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Chhano Devi Vs. Delhi Municipal Development Authority

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Court : Delhi

Decided On : Mar-01-2000

Reported in : 2000IVAD(Delhi)136; 86(2000)DLT213; 2000(54)DRJ922

Judge : Dr. M.K. Sharma, J.

Acts : Constitution of India - Article 226

Appeal No. : C.W. No. 1226/1995

Appellant : Chhano Devi

Respondent : Delhi Municipal Development Authority

Advocate for Def. : Ms. Anusuya Salwan Adv.

Advocate for Pet/Ap. : Mr. B.L. Chawla Adv

Judgement :
ORDER

Dr. M.K. Sharma, J.

1. The present writ petition has been preferred by the petitioner seeking for a direction to the respondent authority to mutate Plot No. 39, Block-E, East of Kailash Residential Scheme, New Delhi in favor of the petitioner after the death of Sh. Muni Lal on the basis of the alleged will dated 12.3.1969 in accordance with

the notice published by the authority in the newspaper on 22.10.1990 and its policy guidelines and Resolution No. 163/93.

2. It is stated in the writ petition that late Sh. Muni Lal was the owner of the plot of Land being No. E-39, East of Kailash, Residential Scheme, New Delhi. It is alleged that the petitioner was adopted by deceased Sh. Muni Lal vide deed of adoption dated 27.10.1969 which was duly registered in the Office of the Sub-Registrar. It was also alleged that the deceased Sh. Muni Lal left behind a registered will dated 12.3.1969 in favor of the petitioner. Sh. Muni Lal died on 29.5.1972 at Delhi, subsequent in which in the year 1973 the petitioner made an appliction to the DDA for mutation of the aforesaid plot in her favor on the basis of the registered will as also the registered adoption deed. Several communications thereafter were made by the petitioner for mutation of the said plot in her favor on the basis of the registered will as also the registered deed of adoption. In spite of the aforesaid requests, mutation has not been done in favor of the petitioner and accordingly the present petition.

3. Counsel appearing for the petitioner, during the course of his arguments, relied upon the notice published by the respondent No. 1/DDA in the newspaper on 22.10.1990. In the said notice published the DDA had announced its decision to dispense with the requirement of obtaining 'No Objection Certificates' from other legal heirs in case of mutation on the basis of the registered will. It was announced that such No Objection Certificates from other legal heirs would not be necessary in the cases where registered will has been executed in favor of family member of the testator. It was also announced that in case where the testator has not family of his own, the family member will mean his legal heirs as defined in the Law of Succession applicable to him and that in such cases mutation will be allowed only after expiry of three months from the date of death of the testator so that, if any legal heir has any objection that may be filed during that period. He also sought to rely upon Resolution No. 163/93 of the Delhi Development Authority wherein it was decided that in the case of devolution of the property on the basis of a will of family member furnishing of certain documents was only necessary. He submitted that the deceased Muni Lal was the uncle (mausa) of the petitioner and he had no daughter of his own and so he adopted the petitioner as a daughter. By virtue of

adoption deed dated 27th October, 1969 she was adopted as the daughter and became a family member of the deceased under the law and, thereforee, was covered by the definition of the family member in terms of the notice published in the Statesman dated 22.10.1990 and was entitled to get mutation of the above plot in her favor on the basis of the registered will dated 12.3.1969 after the death of her father late Sh. Muni Lal in accordance with the policy guidelines of the respondent/DDA.

4. The respondent/DDA has contested the aforesaid petition by filing a counter affidavit contending, inter alia, that late Sh. Muni Lal by his letter dated 11.1.1969 sought for transfer of the plot in favor of Smt. Chhano Devi, the present petitioner and also submitted certain documents for the aforesaid purpose, but his request was rejected vide letter dated 15th December, 1969 and she was asked to obtain declaration regarding the alleged adoption from the competent court of law vide letter dated 31st May, 1971. It was also alleged that the petitioner did not submit the attested copy of the alleged will which was reported to have been executed by Sh. Muni Lal. It is also stated that a suit was filed for declaration wherein the petitioner was the plaintiff. But the said suit was withdrawn. It is also stated that while request of the petitioner for mutation of the plot in her favor was under examination, a registered letter dated 19th June, 1985 was received from one Sh. Mohan Lal, one of the sons of Sh. Muni Lal informing the respondent that no will was ever executed by his father in favor of the petitioner. Accordinly, the mutation was not allowed in favor of the petitioner by the respondent and by letter dated 13th April, 1988 petitioner was asked to get the will probated from the competent court of law and to submit a certified copy of the will to the respondent.

5. In view of the pleadings of the parties, it is apparent that the petitioner is claiming right and title to the aforesaid plot on the basis of the registered will executed in her favour, which is being disputed by other legal heirs of the deceased Muni Lal. thereforee, a dispute has arisen in respect of legality of the title. In view of such a dispute the respondent has directed the petitioner to approach the Civil Court to obtain a probate in respect of the will so that action could be taken in terms of the request of the petitioner.

6. Counsel appearing for the petitioner further submitted that in Delhi it is not necessary to have the will probated, for on the basis of the registered will itself the property could be mutated in favor of the petitioner. In respect of the aforesaid submissions of the counsel appearing for the petitioner it is suffice to refer to a decision of a Division Bench of this Court in C.W.P. No. 3696/1992 disposed of on 10th May, 1994 in the case of M/s. Vijaya C. Gursahaney v. D.D.A & Ors. The Division Bench in the said case held that it is only the genuineness of the will unless it is probated or Letters of Administration obtained which would make the DDA to enquire into the same. The Division Bench also took notice that as the law stands in Delhi, it is not necessary to have the will probated or to have letters of administration obtained and the authority can itself satisfy as to the genuineness of the will by adoting the fair and reasonable method. Taking into consideration the aforesaid position, the Division Bench held that if the authority is unable to decide for any reason, it can require the legatee to get the genuineness of the will established in a court of law as per the procedure prescribed under the Indian Succession Act.

7. In my considered opinion, by directing the petitioner to obtain a probate of the will in view of the dispute arising in respect of title to the property, the respondent has proceeded in terms of the observations made by the Division Bench of this court in the aforesaid decision. A dispute is raised by one of the legal heirs in respect of ownership and title of the property in question and also to the claim of the petitioner.

8. In view of the said position, the respondent has been unable to decide the question of mutation and has asked the petitioner to get the matter decided through probate proceedings in accordance with law. thereforee, I do not find any illegality in the said action on the part of the respondent. There is no merit in this petition and the same is dismissed but without any costs.

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