

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

% **Date of decision: 25th July, 2018**

+ **RSA 106/2018 & CM No.29346 (for stay).**

RAGHBIR KAUR THR LRS & ANR

..... Appellants

Through: Mr. Bharat Bhushan Bhatia with
Mr. Akshay Bhatia, Mr. Swapnil
Aeron and Mr. Vivek Singh, Advs.

versus

UNION OF INDIA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.29347/2018 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

RSA 106/2018 & CM No.29346 (for stay).

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment [dated 18th April, 2018 in RCA/DJ No.113/17 of the Court of the Additional District Judge-03 (West)] allowing the First Appeal under Section 96 of the CPC preferred by the respondent Union of India (UOI) against the judgment and decree [dated 27th January, 2017 in Suit No.607282/2016 of the Court of Civil Judge-07, West District, Tis Hazari Courts, Delhi] of mandatory injunction directing the respondent UOI to substitute the name of the two appellants/plaintiffs Raghbir Kaur and Davinder Kaur in place of name of Mehar Singh, as lessee of the land underneath the property no.5-B/36, Tilak Nagar, New Delhi, under the respondent/defendant UOI.

4. The counsel for the appellants/plaintiffs has been heard and the copies of the entire relevant Trial Court record filed along with the memorandum of appeal perused, to gauge whether any substantial question of law arises. Merely because the First Appellate Court has interfered with the judgment and decree of the Suit Court, will not convert this Second Appeal into a First Appeal, for it to be entertained on any other parameters.

5. The appellants/plaintiffs instituted the suit, from which this appeal arises, pleading (i) that the leasehold rights in the land underneath the property no.5-B/36, Tilak Nagar, New Delhi were granted by the respondent/defendant UOI in favour of Shri Mehar Singh Giani, who died on 28th June, 1994 leaving four sons and three daughters as his only natural heirs, his wife having predeceased him; (ii) the said Mehar Singh Giani left a registered Will dated 1st February, 1994 bequeathing the property aforesaid in favour of the appellant/plaintiff no.1 and Manohar Singh being the daughter-in-law and son respectively of the deceased Mehar Singh Giani; (iii) Manohar Singh died, leaving the appellant/plaintiff no.2 Davinder Kaur as his widow; (iv) thus the two appellants/plaintiffs became owners of the two half portions bequeathed under the Will of Mehar Singh Giani; (v) the appellant/plaintiff no.1 applied for grant of probate of the aforesaid Will of late Shri Mehar Singh Giani and in which all the other natural heirs of Mehar Singh Giani were impleaded as respondents; (vi) that inspite of service of notice and publication, none of the other natural heirs of Mehar Singh Giani appeared in the Probate Case; (vii) that the two appellants/plaintiffs, at the

time of appellant/plaintiff no.1 filing Probate Case, were having *inter se* differences and subsequently, before the Mediation Centre, Tis Hazari Courts, they arrived at a settlement and the Probate Case was disposed of in terms of the said Settlement; (viii) that the appellants/plaintiffs then applied to the respondent/defendant UOI for mutation of the leasehold rights in the land underneath the property, from the name of Mehar Singh Giani, to their joint names; (ix) that the respondent/defendant UOI asked the appellants/plaintiffs to submit no objection affidavits of the other natural heirs; and, (x) that the said demand of the respondent/defendant UOI was without any justification. Hence, the suit for mandatory injunction directing the respondent/defendant UOI to substitute the appellants/plaintiffs in place of Mehar Singh Giani as lessees of the land underneath the property.

6. The respondent/defendant UOI contested the suit by filing a written statement, *inter alia* pleading (i) that on 2nd September, 1994, one H.S. Goomer filed a complaint with the respondent/defendant UOI that his father Mehar Singh Giani was the lessee of the land underneath the property and had died leaving five natural heirs but the property was in occupation of younger brothers only and cautioning the respondent/defendant UOI from taking any action with regard to the title of the property; (ii) that on the appellants/plaintiffs applying for mutation in their exclusive favour, they were requested to furnish the certified copy of the Will, Indemnity Bond and No Objection Certificates (NOCs) attested by First Class Magistrate of the other natural heirs; (iii) however the NOCs were not produced; and, (iv) that no reliance could be placed by

the appellants/plaintiffs on Probate Case, though instituted but which was not pursued and withdrawn.

7. In the aforesaid state of pleadings, the following issues were framed in the suit:-

“1. *Whether the suit of the plaintiff is entitled to decree for mandatory injunction as per the prayer clause i.e. (a) decree for mandatory injunction in favour of the plaintiffs thereby directing the defendant to substitute the name of the plaintiffs in place of late Sh. Mehar Singh Giani in the concerned records relating to property bearing no.5-B/36, Tilak Nagar, New Delhi – 110 018 within such time as may be fixed for such purpose and on such terms as may be deemed just and proper; (b) Award cost of the proceedings; and (c) Pass such further order(s) as may do complete justice in the fact and circumstances of the case. OPP*

2. *Relief, if any.*”

8. The Suit Court allowed the suit, reasoning (i) that the appellants/plaintiffs had proved and had relied upon the certified copy of the Will of Mehar Singh Giani and whereunder the property was bequeathed to the appellant/plaintiff no.1 and to the predecessor-in-interest of the appellant/plaintiff no.2; (ii) there was no necessity of probate in Delhi; and, (iii) in view of the Will, there was no need for the insistence by the respondent/defendant UOI for the appellants/plaintiffs to produce the NOCs of other natural heirs. Though the rules for mutation proved by the respondent/defendant UOI as Ex.DW1/1 were noticed, but neither was it stated that the rules permitted so nor was any other reason given as to why the rules were not to be abided by.

