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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment reserved on : 21.7.2016*
Judgment delivered on : 26.7.2016

+ W.P.(C) 8810/2015 & C.M. No.19663/2015

BIJENDER KUMAR

..... Petitioner

Through Mr.Rajiv Khosla and Mr.Jasvinder Varma, Advocates.

versus

FINANCIAL COMISSIONER, GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through Mr.Rahul Gupta and Mr. Shekhar Gupta, Advocates for R-4 to R-27.

Mr.Sandeep Sethi, Sr. Adv. with Mr.Rajat Navet, Mr. Dalbir Thakran, Advocates for R-28.

Mr.Shekhar Dasi, Advocate for R-29.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Petitioner before this Court is Bijender Kumar. He is the maternal grandson of Raja Ram. Raja Ram was the original owner of the land totaling 30 bighas 4 biswas in khasra No. 485/1, Village Bijwasan, Delhi. In khasra No.272 of Village Salampur he had land measuring 7 bighas and 1 biswas. Raja Ram died without a male descendant. His only child was Khazani who was his daughter. She is the mother of the present petitioner Bijender Kumar.

2 The contention raised by the petitioner is that the land could not devolve upon his mother and under Section 50(p) of the Delhi Land Reforms Act 1954 (DLRA) on the death of Raja Ram mutation should have been recorded in his name; inadvertently the name of his mother Khazani was recorded. The petitioner was a minor at that time. His date of birth is 01.4.1971. This act of the mutation by the Revenue Authorities of the aforenoted land in the name of his mother was in contravention of Section 50(p) of the DLRA. This has prejudiced the rights of the petitioner.

3 The mother of the petitioner expired in 1974. The land was mutated in the name of the petitioner on 16.10.1993 and this continued till when the Mutation Officer recorded the name of Phool Kaur as the recorded owner of the property. This was on the strength of a sale deed purported to have been

executed by Khazani in favour of Phool Kaur. Submission being that this sale deed was void as Khazani was never the original owner of the property and she could not have transferred this land to Phool Kaur. Learned counsel for the petitioner submits that Section 33 of the DLRA also prohibits such a transfer and where as a result of the transfer, the transferor is left with less than 8 standard acres of land and thus such a transaction (which is in contravention of the aforenoted provision) is void under Section 45 of the said Act. The entire so-called sale pursuant to which the land has now been mutated in favour of Phool Kaur is a void transaction. Additional submission being that Chandan who is the husband of Khazani and father of the petitioner had got remarried and the stand adopted by Chandan (which was in support of Khazani) was also prejudicial to the interest of the petitioner. Chandan who was the father of the petitioner had not watched the interest of the minor petitioner.

4 Further argument of the learned counsel for the petitioner is that the Consolidation Officer could not have passed any order in this matter directing the mutation of the land in favour of Phool Kaur and the order passed by the Financial Commissioner dated 28.7.2015 (which is the order under challenge) and being a reendorsement of the order of the

Consolidation Officer; for all the aforenoted reasons suffers from grave illegalities. The Consolidation Officer had no jurisdiction to deal with the matter; he could not have decided the question of title. Learned counsel for the petitioner in support of his submission has placed reliance upon a judgment of a Bench of this Court in *Ram Niwas Vs. Pitamber Singh & Ors.* reported as 2008 (102) DRJ 81 (DB). Submission is that the Civil Court will have no jurisdiction to try and decide matters of title and the orders passed by the Civil Court deciding title in the aforenoted property thus suffers from an infirmity. In this context, learned counsel for the petitioner has drawn attention of this Court to the order passed by a Bench of this Court in RFA No.44/1986 titled *Phool Kaur Vs. Sardar Singh.* Submission is that in this suit which was an inter se dispute between Phool Kaur (recorded owner) and Sardar Singh (purported to be the owner on the strength of an agreement to sell and other related documents etc.) a Bench of this Court had set aside the order passed by the Trial Judge and the finding returned was that the sale deed in favaour of Phool Kaur was a valid document. Submission being that this being an agricultural land the title of the said land could not have been decided by a Civil Court. It is additionally pointed out that in this suit certain additional issues had been framed and additional Issue No.2 which reads herein as under:

"Whether the deceased defendant No.1 after the execution of the agreement to sell dated 25.6.1973 was with less than 8 standard acres of land. If so to what effect? OPP"

5 Submission being that this additional issue was on the aspect of Section 33 of the DLRA and this has not been answered by any Court. Written submissions have also been filed.

