statutes viz. Income Tax, 1961, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, Foreign Exchange Management Act, 1999, The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 can be instituted. In my prima facie view not. RSA No.290/2017 Page 7 of 15 It has further been enquired from the counsel for the appellants / plaintiffs, whether not alternative efficacious remedy within the Reforms Act are available to the appellants / plaintiffs for the rights as asserted in the suit.

11. The counsel for the appellants / plaintiffs has contended that the revenue authorities and / or the Revenue Courts are not entitled to grant the relief of declaration as sought in the present case with respect to the order dated 12th October, 2000 of Revenue Assistant / SDM. Reliance in this regard is placed on

Section 185 of the Reforms Act with Schedule thereto and on Ashok Kumar Vs. Munni Devi 188 (2012) DLT589 It is further stated that the appellants / plaintiffs even if were to lay any claim before the Revenue Courts under the provisions of the Reforms Act, will face the obstacle of the order dated 12th October, 2000 of Revenue Assistant / SDM and thus the need to have the said order declared null and void and which declaration is beyond the jurisdiction of the Revenue Courts and for which inherent jurisdiction of the Civil Court is not barred by Section 185 of the Reforms Act.

12. I have enquired from the counsel for the appellants / plaintiffs, whether the order dated 12th October, 2000 of Revenue Assistant / SDM qua which declaration is sought, would bind the appellants / plaintiffs who are admittedly not parties to the proceedings culminating in the said order. It has further been enquired, why it is not open to the appellants / plaintiffs to either apply under Section 85 of the Reforms Act for declaration of themselves also as bhumidhar, as the declaration which the respondent / defendant no.1 has obtained, or why the appellants / plaintiffs cannot sue before the Revenue Courts for partition of the subject land and in which proceedings the said pleas also would be decided or as to why the appellants RSA No.290/2017 Page 8 of 15 / plaintiffs cannot seek rectification of the revenue records recording respondent / defendant no.1 as bhumidhar of the subject land, by invoking the provisions of the Delhi Land Revenue Act, 1954.

13. The counsel for the appellants / plaintiffs again, though does not dispute that the aforesaid avenues are open, but contends that the appellants / plaintiffs would face the obstacle of the Revenue Courts not entertaining such proceedings owing to the earlier order dated 12th October, 2000 of Revenue Assistant / SDM. However, the counsel for the appellants / plaintiffs does not respond as to how the said order would be an obstacle when the appellants / plaintiffs were not parties thereto.

14. The counsel for the appellants / plaintiffs then states, that for the appellants / plaintiffs to institute proceedings under Section 85 of the Reforms Act, they have to show themselves to be in cultivatory possession of the land. On enquiry,

whether not the appellants / plaintiffs in the plaint in the suit from which this appeal arises claimed to be in joint cultivatory possession along with the respondents / defendants no.1 to 3 and respondent no.4 / plaintiff, though the same is not disputed but under instructions from Mr. Sudhir Tyagi appellant no.4 / plaintiff present in Court it is stated that the appellants / plaintiffs are not in possession of the land. However, on further enquiry that if the appellants / plaintiffs were in joint cultivatory possession till the institution of the suit in November, 2012, when were the appellants / plaintiffs dispossessed and whether at any stage a plea in this regard was taken, no answer is forthcoming.

15. Thus, what emerges is that the appellants / plaintiffs, as of today are not in possession of the land and since they have not pleaded, when after the institution of the suit, they were dispossessed; doubt is also cast on the plea RSA No.290/2017 Page 9 of 15 in the plaint of the appellants / plaintiffs, on the date of institution of the suit, being in possession.

