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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 7851/2019 and CM APPL. Nos. 32654-32655/2019

KANHAIYA LAL MITTAL

Through
in-person.

..... Petitioner
Mr.Gaurav Ray, Adv. with petitioner-

versus

FINANCIAL COMMISSIONER
(DELHI) AND ORS.

..... Respondents

Through M.Anupam Srivastava, ASC,
GNCTD with Mr.Dhairya Gupta and Ms.Divya
Joshi, Advs. for R-1, 4 & 5.

Mr.Akhil Mittal and Mr. Vineet Mishra, Advs. for
R-2 & 3.

+ W.P.(C) 7857/2019 and CM APPL. Nos. 32669-32670/2019

KANHAIYA LAL MITTAL

Through
in-person.

..... Petitioner
Mr.Gaurav Ray, Adv. with petitioner-

versus

FINANCIAL COMMISSIONER
(DELHI) AND ORS.

..... Respondents

Through M.Anupam Srivastava, ASC,
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Joshi, Advs. for R-1, 4 & 5.

Mr.Akhil Mittal and Mr. Vineet Mishra, Advs. for
R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

16.10.2019

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1. These writ petitions are filed by the petitioner seeking to quash the impugned order dated 07.05.2019 passed by respondent No.1-Financial

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Commissioner dismissing the application of the petitioner under Order 1 Rule 10 CPC.

2. Background facts of the case are that one Mr. Nanhe Mal Jain was in physical cultivatory possession of the land in question. It is stated that on 28.01.1985, Mr. Nanhe Mal Jain executed a Will granting rights in the land in question in favour of the petitioner. The said Mr. Nanhe Mal Jain passed away on 28.03.1985. The Will was registered thereafter on 23.12.1985. However, a mutation was carried out in favour of respondents No. 2 and 3. The petitioner commenced appropriate proceedings before the Tehsildar regarding mutation of the property in his favour. The aforesaid order of the Tehsildar ordering mutation in favour of respondents No. 2 and 3 was upheld by the SDM, Narela on 29.04.2011. Against the said order, the petitioner has filed an appeal before the Deputy Commissioner being appeal No. 62/2011. The said appeal is said to be pending adjudication.

3. In the meantime, respondents No. 2 and 3 filed a Revision Petition before the Financial Commissioner stating that on 28.04.2017 after much follow up the Halqa Patwari issued a khatoni stating that the land is vested in the Gram Sabha. The Halqa Patwari gave no information as to under which order the said land is vested on the Gram Sabha. To the knowledge of the respondents, no proceedings under Section 81 of the DLR Act were ever initiated.

4. In the Revision Petition filed by respondents No. 2 and 3, the petitioner moved an application under Order 1 Rule 10 CPC seeking impleadment as a party. Learned Financial Commissioner by the impugned order dated 07.05.2019 dismissed the application of the petitioner holding that the Will in question was registered 9 months after the death of the

testator Mr. Nanhe Mal Jain. It was further held that the petitioner is not a blood relation of Mr. Nanhe Mal Jain. Learned Financial Commissioner also placed reliance on the judgment of the Civil Court (ADJ-LAC) where it was noted that the petitioner has failed to prove the Will as per law.

5. It is quite clear that there are two parallel proceedings pending between the parties. One proceeding is pending before the Deputy Commissioner whereby the order of mutation in favour of respondents No. 2 and 3 has been challenged. Second proceeding is pending before the learned Financial Commissioner where the mutation done in favour of Gaon Sabha has been challenged by respondents No. 2 and 3. It is the case of respondents No. 2 and 3 that despite orders of the Tehsildar mutating the land in their favour, khatoni was wrongly issued in favour of the Gaon Sabha.

6. In my opinion, the real dispute between the petitioner and respondents No. 2 and 3 centres around the Will propounded by the petitioner dated 28.01.1985. An adverse inference was drawn by the Civil Court in the proceedings under Sections 30 & 31 of the Land Acquisition Act, 1894 where it was held that the petitioner has failed to prove the Will as no evidence has been led by way of attesting witness

7. Learned counsel for the petitioner has clarified that an appeal has been filed against the said order which is pending adjudication before this court.

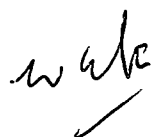
8. The issue regarding the rival claims of title claimed by the petitioner is being adjudicated upon before the Deputy Commissioner where the appeal filed by the petitioner is pending at present. The revision petition filed by respondents No. 2 and 3 cannot be converted into a title dispute

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between the petitioner and respondents No. 2 and 3 inasmuch as the dispute before the Financial Commissioner pertains to the alleged wrongful khatoni issued in favour of the Gaon Sabha. To that extent, in my opinion, the learned Financial Commissioner has rightly dismissed the application for impleadment of the petitioner as the petitioner is neither a necessary nor a proper party.

9. However, the petitioner is correct that in the impugned order the learned Financial Commissioner has needlessly gone into the merits of the contentions of the petitioner claiming title to the property in question. The observations made in the impugned order in paras 6 and 7 regarding the title claim of the petitioner will not prejudice the rights and contentions of the parties. It is also clarified that the outcome of the proceedings filed before the learned Financial Commissioner will not prejudice the rights and contentions of the petitioner before this court or before the court of the Deputy Commissioner inasmuch as the petitioner is not a party to the said proceedings.

10. The petitions stand disposed of. Pending applications, if any, also stand disposed of.


JAYANT NATH, J

OCTOBER 16, 2019
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