

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

% **Decided on: 16th September, 2019**

+ **TEST. CAS. 54/2017**

ANIL TYAGI & ORS.

..... Petitioners

Represented by: Sanjeev Kumar Tyagi, Advocate

versus

THE STATE OF DELHI & ORS

..... Respondent

Represented by: Mhd. Umar Iqbal Khan and Mhd.
Irshad, Advocates for Respondent No. 1

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present petition, the petitioner seeks grant of probate/Letters of Administration on the basis of the Will and testament dated 30th December 1988 with respect to the estate of Late Smt. Inderjeet Kaur in favour of the petitioners.

2. As per the petition, the deceased, Late Smt. Indrjeet Kaur died on 11th December 2011. Late Smt. Inderjeet Kaur executed a will in favour of Lt. Smt. Urmila Tyagi in respect of agricultural land measuring 4 Bigha 11-1/2 Biswa being her half share in total land measuring 9 Bigha 3 Biswa falling in Khasra No. 1748/1, 1769/1 and 1769/2 of revenue estate Village Chhatarpur, Tehsil- Mehrauli, New Delhi. Petitioner Nos. 1 and 2 are sons of Lt. Smt. Urmila Tyagi. Respondent No. 2 is the son and Respondent Nos. 3 to 5 are the daughters of Smt. Inderjeet Kaur.

3. During their lifetime, Smt. Inderjeet Kaur and Sh. Harbhajan Singh, transferred the suit property with possession in favour of Smt. Urmila Tyagi by executing a General Power of Attorney, agreement to sell, affidavit, indemnity bond, receipts, possession letter and a registered will dated 30th December 1988.
4. Accordingly, after the death of Lt. Sh. Harbhajan Singh on 8th January 1993, Smt. Urmila Tyagi approached the revenue court for mutation of land in her favour and same was done vide order dated 16th November 1993.
5. Smt. Urmila died on 21st January 2007 whereafter her husband Sh. Chander Kiran Tyagi and her legal heirs became owners of the said property. Sh. Chander Kiran Tyagi died on 23rd July 2013 and the ownership of the said land dwelled upon the sons that is the petitioners and the two daughters namely Smt. Kusum Tyagi and Smt. Manju Tyagi. Smt. Kusum Tyagi and Smt. Manju Tyagi relinquished their rights in favor of petitioners qua the subject property vide relinquishment deed dated 28th June 2014.
6. It is further averred by the petitioners that the factum of the death of Smt. Inderjeet Kaur came into their notice in October 2015, when they received a notice from the office of Tehsildar (Saket) pertaining to false and dishonest claims being made by the respondents on 21st September 2015. During the hearing of mutation proceedings between the respondents and the petitioners, respondent no. 2 disclosed that the land in question is subject matter of litigation titled as "*K.B. Gupta & Anr v. Harbhajan Singh and Ors.*" being RFA No. 110/2008. Sh. K.B. Gupta and Sh. Vijay Gupta filed a suit on 9th February 1989 against Harbhajan Singh and Inderjeet Kaur seeking specific performance amongst other reliefs alleging that receipts

dated 11th May 1988 and 30th May 1988 executed for loan were the agreement to sell in respect of suit lands. The said suit was dismissed by the learned Trial court and the appeal therefrom was pending adjudication before this Hon'ble court. The father and mother of respondents no. 2 to 5 filed a written statement categorically acknowledging and admitting that they had sold the land and handed over possession of the same to the purchaser prior to institution of the suit. The petitioners herein moved an application for impleadment on the ground that the petitioners are entitled to defend false and frivolous claims of Appellants therein. The application of petitioners was dismissed vide order dated 9th May 2016. The records pertaining to RFA No. 110/2019 were also produced.

7. Notice in the present petition was issued to Respondent Nos. 2 to 5 vide order dated 20th September 2017. On 31st January 2018 learned counsel for Respondent Nos. 2 to 5 entered appearance and stated that Respondents No. 3 to 5 have relinquished their rights in favor of Respondent No. 2. Vide order dated 18th February 2019 following issues were settled:

- i. *Whether the Will dated 30.12.1988 was legally and validly executed by Lt. Smt. Inderjeet Kaur?(OPP)*
- ii. *Whether the Will dated 30.12.1988 is a forged, fabricated and manipulated document?(OPR2)*
- iii. *Relief*

8. Vide order dated 20th May 2019, the matter was listed on the report of the learned Local Commissioner who brought to the notice of the court that the examination in chief of PW-1 was conducted on 22nd April 2019 when the proxy counsel for the respondent sought adjournment and the same was adjourned to 1st May 2019 when none appeared on behalf of the respondent

and again it was fixed for 16th May 2019 and again none appeared. Even on 20th May 2019 none appeared on behalf of the respondents. Respondents were thus proceeded ex-parte.

