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

% ***Date of Decision***: 04.09.2019

\+ W.P.(C) 2909/2016

M/S D.S.S. HOTEL (P) LTD. ..... Petitioner

Through Mr.Rajendra Dutt, Adv.

versus

GOVT. OF NCT OF DELHI & ORS ..... Respondents

Through Mr.Pramod Kumar and Mr. Shavej Khan, Advs. for R-1.
Mr.Parvinder Chauhan and Mr.Nitin Jain, Advs. for R-2

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. This writ petition is filed by the petitioner seeking a writ of certiorari/mandamus for quashing the order dated 09.02.2016 passed by the Financial Commissioner and the order dated 30.06.2015 of the Additional Collector and restoring the order dated 24.01.2011 passed by the Revenue Assistant and Tehsildar’s order dated 15.02.2011 ordering mutation of property in respect of the land in question bearing Khasra No. 430 min(0-4), 431 min (0-11) and 427 min (0-5) situated in the revenue estate of Village Malikpur Kohi @ Rangpuri, New Delhi in favour of respondents No. 3 and 4.

2. The case of the petitioner is that the petitioner Company was a co-sharer in respect of the said property and had filed a suit for partition before the Revenue Assistant, Vasant Vihar, New Delhi. Respondents No. 3 and 4

were parties in the aforesaid suit being the co-sharers having purchased the land from Late Sh. Gian Chand Jain, the father of respondent No. 2. The above land was purchased by the petitioner on 31.01.2011 vide a Release Deed dated 31.01.2011 from respondents No. 3 and 4 after verifying the mutation in favour of respondents No. 3 and 4. Respondent No. 2 after having knowledge that his father Sh. Gian Chand Jain is selling the property in dispute had filed a suit before the Civil Judge, Delhi against his father seeking relief of injunction regarding the sale of the property in dispute. This was done in 2002. Sh. Gian Chand Jain filed a written statement stating therein that he had already disposed of the property on 09.08.2002 to respondents No. 3 and 4. While the suit was pending, Sh. Gian Chand Jain expired on 10.12.2003. The application of respondent No. 2 for bringing him on record as an LR of Sh.Gian Chand Jain was dismissed by the court holding that the father of respondent No.2 had sold the property to respondent Nos.3 and 4 prior to filing of the suit. The suit was dismissed having been abated.

3. In 2010, respondent No. 2 then filed another suit titled as *"Yogesh Jain vs. Satish Kumar Dhankar & Ors."* in the court of Additional District Judge seeking relief of declaration that the Registered Will dated 13.08.2002 executed by Late Shri Gian Chand in respect of the land in question in favour of respondents No. 3 & 4 is forged, fabricated and null and void and declaring that respondent No.2 is the owner in possession of the land in question. The suit was dismissed on 09.11.2010. Respondent No.2/Yogesh Jain thereafter filed an RFA in the High Court which was dismissed on 02.12.2013.

In the meantime, respondent No. 2 filed an appeal under Sections 64/65 of the Delhi Land Revenue Act against the order dated 24.01.2011 of the Revenue Assistant before the Deputy Commissioner which was allowed on 30.06.2015. The order directed mutation in favour of respondent No.2.The petitioner Company thereafter filed an appeal against the said order before the Financial Commissioner. It was pleaded before the Financial Commissioner that respondent No. 2 concealed the factum of filing of RFA in the Delhi High Court. The Financial Commissioner dismissed the appeal overlooking the order of the High Court dated 02.12.2013. Hence, the present writ petition.

4. The facts of this case are within a narrow compass. The admitted facts are that Late Sh. Gian Chand Jain bought the property in question by virtue of a registered sale deed dated 22.07.1992. He sold the said land to respondents No. 3 and 4 on 09.08.2002. Respondent No. 2 the son of Sh.Gian Chand Jain filed a suit in respect of the land seeking the relief of injunction against his father. Sh.Gian Chand Jain died on 10.12.2003. The application for substitution of respondent No. 2 was denied as Late Sh. Gian Chand Jain had sold the property and executed the Will dated 13.08.2003 with respect to the land in favour of respondents No. 3 and 4 and in the written statement that was filed by Sh. Gian Chand Jain, he had admitted the sale and delivery of the possession of the land to respondent No. 3 and 4. Respondents No. 3 and 4 have now sold a part of the land to the petitioner by means of the Release Deed dated 31.01.2011.

5. A perusal of the impugned order shows that the learned Financial Commissioner seems to have come to a conclusion that there was no sale deed in question in favour of the petitioner. What was executed, was a

release deed and that no stamp duty was paid and no consideration was paid. Further, the Will executed by Late Sh. Gian Chand Jain was without consideration. However, there is a registered Will which, it was held, can only be acted upon after the due process of deposition of witnesses. Reliance was placed on the judgment of the Supreme Court in the case of ***Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr., (2012) 1 SCC 656*** where the Supreme court had held that power of attorney is not an instrument of transfer with regard to right, title and interest.

