

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

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**Date of decision: 11<sup>th</sup> September, 2012**

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**LPA No.81/2012**

**OM PRAKASH & ORS.**

**..... Appellants**

Through: Mr. S.B. Upadhyay, Sr. Adv. with Mr.  
Rajendra Saini, Adv.

Versus

**GOVT. OF NCT OF DELHI & ORS.**

**..... Respondents**

Through: Mr. V.K. Tandon with Ms. Chaitali,  
Advs. for R-1.  
Mr. B.S. Maan & Mr. Jitin Tewathia,  
Advs. for R-5.

***CORAM :-***

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J**

1. This intra-court appeal impugns the judgment dated 28.11.2011 of the learned Single Judge dismissing W.P.(C) No.18884/2006 preferred by the three appellants. The said writ petition was preferred impugning the order dated 31.08.2006 of the Financial Commissioner dismissing the Second Appeal preferred by the appellants under Section 66 of the Delhi Land Revenue Act, 1954 (Revenue Act) against the order dated 26.07.2004 of the Deputy Commissioner (West), Delhi allowing the First Appeal under Section 65 of the Revenue Act preferred by the respondents No.2 to 7 herein. The said First Appeal had been preferred by the respondents No.2 to 7 against the order dated 18.06.2003 of the Revenue Assistant (Punjabi

Bagh) directing mutation of agricultural land, admeasuring 77 Bighas 13 Biswas in village Tikri Kalan, Delhi in the name of the appellants.

2. It is not in dispute that the aforesaid agricultural land belonged to one Sh. Lachhman Singh who died on 31.08.1986. The three appellants are the sons of one daughter of the said Sh. Lachhman Singh and the respondents No.2 to 7 are the sons of the other two daughters of the said Sh. Lachhman Singh.

3. The appellants herein claimed a registered Will dated 20.08.1986 in their favour qua the aforesaid land of Sh. Lachhman Singh. The appellants, soon after the death of Sh. Lachhman Singh, on 02.09.1986, applied to the Tehsildar for mutation of the said land, from the name of Sh. Lachhman Singh, in their name on the basis of the said Will. The respondents No.2 to 7 opposed, disputing the Will. In view of the dispute raised, the Tehsildar referred the matter to the Revenue Assistant.

4. The appellants also applied to the District Judge, Delhi for probate of the Will aforesaid. The Revenue Assistant, upon coming to know of the pendency of the probate proceedings, adjourned the mutation proceedings *sine die* awaiting the outcome of the probate proceedings. Though, there are some chequered proceedings thereafter but the same are not relevant for the present purposes. Suffice it is to state that the appellants ultimately withdrew the probate petition and the Revenue Assistant as such proceeded to decide the mutation proceedings.

5. Though, it was *inter alia* the plea of the respondents that the Revenue Assistant did not have the jurisdiction to look into the intricate questions of law like genuineness of a registered Will and a issue thereon was also framed but the Revenue Assistant held himself to be so having jurisdiction and directed the parties to present oral and documentary evidence. The Revenue Assistant, finally vide order dated 18.06.2003, on the basis of the oral and documentary evidence led before him, held the registered Will to be a genuine document and that there was nothing suspicious about it and accordingly gave effect to the Will by directing mutation of the land aforesaid in favour of the appellants.

6. Aggrieved from the aforesaid order of the Revenue Assistant, the respondents No.2 to 7 preferred the appeal to the Deputy Commissioner. The Deputy Commissioner, vide order dated 26.07.2004 allowed the appeal and set aside the order of the Revenue Assistant, holding that once the Will, on the basis whereof mutation was claimed, had been disputed, under Section 186 of the Delhi Land Reforms Act, 1954 (Reforms Act) such question of title to the land was required to be referred to the Civil Court for adjudication. It was observed that even though Section 186 of the Reforms Act specifically applies to suits or proceedings mentioned in Column 3 of Schedule I of the Reforms Act but the same principle will be applicable in all cases where a dispute of title is the primary issue and that determination of genuineness and validity of a Will is beyond the jurisdiction of the Revenue Assistant. It was accordingly held that the prayer of the appellants for mutation on the basis of the Will could not be accepted at that stage and

the matter was remanded back to the Revenue Assistant for decision after the genuineness and validity of the Will had been decided in a Civil Court of competent jurisdiction.

