

**(1988) 09 DEL CK 0003**

**In the Delhi High Court**

**Case No :** Interim Application No. 4001 of 1988 and Suit No. 1655 of 1988

Ram Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 07-09-1988

**Acts Referred:**

**Citation :** (1988) 36 DLT 401 : (1988) 15 DRJ 302 : (1988) RLR 669

**Hon'ble Judges :** C.L. Choudhary, J

**Bench :** Single Bench

**Advocate :** R.L. Kohli and O.P. Tyagi, for the Appellant;

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## **Judgement**

C.L. Chaudhry, J.

(1) By this suit the plaintiffs claim a decree for declaration to the effect that the Judgment and order of the Additional District Judge dated 16-5-1986 so far it holds that the bhumidari rights granted to Bahadur and others is wrong, consequently he and now his successors, the plaintiffs are not entitled to the compensation, be declared null and void and without jurisdiction and of no legal effect whatsoever.

(2) The plaint proceeds on the allegations that the plaintiffs are the heirs and successors of late Bahadur whereas the defendants 4 to 8 are the heirs and successors of late Prem Chand. There was a joint khata of 314 bighas 6 bids was which constituted 72 parts and out of this joint khata Kale and Rughan had 21/72 shares whereas Ram Chander had 17 parts, Prem Raj had 17 parts and Bahadur had 17 parts. Rughan, Kale and Prem Raj were sons of Inder. Rughan expired in the year 1966 issueless and was succeeded by Kale and Prem Raj. It is claimed that Prem Raj filed a suit (being suit No. 316 of 1960) and it was in appeal that Prem Chand was not accepted as the adopted son of Rughan. However, on the basis of a Will he was declared to be successor of Rughan's estate having 21/144 share in the joint khata. It is stated that after coming into force of the Land Reforms Act, Bahadur was declared bhumidar of the suit land

under Sections 11 and 13 of the Land Reforms Act. Prem Chand challenged the bhumidari rights of Bahadur before the Revenue Court, but all his objections and appeals stood dismissed and the result was that Bahadur was declared as bhumidar of the land in dispute. The land in dispute was acquired by the Government under the provisions of the Land Acquisition Act. The Land Acquisition Collector by his award awarded a sum of Rs. 1,48,140.06 in respect of the land in question. Since there were disputes as to who was entitled to receive the compensation the matter was referred by the Land Acquisition Collector to the learned Additional District Judge under the provisions of Sections 30 & 31 of the Land Acquisition Act.

(3) The rival claimants before the court were Bahadur and Prem Chand. Bahadur set up his claim before the Additional District Judge on the ground that he was the bhumidar in possession in respect of the entire land which was the subject matter of reference and the possession of the land was taken by the Government from him, and on these premises he claimed to be entitled to the entire compensation. On the other hand Prem Chand claimed compensation to the exclusion of Bahadur. It was asserted by him that he was the bhumidar. It was stated that the acquired land originally belonged to late Rughan, who executed a Will bequeathing his entire property to him. He filed a suit for declaration and possession against Bahadur, Kale and others. The suit was dismissed by the trial court but it was decreed by the first appellate court, on 21-7-1963. The second appeal filed by the opposite party was dismissed. After the decision of the first appellate court he filed an application before the Revenue Assistant for the grant of bhumidari rights u/s 11 of the Delhi Land Reforms Act for the land owned and possessed by late Rughan. His application was dismissed on 15-7-1966 by the Revenue Assistant. An appeal filed against that order was stayed on 7-10-1966 till the final disposal of the second appeal filed by Kale and Bahadur against Prem Chand. After dismissal of the second appeal of Bahadur and others, the appeal proceedings pending before the Additional Collector were revived. The Additional Collector accepted the appeal and the case was remanded. Bahadur filed a Revision against the order of remand 304 before the Financial Commissioner, which revision was dismissed on 21-3-1971. The Revenue Assistant by his order dated 5-4-1972 held that the application u/s 11 of the Act filed by him had abated. His appeal before the Additional Collector against the abatement was dismissed. But the Revision was accepted by the Financial Commissioner and was now being tried by the Revenue Assistant. On this ground he claims to be entitled to the gram of bhumidari rights in respect of the land owned by late Rughan as the question regarding inheritance of Rughan's property was finally decided by the High Court in his favor.

(4) The parties were given liberty to lead evidence. The learned Additional District Judge by his judgment dated 16-5-1986 returned the finding that Prem Chand was entitled to receive the compensation.

