

Ram Kishore vs Jai Singh & Ors. on 20 January, 2012

Author: Pradeep Nandrajog

Bench: Pradeep Nandrajog, Pratibha Rani

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : 20th January, 2012

+ RFA(OS) 54/2008

RAM KISHORE Appellant
Through: Mr.Munish Tyagi, Advocate.

versus

JAI SINGH & ORS.Respondents
Through: Mr.K.N.Popli, Advocate for R-2 to R-4.
Mr.Surendra Kumar, Advocate for R-4.
Mr.Anil Grover, Advocate and
Ms.Divya Jain, Advocate for R-9, R-10,
& R-16.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment dated May 20, 2008, CS(OS) 375/2001 has been dismissed on two reasons. The first reason is the finding return that the suit seeking partition of land in village Alipur was not maintainable in view of the decision of the Supreme Court reported as 1970 (2) SCC 841 Hatti vs. Sunder Singh. The second reason is that no document was filed nor in the pleading any reference was made to a document of title in the name of the ancestor on whose death partition was prayed for.

2. Appellant Ram Kishore son of Jai Singh sought partition of five properties, delineated in site plans marked „A to „E annexed with the plaint, on the plea that the great grand-father of the plaintiff and the common ancestor of defendant No.1 to No.8 i.e. Mam Raj was the owner of the said properties. Defendant No.9 to No.16 were impleaded inasmuch as certain portions of the properties, of which partition was sought, had purchased the same from defendants No.1 to No.8.

3. It is pleaded in the plaint, as per para 8, that the total land, at different sites, as reflected in the plans marked „A to „E , ad-measures 5849 sq.yds. In para 12, it is pleaded that the plot as per plan marked „A ad-measures 206 sq.yds. In para 13, it is pleaded that the plot as per plan marked „B ad-measures 408 sq.yds. In para 14, it is pleaded that the largest plot as per plan marked „C

ad-measures 4530 sq.yds. In para 24 and para 25 it is pleaded that the plots ad- measuring 550 sq.yds and 200 sq.yds. are as per site plan marked „D and „E .

4. It needs to be highlighted that in the plaint, we do not find any averment on the point: Whether the aforesaid lands are within the abadi site of the village or are constituting land within the holding of late Mam Raj. Qua land as per plan marked „C , averments in para 14 read as follows: „That bigger property adjacent to Phirni was also ancestral plot measuring 4530 sq. yds. covered with Boongas, thorny bushes, Sarkandas and wild plants. The said property is shown in site plan marked „C attached to the plaint.

5. If not for others, pertaining to the plot of land as per plan marked „C , it is apparent that the land in question is agricultural land. We say so for the reason it is pleaded in para 14 that the said land is adjacent to phirni and is covered with boongas, thorny bushes, sarkandas and wild plants. It is not pleaded that the said land is within the phirni. We all understand that the phirni is the boundary within which the village abadi exists.

6. In the plaint reference has been made to two plots ad-measuring 120 sq.yd. and 130 sq.yd. in para 6, and in respect of said two plots it is stated that they are situated in the abadi of village Alipur in Khasra No.894 (No claim to partition these lands has been made and it appears that the intention to plead said facts is to show that when the settlement took place in the year 1908, these two plots were allotted within the phirni comprised in Khasra No.894). With respect to the five lands as per plans marked „A to „E , in respect whereof partition is sought, no averment has been made as to in which khasra these lands are situate. There are no averments that these lands are within the village abadi site or whether these lands are agricultural lands. In which khasra number these lands are situate? Nothing has been stated. In which settlement record it stands recorded that Mam Raj was the owner of these lands, has not been pleaded.

