

(2007) 07 DEL CK 0077
In the Delhi High Court
Case No : C.R.P. No's. 168-70 of 2006

Raj Roop and Others

APPELLANT

Vs

Shri Rajender Singh and Others

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 3, Order 22 Rule 4, Order 22 Rule 9, Order 7 Rule 11
Delhi Land Reforms Act, 1954 — Section 185, 84, 85

Citation : (2007) 07 DEL CK 0077

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Naipal Singh, in C.R.P. Nos. 168-70/2006 and S.S. Panwar, in C.R.P. No. 394/200, for the Appellant; Rajiv Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Though different issues arise for consideration in CRP No. 168-70/2006 and C.R.P. No. 394/2004, both petitions are being disposed of together as they arise out of 2 interlocutory orders passed in the same suit.

2. Respondents of both set of revision petitions are the plaintiffs of the said suit. Petitioners of CRP No. 394/2004 are the legal heirs of late Shri Surat Singh (alias Surte) imp leaded as defendant No. 1 in the suit and the principal contestant.

3. Petitioners of CRP No. 168-70/2006 are third parties, subsequently imp leaded as defendants in the suit.

4. Whereas petitioners of CRP No. 168-70/2006 are aggrieved by the order dated 20.9.2005 allowing application under Order 1 Rule 10 CPC filed by the plaintiffs to the suit and as a consequence impleading petitioners as defendants in the suit.

5. The legal heirs of defendant No. 1 i.e. petitioners to CRP No. 394/2004 challenge the order dated 7.7.2004 allowing an application filed by the plaintiffs setting aside abatement of the suit and on account of death of Surat Singh @

Surte impleading his legal heirs i.e. petitioners of CRP No. 394/2004 as defendants.

6. To appreciate the issues raised in the 2 petitions history of the dispute between the parties needs to be traced out and this takes me back to the year 1986.

7. Surat Singh @ Surte invoked the jurisdiction of the revenue assistant u/s 85 of the Delhi Land Reforms Act 1954 stating that he was entitled to a declaration that he was a bhumidar of land comprised in khasra No. 608 and 613 in the revenue estate of village Malikpur Kohi @ Rangpuri, New Delhi. Basis of his claim was that one Smt. Rampyari who was the recorded bhumidar of the said land, being a widow, was incapable of cultivating the same as she was issue-less and had leased out the land to Surat Singh on batai (share cropping) basis in the year 1961. He further stated that Rampyari died in the year 1978. That there being no successor-in-interest, he i.e. Surat Singh, continued to be in cultivatory possession of the land and thus should be declared a bhumidar thereof. He impleaded Risal Singh, Hukam Chand, Hoshiar Singh, Samay Singh, Pratap Singh and Chand Singh, apart from the Gaon Sabha of the village as respondents. The 6 private persons appeared and filed a written statement inter alia stating that they were the successor-in-interest of Smt. Rampyari. That Rampyari was in self cultivation of the land and claim of Surat Singh was contrary to law.

8. Risal Singh initiated proceedings u/s 84 of the Delhi Land Reforms Act for ejectment of Surat Singh which were dismissed on 6.7.1988.

9. The 6 private parties impleaded in the proceedings u/s 85 of the Delhi Land Reforms Act 1954 stopped appearing and hence were proceeded against ex-parte. Surat Singh led ex-parte evidence. Vide order dated 8.5.1992, revenue assistant declared that Surat Singh was entitled to a declaration that he was the bhumidar of the land comprised in the 2 khasra numbers. He directed that in the revenue records, Surat Singh be recorded as the bhumidar of the 2 lands.

10. None challenged the order dated 8.5.1992 before the revenue authority constituted under the Delhi Land Reforms Act 1954.

11. On 7.5.1996, the sons of Risal Singh, impleaded as respondent No. 2 in the petition filed by Surat Singh u/s 85 of the Delhi Land Reforms Act 1954 before the revenue assistant filed a civil suit seeking declaration, permanent injunction and consequential reliefs against Surat Singh and a few other persons to whom Surat Singh was stated to have transferred part of the land comprised in khasra No. 608 613. Declaration sought was that the order dated 8.5.1992 passed by Shri B.K. Sehgal, Revenue Assistant was null and void on the ground that a fraud was played upon the Court, in that, service upon Risal Singh was procured with the connivance of the process server and thus the order dated 8.5.1992 was a nullity. Injunction sought was to restrain Surat Singh and the persons to whom he had transferred part of the land from further selling the same.

