

* HIGH COURT OF DELHI : NEW DELHI

FAO No. 240/2006 & CM No. 12418/2006

% Judgment reserved on: 23rd November, 2009

Judgment delivered on: 12th January, 2010

Shri Ramesh Chander Aggarwal,
S/o Late R. R. Aggarwal,
R/o B-35, NDSE-I,
New Delhi.

.....Appellant.
Through: Mr. Sanjay Manchanda,
Adv.

Versus

Ram Pal,
S/o Late Sh. Tek Chand,
R/o Village Rajokri,
New Delhi.

....Respondent.

Through: Mr. Rajesh Yadav with Ms.
Ruchira V. Arora.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Present appeal has been filed against order dated 2nd August, 2006, passed by Additional District Judge, Delhi, vide which application under Order 39 Rules 1 and 2 of Code of Civil Procedure (for short as 'Code') filed on behalf of respondent has been allowed.

2. Respondent herein, filed a suit for permanent and mandatory injunction against present appellant as well as 21 other defendants. Present appellant is defendant No.20 in the suit. It is the case of the respondent that land comprised in various khasaras measuring 136 bighas and 5 biswas situated in the Revenue Estate of Village Rajokri, New Delhi, was previously owned and was in the Bhoomidari of the respondent and defendants No.1 to 9 (in the suit) as per their respective shareholding. Respondent has an undivided 1/16th share and defendants (No.1 to 9) had a 15th/16th undivided share as per their respective shareholding in the above said land. Aforesaid land has not been partitioned and is still an agricultural land and is thus governed by the provisions of Delhi Land Reforms Act, 1954 (for short to be referred as 'DLR Act'). Defendants (No.1 to 9) transferred their shareholding vide sale deed in favour of defendants (No.10 to 22) (which include present appellant also). Respondent has been in possession over part of the land but legally and technically, his possession has been on the entire suit land as per his holding. However, defendants (No.1 to 9) illegally transferred, alienated and sold their land in parts and in piecemeal to the remaining defendants. Defendants (No.10 to 22) after illegally purchasing the land from defendants (No.1 to 9) have now started raising boundary walls and constructions, which acts of the defendants are wholly illegal and in total disrespect of various provisions of DLR Act. Thus, it was prayed that defendants be restrained from raising any construction, laying or constructing any road using the land for non-agricultural purposes or alienate or sell or create any third party interest.

3. In the trial Court only defendants No.13 to 17 and 21 to 22 (jointly) and defendant No.19 (separately), filed their written statements. They took preliminary objections inter alia, that the Court has no jurisdiction to try and entertain the present suit; that respondent has no locus standi to file the present suit and suit is barred under Section 10 and 11 of the Code.

4. On merits, it was stated that respondent is having 1/16th share in the land in question which is about 8 bighas land and after mutual and oral partition by metes and bounds between the co-owners for cultivation purposes, the respondent is in possession of his portion of land. Respondent filed the present suit to intervene in the rights of the defendants and other co-owners.

5. It is contended by learned counsel for the appellant that suit filed by respondent is not maintainable in view of Section 185 of DLR Act and trial court has no jurisdiction. Since, respondent is the owner and Bhumidar of 1/16th shareholder of the suit land, he has become a land holder by virtue of DLR Act. Being a land holder, he has remedy under the DLR Act.

6. Other contention is that, suit land has been partitioned which fact has been admitted by the respondent and the respondent categorically admits that he is in possession of certain portions of the suit land therefore, he cannot take the other co-sharers on ransom for his whims. Once the oral partition is admitted, then no co-sharer can claim any right in the share of others.

7. On the other hand, it is contended by the learned counsel for respondent that appellant has no locus standi to file the present appeal as appellant (who was defendant No.20 in the trial court) did not file his written statement. He was

defenceless in the trial court and now he has got no legal right to challenge the impugned order.

8. Other contention is that, there has been no partition of the suit land and respondent is one of the co-sharer and when the defendants started raising construction the respondent filed the suit. Under these circumstances, there is no bar to the filing of suit for injunction.