7. The appellants, as aforesaid, appealed to the Financial Commissioner who vide order dated 31.08.2006 concurred with the decision of the Deputy Commissioner and dismissed the Second Appeal preferred by the appellants.

8. The learned Single Judge also dismissed the writ petition preferred by the appellants impugning the order of the Financial Commissioner holding that though the question was of recording mutation but unless disputed question of devolution of bhumidhari rights was decided by invoking the Reforms Act, the recording of mutation under the Revenue Act could not be done. It was further observed that the issue of recording of mutation, though procedural, is dependent upon the decision on the substantive issue of devolution of bhumidhari rights which has to be as per the general order of succession in terms of Section 50 of the Reforms Act or on the strength of a bequest under Section 48 of the Reforms Act and which has to be done by invoking Section 186 of the Reforms Act.

9. The senior counsel for the appellants before us has raised only one argument i.e. that the provisions of the Reforms Act cannot be read into the Revenue Act which alone governs mutation. Attention has been invited to Sections 2(6), 23, 79(4) and 83(c) of the Revenue Act to contend that it is a complete code insofar as mutation is concerned and the Deputy Commissioner, Financial Commissioner and the learned Single Judge erred

in invoking the principles of Section 186 of the Reforms Act for a decision on the question of mutation under the Revenue Act. It is argued, that it is the Revenue Assistant alone who has been empowered under Sections 23 & 79(4) of the Revenue Act to decide a dispute as to succession and Section 83(c) of the Revenue Act bars the jurisdiction of the Civil Court in this regard and there is no equivalence of Section 186 of the Reforms Act in the Revenue Act. It is reiterated that Sections 185 and 186 of the Reforms Act expressly relate to proceedings mentioned in Schedule I thereto and which nowhere mentions proceedings of mutation. Reference is made to ***Master Mayank Vashishth Vs. Financial Commissioner*** 114 (2004) DLT 162.

10. The counsel for the respondents No.2 to 7 on the contrary has supported the orders of Deputy Commissioner, Financial Commissioner and the Single Judge.

11. The respondent No.1 GNCTD also has contended that the Revenue Assistant has no power to decide complicated questions of title to land or genuineness of Will and the Deputy Commissioner and Financial Commissioner have rightly held that the matter was required to be referred to Civil Court.

12. The two Acts dealing with the land were enacted nearly simultaneously with the Reforms Act being Act No.8 of 1954 and the Revenue Act being Act No.12 of 1954. Prior to the enactment thereof, the field was covered by the Punjab Acts extended to Delhi. The orders aforesaid of the Deputy Commissioner and the Financial Commissioner refer

to a large number of orders of the Financial Commissioners wherein the provisions of Section 186 of the Reforms Act (or of the preceding legislation) of referring the disputed questions of title for adjudication to the Civil Court were read into the disputes relating to mutation also. The same shows a consistent practice having been followed in this regard for more than half a century. Irrespective of the merits of the plea of the appellants, we are of the view that this intra-court appeal against the orders of the Revenue Courts and the learned Single Judge which are in consonance with the said practice, is liable to be dismissed only on the ground that such settled practices / views ought not to be disturbed. The Apex Court in *Shanker Raju Vs. Union of India* (2011) 2 SCC 132 has reiterated that those things which have been so often adjudged ought to rest in peace and that a view which has held the field for a long time should not be disturbed only because another view is possible. The Courts are always reluctant to unsettle an interpretation of law or a practice / view which has been prevalent for a number of years and unsettling which, may affect a large number of settled cases.

13. Be that as it may, the question having been raised, we are duty bound to answer the same.

14. While the Revenue Act is primarily concerned with the collection of land revenue, the Reforms Act was enacted for modification of zamindari system and to create a uniform body of peasant proprietors without intermediaries, of agricultural land. As aforesaid, though the two Acts were enacted simultaneously but the Reforms Act being No.8 of 1954 technically

precedes the Revenue Act being No.12 of 1954. The Legislature, thus while enacting the Revenue Act is deemed to have been aware of what had been enacted in the Reforms Act relating to the same subject matter i.e. the land. It is for this reason only that while the definition Section 3 of the Revenue Act provides that the words and expressions not defined in the Revenue Act and used in the Reforms Act shall have the meaning assigned to them in the Reforms Act, there is no such corresponding provision in the Reforms Act, the residuary definition Section 3 whereof refers to the definitions in the Punjab and U.P. Acts.

