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Mala Mehra Vs. Mcd and ors

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Court : Delhi

Decided On : Jan-09-2013

Judge : G. S. Sistani

Appellant : Mala Mehra

Respondent : Mcd and ors

Judgement :
$~16. * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P. (C) 8369/2011 & CM 18910/2011 % Judgment dated 09.01.2013 MALA MEHRA Through: versus MCD AND ORS Through: ..... Petitioner Mr.Sandeep Sethi, Sr. Advocate with Mr.Shridhar Y. Chaitale and Mr.Naveen Kapoor, Advocates ..... Respondents Mr.Sanjiv Sen for Ms.Amita Gupta, Advocate for the respondent no.1 &2 / MCD Mr.Rajive Sawhney, Sr. Advocate with Mr.Vineet Jhanji, Adv for respondent no.3 CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J (ORAL) 1. Petitioner is aggrieved by the order dated 14.11.2011 passed by the Joint Assessor and Collector, MCD by which mutation granted in favour of the petitioner on 23.09.2010 has been cancelled.

2. The petitioner and respondent no.3 are closely related to each other, respondent no.3 is the elder brother of the petitioner. As per the petitioner, her mother had executed a gift deed in her favour on 12.04.2010. Based on the gift deed and relying on section 128 of the Delhi Municipal Corporation Act, the petitioner made an application for mutation of the ground floor and basement of the property bearing not N-25, Panchsheel Park, New Delhi on 22.06.2010. The

respondent MCD called upon the petitioner by a communication dated 28.07.2010 to furnish additional documents that is fresh affidavit and indemnity bond, which were provided by the petitioner and finally mutation was granted in the name of the petitioner vide letter dated 23.09.2010 bearing No. TAX/SZ/RKP/1125.

3. The respondent no.3 made a complaint to the MCD vide letter dated 13.01.2011 for cancellation of the mutation granted in the name of petitioner in respect of the property in question for various reasons including, alleging that the petitioner had played a fraud upon the MCD. The MCD based on the complaint made by Respondent No. 3 and having regard to the pendency of a dispute between petitioner and Respondent No.3 before the Delhi High Court, suspended the mutation granted in favour of the petitioner vide letter dated 14.01.2011. Subsequently, vide letter dated 09.02.2011 bearing No. TAX/SZ/2011/2439, the Respondent MCD cancelled the mutation granted in favour of the petitioner with respect to the said property, which led to filing of Writ Petition No.1621/2011 by the petitioner. By an order dated 08.08.2011 the MCD was directed to grant a hearing to the parties that is Respondent No. 3 and the petitioner and thereafter pass a speaking order. It is this speaking order dated 14.11.2011 passed by MCD, which is the subject matter of challenge before this court.

4. Learned senior counsel for the petitioner submits that the disputes between the parties are subjudice and are pending on the original side of this court. Mr.Sethi, submits that the respondent no.3 has filed a suit for declaration and cancellation of document, wherein an order of status quo has been passed. It is contended that in case the respondent no.3 was aggrieved by the mutation granted by the MCD, the respondent no.3 in CS(OS)No.2655/2010, could have sought protection from the High Court where the matter was and is pending. It is further contended that the MCD had no right to suspend/ cancel the mutation which was granted in favour of the petitioner. It is further alleged that the MCD has acted under the influence of the respondent no.3.

5. On merits of the matter, it is contended by counsel for the petitioner that the finding of the Joint Assessor and Collector (MCD) that the mutation was obtained by fraud and misrepresentation is not borne out of the impugned order.

6. It is submitted by counsel for respondent no.3 that the Joint Assessor and Collector has noticed that as per the terms of the gift deed, the donor continued to reside in the subject premises, till her death, which fact was suppressed by the petitioner at the time of making the application for mutation. In the impugned order it is further observed that the application for mutation was made when the mother was alive and she was entitled to occupy, possess and enjoy the subject premises, during her life time, without interference from the donee or her heirs, executors, administrators, assigns or any person or persons, lawfully claiming the same. The Joint Assessor and Collector also recorded a finding that as per the terms of the gift deed the title of the premises remained with the donor (wrongly stated as donee), till her death and thus the petitioner herein had no right, title or interest in the property, at the time of making an application for mutation and the petitioner misled the MCD.