9. In support of his contentions, learned counsel for respondent referred the following judgment;

- (i) ***Mam Raj Vs. Ram Chander etc.,
1974 Rajdhani Law Reporter 428 and;***
- (ii) ***Siri Ram Vs. Jai Parkash and Others,
1991 Rajdhani Law Reporter 275.***

10. First point which arises for consideration is as to whether appellant has got any legal right to file the present appeal or not.

11. Appellant who was (defendant No.20 in the trial court) has chosen not to file any written statement before that court. Thus, appellant has no defence in this case. Under these circumstances, averments made by present respondent in the suit, shall be deemed to be admitted by the appellant.

12. Be that as it may, case of respondent is that he is having undivided 1/16th share in the suit land and the aforesaid land has not been partitioned till date and defendants No.10 to 22 are raising illegal construction.

13. As per grounds of appeal taken by the appellant, there has been oral partition, which fact is denied by the respondent. Thus, there is a triable issue

in this case, as to whether there has been oral partition or not. Under these circumstances, application filed by respondent for injunction is maintainable.

14. Now, coming to the objection with regard to the jurisdiction as taken by appellant, in this appeal, Section 185(1) of DLR Act reads as under;

“185. Cognizance of suits, etc., under this Act.-

(1) Except as provided by or under this Act no court other than a court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.”

15. As per provisions of this Section, jurisdiction of civil court is barred only in respect of those cases, which have been mentioned in Schedule I of DLR Act.

16. In **Mam Raj (Supra)**, this court observed that;

“It will thus be noticed that it is only under Section 185 which expressly ousts the jurisdiction of the civil courts in certain matters and not in all matters. The matters in respect of which the jurisdiction of the civil courts is ousted are only those matters which are mentioned in Schedule I to the Act, and various types of suits, applications and other proceedings are mentioned in column 3 of the said Schedule read with entries mentioned in column 2 and the courts in which the proceedings have to be filed are mentioned in column 7 thereof. It is thus clear that in the suit of the present type in which permanent injunction is claimed on the basis of succession to bhoomidari rights by virtue of a will, such a suit is not covered by any entry in column 3 of First Schedule and thus the Delhi Land Reforms Act does not either expressly or implied bar the present suit.”

17. Again in **Siri Ram (Supra)** this court while interpreting Section 185 of DLR Act, 1954 observed;

“From the perusal of this Section it is clear that this saves only those cases which are mentioned in column 7 of

Schedule I of the Delhi Land Reforms Act. Thus, the scope of S. 185 is confined to the specific matters enumerated in Schedule I of that Act and to none other. The present suit of the plaintiff for declaration and permanent injunction seeking that he is sole heir and successor of Om Parkash is not covered under specific matters enumerated in Schedule I of the Act and, therefore, the civil court has every jurisdiction to try the suit.”

18. Trial court in this regard observed;

“Admittedly plaintiff is having 1/16th share in the suit land and the said land is governed by the provisions of DLR Act. The suit land has not been partitioned by metes and bounds as has been alleged by the plaintiff in the plaint. Thus, the plaintiff has every right to file a suit for permanent injunction which is not governed under specific matters enumerated in Schedule I of the DLR Act and, therefore, the Civil Court has jurisdiction to entertain the present suit.”

19. No ambiguity or infirmity can be found in the impugned order and there is no reason to disagree with the above findings of the trial court.

20. Hence, present appeal is not maintainable and same is hereby dismissed with costs of Rs.10,000/-.

21. Appellant is directed to deposit the costs of Rs.10,000/- with the Delhi High Court Legal Services Committee within one month from today and receipt thereafter shall be filed with the trial court.

22. In case of non compliance of this order, the trial court shall recover the costs in accordance with law.

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23. Dismissed being infructuous.

24. Copy of this order be sent to trial Court for compliance.

12th January, 2010

V.B.Gupta, J.

J/RB