9. Petitioner No.1, Anil Tyagi (PW-1) tendered his evidence by way of an affidavit vide Ex. PW-1/A. The certified copy of registered will dated 30th December 1988 executed by Lt. Smt. Inderjeet Kaur was proved as Ex. PW-1/1. Copy of death certificate of Smt. Inderjeet Kaur was proved as Ex. P-1. The copy of notice dated 30th March, 2016 sent by the Revenue Authorities to the petitioners was proved as Ex. PW-1/2. The copy of General Power of Attorney dated 30th December, 1988 executed by Smt. Inderjeet Kaur was proved as Ex. PW-1/3. The copy of Agreement to Sell, Affidavit and Indemnity Bond all dated 30th December, 1988 executed by Inderjeet Kaur were proved as Ex. PW-1/4, Ex. PW-1/5 and Ex. PW-1/6 respectively. Copies of receipts of payment of sale consideration dated 30th December, 1988, 3rd February, 1989, 12th April, 1989 and 22nd April, 1989 with respect to the said land were proved as Ex. Pw-1/7(Colly). Copy of possession letter dated 30th December, 1988 was proved as Ex. PW-1/8. Copy of General Power of Attorney dated 30th December, 1988 executed by Harbhajan Singh in favour of late Smt.Urmila Tyagi was proved as Ex. PW-1/9. Copy of Agreement to Sell, Affidavit and Indemnity Bond all dated 30th December 1988 executed by Harbhajan Singh were proved as Ex. PW-1/10, Ex. PW-1/11 and Ex.PW-1/12 respectively. Copies of two receipts executed by Harbhajan Singh dated 30th December, 1988 and 12th April, 1989 were proved as Ex. PW-1/13(colly). Copy of the possession letter executed by Harbhajan Singh was proved as Ex. PW-1/14. Copy of registered Will executed by Harbhajan Singh dated 30th December, 1988

was proved as Ex. PW-1/15. Copies of the revenue records were proved as Ex. PW-1/16(colly). Copies of death certificates of Smt. Urmila Tyagi and Sh. Chander Kiran Tyagi were proved as Ex. PW-1/17 and Ex. PW-1/18 respectively. Copy of Relinquishment Deed dated 19th June 2014 registered on 28th June 2014 was proved as Ex. P-2(Ex. PW-1/19). Copies of electricity bills pertaining to said lands were proved as Ex. PW-1/20(colly). Copy of property tax and copy of challan dated 4th June 2013 issued by Delhi Jal Board with respect to the said land were proved as Ex. PW-1/21 (colly). Copy of letter dated 5th November 2015 issued by Delhi Jal Board qua said land was proved as Ex. PW-1/22. Copy of order dated 9th May 2016 dismissing application of petitioners for impleadment in RFA No.110/1988 was proved as Ex. P-2. Copy of legal notice dated 26th July, 2018 sent by respondent was proved as Ex. PW-1/23.

10. An affidavit by way of evidence has been tendered by the Petitioner No.2, Sunil Tyagi (PW-2) vide Ex. PW-2/A. He deposed in sync with the deposition of Anil Tyagi (PW-1).

11. Tarachand (PW-3) tendered his evidence by way of an affidavit Ex. PW-3/A wherein he identified the signatures of Lt. Sh. Chander Kiran Tyagi on documents Ex. PW-1/1 and Ex. PW-1/15.

12. Subhash Chand Tyagi (PW-4) tendered his evidence by way of an affidavit Ex. PW-4/A wherein he deposed that Lt. Smt. Urmila Tyagi paid the sale consideration of the said land to Lt. Sh. Harbhajan Singh and Smt. Inderjeet Kaur in his presence and that he was the witness to payment receipts Ex. PW-1/7 (colly) and Ex. PW-1/13 (colly).

13. Yogesh Kumar (PW-6), Halka Patwari deposed that as per the *khasra girdawari* of village Chhatarpur from year 2014 to 2019, the petitioners are

in cultivatory possession of agricultural land total measuring to 9 bigha and 3 biswa falling in Khasra No. 1748/1, 1769/1 and 1769/2 of revenue estate Village Chhatarpur, Tehsil- Mehrauli, New Delhi. The petitioners entered in the revenue record after the death of their father Sh. Chander Kiran Tyagi vide *rojanamcha* no. 115 order passed by Tehsildar, Saket on 28th October 2013.

14. Naveen Gandas (PW-7), Record Lifter, Department of Delhi Archives deposed that the original Will of Smt. Inderjeet Kaur is in their records and the said Will was registered vide Registration No. 6090, Book No. 3, Vol No. 481 on pages 79-80. The Will of Sh. Harbhajan Singh was registered vide Registration No. 6091, Book No. 3, Vol No. 481 on pages 81-82.

15. Azhar Ahmed (PW-8), Office Kanoongo, DM Office, stated that as per khasra girdawari record from year 1990 to 2010, Smt. Urmila Tyagi and Sh. Chander Tyagi were in cultivatory possession of agricultural land in Khasra No. 1748/1, 1769/1 and 1769/2 of revenue estate Village Chhatarpur, Tehsil- Mehrauli, New Delhi from the year 1990 to 2007.

16. For the evidence adduced on behalf of the petitioners who have proved the complete chain of documents besides the documents of title and possession it is proved by the petitioners that the Will dated 30th December, 1988 of late Smt. Inderjeet Kaur is a legally executed and a valid Will. The respondents have failed to prove to the contrary having led no evidence, nor from the cross-examination of the petitioner's witnesses which was not conducted by the respondents. Hence, there is no impediment in granting the relief of letter of administration as claimed in the petition, the petitioners being the beneficiaries under the Will (Ex. PW-1/1) which is proved to have

been executed validly by the testator Smt. Inderjeet Kaur, in absence of proof to the contrary.

17. Accordingly, letters of administration with respect to Will (Ex. PW-1/1) dated 30th December 1988 of Smt. Inderjeet Kaur, is granted in favour of the petitioners in respect of the immovable property left behind by the deceased as mentioned, subject to the requisite court fees/stamp duty being furnished in accordance with the valuation report and upon submission of administration bond and surety, in accordance with law, to the satisfaction of the Registrar General of this Court.

18. Petition is disposed of.

19. Matter be listed before the Registrar General for payment of requisite court fees in respect of the abovementioned immovable and movable property of the deceased and for acceptance of the administration bond and surety bond on 30th October, 2019.

I.A. 10972/2017 (u/O 39 R 1&2 CPC)

Disposed of as infructuous.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 16, 2019
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