

Vijender Singh and ors Vs. Narinder Singh and ors

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Court : Delhi

Decided On : Nov-15-2011

Judge : Pradeep Nandrajog; S.P. Garg, Jj.

Acts : [Delhi Municipal Corporation Act 1957](#) - Section 507(a), 2(52); [Delhi Development Act 1957](#) - Section 11; [Delhi Land Reforms Act 1954](#) - Section 185

Appeal No. : FAO (OS) 451 of 2010

Appellant : Vijender Singh and ors

Respondent : Narinder Singh and ors

Judgement :

1. Late Sh.Ram Chander S/o Late Sh.Chippa was blessed with four sons named Dharamvir, Randhir, Narender and Yogender. He was blessed with two daughters, Shakuntla and Nirmla.
2. Dharamvir having died, Vijender claims to be his son and it is not in dispute that Raj Bala was his wife and thus they jointly claim a share in the properties which Dharamvir would have inherited on the death of Ram Chander if Ram Chander died intestate or alternatively if properties in the name of Late Sh.Ram Chander were Joint Hindu Family Properties.
3. The dispute raised in the suit is by Vijender, Raj Bala and Randhir; joining as co-plaintiffs. Yogender having died, his wife and children as also Narender Singh

and the two daughters of Ram Chander are the opposite parties.

4. At the outset we may state that whether Vijender is or is not the son of Dharamvir would make no difference for the reason if Vijender is held not to be the son of Dharamvir, Dharamvir's share would then be inherited by his wife Raj Bala.

5. CS(OS) No.1546/2009 filed by Vijender, Raj Bala and Randhir as co-plaintiffs seeks a declaration that the suit properties are ancestral and are liable to be partitioned as per the respective shares of the parties. A decree for permanent injunction against the defendants from dealing with the subject properties as also a claim for mesne profits has been laid.

6. The averments in the plaint are that the under- noted lands, mutated in the name of Late Sh.Ram Chander in the revenue records, are joint family properties:-

(i) 16 biswa land bearing plot No.399 situated in extended abadi/lal dora, village-Khera Khurd, Delhi in Khasra No.77/16 min (west).

(ii) 3 bigha land comprising in Khasra No.118/2 situated in village Naya Bans, Delhi in Khata/Khatoni No.145/142.

(iii) 8 bigha 17 biswa land comprised in Khasra No.48/25/2(1-0), 49/21(4-16) and 65/5(3-1) in village Khera Khurd, Delhi in Khata/Khatoni No.187/165 min.

(iv) 18 biswa of land in plot No.505 and land measuring 1 bigha 16 biswa in plot No.462/1 situated in Lal Dora/abadi area of village Khera Khurd, Delhi.

(v) Residential plot ad-measuring around 70 sq.yards in old Lal Dora, Village Khera Khurd, Delhi.

(vi) Residential land measuring 250 sq.yard approx., bearing house No.276, situated in old Lal Dora, Village Khera Khurd, Delhi.

(vii) Land bearing khasra No.36/15(4-12), 36/16(4- 11), 36/25(4-16), 36/26(0-5), 16/23(4-12), 24/2(3-0), 38/3(4- 12), 38/4(4-10) and 38/8(4-12) in village-Khera Khurd, Delhi. (Stated to be acquired and compensation received by Ram Chander).

7. It is further alleged that from the compensation which was received by Ram Chander following lands were purchased in the names of the defendants:- (i) Land measuring 4 bigha, 1 biswa i.e. equal to 1/9th share out of total land measuring 36 bigha 12 biswa comprised in khasra No.37/11(4-16), 20/1(2-00), 38/14 (4- FAO (OS) 451/2010 Page 3 of 10 16), 38/15 (4-16), 38/16 (4-16), 25 min (2-00), 51/4 (4-16), 51/15 (4-08), 51/16/1 (1-03), 139 (0-10), 136/1 min (0-10), 136/1 min (0-10), 160 (1-09), 21/13/2/3 min (0-04), 196/2 min (0-08) situated in revenue estate of village - Bajitpur, Delhi.

(ii) Plot No.154/718(2-02)/2100 sq.yard situated in extended abadi of village-Pooth Khurd.

(iii) Plot No.154/468(1-10)/1050 sq. yards situated in extended abadi of village Pooth Khurd.

(iv) Land measuring 4 bigha 16 biswa situated in village Barwala, Delhi. (Stated to have been acquired and compensation determined in the names of defendants No.2 to 5.

(v) Land measuring 2.5 acres in Pipli, Tehsil- Kharkkauda, District Sonipat, Haryana in Khasra No.67/16, 68/11, 20/1/1.

(vi) Land measuring 1 biswansi, out of Khasra No.57/11 situated in village-Saidpur, Tehsil-Kharkkauda, District Sonipat, Haryana.

(vii) Plot measuring 125 sq.yard, out of plot No.463, extended lal dora village-Kherakhurd, Delhi.

(viii) Land measuring 6.9160 Hec., comprising in Khasra Nos.1046, 1048A, 1141, 1142, 1143, 1144, 1145, 1149, 1209, 1213 and 1148 situated in the revenue estate of Village-Alipur Morna, Tehsil-Mawana, Janpad-Meerut, U.P.