6 The order passed by the Financial Commissioner is liable to be set aside.

7 These arguments have been countered by the learned counsel for the respondents. Respondent nos.1 to 3 are the Government of NCT of Delhi. The Financial Commissioner has been arrayed as respondent no.1. Respondent nos.4 to 27 are the recorded owners of the suit land i.e. Phool Kumar and others. Respondent no.28 is stated to have purchased the property from Phool Kaur and others and so also respondent no.29 who is also stated to have purchased a portion of this land.

8 Needless to state that respondent no.28 and respondent no.29 are supporting the stand of respondents nos.4 to 27.

9 On behalf of respondent nos.4 to 27 it is pointed out that mutation had

been carried out in the name of Phool Kaur on the strength of a registered sale deed which was registered in favour of Phool Kaur on 13.9.1973 and which had been executed by Khazani in favour of respondent no.4. This sale deed has attained a finality as although it was the subject matter of litigation in an inter se suit between Phool Kaur and Sardar Singh; the RFA Court in its judgment in RFA No.44/1986 (supra) decided on 24.12.2010 had clearly held that this sale deed is an authentic document the title of Phool Kaur stands established. The Consolidation Officer had passed orders subsequent to this judgment and the orders of the Financial Commissioner directing mutation to be carried out in the name of Phool Kaur which was an endorsement of the orders passed by the Consolidation Officer this suffers from no infirmity. Learned counsel for respondent nos.4 to 27 in support of his submission pointed out that the Consolidation Officer in so far as notice to other parties is concerned was not required to go into this issue unless and until an objection is placed before him. Submission being that admittedly in this case, the petitioner who was contesting the proceedings all along and was a party in the suit for specific performance and also before the RFA Court was heard and his objections were dismissed. In fact, in the written statement which had been filed in their suit, the father of the petitioner

(Chandan Singh) had fully supported the stand of Khazani stating that this sale deed has been executed by Khazani in favour of Phool Kaur. In that suit the interest of the minors including present petitioner had also been represented through their father. Additional submission being that even presuming that the petitioner was a minor at a particular point of time, he had attained adulthood in the year 1989 and even after 1989 till the present petition, the petitioner has not laid any independent challenge to the aforenoted sale transaction. All these submissions are afterthought and have been raised only to harass the respondents. It is pointed out that respondent no.4 is a 90 year old lady and she is suffering repeated harassment at the hands of the petitioner who is forcing her to come to the Court time and again when the matter already stand settled. Additional submission being that in view of the judgment of the Supreme Court in *Suraj Bhan and Ors. Vs. Financial Commissioner and Ors.* (2007) 6 SCC 186 an entry in the revenue record does not confer title on a person; it is only for a fiscal purpose i.e. for payment of revenue and the Apex Court in this case has clearly held that it is only the Civil Court who can decide the question of title.

10 Learned counsel appearing for respondent no.28 also points out that

this is a clear case of harassment as the matter already stands settled. It is pointed out that a registered sale deed is presumed to be validly executed and it is for the person who disputes it to rebut this presumption. Learned counsel for respondent no.28 has placed reliance upon a judgment of the Apex Court in _*Prem Singh and Ors. Vs. Birbal and Ors.*_ reported as (2006) 5 SCC 353 to support his submission that where a minor had set up a plea that a sale deed executed inter se the parties was void he could have filed a suit within 12 years of the execution of the sale deed or within 3 years of his attaining majority which admittedly in this case has not been adhered to. On all grounds the submission of the petitioner is without merit.

11 Respondent no.29 has also supported the stand of the other respondents i.e. respondent nos.4 to 28.

12 Arguments have been heard. Record perused.

13 The record evidences that Raja Ram the maternal grandfather of the petitioner was the owner of the suit land. He had died leaving behind one daughter namely Khazani. The aforenoted land came to be mutated in the name of Khazani on 22.11.1972. Khazani during her lifetime executed a deed dated 16.8.1973 with regard to the suit land in favour of Phool Kaur and as also one Bhagwan Singh and Hazari (now represented through their

legal heirs and arrayed as respondent nos.5 to 27). This sale deed dated 16.8.1973 was registered on 13.9.1973. There is a presumption under section of the Indian Evidence Act which presumes that such a document has been validly executed unless rebutted. This sale deed has attained a finality. This is clear from the judgment passed by a Bench of this Court in RFA No.44/1986 titled Phool Kaur Vs. Sardar Singh.

