

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 8th February, 2011.

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W.P.(C) No.101/2008

% **SH. PREM PRAKASH CHAUDHARY & ORS. Petitioners**

Through: Dr. Anurag Kumar Agarwal & Mr.
Vibhav Kumar Srivastava,
Advocates.

Versus

SH. RAJINDER MOHAN RANA & ORS Respondents

Through: Mr. N.S. Dalal & Mr. Devesh Pratap
Singh, Advocates for R-1 & 2.
Mr. Anshuman Srivastava, Adv. for
Mr. V.K. Tandon, Adv. for R-3 to 5.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether the judgment should be reported
in the Digest? Yes.

RAJIV SAHAI ENDLAW, J.

1. The writ petition impugns the order dated 20th November, 2007 of
the Financial Commissioner, Delhi allowing the second appeal preferred

by the respondents no.1 & 2 herein under Section 66 of the Delhi Land Revenue Act, 1954 (Revenue Act) against the order dated 20th November, 1995 of the Additional Collector, Delhi dismissing the appeal of the respondents no.1 & 2 against the order dated 9th June, 1995 of Tehsildar, Najafgarh, Delhi.

2. The factual matrix is not in dispute. The petitioners no.1 & 2 and the respondents no.1 & 2 are brothers; their father Sh. Siri Lal was Bhumidhar of agricultural land measuring 33 Bighas and 3 Biswas situated at Village Ghewra, Delhi; the said Sh. Siri Lal died on 8th October, 1984 leaving the petitioners no.1 & 2 and the respondents no.1 & 2 as his only four male descendants; the said land was on 20th March, 1985 accordingly mutated from the name of Sh. Siri Lal to the names of the petitioners no.1 & 2 and respondents no.1 & 2.

3. It is the case of the petitioners no.1 & 2 that there was in fact a family settlement on 26th December, 1984 between the petitioners no.1 & 2 and respondents no.1 & 2 under which the land aforesaid was agreed to be divided into four parts with each of the four brothers taking possession of

their respective portions of land and continuing so till the end of the year 1988 when the respondent no.2 tried to grab the share of the petitioners no.1 & 2; a suit for permanent injunction was filed in the Civil Court by the petitioners no.1 & 2 against the respondents no.1 & 2 pleading the family settlement of 26th December, 1984 and seeking to restrain the respondents no.1 & 2 from selling, dispossessing or otherwise interfering in the land which had fallen to the share of the petitioners no.1 & 2. The said suit remained pending. It is not in dispute that the parties appointed *Panchas* to arrive at an amicable settlement and an award dated 14th May, 1989 signed by all the four brothers was made by the said Panchas; thereafter the four brothers filed an application under Order 23 Rule 3 of the CPC in the civil suit aforesaid in which they admitted that the agricultural land aforesaid had been divided by them between themselves. The Civil Court where the suit was pending, on 3rd August, 1989 recorded the statements of the parties in support of the compromise and dismissed the suit as compromised.

4. The petitioners no.1 & 2 thereafter approached the Tehsildar, Najafgarh for mutation of the portion of the land which had as per the compromise aforesaid fallen to their share in their exclusive names. The Tehsildar called for the report from the Patwari and thereafter vide order dated 9th June, 1995 mutated the Khasra Numbers which under the compromise application aforesaid had fallen to the share of the petitioners no.1 & 2 in the names of the petitioners no.1 & 2.

5. While doing so, the Tehsildar observed that since the Civil Court had passed a decree on the basis of the compromise, the Revenue Officer is not supposed to go into the intricacies of the order and it is the duty of the Revenue Officer to implement the judgment and decree of the Court.

6. Aggrieved therefrom the respondents no.1 & 2 preferred an appeal to the Additional Collector, Delhi. It was the contention of the respondents no.1 & 2 in the appeal that the suit was dismissed as withdrawn and as such there was no decree with which the Tehsildar could consider himself bound. It was further argued that without giving an opportunity of being heard to the respondents no.1 & 2, the land had been partitioned illegally.

It was yet further contended that even if there was a decree, the Civil Court had no jurisdiction to pass a decree for partition of agricultural land. It was also argued that the agricultural land could be partitioned only under Section 55 of the Delhi Land Reforms Act, 1954 (Reforms Act) with which the land was governed and not by the parties themselves. It was yet further argued that the partition was in contravention of Section 33 of the Reforms Act.