8. The defence is predicated on the plea that lands mutated in the name of Ram Chander and such lands which were acquired and compensation paid to Ram Chander were his individual property and during his life time late Sh.Ram Chander executed a will dated 24.5.2002 based whereon, after following the procedures of

law, the tehsildar sanctioned mutation in the names of the beneficiaries as per the will and that pertaining to the money received towards compensation for the acquired lands, such lands and properties (in different villages) purchased by Ram Chander in his name or by the defendants from the money gifted to them by Ram Chander have to be treated as the personal properties of the defendants. The suit is also resisted on the preliminary objection that being lands comprised in the revenue estates of different villages, claim for partition has to be maintained before a Revenue Court and that the Civil Court would have no jurisdiction. It is highlighted that declaration qua agricultural lands and lands within revenue estates qua its ancestral character has been prayed for and this means that the plaintiff's claim proprietary/bhoomidari rights in the lands; a claim which can be sustained only before the Revenue Courts.

9. The jurisdictional plea has been sought to be negated by the plaintiffs by pleading that as per the Master Plan for Delhi-2021 and the Draft Zonal Development Plan for Narela Sub-City, the lands have to be treated as urbanized lands. Thus it was pleaded that the Revenue Courts would have no jurisdiction to entertain a claim qua the title to the lands which are in Delhi and thus the Civil Courts would have jurisdiction.

10. Learned counsel for the parties did not dispute that in view of Section 185 of the [Delhi Land Reforms Act 1954](#), as held by the Supreme Court in the decision reported as (1971) 2 SCR 163 Hathi vs. Sunder, with respect to a claim for title or partition of either agricultural land or land within the abadi or extended abadi in the revenue estate of a village in Delhi, Civil Courts would have no jurisdiction and if a decree is passed by a Civil Court, the same would be a nullity.

11. Thus, the issue debated before the learned Single Judge with respect to whether the plaintiffs would be entitled to an interim injunction, pending final disposal of the suit, restraining the defendants from transferring, alienating, encumbering or parting with possession of the suit lands, was whether the lands were urbanized.

12. Needless to state, the issue of urbanization, related to the jurisdiction of the Civil Court. If it could be prima facie shown that the lands were urbanized, the

Court would have returned a tentative view that it had the necessary jurisdiction and thereafter the learned Single Judge would have further considered the matter from the point of view of the requirements of Order 39 Rule 1 and 2 CPC.

13. Vide impugned order dated 13.05.2010, the learned Single Judge has held that the plaintiffs could not prima facie justify that the lands were urbanized and thus, forming a prima facie opinion that the suit would not be maintainable before the Civil Court, has declined the interim injunction which was prayed for.

14. The claim of the plaintiffs that the lands were urbanized was predicated on the Master Plan for Delhi - 2021 and the Draft Zonal Development Plan for Narela Sub- City. It was urged, with reference to the Master Plan for Delhi-2021, that the lands fall in the peripheral villages of the Master Plan and are hence urbanized.

15. The learned Single Judge has held that the Draft Zonal Development Plan for Narela Sub-City would be of no legal value till, in terms of Section 11 of the Delhi Development Act (inadvertently typed as DMC Act), the Central Government accorded concurrence thereto. The learned Single Judge has further held that in view of the provisions of Section 2(52) read with Section 507 of the [Delhi Municipal Corporation Act 1957](#), unless a notification was issued urbanizing, hitherto-fore rural areas, the rural areas could not be treated as urbanized. Noting that no such notification was issued, the learned Single Judge has held that the inevitable consequence was that prima facie it had to be held that the lands were comprised in a rural area.

16. We note Section 2(52) of the [Delhi Municipal Corporation Act 1957](#). It reads as under:-

"2. Definitions- In this act, unless the context otherwise requires,

(1)

(52) 'rural areas' means the areas of Delhi which immediately before the establishment of the Corporation are situated within the local limits of the District Board of Delhi established under the Punjab District Boards Act, 1883 (Punjab Act 20 of 1883), but shall not include such portion thereof as may, by virtue of a

notification under section 507, cease to be included in the rural areas as herein defined."

17. We note Section 507 of the [Delhi Municipal Corporation Act 1957](#). It reads as under:- "507. Special provisions as to rural areas.- Notwithstanding anything contained in the foregoing provisions of this Act,-

(a) the Corporation with the previous approval of the Government, may by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas;

(b)

(c)"

18. The plaintiffs themselves admitted that the subject lands were in rural areas when the DMC Act 1957 was promulgated and suffice would it be to state that Revenue Record is being maintained qua the said lands in relation to not only title but even possession. The plaintiffs have not shown or even relied upon any notification issued under Section 507(a) of the [Delhi Municipal Corporation Act 1957](#) declaring the villages in question to be urbanized. It may be true that the Draft Zonal Development Plan for Narela Sub-City proposes to urbanize the area, but we find that the Central Government has not accorded its approval thereto and as per the mandate of Section 11 of the [Delhi Development Act 1957](#), till a notification is issued notifying the said Draft Zonal Development Plan, the lands have to be treated as lands in a rural area.

19. Thus, the view taken by the learned Single Judge is correct.

20. We may note that the mutation got effected by the defendants in the revenue records on the basis of the will dated 24.05.2002, statedly executed by late Sh.Ram Chander, has yet not been set aside and proceedings are pending before the learned Financial Commissioner. We thus clarify that if the plaintiffs succeed in getting set aside the said mutation entry and are able to obtain a mutation in their names along with the defendants, the issue of declaration which plaintiffs seek

qua the title to the suit lands would become a non-issue and in that view of the matter the claim for declaration in the suit may not be required to be pressed. The plaintiffs would then be better advised to seek partition of the suit lands before the Revenue Authorities.

21. As held in the decision reported as 1990 Supp. (1) SCC 727 *Wander Ltd. & Anr. vs. Antox India Pvt. Ltd.* (Para 9), in an appeal before the Division Bench against the exercise of discretion by the learned Single Judge, will not entitle the Appellate Court to interfere with the exercise of discretion by the Court of First Instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court of First Instance has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle.

22. We dismiss the appeal but refrain from imposing any costs.

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