14 Before adverting to the judgment passed in the aforenoted RFA (supra) it would be relevant to note that an interse dispute has arisen between Phool Kaur and Sardar Singh. Contention of Sardar Singh being that he on the strength of certain documents i.e. the agreement to sell, will, affidavit, receipt etc. purported to have been executed by Khazani on 04.5.1973 had become the owner of the suit land. He had filed a suit for specific performance which suit was decided by the Trial Court after framing various issued including the additional issue as noted supra. In this suit a written statement had been filed by Chandan Singh. This written statement was on behalf of Chandan Singh and the minors which included the petitioner. In this written statement Chandan Singh clearly stated that his wife Khazani had during her lifetime sold this property to Phool Kaur vide registered sale deed dated 13.9.1973. This written statement was filed on 18.02.1974. By

that time Khazani had died that is why this written statement came to be filed by her husband Chandan Singh which, at the cost of repetition, is on behalf of Chandan and her legal heirs including the present petitioner. The stand of Khazani through her husband Chandan and her children was clear. They had supported the fact that Khazani had during her lifetime sold this property to Phool Kaur. This suit for specific performance which had been filed by Sardar Singh was, however, decreed in favour of Sardar Singh. Khazani preferred an appeal before the higher court. The High Court in RFA No.44.1986 decided on 24.12.2010 set aside the decree dated 06.8.1985 passed by the Trial Judge; it was held that the registered sale deed dated 13.9.1973 in favour of respondent nos.4 to 27 was valid and a binding document. The RFA Court had additionally noted that the additional issue cannot be pressed as the Trial Judge had clearly noted that no party had advanced any argument on the additional issue and all the aforenoted issues were held to be not having any effect on the agreement to sell and the rights of the parties for specific performance. The RFA Court was thus of the view that the parties not having addressed any argument on the additional issues by a necessary implication had given up the aforenoted additional issues. The relevant extract of that part of the RFA which has dealt with this aspect is reproduced herein as under:

"62. In view of my aforesaid findings, the decree in favour of the respondents for specific performance on payment of Rs.59,000/- with costs passed by the learned trial court is set aside.

63. Before concluding, however, two aspects of the matter deserve to be notice. The first is that an attempt was made by Mr.R.N.Vats, the learned counsel for the legal representatives of Smt. Khazani to contend that the additional issues have not been decided by the learned trial court and the case should, therefore, be remanded to the learned trial court for decided the aforesaid issues. The second is that Mr.R.N. Vats, the learned counsel for the legal representatives of Smt. Khazani addressed arguments in support of the respondents No.1 and 2 and contended that the appeal was not at all maintainable.

64. As regard the contention of Mr. R.N. Vats that the additional issues have not been decided by the learned trial court, this contention may be dealt with by noting that the trial court in its judgment has held as under;

> *"No party has advanced any arguments. These issued affect both the parties. So, that is why they have avoided to advance any arguments. So, I decide all the three issued accordingly as they have no effect on the Agreement to Sell the property and the rights of the parties for specific performance."*

65. It is abundantly clear from the above that the parties not having addressed any arguments on the additional issued and by necessary implication having given up the aforesaid issues, it does not now lie with any of the parties to contend that the matter should be remanded back to the *learned trial court for deciding the additional issues. This position is not controverted either by the appellants or by the respondents No.1 and 2, who are the contesting respondents.*

66. Adverting to the contention of Mr. Vats on behalf of the legal representatives of Smt.Khazani that the appeal is not at all maintainable, it only needs to be noted that all the submissions of Mr.Vasts were in direct contradiction of the pleadings of the parties and in particular the written statement filed by Smt. Khazani herself as well as the evidence adduced by the parties, including the evidence of DIW1 Chandan Singh, the husband of Khazani. Further, no appeal having been filed by the legal representatives of Smt. Khazani, to my mind, there exists no cogent reason for this Court to entertain the contentions raised at the bar by her legal representatives 25 years after the passing of the decree. The pleadings of these respondents and the evidence adduced by them clearly show that these respondents have all along opposed the grant of the decree for specific performance. Form them to change their stance and do a somersault to now strengthen the case for the respondents no.1 and 2 is neither understandable nor can be countenanced."

15 The sale deed was held to be valid.

16 Against this order passed by the RFA Court a review petition was also preferred; the same was also dismissed. An SLP against the said judgment also stood dismissed. This was by the order of the Apex Court dated 25.4.2011 in SLP No.8411 of 2011.

17 The Consolidation Officer on the strength of these judgments had held

that since this sale deed has been held to be a valid document and the suit of Sardar Singh seeking specific performance has been dismissed, had recorded Phool Kaur and respondent nos.5 to 27 as the recorded owners in the suit land.

18 This order passed by the Consolidation Officer was endorsed by the Financial Commissioner. The Financial Commissioner has also noted all the aforenoted facts and held that the order passed by the Consolidation Officer suffers from no infirmity.