9. The First Appellate Court, on appeal by the respondent/defendant UOI, has set aside the judgment and decree of the Suit Court and dismissed the suit, reasoning (i) that the procedure required to be followed for mutation was provided for in Chapter - 28 of the Office Manual of the Land & Development Office of the respondent/defendant UOI; (ii) as per the said procedure, it was incumbent upon the appellants/plaintiffs to, along with the Will on the basis of which they were claiming mutation in their exclusive favour, either produce NOC of other natural heirs or if seeking mutation on the basis of Will alone, seek probate of the Will; (iii) Rules of the respondent/defendant UOI governing mutation could not be bypassed, merely by filing a suit and by a decree of Civil Court; (iv) that the appellants/plaintiffs had neither produced the NOC nor the probate of the Will; (v) the probate proceedings though filed were withdrawn without the Probate Court adjudicating the validity and genuineness of the Will of the deceased Mehar Singh Giani; (vi) though the appellants/plaintiffs claimed that the other natural heirs of Mehar Singh Giani were served in the Probate Case and public notices were published and none filed objections, but the appellants/plaintiffs had not filed any document or certified copy of the proceedings of the Probate Court to substantiate their said claim; and, (vii) thus, the order disposing of the Probate Case cannot amount to grant of probate.

10. The counsel for the appellants/plaintiffs has drawn attention to page 157 of the paper book, being the certified copy of the order dated 30th October, 2012 in PC No.30/10 disposing of the Probate Case in terms of the proceedings before the Mediation Cell on 18th September, 2012.

11. However, the counsel for the appellants/plaintiffs admits, that before the Mediation Cell also, only the appellants/plaintiffs arrived at a settlement and none of the other natural heirs of Mehar Singh Giani joined in the settlement.

12. I have enquired from the counsel appellants/plaintiffs, whether the Civil Court can grant a decree for mandatory injunction mandating the respondent/defendant UOI and/or any authority of the respondent/defendant UOI to act contrary to the Rules & Regulations governing its affairs and thereby act in contravention of the said rules.

13. The counsel for the appellants/plaintiffs is unable to contend otherwise.

14. Grant of mandatory injunction is governed by Section 39 of the Specific Relief Act which *inter alia* provides that when, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

15. The Rules & Regulations of the respondent/defendant UOI governing/regulating mutation of leasehold rights were proved before the Suit Court and the first Appellate Court has unequivocally held that the act of the respondent/defendant UOI of, in response to the application of the appellants/plaintiffs for mutation in their exclusive favour, demanding NOCs of the other natural heirs was in accordance with the said Rules & Regulations. The counsel for the appellants/plaintiffs also has not

contended otherwise. Judicial notice can also be taken of the said Rules which indeed are found to provide so.

16. The aforesaid Rules are for valid reason. Merely on unilateral production of a Will of the deceased and the validity of which Will has not been adjudicated by a Competent Court, prejudice at the hands of the respondent/defendant UOI cannot be caused to the other natural heirs of the deceased who may not be accepting the said document to be the validly executed last Will of the deceased. It is for this reason that the Rules provide either for obtaining probate of the Will or for submitting NOCs of the natural heirs, so that none suffers on account of mutation sought and granted. It cannot be lost sight of that persons dealing with respect to such leasehold properties expect mutations to have been carried out in accordance with the Rules and consider such mutation entries of the respondent/defendant UOI to have been made after satisfying itself of the title of the person in whose favour mutation has been carried out and purchase the property or otherwise acquire valuable rights therein and pay consideration therefor in the name of the mutatee.

17. If the respondent/defendant UOI were to be directed by a decree of the Civil Court to act in contravention of the Rules, the same would not only be contrary to Section 39 of the Specific Relief Act, but also against public interest.

18. There is no obligation on the respondent/defendant UOI to act contrary to its Rules or at its *ipse dixit*. As long as the respondent/defendant UOI was acting in accordance with its Rules, the appellants/plaintiffs could not have sought mandatory injunction directing

the respondent/defendant UOI to act contrary thereto. Only if the respondent/defendant UOI is found to be in violation of any of its obligations under the Rules, can such mandatory injunction be claimed.

19. The First Appellate Court has also rightly held that the settlement in the Probate Case does not amount to probate.

20. The counsel for the appellants/plaintiffs has before me, also canvassed, that none had filed objections to the probate. However, on enquiry whether merely on no objections having been received pursuant to service of notice and citation issued, probate can be granted, the counsel for the appellants/plaintiffs again agrees that it cannot be, unless the Will is proved.

21. The appellants/plaintiffs in the present case, though produced the certified copy of the Will before the Suit Court, but did not prove the same in accordance with Section 68 of the Indian Evidence Act, 1872. Thus, it is not as if the Will has been proved in the subject suit also. Merely because the Will is registered, does not obviate proof thereof in accordance with the Evidence Act.

22. The counsel for the appellants/plaintiffs has also argued that the appellants/plaintiffs have no other remedy.

23. I am unable to agree.

24. The appellants/plaintiffs could have very well impleaded the other natural heirs of the deceased Mehar Singh Giani as defendants to the suit so that even if the said natural heirs were to be proceeded against *ex parte*,

they would have been bound by the decree. However, the action of the appellants/plaintiffs, of not taking the Probate Case to its conclusion and not impleading the other natural heirs of deceased Mehar Singh Giani in the subject suit, raises doubts as to the validity of the Will set up by the appellants/plaintiffs and it appears that the appellants/plaintiffs are seeking a walkover and avoiding a contest.

25. Thus, no substantial question of law arises and there is no merit in the appeal.

Dismissed.

No costs.

Decree sheet be drawn up.

JULY 25, 2018
'pp'

RAJIV SAHAI ENDLAW, J.