7. The petitioners no.1 & 2 during the pendency of the appeal before the Additional Collector, by sale deeds executed between 9th August, 1995 and 1st May, 1996, transferred the land, which under the compromise had fallen to their exclusive share in favour of the petitioners no.3 to 7. However, the petitioners no.3 to 7 were not impleaded as parties in the appeal before the Additional Collector.

8. The Additional Collector vide order dated 20th November, 1995 agreed with the order of the Tehsildar and dismissed the appeal.

9. Aggrieved therefrom the respondents no.1 & 2 preferred the second appeal to the Financial Commissioner. The Financial Commissioner vide

order dated 27th August, 1996 allowed the said appeal and set aside the order of the Tehsildar and the Additional Collector.

10. The petitioners no.1 & 2 did not challenge the said order of Financial Commissioner. The petitioners no.3 to 7 however filed Civil Writ Petition No.4813/2000 in this Court and in which the petitioners no.1 & 2 as well as the respondents no.1 & 2 were impleaded as respondents. The said writ petition was, with consent of the parties, allowed on 18th October, 2001. The order dated 27th August, 1996 (supra) of the Financial Commissioner was set aside and the matter remanded to the Financial Commissioner for decision afresh after also hearing the petitioners no.3 to 7. The respondents no.1 & 2 applied for review of the said order but which application was dismissed on 16th September, 2003 for the reason of the order being a consent order.

11. It is thereafter that the order dated 20th November, 2007 impugned in this writ petition has been made by the Financial Commissioner allowing the appeal of the respondents no.1 & 2.

12. Notice of the writ petition was issued. The counsel for the petitioners and the counsel for the respondents no.1 & 2 have been heard. The counsel for the respondents no.3 to 5 has not made any submissions.

13. The counsel for the petitioners has contended that the Tehsildar has effected mutation in terms of the compromise recorded in the suit for permanent injunction aforesaid. It is contended that the Financial Commissioner has erred in holding that a notice of hearing was required to be given to the respondents no.1 & 2 in mutation proceedings. Attention is invited to Sections 22 & 23 of the Revenue Act to contend that where there is no dispute, no notice is required to be given or enquiry required to be made. Attention is specially invited to the Explanation to Section 22 where family settlement, by which the holding or part of the holding recorded in the record of rights in the name of one or more members of that family is declared to belong to another or other members, is included in the word “transfer” under Section 22. It is also argued that though the Financial Commissioner has held the order of Tehsildar to be bad for the reason of having been made without hearing the respondents no.1 & 2 but has not

remanded the matter to the Tehsildar, leaving the petitioners in lurch. It is also contended that the respondents no.1 & 2 have not disputed the factum of the appointment of *Panchas* or the award dated 14th May, 1989 or the filing of the compromise application and/or separate possession and hence are not entitled to challenge mutation on the basis thereof. It is yet further contended that the respondents no.1 & 2 themselves have been enjoying the portion which fell to their share and are with *mala fide* intention coming in the way of mutation of the portion which has fallen to the share of the petitioners no.1 & 2. Reliance is placed upon ***M.S. Madhusoodhanan Vs. Kerala Kaumudi (P) Ltd.*** (2004) 9 SCC 204, ***Hari Shankar Singhania Vs. Gaur Hari Singhania*** (2006) 4 SCC 658 and ***K.K. Modi, Vs. K.N. Modi*** AIR 1998 SC 1297 in support of the contention that the Courts have placed the family settlement at a high pedestal and have always attempted to enforce the family settlement and not allowed technicalities to come in the way thereof. Lastly, it is argued that mutation is not adjudicatory and the title is not on the basis of mutation but on the basis of family settlement and the Tehsildar has merely given effect to the family settlement. It is argued that the Financial Commissioner has

erroneously considered the proceedings before the Tehsildar to be of partition and which the Tehsildar in any case has no jurisdiction to entertain, the jurisdiction with respect thereto under the Reforms Act having been vested in the Revenue Assistant.

