



IN THE COURT OF REVENUE ASSISTANT / SDM (SAKET)
REVENUE DEPARTMENT : GOVERNMENT OF NCT OF DELHI
OLD TRAFFIC COURT COMPLEX : M B ROAD : SAKET : NEW DELHI,

No - 4005

DT. - 11/03/15

Case No. 125/RA/HK/1999

SATBIR GOEL VS RAI SINGH
(- MUTATION CASE -)

ORDER

This order shall dispose-off the dispute regarding mutation of land comprising Khasra No. 28, Village – Saidulajab, New Delhi referred/remanded by the Court of Collector (South), New Delhi vide Orders dated 22.11.1999.

The Naib Tehsildar (Mehrauli) sanctioned a mutation in respect of land bearing Khasra No. 28 situated in the revenue estate of Village Saidulajab to the extent of 1/6th share in favour of Shri Rai Singh S/o Late Shri Ram Kala, R/o Village Saidulajab, herein after referred as 'respondent' alongwith other ownership of the deceased bhumidar. The Petitioner, Shri Satbir Singh Goel being aggrieved by the said mutation order filed an appeal before the Court of Collector (South) vide Appeal No. 89/97. The said appeal was decided by the Court of Collector (South), GNCTD vide orders dated 22.11.1999, wherein, it was observed that "at the time of passing the order the Naib Tehsildar (Mehrauli), ordered for mutation of land in khata kataoni no. 34min in favour of the respondent. The area mentioned in the order of mutation is 01 bigha 16 biswa, while it should be only 16 biswas i.e. 1/6th share in total area of 04 bigha 16 biswa. This needs to be changed accordingly by the Revenue Assistant. Accordingly, the case was remanded back to the Court of Revenue Assistant. Fresh notices were issued in the matter. The records show that there was no appearance on the part of the respondent. During the pendency of the case, the petitioner Shri Satbir Singh Goel expired on 05.10.2001, accordingly, Shri Pramod Goel, Shri Vijay Goel and Shri Pankaj Goel filed an application for impleadment being the surviving legal heirs of the deceased petitioner. The present matter was received from the O/o SDM (Mehrauli) on trifurcation of District – South and redefining of the jurisdiction of the sub-divisions concerned. Accordingly, fresh notices were issued. Again there was no response from the respondents. On 06.01.2015, Shri Pramod Goel appearing for the Petitioner pleaded that despite the application that the Petitioner in the present case has expired in the year 2001, the LRs of Late Shri Satbir Goel have not been impleaded as Party. The request was allowed on the basis of the records available on record and Shri Pramod Goel, Shri Vijay Goel and Shri Pankaj Goel were impleaded as necessary party & Petitioners in the case. It was further pleaded that the case has been pending for last more than 15 years without any results and there has been no appearance on behalf of the respondent since long. The Counsel for Gaon Sabha submitted that since the present dispute evolves from a WILL, the provisions of Section 33 of



the Delhi Land Reforms Act, 1954 are not attracted. Besides, he submitted his no-objection if the matter is proceeded ex-parte owing to the long non-representation of the respondent. Accordingly, the matter was reserved for Orders.

