

# SUPREME COURT OF INDIA

Ram Dutt

Vs.

Dev Dutt

C.A.No.2522 of 2016

(T.S.Thakur,CJI., A.K.Sikri and R.Banumathi,JJ.)

04.03.2016

## JUDGMENT

**A.K.Sikri,J.**

(S.L.P. (Civil)No.15358 of 2011)

1. Leave granted.

2. We heard learned counsel for the parties at length. For deciding this appeal, those facts which are essential to understand the nature of controversy are captured hereinafter. The appellants, who are three in numbers, and the private respondents, who are 27 in numbers (hereinafter referred to as the “private respondents”), are members of one family. Their predecessors owned land in the Revenue Estate of Burari, Delhi since 1948, i.e., much before the Delhi Land Reforms Act, 1954 (hereinafter referred to as the “Act”) was enacted. The appellants, therefore, claimed that they are co-sharers with the private respondents in the said land which is described as Khewat Nos. 73 and 85 in Revenue Estate, Burari, Delhi. According to them, total area of the land comprised by the aforesaid two Khewat numbers is 253.31 Bigha which is now owned by the said family members. After coming into force of the said Act, a part of said land was recorded in the Bhumidari of the appellants only. This gave cause of action to the private respondents/their predecessors to file proceedings under Section 11 of the Act for declaration that they were also Bhoomidars of the said land which could not be exclusively entered in the name of the appellants. The appellants, on the other hand, claimed that the land in respect of which they were declared Bhoomidars vested in them exclusively as a result of oral partition and re-partition during consolidation proceedings conducted in the year 1975-76. The Court of Revenue Assistant decided the issue in favour of the appellants and dismissed the proceedings initiated by the private respondents. First appeal of the private respondents preferred against the aforesaid order was also dismissed. However, their second appeal to the Financial Commissioner was accepted vide orders dated February 08, 1979 and these private respondents were declared as Bhoomidars, in accordance with their shares, along with the appellants in respect of those lands contained in Khewat Nos. 73 and 85 in the Revenue Estate of Burari.

3. The Consolidation Officer implemented the aforesaid orders vide his orders dated December 31, 1982 thereby modifying the allotment pursuant to the re-partition. The appellants, on the other hand, did not accept this order and preferred a revision petition to the Financial Commissioner against orders dated December 31, 1982. Main plea of the appellants was that the Consolidation Officer could not have ordered modification in the allotment, having become functus officio. The Financial Commissioner, however, rejected the revision petition of the appellants vide his orders dated June 14, 1983. He held that since at the time when the order dated February 8, 1979 (supra) was passed holding the private respondents/their predecessors as Bhumidars together with the appellants, consolidation proceedings in the village were in progress, the private respondents/their predecessors were entitled to approach the Consolidation Officer for allotment of land to them in lieu of their share in the Bhumidari rights out of Khewat Nos. 73 and 85. The contentions of the appellants that the Consolidation Officer had become functus officio and could not effect partition was negated and the Consolidation Officer was held to be entitled to allot land to the private respondents/their predecessors as per their joint Khewats with the appellants.

4. The appellants preferred CWP No. 2462/1984 in the High Court against the aforesaid order dated June 14, 1983 of the Financial Commissioner. The said Writ Petition was dismissed vide order dated February 11, 1985.

5. The appellants then preferred SLP No. 9594/1985 which was also dismissed vide order dated January 27, 1986. It is, thus, clear that order of the Financial Commissioner attained finality. However, while dismissing the special leave petition, this Court also made certain observations. Since, these observations are relevant for our purposes, we are reproducing the order dated January 27, 1986 in its entirety:

“There is no ground to interfere with the order dated 8.2.1979 which shall be binding on the parties. If the petitioners have not been allotted 1/5th of the total holding as determined in the order dated 8.2.1979 it will be opened to the petitioners to resort to any other remedy available in law including a suit if it is permissible. Status quo will continue for four weeks. The Special Leave Petition is disposed off with the observations.”

6. Armed with this order, showing a window to agitate their rights qua non-allotment of a particular land, the appellants filed a suit in the court of Revenue Assistant for allocation of their 1/5th share in the Bhumidari in Khewat Nos. 73 and 85. However, after some time the appellants withdrew the said suit.