7. Mr.Sethi, learned senior counsel for the petitioner submits that the Joint Assessor and Collector has failed to read the document as a whole. To show that the mother had only reserved her right to reside in the property, but as far as right, title or interest is concerned, the same was transferred the moment gift deed was executed. Mr.Sethi has placed reliance on the recitals of the gift deed: NOW THIS DEED WITNESSETH THAT THE Donor, without any monetary consideration and for natural love and affection, which the Donor bears to the Donee, doth hereby grants and transfers by way of gift the Basement and the Ground Floor of the said Property comprising of two bed rooms with attached bathrooms, dining room, sitting room, kitchen, temporary covered veranda (now being used as a drawing room), store room, puja room, garage, front and back verandas, front and back lawns (set back) and Driveway adjacent to N-23, Panch Shila Park, New Delhi, which areas are more specifically demarcated in color Blue in the attached plan of the said Property, as well as the roof rights of the Second Floor with right to construct the Third Floor thereonabove alongwith 55% undivided share in the land forming part of the said property (referred to as the said Premises), owned and possessed by the Donor together with all the liberties, privileges, easements and advantages, appurtenant hereto, and all the estate, right, title, interest, use, inheritance, possession, benefit, claims and demands whatsoever of the Donor TO HAVE AND TO HOLD the same unto and to the use of the Donee absolutely but

subject to the payment of all taxes, rates, assessments, dues and duties now and hereafter chargeable thereon to the Government and/ or MCD and/ or other Local Authority.

8. Mr.Sethi submits that the para (b) extracted below has been relied upon by the Assessor and Collector in the impugned order in isolation and out of content. Para (b) of the Gift Deed reads as under: AND THE DONOR DOTH HEREBY COVENANTS WITH THE DONEE: (a) (b) 9. xxxx The Donor who has throughout been residing in the said Premises shall continue to occupy, possess and enjoy the said Premises during her lifetime, without any interference from the Donee or her heirs, executors, administrators and / or assigns or any person or persons lawfully claiming or to claim by, from, under or in trust for the Donee. The said arrangement is confirmed by the Donee. Counsel for the MCD submits that the MCD has passed the impugned order taking into consideration the hotly contested inter se dispute between the close family members and with a view to avoid any aspersions on the department.

10. Mr.Rajive Sawhney, learned senior counsel for respondent no.3 submits that the Will and the Gift Deed sought to be relied upon by the petitioner are under challenge by the respondent no.3 in the Delhi High Court, as they are forged and fabricated documents. Hence the petitioner has no right, title or interest in the basement and ground floor of the property and in case the mutation is to be carried out, then the same should be carried out in the name of all the legal heirs of the deceased or in the name of the executors.

11. I have heard counsel for the parties. It is not in dispute that the inter se dispute between petitioner, respondent no.3 and Mr.Sanjeev Ghai (the second brother of the parties) is a subject matter of civil suit [CS(OS)No.2655/2010]. It is also not in dispute that the respondent no.3 has challenged the gift and the Will executed by the mother. It is also not in dispute that the MCD was aware of the dispute pending between the parties. Given the above stated facts, I see no reason for MCD to have acted upon the complaint of the respondent no.3. The MCD should have left it to the parties to seek relief from the Civil Court where the matter is pending. In my view the MCD has acted in haste on the merit of the matter.

12. On the merits of the matter, reading of the entire gift deed would prima facie show that the donor had transferred all her right, title interest in the property to the donee. I would not like to observe any further or else it may cause prejudice to the rights of either of the parties, who are locked in litigation before the High Court and the gift deed on the basis of the mutation has been granted is under challenge.

13. The learned counsel for the parties do not dispute the fact that grant of mutation does not confer title on any of the parties. However, the apprehension of the respondent no.3 is that in case the mutation continues to remain in the name of the petitioner, the petitioner will gain an unfair advantage of the same either in the civil suit or can misrepresent the public at large to show that she is the owner of the ground floor and basement of the subject property, whereas these questions are yet to be adjudicated upon by the civil court. However, the apprehension of the respondent no.3 can be addressed by observing that the grant of mutation in favour of the petitioner will not confer any right, title or interest in favour of the petitioner. The mutation is simply for the purpose of paying house-tax; the question of mutation as also right, title or interest, gift and Will are the subject matter of the civil suit; and the orders which may be passed in the civil suit alone, will decide the owner-ship and the authenticity of the documents. Accordingly, the impugned order dated 14.11.2011 is set aside. It will be open for the respondent no.3 to make an appropriate application before the civil Court with regard to the mutation granted in favour of the petitioner and to safeguard his interest.

14. Copy of this order shall form part of the record of the MCD, so that neither of the parties can take any unfair advantage of the mutation. Payment of house-tax by the petitioner will not entitle her to claim any special equities or right over the basement and ground floor of the property no.N-25, Panchsheel Park, New Delhi, however, she may ask for adjustment, if she does not succeed finally.

15. With above observations, petition stands disposed of. G.S.SISTANI, J JANUARY 09 2013 ssn

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