I, have gone through the material available on file. The land bearing Khasra No. 28 admeasuring 05 bigha 07 biswa situated in Village Saidulajab was recorded in the name of Shri Rattan Singh S/o Shri Ram Kala as bhumidar to the extent of 1/6th Share, alongwith other ownerships. Shri Rattan Singh expired on 12.11.1992 and on the application of Shri Rai Singh (claiming to be the sole successor of Late Shri Rattan Singh), his interest in land was mutated in his favour by the then Naib Tehsildar (Mehrauli) vide Orders dated 01.04.1994. After the mutation was effected, Shri Satbir Singh Goel filed an appeal before the Court of Collector (South) wherein he deposed that Shri Rattan Singh in the year 1974 let out a portion of land measuring (80' * 30') to the appellant and subsequently in the year 1988 bequeathed (00-10) of land in Khasra No. 28 out of his share in favour of the appellant Shri Satbir Singh Goel, by way of a WILL. Even the possession of the concerned land was handed over to Shri Satbir Singh Goel by Shri Rattan Singh during his life time. Thus, it was prayed that the Order dated 01.11.1994 of the Naib Tehsildar passed in Case File No. 697/94-95 be set-aside. Accordingly, the appeal was decided by the Court of Collector (South) vide Orders dated 22.11.1999, wherein, the appeal was allowed and the matter was remanded back to the Court of Revenue Assistant to decide the case, afresh. Accordingly, notices were issued. However, as per the record the respondent Shri Rai Singh never cared to put his appearance in response to the notices. Thus, looking into the pendency of the case for almost 15 years and non-appearance of the respondent despite notices, this court is forced to decide the matter ex-parte on the basis of the information available on file. As per the records, Shri Sheo Chand S/o Late Shri Shera R/o Village Saidulajab, New Delhi and Shri Jai Narain S/o Shri Jug Lal R/o Village Maidangarhi, New delhi had deposed before the court by way of an affidavit dated 18.10.2003 attested by the Oath Commissioner, wherein they confirmed that Shri Rattan Singh during his life time had transferred 500 sq. yds. of land to Shri Satbir Goel and also handed over the possession of the said land. Besides, they also confirmed their signatures as witness on the Will and identified the signatures of Shri Rattan Singh. The instrument of transfer in the present case is a "WILL", which was registered in the O/o Sub Registrar (Gurgaon) and both the witnesses of the will confirmed their signatures on the Will.

Before proceeding in the matter, it would be appropriate to mention that the Court of Collector (South) while disposing-off the appeal vide orders dated 22.11.1999, had observed that "at the time of passing the order the naib Tehsildar (Mehrauli), ordered for mutation of land in khata kataoni no. 34min in favour of the respondent. The area mentioned in the order of mutation is 01 bigha 16 biswa, while it should be only 16 biswas i.e. 1/6th share in total area of 04 bigha 16 biswa. This needs to be changed accordingly by the Revenue Assistant". The Khasra No. 34min total measuring (04-16), Shri Rattan Lal was having 1/6th Share in the said land, hence, the area for which mutation was sanctioned mentioned as (01-06) is wrong and it should be corrected as (00-16). Coming back to the subject matter, the respondent have failed to avail the opportunities granted by the Court. The Petitioner/Claimant Shri Satbir Goel has sought mutation in respect of (00-10) out of Khasra No. 28min admeasuring (05-07) on the basis of a registered WILL, which although is a document which do not require compulsory registration. In




the present case, the following provisions of the Delhi Land Reforms Act, 1954 needs consideration :-

Section 43 *Transfer with possession by a Bhumidhar to be deemed a sale* - Any transfer of any holding or part thereof made by a Bhumidhar by which possession is transferred to the transferee for the purpose of securing any payment of money advanced or to be advanced by way of loan, and existing or future debt or the performance of an engagement which may give rise to a pecuniary liability, shall, notwithstanding anything contained in the document of transfer or any law for the time being in force, be deemed at all times and for all purposes to be a sale to the transferee and to every such sale to the provisions of section 33 and 42 shall apply.

Section 48 *Bequest by a Bhumidhar.* - (1) A Bhumidhar may by will bequeath his holding or any part thereof except as provided in sub-section (2).

(2) No Bhumidhar entitled to any holding or part in the right of a widow, mother step-mother, father's father, father's mother, unmarried daughter, or unmarried sister, may bequeath by will such holding or part.

(3) Every will made under provisions of sub-section (1) shall, notwithstanding anything contained any law, custom or usage, be in writing and attested by two persons.

Section 84 *Ejectment of persons occupying land without title.* - A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and

(a) Where the land forms part of the holding of a Bhumidhar or Asami without the consent of such Bhumidhar or Asami, or

(b) Where the land does not form part of the holding of a Bhumidhar or Asami without the consent of the Gaon Sabha shall be liable to ejectment on the suit of the Bhumidhar, Asami or Gaon Sabha, as the case may be and shall also be liable to pay damages.

(2) Where any person against whom a decree for ejectment from any land has been executed in pursuance of a suit under sub-section (1) re-enters or attempts to re-enter upon such land otherwise than under authority of law, he shall be presumed to have done so with intent to intimidate or annoy the person in possession or the Gaon Sabha, as the case may be, within the meaning of section 441 of the Indian Penal Code.