14. The counsel for the respondents no.1 & 2 has contended that the partition of agricultural holding is in contravention of Section 33 of the Reforms Act read with Rules 33 & 36 of the Delhi Land Reforms Rules, 1954; that the Reforms Act does not recognize family settlement and the Bhumidhars of a joint holding even though agreeable to amicable partition of their holding, are not entitled to partition the holding themselves and are necessarily required to approach the Revenue Assistant under Section 55 of the Reforms Act for the same and partition can only be effected in the manner provided in Section 57 and in no other manner; it is thus contended that there being no partition between petitioners no.1 & 2 and respondents no.1 & 2, there could be no question of mutation in the exclusive name of the petitioners. Reference is also made to the judgment in **Hatti Vs. Sunder Singh** (1970) 2 SCC 841 that the Reforms Act is a complete Code

in itself and Civil Court is incompetent to pass a decree for partition. It is also contended that the petitioners no.1 & 2 having not challenged the earlier order of the Financial Commissioner, are now not entitled to any relief on this ground also. On query, it is informed that the respondents no.1 & 2 have sold only 100 sq. yds. of land out of the portion falling to their share in the family settlement aforesaid and which transaction has also been nullified in view of the present writ petition. It is yet further stated that out of the entire land inherited by petitioners no.1 & 2 and respondents no.1 & 2, nine Bighas of land has since been acquired and compensation with respect thereto been received by the petitioners no.1 & 2 and the respondents no.1 & 2 in equal share. In response to the argument of the petitioners no.1 & 2 of the petitioners being left in a lurch, it is stated that since the question of mutation did not arise, there was no need to remand the matter and the petitioners are free to sue the respondents for partition before the Revenue Assistant, if so desire.

15. As far as the contention of the respondents no.1 & 2 of the petitioners being not entitled to challenge the order owing to the petitioners

no.1 & 2 having not challenged the same earlier is concerned, as aforesaid, the order in the earlier writ petition setting aside the earlier order of the Financial Commissioner is a consent order made in the presence not only of the petitioners no.3 to 7 and respondents no.1 & 2 but also of the petitioners no.1 & 2. Once the respondents no.1 & 2 agreed to setting aside of the order and to remand for consideration afresh by the Financial Commissioner, it does not lie in the mouth of the respondents no.1 & 2 to contend that the petitioners are bound by the earlier order which in any case has ceased to exist.

16. I find the proposition that the agricultural holding cannot be partitioned amicably by the parties themselves and the parties have to necessarily sue therefor to be preposterous. The Reforms Act was not intended to bring about a change in the normal rights of a person or of the co-owners to effect partition amicably without being required to approach the Courts therefor. The attempt of the Courts must always be to minimize litigation and not multiply it. An established maxim *boni judicis est lites dirimere, ne lis ex lite oritur; et interest reipublicae ut sit finis litium* casts

a duty upon the Court to bring litigation to an end and to ensure that no further litigation arises from its decisions. Judicial resources are valuable and scarce. The resources of the Court are not infinite especially in terms of judicial time. Therefore, administration of justice, in interest of equity and fair play, demands that a view which discourages rather than encourages litigation be taken. The procedure prescribed even when the Courts are approached with a claim for partition is distinct from that in other cases. In a partition suit the preliminary decree decides only a part of the suit i.e. the share of the parties and thereafter gives the parties an opportunity to divide / partition mutually as per the share so adjudicated and the Court proceeds to partition by passing a final decree only if the parties are unable to themselves divide as per their shares. Amicable resolution of disputes and negotiated settlements is public policy in India. Section 89 of the Code of Civil Procedure, Arbitration & Conciliation Act, 1996 as well as Legal Services Authority Act, 1995 call upon the Courts to encourage settlements of legal disputes through negotiations between the parties. If amicable settlements are discarded and rejected on flimsy pleas, the parties would be wary of entering into negotiated settlements. This

tendency has to be checked and such litigants discouraged by the Court. It would be in consonance with public policy of India (see ***Double Dot Finance Ltd. Vs. Goyal MG Gases Ltd.*** 117 (2005) DLT 330).

17. The Supreme Court recently in ***Ranganayakamma Vs. K.S. Prakash*** (2008) 15 SCC 673 reiterated that only where a settlement is contrary to any statutory provision or opposed to public policy as envisaged under Section 23 of the Indian Contract Act, can the Courts refuse to enforce the same. Neither of the counsels are able to show any provision in the Reforms Act prohibiting the amicable partition; nor any precedent for the same. On the contrary, the language of Section 55 providing for the holding to be partible, uses the expression “may sue”, enabling the Bhumidhar to approach the Court of Revenue Assistant for partition. Section 55 does not indicate that a holding can be partitioned only in the manner provided therein. The Legislature has not opted to make the same “notwithstanding anything to the contrary contained in any other law or contract”. Once it is held that the right to partition is inherent in the right to property, in the absence of the said right having been shown to have

been taken away, it cannot be held that partition of property governed by the Reforms Act could only be under Section 55 and not otherwise.