7. It so happened that respondent no. 26 also felt aggrieved by the orders dated December 13, 1982 of the Consolidation Officer as according to him the Consolidation Officer had not correctly implemented the orders dated February 08, 1979 passed by the Financial Commissioner. He, thus, also preferred a revision petition before the Financial Commissioner. This revision petition was opposed by Respondent Nos. 1 to 25. The Financial Commissioner, after hearing parties, passed orders dated April 13, 1987 thereby

remanding the matter back to the Consolidation Officer for correct implementation of his order dated February 08, 1978. The writ petition filed by the Respondent Nos. 1 to 25 against the said order of the Financial Commissioner was dismissed by the High Court.

8. When the matter was, thus, remanded back to the Consolidation Officer at the instance of Respondent No. 26, the aforesaid success of Respondent No. 26 in the revision petition filed by him emboldened the appellants as well to file another revision petition before the Financial Commissioner. They contended that their grievances were the same as that of Respondent No. 26. They also referred to orders dated January 27, 1986 passed by this Court in Special Leave Petition No. 1994/1985 and on that basis submitted that the Supreme Court had permitted them to claim their rightful share.

9. The Financial Commissioner vide order dated November 11, 1987 though dismissed the Revision Petition but held that since the Tehsildar/Consolidation Officer pursuant to the order in the Revision Petition of the respondent no. 26 was verifying the shares of the family members in Kehwat Nos. 73 and 85, if the appellants had any grievance, they could also approach the Teshildar/Consolidation Officer who vide order dated 12th July, 1988 divided the land in Khewat Nos. 73 & 85 between the appellants and the private respondents. The said order contains the particulars of the land allotted to each of the groups. However, after so dividing/apportioning the land, the Tehsildar/Consolidation Officer at the foot of the order mentioned “the details of Khasra Nos. of two Khewats i.e. 73 and 85 which have been left out for distribution amongst the co-sharers” and thereafter gave the Khasra Nos. of 94 bighas 15 biswas of land so left out. The said order of the Tehsildar/Consolidation Officer records that the same was agreed to by all the parties.

10. The appellants contending that the Tehsildar/Consolidation Officer had failed to divide/apportion the aforesaid 94 bighas 15 biswas of land again preferred a Revision Petition to the Financial Commissioner.

11. The Financial Commissioner vide order dated August 09, 1988 dismissed the said Revision Petition as not maintainable. It was held that if the appellants were claiming Bhumidari rights in the said 94 bighas 15 biswas of land, their remedy was by way of an application under Section 11 of the Act for declaration of this Bhumidari rights and that the appellants had already been given their share in accordance with order dated February 8, 1979.

12. It is this order of the Financial Commissioner which was impugned by the appellants by filing writ petition in the High Court. Learned Single Judge was not convinced by the plea raised by the appellants in the said writ petition and dismissed the same vide judgment dated December 01, 2010 holding that there was no error in the orders passed by the Financial Commissioner. We may note that primary contention raised by the appellants was that 94 bighas 15 biswas of land was left out and not distributed by the Consolidation Officer. The appellants, therefore, pleaded that it should also be distributed and they should not be relegated to having their rights as Bhumidars with respect to the said land by instituting the separate proceedings under Section 11 of the Act. This contention of the appellants was

rejected by the learned Single Judge of the High Court, inter alia, on the ground that the land which the Consolidation Officer distributed/apportioned between the appellants and the private respondents vide his orders dated July 12, 1988 was a land of which the appellants and the respondents were Bhumidars and of which they were in possession and it was only that land which was the subject matter of orders dated February 08, 1979. According to the learned Single Judge of the High Court, left out land admeasuring 94 bighas 15 biswas in which the appellants were now claiming their share was the land in respect whereof there was a dispute of ownership and it was not for the High Court to inquire into this factual aspect in writ jurisdiction.

13. The appellants filed Letters Patent Appeal No. 128 of 2011 against the aforesaid order of the learned Single Judge. This appeal has been dismissed by the Division Bench vide its orders February 1, 2011. The Division Bench has taken note of order dated January 27, 1986 passed by this Court in SLP (C) No. 9594/1985 and filing of the suit by the appellants thereof which was withdrawn. On that basis, it is held that a second writ petition could not have been filed when on earlier occasion the lis in-question was adjudicated. It has, thus, brushed aside the submissions of the appellants that when a revision petition was filed by one of the respondents, the appellants felt that they could also file a revision petition.