19 The submissions made by the learned counsel for the petitioner are all bereft of merits. His submission that the provisions of Section 33 of the DLRA has been contravened which makes the transaction void under Section 45 of the said Act has already been answered by the RFA Court and the RFA Court had rightly noted that since the additional issues framed before the Trial Court had not been pressed by either party, the submission of the petitioner before the RFA Court that the matter should be remanded back to the Trial Court for this purpose had been negatived. This finding of the RFA Court was endorsed by the Supreme Court when the Supreme Court dismissed the appeal against that judgment on 25.4.2011. It was thus final that and agitation of this plea set by the petitioner qua Sections 33 and 45 of

the said Act had come to rest. This issue could not be agitated and reagitated again.

20 Additional submission of the petitioner that the Civil Court could not have decided the question of title since it was an agricultural land; and could only be decided by the Revenue Authorities was again answered against the petitioner. Infact section 186 of the Delhi Land Reforms Act contemplates such a situation.

21 In fact whenever disputed questions arise it is for the Civil Court to decide the issue. The Apex Court in the judgment of <u>*Suraj Bhan*</u> (supra) had an occasion to deal with one such question and it had answered the same as under:

"8.There is an additional reason as to why we need not interfere with that order under Article 136 of the Constitution. It is well settled that an entry in revenue records does not confer tile on a person whose name appears in record-of rights. It is settled law that entries in the revenue records or jamabandhi have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court (vide Jattu Ram v. Hakam Singh). As already noted earlier, civil proceedings in regard to genuineness of will are pending with the High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition."

22 The Apex Court in this judgement besides holding that it is a competent civil court which would decide the title to the property had also noted the well settled proposition of law that the entries in the revenue record do not confer title but are only for a fiscal purpose and no ownership is conferred. Bijender has also not filed any objections before the Consolidation Officer. His submission that he was unaware of his right is again negatived by the fact that when he was admittedly a party in the suit for the specific performance as also before the RFA Court he was duly represented. (The memo of parties before the RFA Court has been placed on record shows that the petitioner Bijender is respondent no.6) and this RFA having been decided on 24.12.2010 and pending since the year 1986 he was a fully grown adult at that time. Even as per the submission of the petitioner he was borne on 01.4.1971; he had attained thus adulthood in the year 1989; nothing prevented him from setting up his independent case and bringing it to the notice of the RFA Court that his rights and interest have been prejudiced at the hands of his parents i.e. Khazani and Chandan. He chose not to do so. He cannot now agitate a matter which already stands settled.

23 Additional submissions noted by the petitioner and which has been brought to the fore related to the procedure contained under Section 33 of the

DLRA and Rules 23 and Rules 144 and 145 of the Delhi Land Revenue Rules, 1962. Submission of the petitioner on this count is that the Consolidation Officer has not followed this procedure as it was obligatory upon him to have referred the matter to the Revenue Assistant; the proclamation was to be issued by the Patwari in terms of Rules 144 and 145 of the said Rules, 1962; these Rules have been contravened.

24 This argument which relates to the purported contravention of the Delhi Land Reforms Act has already been answered by this Court in view of the finding returned by the Civil Court already having decided the question of the title of the suit property (which it was obliged to do so in view of the fact that this was a disputed question). The answer had been given in the suit for specific performance filed by Sardar Singh qua Khazani. The question of applicability of Section 33 of the DLRA and Rules 144 and 145 of the said Rules does not arise.

25 The consolidation Officer had rightly made the entries of mutation in the revenue record on the strength of the judgment of the RFA Court which was endorsed by the Apex Court. The order of the Finacial Commissioner which is the subject matter of challenge thus does not suffer from any infirmity.

26 Before dismissing this petition, this Court also would like to comment on the conduct of the petitioner. The petitioner is agitaing a matter which had been set to rest as way back as in the year 2010 i.e. when the Apex Court had allowed SLP No. 8411/2011. His vehement submissions that he has not been heard and he being a minor, his interest has been jeopardized at the hands of his parents, deserves no sympathy in view of the clear facts which have emerged and which show that the petitioner had attained adulthood in 1989. After 1989 he had ample opportunity to address his submissions before various courts of law including the RFA Court. The RFA Court had given its decision in December, 2010. By that time the petitioner Bijender Kumar would have been more than 40 years of age. He was arrayed as an independent party before the RFA Court by respondent 6. He was a mature adult but he stuck to the stand adopted by his father. He did not raise any dispute there. The question of the sale deed having attained a finality is an admitted position. The presumption under Evidence Act also lies in favour of this registered document. The respondent no.4 is stated to be 90 years of age. This clearly appears to be a case where the petitioner is harassing the respondent and is making every attempt to thwart her peace of mind and which he has managed to do successfully by forcing her into this litigation

on issues which at the cost of repetition already stand settled.

27 This petition is nothing but an abuse of the process of the Court. It is dismissed with costs quantified at Rs.25,000/-.

INDERMEET KAUR, J

JULY 26, 2016
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