

Shri Hari Singh and Ors. Vs.smt. Savitri Devi and Ors.

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Court : Delhi

Decided On : Aug-21-2019

Appellant : Shri Hari Singh and Ors.

Respondent : Smt. Savitri Devi and Ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment delivered on:

21. tAugust,2019 + W.P.(C) 6614/2014 1. SHRI MALKHAN SINGH² SHRI CHANDER HAS³ SHRI SANJEET SEHRAWAT⁴ SHRI VISHAL SEHRAWAT ...Petitioners Through: Mr. Sunil Chauhan, Advocate. Versus 1. FINANCIAL COMMISSIONER, DELHI.

2. SMT. SAVITRI DEVI³ SMT. BIMLA DEVI⁴ SMT. DARSHNA⁵ SHRI HARI SINGH⁶ SHRI SULTAN⁷ SHRI AMAN KUMAR⁸ SHRI AMIT KUMAR⁹ SHRI ANIL KUMAR ...Respondents Through: Satya Mr. B. D. Kaushik, Advocate with Mr. Neeraj Yadav and Mr. Bhushan, for R-1. Mr. Advocates Sanjay Pathak, Advocate with Mrs. K. K. Kiran Pathak, Mr. Sunil Kumar Jha and Mrs. M. S. Akhtar, Advocates for R-5 to R-9. Kumar + W.P.(C) 6106/2015 1. SHRI HARI SINGH² SHRI SANJEEV KUMAR W.P.(C) Nos. 6614/2014 & 6106/2015 Page 1 of 11 3. SHRI RAJEEV KUMAR⁴ SHRI AMAN KUMAR⁵ SHRI AMIT KUMAR⁶ SHRI ANIL KUMAR Through: ...Petitioners Mr. Sanjay Kumar Pathak, Advocate with Mrs. K. K. Kiran Pathak, Mr. Sunil Kumar Jha and Mr. M. S. Akhtar, Advocates. Versus 1. SMT. SAVITRI DEVI² SMT. BIMLA DEVI³ SMT. DARSHNA⁴ SHRI MALKHAN

SINGH⁵ SHRI CHANDER HAS⁶ SHRI SANJEET SEHRAWAT⁷ SHRI VISHAL SEHRAWAT ...Respondents Through: Mr. B.D. Kaushik, Advocate with Mr. Neeraj Yadav and Mr. Bhushan, Advocates for R-1. Mr. Sunil Chauhan, Advocate for R-4 to R-7. Satya CORAM: HON'BLE MR. JUSTICE I.S.MEHTA I. S. MEHTA, J.

JUDGMENT¹ Instant petitions under Article 226 and 227 of The Constitution of India have been filed by the present petitioners against the order dated 31.07.2014 passed by the Ld. Financial Commissioner, dated 07.10.2013 passed by the Collector Revenue DC/North and the order W.P.(C) Nos. 6614/2014 & 6106/2015 Page 2 of 11 dated 18.01.2013 passed by the Tehsildar.

2. The brief facts stated are that Sh. Layak Ram S/o Kanhiya was the recorded co-owner of
share of Khata No.

and

share of Khata No.

along with his two brothers namely Desraj S/o Kanhiya and Kehar Singh S/o Kanhiya in the aforesaid agriculture land situated within the revenue estate of village Mohd. Pur Ramjanpur, Delhi.

