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On the facts and circumstances of this case, therefore; it is not possible to sustain the appellant's contention. I, therefore, agree that the appeal be dismissed with costs.

B.R.T.

APPELLATE CIVIL

Before H. R. Khanna, J.

LAL SINGH,—*Appellant.*

Versus

SARDARA AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 31-D of 1960.

1964

May, 1st.

Delhi Land Reforms Act (VIII of 1954)—S. 185 and Entry No. 4 in Schedule I of the Act—Delhi Land Reforms Rules, 1954—Rules 6A to 8—Suit for declaration that Bhumidari rights have been wrongly conferred on the defendants and that the plaintiffs are entitled to get those rights—Whether maintainable in civil Court—Decision by Revenue Court in the presence of the parties that the suit was not maintainable in Revenue Court—Whether binding on the parties.

Held, that sub-rule (4) of Rule 8 of the Delhi Land Reforms Rules, 1954, makes no provision for giving notice to the different interested parties before a declaration of *bhumidari* rights is made and the whole thing is done in more or less a mechanical way. As there is no effectual adjudication of the rights by the revenue authorities while declaring *bhumidari* rights, their declaration, must be subject to the due adjudication of rights which, in the absence of anything to the contrary, can only be by a Civil Court.

Held, that section 185 of the Delhi Land Reforms Act, 1954, coupled with entry No. 4, in the Schedule does not exclude the jurisdiction of the Civil Court to entertain and decide a suit for a declaration of *bhumidari* rights in favour

of the plaintiff or plaintiffs. The aforesaid entry does not deal with suits but only with applications. Then again the entry deals with applications for declaration of *bhumidari* righs and not for a declaration that the grant of such *bhumidari* rights is invalid. Where, as in the present suit, the relief sought by the plaintiff is primarily to impugn the grant of certificates of *bhumidari* rights in favour of defendant, the matter cannot be said to be covered by the aforesaid entry. Sub-rule (4) of Rule 8 of the Delhi Land Reforms Rules, 1954, goes to show that matters relating to titles are to be decided by Civil Courts and not by revenue authorities. Section 186 of the Act, also makes it clear that questions of title are beyond the scope of the proceedings before the revenue authorities and they have to refer them to the Civil Courts.

Held, that a decision given between the parties in respect of the land in dispute by the Revenue Assistant that the suit was not triable by a Revenue Court but by a Civil Court, whether right or wrong, is binding upon the parties. It would look anomalous and would indeed be reducing judicial proceedings to a farce if a finding was given by the Revenue Court that the suit was triable by the Civil Court and subsequently when the matter came before the Civil Court a decision was given that the suit was trialable by the Revenue Court.

Regular Second Appeal from the decree of the Court of the Senior Sub-Judge, Delhi, dated the 14th day of February, 1960, affirming with costs that of Shri P. C. Saini, Sub-Judge, Ist Class, Delhi, dated 31st December, 1958, passing a declaratory decree in favour of the plaintiffs to the effect that the plaintiffs and not the defendant, are entitled to Bhumidari rights in the suit land and ordering that it is for the Revenue Authorities to cancel the bhumidari certificate issued to the defendant.

N. D. BALI & HAR NARAIN SHARMA, ADVOCATES, for the Petitioner.

BHAGWAT DAYAL, ADVOCATE, for the Respondent.

JUDGMENT

Khanna, J. KHANNA, J.—This Regular Second Appeal filed by Lal Singh is directed against the judgment and decree of the learned Senior Subordinate Judge, Delhi, affirming on appeal the decision of the trial Court by which Sardara and Manga, plantiff-respondents were granted a declaratory decree.

The brief facts of the case are that the two respondents, who were both minor, were the occupancy tenants of the land in dispute while the appellant was shown as occupying the land in dispute as a tenant under them. The appellant was declared by the Revenue Assistant to be Bhumidar of the land in dispute. The respondents thereafter filed the present suit stating that the appellant was not entitled to be declared as Bhumidar in respect of the disputed land and that the Bhumidari Sanad had been wrongly issued in his favour. They also sought declaration that in fact they were entitled to be declared Bhumidars and to get Bhumidari certificate.

The suit was resisted by the appellant *inter alia* on the ground that it was not maintainable in a Civil Court. The trial Court decreed the suit of the plaintiff-respondents and the decision was affirmed on appeal, as stated above, by the learned Senior Subordinate Judge.

In second appeal Mr. Bali, learned counsel for the defendant-appellant, has argued that the present suit could only lie in a Revenue Court and was not maintainable in a Civil Court and the findings of the Courts below to the contrary are not correct. In this respect I find that a suit with regard to the land in dispute on same allegations was previously filed by the respondents in the

Court of Revenue Assistant on 2nd November, 1957. In that suit after service of the appellant the Revenue Assistant passed an order on 7th February, 1958, in the presence of the parties that the suit was not maintainable in the Revenue Court. The respondents were accordingly directed to file a suit, if not already done, in a competent Civil Court. It would appear that the respondents in the anticipation of that order of the Revenue Assistant filed the present suit on 14th December, 1957. As a finding has already been given between the parties in respect of the land in dispute by the Revenue Assistant that the present suit is triable not by a Revenue Court but by a Civil Court the respondents, in my opinion, cannot be non-suited in the present suit on the ground that the suit in fact was triable by a Revenue Court. The above finding was given by the Revenue Assistant after hearing both the parties and whether right or wrong it would be binding upon the parties. It would look anomalous and would indeed be reducing judicial proceedings to a farce if a finding was given by the Revenue Court that the suit was triable by the Civil Court and subsequently when the matter came before the Civil Court a decision was given that the suit was triable by the Revenue Court.