12. On being served with the summons in the suit filed by the 5 sons of late Shri Risal Singh i.e. the respondents in the 2 set of captioned petitions, Surat Singh filed an application under Order 7 Rule 11 CPC inter alias stating that by virtue of the provisions of Section 185 of the Delhi Land Reforms Act 1954, the suit was barred. He pointed out that Section 185 of the Delhi Land Reforms Act 1954 bars cognizance of suits, applications or proceedings which are actionable before authorities constituted under Schedule 1 of the Act and pertains to a cause listed in column 3 of the said schedule. He pointed out that proceedings relate to declaration of bhumidari rights u/s 85 of the Delhi Land Reforms Act 1954 are actionable only before the revenue assistant and appeal lies, under column 8 of schedule 1 before the Deputy Commissioner. Thus, it was prayed that the plaint be rejected.

13. Pleas urged by Surat Singh were rejected and application under Order 7 Rule 11 CPC was dismissed by the learned Civil Judge vide order dated 9.2.2000. Learned Judge held that since the suit was based on allegations of fraud i.e. that order dated 8.5.1992 passed by the revenue assistant was a result of a report procured from the process server evidencing service upon Risal Singh, it was held that jurisdiction of the civil courts was not barred.

14. Surat Singh challenged the order dated 9.2.2000 by filing a revision petition in this Court numbered as C.R.P. No. 577/2000. After issuing notice and granting stay of proceedings before the learned Trial Judge, the petition was adjourned from time to time for hearing. Surat Singh died on 19.6.2000. This fact was brought to the notice of the Court by counsel for the respondents i.e. Rajinder Singh and Ors., the sons of Risal Singh. No action was taken by legal heirs of Surat Singh to seek impleadment. Matter was re-notified on 21.5.2001 and 14.8.2001 to enable legal heirs of Surat Singh to seek impleadment in CRP No. 577/2000. They failed to do so. Vide order dated 19.12.2001 CRP No. 577/2000 was dismissed as having abated.

15. After 1 year and nearly 9 months of the dismissal of the CRP No. 577/2000 on account of the same having abated, applications were filed under Order 22 Rule 9 and Order 22 Rule 3 CPC seeking setting aside of the abatement and impleadment of the legal heirs of the deceased petitioners. The 2 applications were dismissed on 3.3.2003 holding that no sufficient cause was shown by the legal heirs of late Surat Singh to have the abatement set aside; that no valid reasons were assigned as to why it took them nearly 2 years to seek substitution on account of death of their father. The result was that the 2 applications under Order 22 Rule 9 and Order 22 Rule 3 CPC were dismissed resulting in the order dated 9.2.2000 passed by the learned Civil Judge remaining intact.

16. In the meanwhile, in the suit filed by the respondents in the 2 captioned revision petitions, they moved an application under Order 22 Rule 9 and Order 22 Rule 4 CPC seeking impleadment of the legal heirs of deceased defendant No. 1 i.e. Surat Singh inter alias alleging that though knowledge of the death of defendant No. 1 was gained earlier, names of the legal heirs came within their

knowledge a few days prior to filing of their application which I note was filed on 30.7.2002.

17. The said application under Order 22 Rule 9 CPC for setting aside the abatement and impleadment of legal heirs of deceased Surat Singh was allowed vide order dated 7.7.2004

18. The said order has been challenged by the legal heirs of Surat Singh by and under C.R.P. No. 394/2004

19. In the meanwhile, Rajinder Singh and Ors. i.e. the plaintiffs of the suit filed an application under Order 1 Rule 10 CPC praying that had it come to their knowledge that certain parcels of land which were forming the subject matter of the suit were further sold to Raj Roop, Yashpal and Jagdish i.e. the petitioners of C.R.P. No. 168-70/2006. It was stated that the said 3 persons would be affected by the decision in the suit. Their impleadment was prayed for.

20. The said application has been allowed vide order dated 20.9.2005, the order under challenge by Raj Roop, Yashpal and Jagdish in C.R.P. No. 168-70/2006.

21. Dr. Naipal Singh, learned Counsel for the petitioners of C.R.P. No. 168-70/2006 urged that the suit filed by the sons of Risal Singh was barred u/s 185 of the Delhi Land Reforms Act and thus question of impleading any party in the suit did not arise. Counsel urged that the learned Civil Judge was acting totally without jurisdiction; that even entertainment of the plaint was without jurisdiction; that all orders passed in the suit which was without jurisdiction would obviously be without jurisdiction, was the contention urged.

22. Mr. S.S. Panwar, learned Counsel for the petitioners of C.R.P. 394/2004 i.e. the legal heirs of Surat Singh not only supported Dr. Naipal Singh, Advocate but additionally urged that no ground was made out to condone the delay in impleadment of the legal heirs of Surat Singh and that on said short ground order dated 7.7.2004 was liable to be set aside and as a consequence the suit filed by the respondents in the 2 captioned petitions be dismissed as having abated.

