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

% *Decision delivered on: 27.07.2022*

+ **LPA 97/2020 & CM Nos. 32788-89/2022, 6542-43/2020 & 6546/2020**

MALKHAN SINGH (DECEASED) THR LRS & ORS... Appellants
Through: Mr Tanmaya Mehta, Mr Sunil Singh,
Ms Vatsala Chauhan, Advs.

versus

RAKESH KUMAR JAIN & ORSRespondents
Through: Mr Avneesh Garg and Mr Sushil
Kumar, Advs. for R-1.

+ **LPA 98/2020, CM Nos.6548/2020 & 6550-51/2020**

HARI SINGH & ORSAppellants
Through: Mr Tanmaya Mehta, Mr Sunil Singh,
Ms Vatsala Chauhan, Advs.

versus

RAKESH KUMAR JAIN & ORSRespondents
Through: Mr Avneesh Garg and Mr Sushil
Kumar, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. The appellants, who were the original writ petitioners, had filed two separate writ petitions, i.e., W.P. (C.) No.6614/2014, titled *Shri Malkhan Singh & Ors. v. Financial Commisioner, Delhi & Ors.* and W.P.(C.) No.6106/2015, titled *Shri Hari Singh & Ors. v. Smt. Savitri Devi & Ors.*



2. These writ petitions were disposed of by the Learned Single Judge *via* a common judgment dated 21.08.2019.

3. In the aforesaid writ petitions, challenge was laid to the order of Tehsildar dated 18.01.2013, which was sustained by the Collector Revenue DC/North *via* order dated 07.10.2013, and thereafter by the Financial Commissioner *via* order dated 31.07.2014.

3.1 Resultantly, the mutation ordered in favour of the original respondent nos.2 to 4 i.e., Smt Savitri Devi, Smt Bimla Devi and Smt Darshana was sustained.

3.2. The record also shows that the original respondent nos.2 to 4 had executed a sale deed dated 06.02.2015, in favour of the original respondent no.1 i.e., Rakesh Kumar Jain.

4. Therefore, the foundational order in favour of the original respondent nos.2 to 4, based on which the subject property was conveyed to respondent no.1, is the order of Tehsildar dated 18.01.2013. The operative part of this order reads as follows:

“In view of above, I therefore order that the name of the applicants namely Smt. Bimla, Smt. Savitri & Smt. Darshna be entered in the revenue record as the legal heirs of deceased Layak Ram, S/o Kanhiya with regard to only Khasra nos. 75 (4-16), 76 (4-16), 77 (4-16), 78 min (1-16), 155 (4-16), 231 (1-8), 230 (1-12), 233 (4-12), 336 (3-9), 339 (4-10) & 340 (2-3), 227 (4-16), 228 (4-16), 232(4-13) total measuring 52 Bigha 19 Biswa situated within the revenue estate of village Mohd. Pur Ramjanpur, Delhi. It is further cleared that, the order of mutation vide dt. 18.05.1995 had already set-aside by Ld. Addl. Collector and the petition vide no. 1194/2011 had already disposed of by Hon'ble High Court of Delhi, so, the field staff is directed to make the entry in the revenue record accordingly.”

5. The appellants i.e., the original writ petitioners, were not able to



persuade the Learned Single Judge to set aside the orders impugned in the writ petitions i.e., the orders dated 18.01.13 and 07.10.2013, 31.07.2014; which are referred to hereinabove.

6. It is also not in dispute, that since a doubt was raised by the appellants/writ petitioners with regard to the title to the subject property, that aspect of the matter was noticed by the Learned Single Judge in the impugned judgment.

7. Consequently, the appellants/original writ petitioners took recourse to civil proceedings, by filing a suit before the concerned court.

7.1 This suit was numbered as CS (SCJ) No.348/2018.

8. An application was moved under Order VII Rule 11 of the Code of Civil Procedure, 1908 by the original respondent no.1 i.e., Mr Rakesh Kumar Jain, in the aforementioned suit.

8.1 This application was allowed by the concerned judge *via* order dated 11.03.2022. As a result, the concerned Judge “rejected the suit”.

9. Admittedly, an appeal has been preferred against the said order, which, we are told, is pending adjudication.

10. According to us, the correct course of action, in the given circumstances, would be for the parties to agitate their respective rights in the suit, which is now pending before the appellate court.

11. It cannot but be accepted by learned counsel for the parties that mutation would follow the title in the subject property.

11.1 Therefore, in the first instance, title to the property needs to be ascertained.

12. Since the appellants in the writ petition filed a suit, which, as noticed above, has been rejected and an appeal has been preferred, their rights can



be determined based on the final outcome in the suit proceedings.

13. Thus, insofar as the above-captioned appeals are concerned, they are disposed of with the direction that the fate of the parties shall stand determined by the final outcome in the suit proceedings.

14. Consequently, the pending applications shall also stand closed.

15. Learned counsel for the parties' state, in no uncertain terms, that they will abide by the final judgment in the suit proceedings.

16. It is made clear that the observations made herein and by the Learned Single Judge will not come in the way of the parties in getting the fruits of their efforts in the suit action.

17. At this stage, Mr Tanmaya Mehta, who appears on behalf of the appellants, expresses an apprehension that the title in the subject property may change hands before the appellants/original writ petitioners approach the appellate court, to press their pending application for stay.

18. We make it clear that if any steps are taken hereafter by respondent no.1, they will be subject to the decision of the concerned appellate court in the pending application.

19. Needless to add, all rights and contentions of the parties in the pending suit proceedings will remain open.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JULY 27, 2022/aj

Click here to check corrigendum, if any