7. Section 55 of the Delhi Land Reforms Act 1954 confers the power upon a bhoodidar to sue for partition of a holding. Land has been defined in Sub-Section 13 of Section 3 of the Delhi Land Reforms Act 1954 as under:-

"(13) "land" except in sections 23 and 24, means land held or occupied for purpose connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming and includes -

(a) Buildings appurtenant thereto,

(b) Village abadis,

(c) Grovelands,

(d) Lands for village pasture or land covered by water and used for growing singharas and other produce or land in the bed of a river and used for casual or occasional cultivation, But does not include -

land occupied by building in belts or areas adjacent to Delhi town, which the Chief Commissioner may be a notification in the Official Gazette declare as an acquisition thereto;"

8. Holding has been defined in Sub-Section 11(a) as under:-

"[(11a)]"holding means -

(a) In respect of -

(i) Bhumindar or Asami; or

(ii) Tenant or sub-tenant under the Punjab Tenancy Act, 1887, or the Agra Tenancy Act, 1901; or

(iii) Lessee under the Bhoojan Yagna Act, 1955, a parcel or parcels of land held under one tenure, lease, engagement or grant; and

(b) In respect of proprietors, a parcel or parcels of land held as "sir or khudkasht"]"

9. It is thus apparent that a holding would be included within the definition of land and not vice-versa i.e. the definition of land is wider than that of a holding.

10. Section 55 of the Delhi Land Reforms Act 1954 confers the power on a bhoodanidhar to sue for partition of a holding. There is no provision in the Act for partition of land. Thus, only such lands as constitute a holding are liable to be partitioned as per the Delhi Land Reforms Act 1954 and for other lands, obviously, the right to seek partition has to be before a Civil Court.

11. Section 185 of the Delhi Land Reforms Act 1954 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.

(2) Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid.

(3) An appeal shall lie from the final order passed by a court mentioned in column 3 to the court or authority mentioned in column 8 thereof.

(4) A second appeal shall lie from the final order passed in an appeal under sub-section (3) to the authority, if any, mentioned against it in column 9 of the Schedule aforesaid."

12. Thus, as per the said Section, Revenue Courts alone would have jurisdiction to take cognizance of suits which are mentioned in Column „7 of Schedule „I of the Act. Entry 11 under Schedule „I lists, in Column „7 , the Court of the Revenue Assistant as the Court where „Suit for Partition of Holding of a Bhoomidar can be filed.

13. It is clear that the bar under Section 185 of the Delhi Land Reforms Act 1954 would apply only to partition of such lands as constitute a holding of a bhoomidar and not the abadi lands in a village.

14. The sweeping observations made by the learned Single Judge, without analyzing as aforesaid, lays down an incorrect law and to that extent impugned judgment and decree is set aside. However, noting that the pleadings are vague and that qua land as per plan marked „C there is clarity of the said land being within the holding, the suit would not be maintainable in respect of said land in any case. Qua the remainder land, on account of vagueness in pleading and additionally for the reason there is no averment regarding the settlement record where Mam Raj is recorded as the owner of the lands, we concur with the view taken that on said reasoning the suit is liable to be dismissed. In the decision reported as AIR 1999 SC 1464 D.M.Deshpande vs. Janardhan Kashinath Kadam, the Supreme Court clearly laid down that issues cannot be settled on vague pleadings and that if there is no concise statement of a material fact in either pleading i.e. in the plaint or the written statement, the said plea has to be ignored. We would be failing not to note that in Delhi it has become a practice of many unscrupulous elements to file collusive suits for partition with respect to gaon sabha land and then enforce the collusive decrees through Court processes to gain possession of gaon sabha lands. Thus, Courts have to be vigilant when such suits are filed and where the plaint does not disclose the relevant revenue record where a bhoomidari or a possessory right of a person is recorded.

Such suits are liable to be dismissed at the threshold on account of vague pleadings. Where a party claims a particular land to be ancestral, a concise statement of material facts, needed to maintain the action has to include a statement in the pleading as to in which record the ownership, bhoomidari or possessory right is recorded.

15. Clarifying on the law as aforesaid but agreeing with the final decision arrived at, the appeal is dismissed leaving the parties to bear their own costs.

(PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE JANUARY 20, 2012 dk