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

% *Date of decision:* 18.02.2020

\+ W.P.(C) 12178/2015

DEVENDER SINGH & ANR. ..... Petitioners
Through Mr.Bheem Sain Jain, Adv.

versus

GOVT OF NCT OF DELHI & ORS. ..... Respondents
Through Mr.Satyakam, Additional Standing Counsel for R-1/GNCTD.
Mr.Anand Yadav and Mr.Pradyumn Rao, Advs. for R-2 and 3.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This writ petition is filed by the petitioners seeking to impugn the order dated 18.04.2012 passed by the Deputy Commissioner/Collector, North-West, Delhi and the order dated 06.10.2015 passed by the Financial Commissioner, seeking condonation of delay in filing the appeal before the Deputy Commissioner.

2. It is stated that the petitioners and respondents No.2 and 3 are the successors of a common ancestor, namely, Sh.Sheo Nath. It has been pleaded that Sh.Sheo Nath had four sons, namely, Sh.Sita Ram, Sh.Arjun, Sh.Maharam and Sh.Nathan. Respondents No.2 to 4 are successors of Sh.Nathan. Sh.Maharam died issue less. Sh.Arjun left behind his widow, namely, Smt.Ghoghri. The petitioners are successors of late Sh.Sita Ram.

3. It is stated that Smt.Ghoghri was the owner of 1/3rd share in the land

measuring 102 bighas and 2 biswas in Khata No.23/17, Village Ranikhera, Delhi. Smt.Ghoghri died issueless on 05.08.1973. It is claimed by the petitioners that the share of Smt.Ghoghri ought to have been divided between the petitioners at one hand and respondents No.2 to 4 on the other hand, meaning thereby the descendants of Sh.Sita Ram including the petitioners and the descendants of Sh.Nathan including respondents No.2 to 4 will have equal share in the property of late Smt.Ghoghri. However, the share of late Smt.Ghoghri was mutated in favour of respondents No.2 and 3 vide order dated 21.07.1975 passed by Tehsildar.

4. It is the case of the petitioners that they came to know about the change of mutation only in the year 1992 when a suit for partition was filed by the petitioners against respondents No.2 to 4 in the civil court. On 01.05.2003, the said suit was returned for presenting the same before the court of competent jurisdiction as the value of the said suit was beyond the pecuniary jurisdiction of the civil court. It is, thereafter, stated that the petitioners were advised to file a petition for declaration of their rights under sections 11 and 13 of the Delhi Land Reforms Act, 1954 (*hereinafter referred to as the 'DLR Act'*) before the court of Revenue Assistant. The aforesaid petition was also dismissed on 24.12.2010 on the ground that it was beyond the purview/jurisdiction of the Revenue Assistant with the direction to approach the appropriate authority. Subsequently, the petitioners filed an appeal under section 64 of the DLR Act along with an application under sections 5 and 14 of the Limitation Act before the learned Deputy Commissioner, North West District, Delhi seeking condonation of delay of 37 years in filing the accompanying appeal. The aforesaid application filed seeking condonation of delay was dismissed by the learned Deputy

Commissioner vide order dated 18.04.2012. Thereafter, the petitioners filed an appeal before the Financial Commissioner and the Financial Commissioner also dismissed the said appeal vide order dated 06.10.2015. Hence, the present writ petition.

5. I have heard learned counsel for the parties.

6. Learned counsel for the petitioners has submitted that Tehsildar wrongly carried out mutation without issuing of notice to the petitioners. He further states that the petitioners were diligent and prosecuting their remedy regarding the land immediately after receipt of knowledge of the said order in 1992. He further submitted that thereafter, the petitioners filed a suit for partition and proceedings under Section 11 of the DLR Act. He submits that there are sufficient grounds to condone delay in filing of the appeal.

7. Learned counsel for respondents No.2 and 3 relies upon section 51(2) read with section 50(l) of the DLR Act to submit at the time Smt. Ghoghri, expired, the petitioners' father Sh.Chandgi Ram had already passed away. He submits that no title passed to the petitioner on the death of Smt.Ghoghri. He further states that section 14 of the Limitation Act has no application to the DLR Act as it applies only to civil proceedings. Hence, there is no due diligence on the part of the petitioners.