23. Issue as to when jurisdiction of civil court is barred pertaining to a claim relating to agricultural land governed by the provisions of the Delhi Land Reforms Act 1954 was the subject matter of consideration before the Supreme Court in the decision reported as Hatti Vs. Sunder Singh, . It was held that the jurisdiction of civil courts was barred u/s 185 of the Delhi Land Reforms Act 1954 read with various items of the 1st Schedule to the Act and that orders passed by the authorities under the Act exercising primary jurisdiction were amenable to further challenge before the appellate or revisional authorities constituted under the Act.

24. From the afore-noted facts pertaining to C.R.P. No. 577/2000, unfortunately, at this point of time, petitioners of both revision petitions have been trapped in the pincers of procedural laws. But, as would be noted by me hereinafter, right of

petitioners of C.R.P. No. 168-70/2006 to invoke Order 7 Rule 11 CPC is still intact and thus, it would be impermissible for me to exercise my extraordinary jurisdiction to deal and thereafter decide the issue whether the suit filed by the respondents of the 2 captioned petitions is maintainable.

25. Dismissal of C.R.P. No. 577/2000 which challenged the order dated 9.2.2000 dismissing application filed by Surat Singh under Order 7 Rule 11 CPC has resulted in the said interlocutory order not being set aside by this Court. But, the dismissal being on account of the said revision petition as having abated, finality cannot be attached to the issue whether the suit is barred or not u/s 185 of the Delhi Land Reforms Act 1954.

26. As held, in the opinion reported as Debi Prasad and Others Vs. Khelawan and Others, . interlocutory orders do not attain finality at par with final adjudication.

27. In my opinion, petitioners of C.R.P. No. 168-70/2006 cannot question their impleadment on the ground that the suit itself was not maintainable. Suffice would it be to state that while considering impleadment of parties under Order 1 Rule 10 CPC, the contours of consideration are whether the party sought to be imp ledged would or would not be affected by any decision in the suit. No other consideration comes into play.

28. Since admittedly, the said 3 parties i.e. petitioners of C.R.P. No. 168-70/2006 have purchased part of the suit land during pendency of the suit, considering the nature of relief prayed for in the suit, I hold that the said 3 parties have been correctly imp ledged as defendants.

29. Issues raised by said 3 parties in the civil revision petition has to form a subject matter of an application under Order 7 Rule 11 CPC.

30. I hereby hold that the petitioners of C.R.P. No. 168-70/2006 would be entitled to file an application under Order 7 Rule 11 CPC and said application would be decided by the learned Trial Judge. I further hold that order dated 9.2.2000 passed by the learned Civil Judge on a similar application filed by Surat Singh would not operate as final and binding in view of the opinion of the Allahabad High Court noted herein above, a view with which I concur.

31. Needless to state, law relating to challenge to a decree stated to be obtained by fraud, whether the fraud was on the Court or on the party stand well crystallized in various judicial pronouncements of the Supreme Court I may note but a few Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and Jai Narain Parasrampuriah (Dead) and Others Vs. Pushpa Devi Saraf and Others, .

32. I also note that in the decision in Hatti's case (supra), the Supreme Court has noted remedies of persons against whom orders are passed by revenue authorities without notice to them; remedies being under the statutory provisions of the Delhi Land Reforms Act 1954. I additionally note that the Supreme Court

clearly noted the hierarchy of appellate or revisional authorities under the Delhi Land Reforms Act 1954.

33. If petitioners of C.R.P. No. 168-70/2006 filed an application under Order 7 Rule 11 CPC, learned Judge would be expected to meaningfully read the decision in Hatti's case (supra) as also would apply the law relating to decrees obtained by fraud where distinction has been drawn on a fraud played upon a party and a fraud played upon the Court. Learned Judge has also taken note of the decisions where illegality alleged is on account of either no service or on the allegation that service report procured was an act of fraud. It would also be noted that respondents filed a reply to the petition filed by Surat Singh u/s 85 of the DLR Act 1954.

34. As regards the challenge to the order dated 7.7.2004 by the sons of Surat Singh, suffice would it be to note that they never came forward at the right time to disclose that they were the legal heirs of Surat Singh. When the respondents of the revision petitions i.e. the plaintiffs of the suit learnt about the names of the legal heirs of Surat Singh, they promptly moved an application under Order 22 Rule 9 CPC. I note that reckoned with effect from the date of knowledge about the names of the legal heirs of Surat Singh, application under Order 22 Rule 9 CPC was filed promptly.

35. It is settled law that consideration of delay on account of substitution on death of a defendant has to be in light of the date when plaintiffs learnt about the names and addresses of the legal heirs of the deceased defendant.

36. The 2 sets of revision petitions are accordingly dismissed, but with the clarificatory observations and findings as herein above recorded.

37. No costs.