3. On 13.01.1995 Layak Ram S/o Kanhiya Lal died leaving behind three married daughters i.e. Savitri, Bimla and Darshana (Respondent No.2 to 4), no male child was born during the life time of Layak Ram. After the death of Late Layak Ram mutation proceedings pertaining to agricultural land comprised in khata No.75(4-16), 76(4-16), 77 (4-16), 78 min (1-16), 155 (4-16), 231 (1-8), 230 (1-12), 233 (4-12), 336 (3- 9), 339 (4-10) & 340 (2-3), 227 (4-16), 228 (4-16), 232 (4-13) total measuring 52 Bigha 19 Biswa (which is share of deceased Layak Ram out of two khata) was carried out and Tehsildar, Alipur mutated share of Layak Ram in favour of Respondent No.2 to 4. The plea taken by the

... Petitioner

s Malkhan Singh, Chander Has, Sanjeet Sehrawat and Vishal Sehrawat was ignored that Late Layak Ram was co-share of the property in question. Aggrieved from the order of the Tehsildar Respondent No.2 to 4 preferred an appeal before the Collector, Revenue DC/North vide appeal No.31/DCN/2030/4638, same was

dismissed on 07.10.2013.

4. Being aggrieved from the said order the petitioners of both petitions i.e. WP(C) 6614/2014 & 6106/2015 filed second appeal before the Ld. Financial Commissioner, Delhi in case No.204/13, W.P.(C) Nos. 6614/2014 & 6106/2015 Page 3 of 11 Financial Commissioner passed the impugned order rejecting the appeal of the petitioners.

5. Aggrieved from the Order of Ld. Financial Commissioner present petitioners of both petitions have challenged the impugned Orders.

6. Learned Counsel on behalf of the petitioners has submitted that Tehsildar has sanctioned the mutation on the basis of Hindu Succession Act. He further submits that no notice of sanction was issued prior to sanction of mutation. He further submits that the daughters are not entitled to bhumidari rights as per Section 50 of Delhi Land Reforms Act. He further submits that the petitioners are reversioners and are entitled to bhumidari rights.

7. Learned Counsel of

... Petitioner

further submits that, factually, the case is, "Daughters versus Reversioners". He further submits that story of two wills of deceased Layak Ram is false, as those two wills were not genuine and were not probated. He further submits that the deceased Layak Ram at the time of his death neither left any will nor the daughters were legally entitled for bhumidari rights under the Delhi Land Reforms Act, 1954. He further submits that the deceased Layak Ram died without having any male issue, therefore, under law the bhumidari rights has to be rewarded back to the male legal descendants i.e., reversioner under Section 50 of the Delhi Land Reforms Act, 1954.

8. He further submits that as per the available record, daughters were married when deceased Layak ram died on 13.01.1995. He W.P.(C) Nos. 6614/2014 & 6106/2015 Page 4 of 11 submits that the female cannot inherit bhumidari rights as per Section 50 of the Delhi Land Reforms Act.

9. Counsel for the petitioner has further submitted that the bhumidari rights could be devolved on the basis of the section 50 of the Delhi Land Reforms Act, 1954 and not by way of Hindu Succession Act as Delhi Land Reforms Act, 1954 is a specific Act which deals with the devolution of interest of Bhumidar rights. Since, Layak Ram died in year 1995, Hindu Succession Amendment Act 2005 will not be applicable. Therefore, mutation was to be given effect in favour of the male descendants. He further submitted that tehsildar went wrong while mutating in favour of the daughters on 18.01.2013 on the basis of Hindu Succession Amendment Act, 2005 which must not be applicable in the instant case. Anybody who purchases the property without holding any title under the law steps into the shoes of the person who does not hold right title over the suit property.

10. Learned Counsel for the petitioner relied upon Prakash Chand & Ors v. Phoolwati & Ors 21 1982 DLT219 Ram Mehar v. Dakhan MANU/DE/0240/1972 and Mayank Vashisht v. Financial Commissioner 114 (2004) DLT162 11. On the other hand Learned Counsel for Respondent No.2 to 4 submits that present writ is arising out of order of the Financial Commissioner and factum of the dispute is to be determined by the Civil Court and not by the Revenue Court. Therefore, present writ petition is liable to be dismissed. W.P.(C) Nos. 6614/2014 & 6106/2015 Page 5 of 11 12. Learned Counsel for the Respondent No.2 to 4 further submitted that the land in question has been given to the daughters i.e. Bimla, Savitri and Darshana in the year 1975 under the family settlement. The said family settlement has been admitted by

... Petitioner

No.1 Malkhan Singh.