(5) The question before the learned Additional District Judge was as to who was

entitled to receive the compensation. It is not disputed that Rughan was the owner of the property. Bahadur claimed to be the successor of Rughan on the basis of bhumidari rights. Prem Chand claimed to be the successor of Rughan on the basis of a judgment of the Civil Court. After discussing the relevant contentions of the parties the learned Additional District Judge in the operative portion returned the following findings :- "Rughan was the owner of the property and he was disabled person. Bahadur and others got the bhumidari rights declared on the ground that they are the heirs of Rughan but later on, Prem Chand filed a suit that he was being the adopted son of Rughan and the suit of Prem Chand was decreed and there is no dispute regarding the interpretation of Delhi Land Reforms Act and that after the enforcement of Delhi Land Reforms Act, the rights can be settled by the revenue courts. But in this case there was only one point regarding the successor of Rughan. So, I find that the claim of Prem Chand has been proved on record that he is the real successor of Rughan and the bhumidari rights conferred on Bahadur and others was wrong and they are not entitled to receive compensation of the land. Only L.Rs. of I.P. No. 2 Prem Chand are entitled to receive the compensation. So claim of I.P. No. 2 is accepted and that of I.P. No. 1 is rejected.

(6) The case of the plaintiff is that the Civil court has no jurisdiction hold that the bhumidari rights conferred on Bahadur and other were wrong and they were not entitled to receive compensation in respect of the land in question. Because of this finding, the judgment delivered by the Additional District Judge is without jurisdiction and is a nullity. Along with this suit the plaintiff has filed an application (which is under disposal ,being I.A. No. 4001/ 1988) under Order 39 Rules 1 & 2 CPC . seeking interim injunction to stay the disbursal of the compensation amount awarded in respect of the land in question.

(7) Defendants I to 4 are contesting this application on the ground that the questions of fact and law have been finally decided by the Additional District Judge in the reference under Sections 30 & 31 of the Land Acquisition Act. Appeal was preferred by the plaintiffs against the decision of the Additional District Judge which was dismissed by the High Court. Presumably SLP in the Supreme Court was also dismissed. The controversy raised in the suit had already been finally decided by the Competent Court and this court has no jurisdiction to entertain the suit.

(8) I have heard the learned counsel for the parties, and have given my thoughtful consideration to the matter involved.

(9) The main thrust of arguments on behalf of the plaintiffs is that the judgment of the learned Additional District Judge is without jurisdiction and the court had no jurisdiction to hold that the bhumidari rights conferred upon Bahadur were wrong. In support of his contention the learned counsel for the plaintiff has relied upon a judgment of the Supreme Court in Hatti Vs. Sunder Singh, wherein it was held that a civil court has no jurisdiction in view of Section 185(1) of Delhi Land Reforms Act to entertain a suit in which the plaintiff, alleging that he is the

proprietor of the suit land asked for declaration that he is entitled to bhumidari rights. I have considered this aspect. In my opinion the reliance on this judgment is misplaced. The question before the learned Additional District Judge was as to the person to whom the compensation was payable in respect of the acquired land. This was not a suit filed under the provisions of Delhi Land Reforms Act for determination of bhumidari rights. The Additional District Judge has not given any declaration regarding bhumidari rights under the provisions of Delhi Land Reforms Act in respect of the land in question. The issue before the court was as to who was the real successor of Rughan. Bahadur laid his claim on the basis of bhumidari rights whereas Prem Chand claimed title on the basis of a judgment of the Civil Court where he was declared to be the successor of Rughan. The Additional District Judge appraised the evidence. He came to the conclusion that Prem Chand was the real successor of Rughan and he was entitled to compensation as successor of Rughan. Bahadur and others were not entitled to receive the compensation of the land in question. The decision of the Additional District Judge is not without jurisdiction. The Additional District Judge had the jurisdiction to decide the question of title between the parties. He has decided that question. In his opinion Prem Chand had a better title than Bahadur. It is not a case of lack of inherent jurisdiction.

(10) The other authorities relied upon by the learned counsel for the plaintiff in support of the proposition that a decree passed by a court lacking inherent jurisdiction is a nullity. There is no quarrel with this proposition. The law is well settled on this point. But in this case prima facie I am of the opinion that the learned Additional District Judge had the jurisdiction and was competent to go into the question of title, so as to find out as to the persons whom the compensation is payable. It is not a case of lack of jurisdiction.

(11) The plaintiff has not been able to make out a prima facie case that the judgment passed by the Additional District Judge is without jurisdiction. Question of balance of convenience and irreparable injury is also not in favor of the plaintiff. In my opinion the application has no merit and it deserves dismissal. Accordingly the application is dismissed, leaving the parties to bear their own costs.

(12) Any opinion expressed in this order is only for deciding the interim application and would not prejudice the contentions of the parties on merits.