14. It is this order which is in appeal before us.

15. After going through the orders and hearing the counsel for the parties, we are of the opinion that the impugned order of the High Court does not call for any interference. The narration of facts disclosed above unambiguously reveals that in the first round they had claimed that they were the co-sharers with private respondents in the land described as Khewat Nos. 73 and 85 in Revenue Estate of Burari, Delhi which was measuring 253.31 Bhiga. The issue was whether the respondents were also Bhumidars of the said land. The appellants had contended that they were declared Bhumidars exclusively to the exclusion of private respondents as a result of oral partition and re-partition during consolidation proceedings conducted in the year 1975-1976. Their respective shares were apportioned. Such proceedings were ultimately decided in favour of the respondents and achieved finality as the SLP No. 9594/1985 of the appellants were also dismissed. However, before this Court, the appellants took another plea, namely, they were not allotted 1/5th of the total holding as determined in the order dated 08.02.1979. Taking note of this contention, the Court observed that it would be open to the appellants to resort to any other remedy available in law including a suit if it is permissible. This clearly implied that for non-allotment of entire 1/5th holding, the appellants were free to avail 'any other remedy' as per law. Precise contention of the appellants was that 94 Bigha 15 Biswa of land was left out and not distributed and, therefore, the same be also distributed and the appellants should get their rights as Bhumidars in the said land as well. This land of 94 Bigha 15 Biswa was not the subject matter of the earlier proceedings. Position in respect of this land is stated by the learned single Judge of the High Court in judgment dated December 01, 2010 in the following manner:

“...It thus appears that 94 bighas 15 biswas of the left out land referred to in the order dated 12th July, 1988 of the Tehsildar/Consolidation Officer is the balance land as per

the Jamabandi of the year 1948. The land which the Consolidation Officer vide order dated 12th July, 1988 distributed/ apportioned between the petitioners and the respondents was the land of which the petitioners and the respondents were Bhumidars and of which they were in possession of and which land was the subject matter of the order dated 8th February, 1979 (supra). It thus transpires that the entire land of which the petitioners and the respondents were the Bhumidars and in possession of and in which the rights of the respondents 1 to 27 were upheld by the order dated 8th February, 1979 which has attained finality has already been distributed. The left out land admeasuring 94 bighas 15 biswas in which the petitioners are now claiming share is the land which, according to the petitioners, had in the settlement fallen to the share of the respondents and in which the respondents had lost their rights by not taking back the mortgage upon coming into force of the DLR Act.”

16. It becomes clear from the above that insofar as dispute pertaining to 94 Bigha 15 Biswa is concerned, it was totally a different subject matter not covered by the proceedings in the first round. We would like to reproduce the following observations of the learned single Judge in his judgment dated December 01, 2010 which clinches the issue and we entirely agree with the said reasons.

“20. The petitioners have not pleaded that the said 94 bighas 15 biswas of land or any part thereof was part of the holding in Khewat Nos. 73 and 85 of which the petitioners and the respondents were Bhumidars and in possession. Thus it cannot be said that the partition/distribution of land of which the petitioners and the respondents were Bhumidars and in possession of is bad for the reason of non inclusion of 94 bighas 15 biswas of land of which the petitioners are not shown to be Bhumidars and in possession. The petitioners in fact by way of these proceedings are found to be seeking to reopen the matters which stand concluded in the earlier round of litigation till the Supreme Court.”

17. It is for this reason that this Court gave liberty to the appellants to initiate appropriate proceedings in this behalf including filing of suit if that was remedy available in law. The appellants, in fact, filed the suit for this purpose. However, for reasons best known to them, they choose to withdraw the suit. After the withdrawal of the suit, they again approach the Commissioner and filed revision petition arising out of earlier proceedings which was rightly dismissed by the Commissioner holding that such proceedings were not maintainable. It is this view which is upheld by the single Judge as well as Division Bench of the High Court. We may point out that the learned single Judge of the High Court has even recorded in his judgment that respondents have no objection to the appellants instituting proceedings, if entitled in law, for claiming share in the said 94 Bigha 15 Biswa of land.

18. We, thus, find no merit in this appeal which is accordingly dismissed. However, there shall be no order as to cost.