13. The Learned Counsel for Respondent No.2 to 4 further submitted that during lifetime of deceased Layak Ram, his daughters filed petition under Section 145 Cr.P.C. which was allowed and possession over the suit property remained with the Respondent daughters of Layak Ram which has been proved during the lifetime of the Layak Ram.

14. Learned Counsel for Respondent No.2 to 4 further submits that deceased Layak Ram died on 13.01.1995 without having a male issue and possession of the

suit property remained with the Daughters. He further submitted that at the time of his death, Layak Ram was left with no property whatsoever in his favour as the Bhumidari rights has already been given under the family settlement in the year 1975. Therefore, the present Petition be dismissed.

15. The Respondent No.2 to 4 placed reliance on Kale & Ors Vs. Director, Consolidation 1976(3) SCC119 UOI & Ors Vs. Coastal Container Transporters Association & Ors, 2019 (9) SCALE758 State of Jammu & Kashmir Vs. Gulam Mohd. Dar & Anr, (2004) 12 SCC327 UOI & Ors Vs. Ghaus Mohammad, (1962) 1 SCR744 K.S. Rashid and Son Vs. The Income Tax Commission etc, AIR 1954 SC207 and Satish Khosla Vs. Eli Lilly Ranbaxy Ltd., 1998 (44) DRJ (DB). W.P.(C) Nos. 6614/2014 & 6106/2015 Page 6 of 11 16. The available record indicates the cause of the dispute between the parties is right of daughters versus reversioner's right over the suit property.

17. The family tree of deceased Layak Ram as per the available records is as under: - Pedigree Table Layak Ram Kanhiya Desraj Kehar Singh Bimla Savitri Darshana Hari Singh Baljeet Sultan Malkhan Singh Samay Singh Chander Has Aman Amit Anil Smt. Santosh Vishal Sandeep 18. The Respondent No.2 to 4 i.e. Bimla, Darshana and Savitri are the daughters of Layak Ram who died intestate on 13.01.1995. The said position of facts remains undisputed by the petitioners till date.

19. The Respondent No.2 to 4 during the life time of deceased Layak Ram, filed a petition under Section 145 Cr.P.C. in Case No.9/3/93 titled State v. Malkhan Singh, Layak & Others before the Ld. SDM and the relevant extract of the Order dated 27.08.1993 is reproduced as under: - ... In view of the above discussions and being satisfied by due enquiry into the claims/evidence of parties, without reference to the merits of the claim W.P.(C) Nos. 6614/2014 & 6106/2015 Page 7 of 11 forbid any disturbance of either of said parties to the legal right of possession, that the claim of actual possession by the said Bimla Devi, Darshana & Savitri (party No.3 in the case) is true. I do decide and declare that they (party no.3) are in possession of the said land bearing kh. nos. 75, 76, 77, 78, 155, 227, 228, 230, 231, 232, 233, 336, 339, 340 in the revenue estate of village Mohd. Pur

Ramjanpur (situated within my local jurisdiction), and entitled to retain such possession until ousted by due course of law and do strictly their possession in meantime. After passing order u/s 145(8) on 7.5.93, sale proceeds for Rs. 60,500/- were deposited with cahier D.C. Office till the disposal of the case. Now, it is, therefore ordered that party no.3 (Bimla Devi & ors.) is entitled to the sale proceeds of wheat dated 7.5.93 for Rs. 45,375/- and no.- 390817 dated 7.5.93 for Rs. 15,125/-. Announced this court on 27.8.93. Given under my hand and seal of Sd/- (S.S. Sidhu) Sub-Divisional Magistrate Kingsway camp/Darya Ganj. 20. The aforesaid order of the SDM indicates that the property in question was in the cultivatory possession of Respondent No.2 to 4. The said order of the SDM on being challenged before the Court of Sessions in Crl. Rev. No.02 dated 8.01.2007, Court of Sessions vide order dated 04.12.2007 affirmed the order of SDM. Thus, cultivatory possession over the suit property of Respondent No.2 to 4 attains the finality between the parties as the petitioners have not claimed otherwise in the present petition. W.P.(C) Nos. 6614/2014 & 6106/2015 Page 8 of 11 21. The claim of the