Section 85 *Failure to file suit under section 84 or to execute decree obtained thereunder.- If a suit is not brought under Sub-section (1) of section 84 or a decree obtained in any such suit is not executed within the period of limitation provided for the filing of the suit or the execution of the decree, the person taking or retaining possession shall—*

(i) Where the land forms part of the holding of a Bhumidhar, become a Bhumidhar thereof;

(ii) Where the land forms part of the holding of an Asami on behalf of the Gaon Sabha, become an Asami thereof;

(iii) In any case to which the provisions of clause (b) of section 84 apply, become a Bhumidhar or Asami as if he had been admitted to the possession of the land by the Gaon Sabha.

Provided that if in the revenue records of the fasli year ending on the 30th June, 1954, the land referred to in clause (iii) was not included in the holding of the person taking or retaining possession or his predecessor-in interest, then, notwithstanding the expiry of the aforesaid period of limitation for such suit or decree, the suit may be filed or the decree obtained in such suit may be executed within a period of three years from the date of passing of the Delhi Land Reforms (Amendment) Act, 1965.

Provided further that the benefit of the extension of the period of limitation under the preceding proviso shall not be availed in any case where a person who has become a Bhumidhar in respect of any land under clause (iii) has transferred such land to another person for valuable consideration before 10th May, 1965.

Thus, a plain reading of the aforementioned provisions of the Delhi Land Reforms Act, 1954 makes it clear that Section 48 provides that land under the DLR Act can be transferred by way of WILL. Besides, Section 43 clarifies that transfer of possession by the bhumidar shall be a deemed sale under the provisions of the Act. In addition, the records placed before me clearly show that despite the possession of the suit property for more than 25 years, the respondent party has not initiated any action for eviction of the Petitioner as provided under the provisions of Section 84, which subsequently, provides benefit to the Petitioner party under the provisions of Section 85.

Thus, in view of the above discussed, it is quite clear that Shri Satbir Goel is having possession of (00-10) of land since 1974. Subsequently, a WILL was registered with the Sub Registrar (Gurgaon) by the deceased bhumidar in favour of the petitioner. In the absence of any contrary claims, action as required u/s 84 and considering the provisions of Section 43, 48 & 85 of the DLR Act, 1954, this court has no hesitation in upholding the claim of the petitioner's. Hence, it is ordered that the mutation entries dated 01.11.1994 sanctioned by the



then Naib Tehsildar be amended as under:-

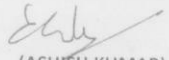
- a). The area of land out of Khasra No. 34min mutated in favour of Shri Rai Singh S/o Shri Ram Kalan being the LR of Late Shri Rattan Singh S/o Shri Ram Kalan be corrected as (00-16) instead of (01-06).
- b). As regards Khasra No. 28min admeasuring (05-07), Late Shri Rattan Singh was having 1/6th Share i.e. (00-17). Out of which (00-10) of land be mutated in the name of Shri Pramod Goel, Shri Vijay Goel and Shri Pankaj Goel (in equal shares) being the LRs of Late Shri Satbir Goel. Remaining (00-07) of land out of the share of Late Shri Rattan Singh be mutated in the name of Shri Rai Singh being the only LR of the deceased bhumidar.

Let a copy of this order be sent to all concerned.

Announced in open court on 05.03.2015.

Given under my hand and seal of this court on this 11th day of March, 2015.




(ASHISH KUMAR)
REVENUE ASSISTANT / SDM
SAKET DIVISION : DISTRICT SOUTH

To :-

1. Shri Pramod Goel, Shri Vijay Goel and Shri Pankaj Geol (All S/o of Late Shri Satbir Goel) R/o E-64, Saket, New Delhi.
2. Shri Rai Singh S/o Shri Ram Kalan R/o F-122, Saidulajab, M B Road, New Delhi.
3. The Tehsildar (Saket), GNCTD with the direction to comply with the directions in a time bound manner.
4. The Halqua Patwari (Village-Saidulajab).

Copy to :-

- 1). The Programmer, O/o DM (South), GNCTD with the request to upload this order on the department site.
- 2). Reader to District Magistrate (South), GNCTD.