Apart from the above, I am of the view that on merits also there is no force in the contention advanced on behalf of the appellant that the present suit is cognizable by the Revenue Court. Reliance has been placed upon sub-section (1) of section 185 of the Delhi Land Reforms Act (Act No. 8 of 1954)—hereinafter referred to as the Act—, which reads as under:—

> "Except as provided by or under this Act no Court other than Court mentioned

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in column 7 of Schedule 1 shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof."

Reference has further been made to entry No. 4 in the Schedule I of the Act which relates to applications for declaration of *bhumidari* rights and it is mentioned that such applications would be triable by the Revenue Assistant and would be subject to 1st and 2nd appeals to the Deputy Commissioners' and the Chief Commissioner respectively. The relevant Sections of the Act having bearing upon applications have been mentioned as 10, 11, 12, 13, 73, 74, 79 and 85. In this respect I find that the Delhi Land Reforms Rules of 1954 have been framed under the Act and Rule 6-A to Rule 8 relate to declaration of *bhumidari* rights. Rule 6-A provides that after the commencement of the Act, the Revenue Assistant shall get statements prepared with respect to different kinds of land's tenures and sub-tenures in each village. Provision is also made in the above Rule about the declaration of *bhumidari*. Rule 6-B relates to the calculation of land revenue and compensation of *bhumidars* declared as such. While Rule 6-C provides for the calculation of land revenue and compensation in respect of certain other categories of land. Rule 7 deals with the completion of the declaration forms, while Rule 8 provides for the distribution of the declaration forms.

Sub-rule (4) of Rule 8, which has a hearing, reads as under:—

"Anyone who challenges the correctness of entries in the forms of declaration shall,

except where it refers to a clerical omission or error, be directed by the Revenue Assistant to file a regular suit within two months of the date of issue."

Perusal of the above Rule goes to show that there is no provision for giving notice to the different interested parties before a declaration of *bhumidari* rights is made and the whole thing is done in more or less a mechanical way. Dealing with the above Rules it was observed in a Division Bench case *Ramji Lal* v. *Lakhi and others* (Regular Second Appeal No. 46-D of 1961) decided on 13th March, 1963, by my Lord the Chief Justice, as under:—

"There is certainly no provision for any contest in rule 6-A and the following rules at the stage of the preparation of the declaration certificates, the work apparently being more or less mechanical subject to the strict checks and counter-checks contained in the rules. An attempt was made to argu that this procedure was *ultra vires*, but this argument was simply based on the principles of natural justice which I do not think apply in a case of this kind."

Mr. Bali has also frankly conceded that the rules do not contemplate the giving of notice by the revenue authorities before a declaration for *bhumidari* is made. As there is no effectual adjudication of the rights by the revenue authorities while declaring *bhumidari* rights, their declaration, in my opinion, must be subject to the due adjudication of rights which, in the absence of anything to the contrary, can only be by a Civil Court.

So far as the argument about the non-maintainability of such a suit based upon section 185 of

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the Act coupled with entry No. 4 in the Schedule is concerned, I find that the aforesaid entry does not deal with suits but only with applications and as such the aforesaid entry cannot bar the maintainability of a suit. Then again the entry deals with applications for declaration of *bhumidari* rights and not for a declaration that the grant of such *bhumidari* rights is invalid. Whereas in the present suit the relief sought by the plaintiff is primarily to inpugn the grant of certificates of *bhumidari* rights in favour of the defendant, the matter cannot be said to be covered by the aforesaid entry. The law is well established that exclusion of jurisdiction of Civil Courts is not to be readily inferred and where a party alleges such exclusion the onus lies upon it to show that the jurisdiction of the Civil Courts is excluded either expressly or by necessary implication. The appellant in the present case, in my opinion, has failed to substantiate his stand that the jurisdiction of the Civil Court has been excluded. Sub-rule (4) of Rule 8 reproduced above clearly goes to show that matters relating to titles are to be decided by Civil Courts and not by revenue authorities. Section 186 of the Act, to which reference has been made, also makes it clear that questions of title are beyond the scope of the proceedings before the revenue authorities and they have to refer them to the Civil Courts.

In the present case the plaintiff-respondents who were occupancy tenants in the land in dispute, were minor and as such under sub-section (2) of section 10 of the Act no *bhumidari* rights could be declared in respect of that land in favour of the appellant. The revenue authorities, however, did the whole thing mechanically without paying any heed to the question as to whether the respondents

were minor with the result that the appellant was declared *bhumidar* of the land against the express provisions of the Act. The respondents in the circumstances, in my opinion, were entitled to file a civil suit to establish their rights. I, accordingly, hold that the present suit was maintainable and the findings of the Courts below in this respect are correct.

The appeal, consequently, fails and is dismissed; but in the circumstances I leave the parties to bear their own costs.

B.R.T.

FULL BENCH

Before D. Falshaw, C.J., A. N. Grover and P. D. Sharma, JJ.

JIT SINGH,—*Appellant.*

Versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 131 of 1960.

1964

May, 5th.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948) as amended by Punjab Act XXXIX of 1963—Ss. 2(bb) and 18 (c)—Amendments made adding more purposes to the definition of Common Purposes—Whether valid—Consolidation authorities—Whether entitled to make reservations of land for those purposes without payment of compensation—S. 15—Scope of.

Held, that the amendments which have been made to section 2(b) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, by the Punjab Act XXXIX of 1963, adding more purposes to the definition of 'Common Purposes' are valid and the consolidation authorities are entitled to reserve lands for those purposes without payment of compensation to the right-holders. Since the Panchayat have been charged with the duty of maintaining various places and services as mentioned in