18. The counsel for the respondents no.1 & 2 in an attempt to show as to what prevents the parties from so partitioning, has referred to Section 33 and to Section 57 (1)(b). Section 33 prohibits transfer where the transferor will be left with less than 8 standard acres. It is argued that since the total holding of 33 Bighas and 8 Biswas was itself less than 8 standard acres (approx equal to 40 Bighas), the same could not be divided by the petitioners no.1 & 2 and the respondents no.1 & 2 between themselves.

19. Section 33 deals with a situation where as a result of transfer, the transferor shall be left with less than 8 standard acres of land. However, in partition there is no transfer or transferor or transferee. Each of the co-owners is the owner of each and every parcel of the property and it cannot be said that any part of the property is transferred by one co-owner to the other. If any precedent is needed for the said proposition, reference may be made to *Ram Charan Das Vs. Girja Nandini Devi* AIR 1966 SC 323. I therefore do not see as to how Section 33 would apply. The purport of

Section 33 is to prevent fragmentation of holdings to uneconomical sizes. There is nothing preventing continuance of holdings less than minimum prescribed or transfer where holding is in any case less than that prescribed. Practical experience shows that transfers resulting in transferor being left with less than that prescribed, are also effected by simultaneously transferring the balance to a nominee/family member of the transferor. Here, the joint holding of the parties itself was less than minimum 8 standard acres prescribed. I do not see as to how the amicable partition effected by the parties themselves would prejudice anyone.

20. As far as Section 57(1)(b) is concerned, the same provides that where the partition will result in a holding less than 8 standard acres, the Court instead of dividing the holding may either direct the sale of the same and distribution of the sale proceeds or proceed to divide the holding in accordance with such principles as may be prescribed or in the alternative dismiss the suit. It is thus not as if Section 57(1)(b) prohibits partition resulting in a holding of less than 8 standard acres. The counsel for the respondents no.1 & 2 also fairly admits that while applying the principles,

the holding can be divided but contends that the same has to be done only in the presence of the Gram Sabha and by the Revenue Assistant and cannot be done amicably by the parties themselves or by way of family settlement and with which proposition, I do not concur.

21. I find that the Division Bench of this Court in ***Sahib Singh Vs. Lt. Governor of Delhi*** 137 (2007) DLT 111 was faced with a similar objection, of the Consolidation Officer in the course of the consolidation proceedings being not entitled to entertain an application for separation of Khata on the basis of a partition of pre-consolidation holding in a family settlement and that such an application could be entertained only if the holding had been partitioned under the Reforms Act. It was further contended that the Consolidation Officer by entertaining the said application had partitioned the holding and for which he had no jurisdiction in the face of the bar of Section 185 of the Reforms Act. The Division Bench did not accept the said contention and held that a family settlement dividing the holding and which family settlement was part of a judicial record and had not been denied could form the basis of not only mutation

but also application for separation of Khata. The said judgment applies to the present case on all fours.

22. The counsel for the respondents no.1 & 2 has also argued that the nature of the order of the Financial Commissioner is not such requiring interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. I am unable to agree. The Financial Commissioner has not returned any categorical finding on the pleas of the respondents under Sections 33 and Section 55, though it has been generally observed that the mode of partition and manner of joint Khata having been specifically provided for in the Reforms Act, but the same does not tantamount to holding that the parties are prohibited from partitioning the land themselves, if the same does not contravene the provision of the Reforms Act.

23. The petitioners no.1. & 2 had applied to the Tehsildar for mutation on the basis of the compromise as recorded in the suit for permanent injunction. The Tehsildar felt that the Civil Court had decreed the partition. The Additional Collector affirmed the said finding. The

Financial Commissioner in the order impugned has primarily disagreed with the same.

24. However, what cannot be lost sight of is that the petitioners had claimed mutation on the basis of the compromise recorded in the Civil Court and not on the basis of a decree of the Civil Court. The Civil Court did not pass a decree in accordance with the compromise. The Civil Court by putting its imprimatur on the compromise did nothing but to ensure that the parties remained bound with the same. Nothing having been brought before this Court that the said contract is in violation of the provisions of the Reforms Act, I see no reason why the order of the Financial Commissioner should not be interfered with. Once it is held that it is not necessary to approach a Revenue Assistant for partition and the parties are free to partition the holding themselves, the order of the Financial Commissioner cannot stand.

25. The writ petition therefore succeeds, the order of the Financial Commissioner is set aside and it is declared that the mutation effected by

the Tehsildar on the basis of the partition mutually effected by the parties amongst themselves is valid.

The writ petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 08, 2011

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(Corrected and released on 22nd February, 2011)