8. A perusal of the order of the Financial Commissioner shows that the Financial Commissioner noted that as per section 14 of the Limitation Act, there are two important ingredients, i.e. 'due diligence' and 'good faith'. The Financial Commissioner recorded that the petitioners have failed to show 'due diligence' and 'good faith' and hence, the appeal is hopelessly time barred. The appeal was accordingly dismissed.

9. Section 14 of the Limitation Act, 1963 reads as follows:

"14. Exclusion of time of proceeding bona fide in court without jurisdiction. —

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.— For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

10. In this context reference may be had to the judgment of the Supreme Court in the case of ***Suryachakra Power Corporation Limited vs. Electricity Department***, ***Represented by its Superintending Engineer, Port Blair and Others, (2016) 16 SCC 152***. The Court held as follows:

> "8. The two main ingredients required for attracting the principles under Section 14 of the Limitation Act, 1963 are that the party should be prosecuting another civil proceedings with due diligence and that the prosecution should be in good faith. It is not enough that one part is satisfied. Both due diligence and good faith must be established.
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> 9. In the case before us, after obtaining the certified copy of the order on 17-12-2014, the review petition was filed only on 25-2-2015, delayed by 37 days. Even after withdrawal of the review petition on 7-5-2015, the appeal was filed before this Court only on 7-7-2015. This Court closed for summer vacations in the year 2015 only on 16-5-2015 and reopened on 1-7-2015. Thus, there were few days left, before the closing of the Court for summer vacations, for the appellant to file the appeal after withdrawal of the review petition. The appeal was filed only after a few days of the reopening of the Court on 1-7-2015. Therefore, the appellant is not entitled even to the benefit of the principles under Section 4 of the Limitation Act, 1963 for exclusion of the period when court is closed. Merely because the Tribunal condoned the delay in filing the review petition, for the purpose of application of Section 14 before this Court for exclusion of the period, in the facts of the present case, it cannot be said that there was due diligence. Under Section 2(*h*) of the Limitation Act, 1963, nothing shall be deemed to be done in good faith which is not done with due care and attention. The facts as narrated above would also show lack of good faith on the part of the appellant in conducting its case. Thus, the appellant having not prosecuted his case with due diligence and good faith is not entitled for the application of the principles under Section 14 of the Limitation Act, 1963."

Hence, as per the aforesaid provision, the petitioners were to be pursuing the other proceedings with 'due diligence' and 'good faith' to avail of the benefit of the aforesaid Section 14.

11. The facts in the present case are quite glaring. Smt.Ghoghri died in 1973. Twenty years after her death, the petitioners woke up in 1992 and filed a suit for partition. It is interesting to note that in the suit for partition which was filed by the petitioners, the petitioners claimed 1/3rd share in the property in question and also admitted that 2/3rd share in the plot was owned by the defendants. In fact, they admitted that the mutation had been rightly carried out by the Tehsildar. Later on, an application for amendment of the plaint was filed to rectify this so called mistake but the same was dismissed by the trial court.

12. On 01.05.2003, the partition suit which was filed by the petitioner was returned for presenting the same before the court of competent jurisdiction as the value of the said suit was beyond the pecuniary jurisdiction of the said civil court. Instead of presenting the case before the court of appropriate jurisdiction, the petitioners chose to file the petition/proceedings under sections 11 and 13 of the DLR Act for declaration of bhumidhari rights. This petition was dismissed on 24.12.2010. The petition was dismissed being without jurisdiction with a direction to the petitioners to approach the appropriate authority.

13. Thereafter, the petitioners filed an appeal under section 64 of the DLR Act in 2011 after a delay of almost 36 years. In my opinion, the view taken by the Financial Commissioner in the impugned order, namely, that there is lack of 'due diligence' and 'bonafide' on the part of the petitioners in pursuing the appeal is a plausible view taken by the Financial

Commissioner. It is not for this court to disturb the said finding.

14. There is no merit in the present petition. The same is dismissed.

JAYANT NATH, J.

FEBRUARY 18, 2020/v
corrected & released on 04.03.2020