... RESPONDENTS

i.e. Bimla, Darshana and Savitri, daughters of deceased Layak Ram, that aforesaid land was given to them under family settlement in the year 1975 is corroborated with the written statement by Malkhan Singh.

22. The contention of the Ld. Counsel of the petitioners that Tehsildar while mutating the aforesaid land in favour of the Respondent No.2 to 4 did not gave hearing to the petitioners on the date of mutation i.e. 18.01.2013 despite presence of order dated 23.08.1996 losses its significance on the following grounds: - I. The dispute between the parties is right of daughters in suit property versus reversioners right over the suit property. II. The consistent plea of petitioners is that the suit property should be rebutted back to the reversioners as deceased Layak Ram died intestate on 13.01.1995 and there is no other factor which gives rise to a claim in favour of petitioners. Therefore, tehsildar did not felt it necessitated to summon him as mutation was to be carried out on the basis of cultivatory possession and family settlement among

... Petitioner

No.1 to 4. Section 22 of Delhi Land Revenue Act, 1954 defines transfer, transfer includes a family settlement, Explanation (i) of Section 22 Delhi Land Revenue Act, 1954 is reproduced as under:-

""(i) A family settlement by which the holding or part of the holding recorded in W.P.(C) Nos. 6614/2014 & 6106/2015 Page 9 of 11 the record-of-rights in the name of one or more members of that family is declared to belong to another or other member, ..."

Moreover, prior to the mutation, parties were in the litigation with their respective issues and the competent Courts already gave finding, negating execution of two wills of Late Layak Ram, leaving no room for existence of any other factor, which could have been considered at the time of mutation.

23. The cultivatory possession in favour of the Respondent No.2 to 4 attained finality as per SDM and ASJ order qua petitioners and it is the petitioners who have to challenge the recovery of possession before competent Civil Court to establish their better right and title than Respondent No.2 to 4. There is no document and evidence coming on records that they did so up till date. Therefore, it is apparent that cultivatory possession of the aforesaid suit property is with Respondent No.2 to 4.

24. So far, right of cultivator over the suit property is concerned, Respondent No.2 to 4 claims that in the year 1975, the property in question was given to them under the family arrangement which has been admitted in the written statement filed by petitioner No.1 Malkhan Singh and he has not denied the same in the present petition.

25. The contention of the learned Counsel that the Hindu Succession Amendment Act, 2005 cannot be applied retrospectively for determining the successors-in-interest of a deceased Bhumidhar who died in the year 1995, loses its significance in presence of the fact W.P.(C) Nos. 6614/2014 & 6106/2015 Page 10 of 11 that land in question was given to Respondent No.2 to 4 under Family Settlement in the year 1975 by Layak Ram (Deceased Father).

26. As such, reliance placed by the

... Petitioner

in Prakash Chand (Supra), Ram Mehar (Supra) and Mayank Vashisht (Supra) is misplaced.

27. Therefore, the mutation dated 18.01.2013 passed by Tehsildar and order of SDM and Financial Commissioner does not require interference in presence of the available forum of Civil Court to the petitioner to prove their title better than that of Respondent No.2 to 4.

28. As discussed above, this Court find no ground to interfere with impugned Orders passed by the Ld. Financial Commissioner, Collector and Tehsildar. Writ petition is accordingly dismissed. Applications, if any, are accordingly disposed of. LCR be sent back alongwith one copy of this judgment. One copy of this judgment be placed in WP(C). No.6106/2015. No order as to costs. I.S.MEHTA (JUDGE)
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