16. Section 85 of the Reforms Act is as under: 85. Failure to file suit under Section 84 or to execute decree obtained thereunder. - If a suit is not brought under section 84 or a decree obtained in any such suit is not executed within the period of limitation provided for filing of the suit or execution of the decree, the person taking or retaining possession shall- (i) where the land forms part of the holding of a Bhumidhar, become a Bhumidhar thereof; (ii) where the land forms part of the holding of an Asami on behalf of the Gaon Sabha, become an Asami thereof; (iii) in any case to which the provisions of clause (b) of [sub- section (1) of Section 84]. apply, become a Bhumidhar or Asami as if he had been admitted to the possession of the land by the Gaon Sabha. Provided that if in the revenue records of the fasli year ending on the 30th June, 1954, the land referred to in clause (iii) was not included in the holding of the person taking or retaining possession or his predecessor-in interest, or was not recorded as being in the cultivation of such person or his predecessor-in-interest, then, notwithstanding the expiry of the aforesaid period of limitation for such suit or decree, the suit may be filed or the decree obtained in such suit may be executed within a period of three years from the date of passing of the Delhi Land Reforms (Amendment) Act, 1965. Provided further that the benefit of the extension of the period of limitation under the

preceding proviso shall not be availed of in any case where a person who has become a Bhumidhar in respect of any land under clause (iii) has transferred such land to another person for valuable consideration before the 10th May, 1965. 17. As would be evident from a reading of Section 85 of the Reforms Act, for the same to be invoked, being in possession of the land is necessary. It also appears that the respondent / defendant no.1, who had vide order dated RSA No.290/2017 Page 10 of 15 12th October, 2000 of Revenue Assistant / SDM been declared as bhumidhar, if not from the said date, at least from the date of institution of the suit i.e. for the last more than six years, is in cultivatory possession of the land.

18. I have wondered, whether a Civil Court, even if were to have jurisdiction to grant declarations with respect to the orders of the Revenue Court, can declare an order at the instance of the appellants / plaintiffs to be null and void, when the appellants / plaintiffs are not in possession of the land. In my opinion, No.19. Even otherwise, it has been held in Union of India Vs. A.V. Narasimhalu (1969) 2 SCC658 Additional Director General, Directorate General of Central Excise Vs. Kiran Machines (2016) 16 SCC580 Commissioner, Bangalore Development Authority Vs. Brijesh Reddy (2013) 3 SCC66 Church of North India Vs. Lavajibhai Ratanjibhai (2005) 10 SCC760 State of Punjab Vs. Amarjit Singh (2011) 14 SCC713 and Girnar Traders (3) Vs. State of Maharashtra (2011) 3 SCC1 that once a statute provides a complete code for adjudication of issues arising thereunder, the jurisdiction of the Civil Court to sit over orders of the authorities constituted under the statute in appeal or to set aside the same on whatsoever ground is impliedly barred. It has been held that, (i) it is clear from a reading of Section 9 of the CPC that Courts have complete jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred; (ii) the jurisdiction of the Civil Court with respect to a particular matter can be said to be excluded, if there is an express provision or by implication it can be inferred that the jurisdiction is taken away; (iii) if the procedure contemplated by a statute is a special procedure, envisaged to effectuate public purpose and the statute RSA No.290/2017 Page 11 of 15 confers finality to the decision taken by following the said procedure and the scheme of the Act is complete in itself, the jurisdiction of the Civil Court to take cognizance of cases arising under the statute, by necessary implication stands barred; (iv) the Civil Court thereby is devoid of jurisdiction to

give declaration on the invalidity of the procedure contemplated under that statute; (v) the only right an aggrieved person has is to approach the Constitutional Courts under their plenary power under Articles 226 and 136 respectively of the Constitution of India with self-imposed restrictions on their exercise of extraordinary power. It was yet further held that even where there is no express exclusion of the jurisdiction of the Civil Court, if the examination of the remedies and the scheme of a particular statute contains an intendment that the result of enquiry provided thereunder is decisive and if the statute creates a special right and provides for determination of the right and liability and further lays down that all questions about the said rights and liberties shall be determined by the Tribunals constituted under the said statute, the jurisdiction of the Civil Court would be impliedly barred. I may in this regard state that Supreme Court in Hatti Vs. Sunder Singh (1970) 2 SCC841 held that the Reforms Act is a complete code under which it is clear that anyone wanting a declaration of his right as Bhumidhar, or aggrieved by a declaration issued without notice to him, in favour of another, can approach the Revenue Assistant and this he is allowed to do without any period of limitation, because he may not be aware of the fact that a declaration has been issued in respect of his holding in favour of another.