6. Based on these observations and some other observations regarding the NOC requirement, the learned Financial Commissioner refused to interfere in the order of the Collector dated 30.06.2015. However, noting the submission of Sh.Gian Chand Jain in the civil suit that he had already sold the property to respondents No.3 and 4, the implementation of the order of the Additional Collector was stayed for a period of six months to enable the affected parties to approach authorities to complete the process such as paying stamp duty to get a duly stamped and registered sale deed to complete the right and transfer of interest. The following directions were passed:-

> "35. In view of the above, I find no ground to interfere with the order of Addl. Collector (New Delhi) dated 30.06.2015. However in view of the specific statement of Gyan Chand Jain before the Civil Court in suit no. 02/2002 on 23.08.2002 that he had already disposed off the property to R-2 and R-3, the implementation of the orders of Addl. Collector/ADM dated 30.06.2015 are stayed for a period of six months.
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> 36. This is to enable the affected parties to get an extra opportunity and approach the appropriate authorities to complete the process such as paying stamp duty etc. in order to get a duly

> stamped and registered sale deed etc. to complete the right and transfer of interest and title in the immovable property and overcome the short falls in the requirements of Section 53, 54 and 55 of Transfer of Property Act as directed by the Hon'ble Supreme Court in 2012 1 SCC 656. That further this period of stay should also be utilized by the parties to take all other requirements^ they deemed necessary/or required whether it be NOC, LOA, Probate, Registration etc^ because these mutation proceedings cannot be used as a proxy battle ground to over reach the substantive provisions of the specific laws."

7. In my opinion, the aforenoted judgment of the learned Financial Commissioner is faulty on various aspects.

8. Firstly, in RFA No.537/2013, on 02.12.2013, this court had on the suit filed by respondent No.2 seeking declaration that the will dated 13.08.2002 of Late Sh.Gian Chand Jain, father of respondent No. 2 in respect of the land be declared to be forged, fabricated and null and void and a declaration that respondent No. 2 is the owner and in possession thereof rejected the plea of respondent No2. The court held as follows:-

> "15.However what the counsel for the appellant/plaintiff ignores is the pleading in the earlier suit no.2/02 filed by the appellant/plaintiff against his father and in which the appellant/plaintiff failed to establish any right in the said land and in which the father of the appellant/plaintiff confirmed the sale of the subject land to the respondents/defendants 1 and 2. The father of the appellant/plaintiff having admitted the said sale, the challenge to his will loses any significance inasmuch as the appellant/plaintiff as a natural heir of his father can inherit only such rights in the property which the father has left and cannot inherit any rights in the property which the father sold in his life time.
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> 16. In this view of the matter, it cannot be said that it was for the respondents/defendants 1 and 2 to prove the will. The onus of the

issues had been correctly placed on the appellant/plaintiff and it was for the appellant/plaintiff to in the first instance prove that notwithstanding his father having in the pleadings in the earlier suit admitted sale to the respondents/defendants 1 and 2, the appellant/plaintiff inherited the subject land. The appellant/plaintiff having not led any evidence, the learned additional district judge was absolutely justified in dismissing the suit."

9. The aforesaid observations of this court which acknowledge the title of the petitioner/respondents No. 3 to the property have been completely ignored by the impugned order. The said order of this court clearly notes that having admitted the sale, the challenge to the Will of Sh.Gian Chand Jain has lost its significance. To hence deny reliefs to the petitioner on the ground that the Will has to be proved is an erroneous finding in the impugned order.

10. In any case, this court in the case of ***Santosh Kakkar v. Ram Prasad, 1998 (71) DLT 147*** has affirmed that no probate of will is required to be obtained before making a claim on the basis thereof, meaning thereby that an executor or a legatee can establish his rights under a will executed in Delhi without seeking probate thereof.

11. Secondly, the reliance by the impugned order on the judgment of the the Supreme Court in the case of ***Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr.(supra)*** is incorrect. The Supreme Court had stated as follows:

> "26. ... We make it clear that if the documents relating to "SA/GPA/will transactions" have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they need not be disturbed, merely on account of this decision."

12. Further, in the case of ***Maya Devi v. Lalta Prasad, (2015) 5 SCC 588,*** the Supreme Court had clarified that the above said proposition in the judgment of ***Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr.***(supra) has prospective operation.

13. Hence, transactions which have already gone through prior to the judgment of the Supreme Court in *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr.(supra)* are not affected or prejudiced by the said judgment. Similarly, in the present case the mutation order was sanctioned in favour of respondent no.3 and 4 on 24.01.2011 following which a release deed was executed in favour of the petitioner company on 31.1.2011, both of which are prior to the date of decision in *Suraj Lamps & Industries Pvt. Ltd. vs. State of Haryana & Anr.* (supra).Thereby, the present transaction was not effected by the observations of the said judgement.

14. Clearly, the order of the Financial Commissioner has ignored the aforenoted legal propositions and has passed directions.

15. At this stage, learned counsel appearing for the petitioner and for respondents No. 3 and 4 state that if the matter is being remanded back, the issue of the illegality and validity of the Will said to have been executed by Late Sh.Gian Chand Jain may be kept open as he states that the suit that was filed by respondent No. 2 for declaration that the said Will is illegal and null and void was dismissed for non-prosecution. Being an order not on the merits, it is pleaded that the said decision does not operate as res judicta and respondent No. 2 can still challenge the validity of the will.

16. Keeping all the aforenoted issues open, in my opinion, it is appropriate to remand the matter back to the learned Financial

Commissioner. I accordingly set aside the order of the learned Financial Commissioner dated 09.02.2016. The matter is remanded back for reconsideration in view of the legal proposition stated above. The learned Financial Commissioner is requested to expeditiously deal with the aforenoted appeal.

17. The Petition stands disposed of. Pending applications, if any, also stand disposed of.

JAYANT NATH, J

SEPTEMBER 04, 2019
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Corrected and released
on 04.10.2019