15. Section 20 of the Revenue Act provides for the maintenance of a Record of Rights consisting of a Register of all persons cultivating or otherwise occupying land. Section 22(1) requires the persons obtaining possession of the land *inter alia* by succession and which possession is required to be recorded in the Record of Rights, to make such report of succession to the Tehsildar. Section 23 of the Revenue Act requires the Tehsildar to, on receiving such report, make inquiry and in undisputed cases if succession appears to have taken place, to direct recording of the same in the Record of Rights and where the succession is disputed or found to be in contravention of the provisions of the Reforms Act, to refer the case to the Revenue Assistant “who shall decide it after such inquiry as may be prescribed”. Though undoubtedly Section 23 of the Revenue Act does not require the Revenue Assistant to whom a disputed mutation matter is referred to by the Tehsildar, to further refer the same to the Civil Court but as aforesaid, the Revenue Act is concerned only with collection of revenue

and the Record of Rights is also required to be maintained for the purpose of such revenue collection only. This becomes clear from Section 27 of the Revenue Act which provides for decision of all disputes regarding entries in the Register.

16. Per contra, the Reforms Act, as aforesaid, deals with rights in the land succession of such rights for resolution of disputes as, to title, the same forum as under the Revenue Act is provided i.e. the Court of the Revenue Assistant. However vide Section 186, the Revenue Assistant is not deemed to be competent to decide question of title of party to any land which is the subject matter of proceedings before the Revenue Assistant and the Revenue Assistant is required to frame an issue on the question of title and submit the record to the competent Civil Court for decision on that issue. What we have wondered is when the same Revenue Assistant under the Reforms Act is not deemed competent to adjudicate the question of title, can he / she be deemed competent to adjudicate such question of title under the Revenue Act. Competency is vis-à-vis the jurisdiction to be exercised and once if a forum is not competent under one Statute, to read it as competent under another Statute would be travesty of justice. The only logical and sensible interpretation thus, can be that the Revenue Assistant is competent to decide a dispute in a mutation proceeding, relating to possession only and not a dispute even if arising in mutation proceeding, relating to title. Reference at this stage may be made to *Suraj Bhan Vs. Financial Commissioner* (2007) 6 SCC 186 and *Suman Verma Vs. Union of India* (2004) 12 SCC 58 reiterating that mutation of name in revenue records does not confer title on

person. In fact *Suraj Bhan* supra was a Delhi case only and mutation therein, on the basis of Will carried out by the Tehsildar was held to be not conferring title and it was reiterated that as far as title to the property is concerned, it can only be decided by the competent Civil Court.

17. However, the appellants herein are not claiming mutation under the Revenue Act merely on the basis of being in possession of the land (which is also disputed) but are claiming such mutation for the reason of Sh. Lachhman Singh having bequeathed his proprietary rights in the land in their favour under the Will aforesaid. Once mutation is claimed on the basis of having inherited such proprietary rights i.e. on the basis of title, the adjudication of disputes with respect thereto shall be governed by the Reforms Act and not by the Revenue Act.

18. Though the Schedule 1 to the Reforms Act does not refer to disputes as to mutation which, as aforesaid, are within the domain of the Revenue Act but refers to dispute as to declaration of bhumidhari rights. Where mutation is claimed on the basis of title and such claim is disputed, it would tantamount to declaration of bhumidhari rights and would be within the domain of the proceedings mentioned in the Schedule 1 to the Reforms Act.

19. In *Master Mayank Vashishth* supra mutation on the basis of sale was denied for the reason of the sale being in contravention of Section 33 of the Reforms Act. However, in that case the Tehsildar had allowed the mutation himself without even referring to the Revenue Assistant as required under Section 23 of the Revenue Act and which led this Court to set aside the order

of the Deputy Commissioner and the Financial Commissioner setting aside the order of mutation and refer the case to Revenue Assistant for determination. While doing so, some observations as to the two Statutes were made but we are afraid the same cannot be said to be adjudication of issue, as has been raised in this appeal.

20. We therefore do not find any merit in this appeal and dismiss the same.

No costs.

**RAJIV SAHAI ENDLAW, J**

**ACTING CHIEF JUSTICE**

**SEPTEMBER 11, 2012**

‘gsr’