20. Though Section 185(1) of the Reforms Act expressly bars the jurisdiction of the courts other than the courts mentioned in the Schedule to RSA No.290/2017 Page 12 of 15 the Reforms Act, to take cognizance of any proceedings mentioned in the Schedule and does not otherwise generally bar the jurisdiction of the Civil Court as some other statutes like Income Tax Act, 1961, Insolvency and Bankruptcy Code, 2015, Competition Act, 2001, The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and National Green Tribunal Act, 2010 do, but it is still felt that once the jurisdiction of the Civil Court to declare a person as bhumidhar under Section 185 of the Reforms Act is barred, the jurisdiction of the Civil Court to set aside the said declaration granted by the Revenue Courts would also be barred. Else, it will lead to chaos, with the disputes first festering in the Revenue Courts and thereafter having a second round in the Civil Court and would set at naught the purpose for constituting the Revenue Courts which can more conveniently adjudicate the disputes as arising with respect to agricultural land matters.

21. I may notice that though it was the contention of the counsel for the respondents no.1 to 3 / defendants on the last date of hearing that the writ petition filed against the order of the Financial Commissioner had also been dismissed but the counsel for the appellants / plaintiffs has handed over a copy of the order dated 24th February, 2012 of this Court in W.P.(C) No.3936/2011 and has contended that the said writ petition, though with respect to the same land but was qua the dispute with Sh. Nand Kishore Tyagi. It is further stated that the said writ petition was dismissed on the ground of Nand Kishore Tyagi having no locus standi.

22. The counsel for the respondents no.1 to 3 / defendants also states that the jurisdiction of the Civil Court to grant a declaration sought is barred and RSA No.290/2017 Page 13 of 15 the remedy if any of the appellants / plaintiffs is before the Revenue Courts only.

23. Though in my opinion the second declaration sought by the appellants / plaintiffs in the suit was also barred inasmuch as the exclusive jurisdiction to grant declaration of bhumidari rights is with the Revenue Courts but the counsel for the appellants / plaintiffs states that the second declaration was dependent upon the first declaration.

24. I may also notice that though it is the contention of the counsel for the respondents no.1 to 3 / defendants that the proceedings under Section 85 of the Reforms Act initiated by the respondent no.1 were on the basis of his own rights but a perusal of the petition and the order dated 12th October, 2000 of Revenue Assistant / SDM shows that the claim of the respondent / defendant no.1 was on the premise of having inherited the land from Sahi Ram, being an heir of Sahi Ram and proceedings under Section 86A having been initiated against Sahi Ram and order therein having attained finality and the respondent / defendant no.1, after the death of Sahi Ram, being in cultivatory possession of the land. Thus, it cannot be said that in the petition filed by the respondent / defendant no.1 under Section 85 of the Reforms Act or in the order passed thereon, there was no reference to Sahi Ram or to the order in the proceedings against Sahi Ram.

25. Once it is found that the suit for the reliefs claimed was not maintainable before the Civil Court, need to adjudicate whether the averments in the plaint therein disclose a cause of action or not is not felt.

26. Though the Suit Court as well as the Appellate Court have dismissed the suit holding the same to be not maintainable and / or the appellants / plaintiffs having not made the requisite pleas but the counsel for the RSA No.290/2017 Page 14 of 15 appellants / plaintiffs states that in the judgments of both the Courts there are same observations / sentences which may come in the way of the appellants / plaintiffs in the event of the appellants / plaintiffs approaching the Revenue Courts.

27. While dismissing this appeal for the reason aforesaid, it is made clear that it will be open to the appellants / plaintiffs to, for their rights if any, including as asserted in the suit from which this appeal arises, take appropriate remedies including under the Reforms Act and the Delhi Revenue Act and it is further clarified that the said proceedings shall be considered on their own merits and without any influence or prejudice from anything contained in the orders in the suit from which this appeal arises or in the first appeal preferred by the appellants / plaintiffs or in this order qua any rights of the parties.

28. This Court expresses its gratitude to Mr. Sourav Roy for pro bono assisting the respondent no.4 / plaintiff on the asking of the Court. No costs. Decree sheet be drawn. RAJIV SAHAI ENDLAW, J.

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