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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **LPA 24/2022 & CM APPLs. 308/2023, 309/2023**

RAVINDER DABAS

..... Appellant

Through: Mr. Harikesh Singh and Mr. Sandeep
 Sinhmar, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Divyam Nandrajyog, Panel
 Counsel, GNCTD with Mr. Mayank
 Kamra, Advocate for R-1.

Mr. Setu Niket and Ms. Esha
 Mazumdar, Advocates for R-2(d) (a)
 & 2(d) (b).

Mr. Anand Yadav, Advocate for R-
 2a, 2b, 2c and LR's of R3.

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Date of Decision: 11th July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal has been filed against the judgment dated 18.02.2020 passed by learned Single Judge in *W.P.(C) No. 12178/2015*, by which the learned Single Judge dismissed the writ petition filed on behalf of the appellant. By the impugned judgment, the learned Single Judge upheld the order dated 06.10.2015 passed by the Financial Commissioner, who dismissed the second appeal filed on behalf of appellant herein, thereby upholding the order dated 18.04.2012 passed by the Deputy Commissioner/Collector, North West, Delhi. By order dated 18.04.2012, the



Deputy Commissioner had dismissed the appeal of the appellant herein under Section 64 of The Delhi Land Revenue Act, 1954 on the ground of limitation and did not condone the delay of 37 years in filing the said appeal.

2. Appellant claims that he along with the respondents are successors of a common ancestor namely Shri Sheo Nath, who had four sons namely Shri Sita Ram, Shri Arjun, Shri Maharam and Shri Nathan. Respondents 2 to 4 are successors of Shri Nathan. Shri Maharam died issueless. Shri Arjun left behind his widow namely, Smt. Ghoghri. The appellant is successor of late Shri Sita Ram.

3. As per the appellant, Smt. Ghoghri was the owner of 1/3 share in the land measuring 102 Bighas and 2 Biswas in khata No. 23/17, Village Ranikhera, Delhi. Smt. Ghoghri, widow of Shri Arjun, died issueless on 05.08.1973. Thus, as per the appellant, the share of Smt. Ghoghri ought to have been divided between the appellant on the one hand and respondent Nos. 2 to 4 on the other hand in equal shares. However, the share of late Smt. Ghoghri was mutated in favour of respondent Nos. 2 and 3 vide order dated 21.07.1975 passed by Tehsildar.

4. As per the appellant, he came to know about the mutation only in the year 1992, when a suit for partition was filed on behalf of the appellant against respondents 2 to 4 in a Civil Court. However, the Civil Court held that it had no pecuniary jurisdiction and returned the plaint for presentation to the Court of competent jurisdiction. Thereafter, a petition under Sections 11 and 13 of the Delhi Land Reforms Act, 1954 was filed on behalf of the appellant in the Court of Revenue Assistant. However, the said petition was also dismissed vide order dated 24.12.2010 thereby holding that the matter pertaining to challenge of mutation was outside the purview of the



jurisdiction of Revenue Assistant.

5. Subsequently, an appeal was filed on behalf of the appellant under Section 64 of the Delhi Land Revenue Act, 1954 before the learned Deputy Commissioner, North West District, Delhi. The said appeal was accompanied with an application under Sections 5 and 14 of the Limitation Act, 1963 seeking condonation of delay of 37 years in filing the said appeal. The said application seeking condonation of delay was dismissed by the learned Deputy Commissioner vide order dated 18.04.2012. Second appeal was filed before the learned Financial Commissioner, which was also dismissed vide order dated 06.10.2015.

6. Against the aforesaid order passed by the learned Financial Commissioner, a writ petition being *W.P. (C) No. 12178/2015* was filed on behalf of the appellant in this Court. By the impugned judgment dated 18.02.2020, the learned Single Judge upheld the order passed by the Financial Commissioner thereby holding the view taken by the Financial Commissioner that there is lack of due diligence and bona fide on the part of the appellant in pursuing the appeal after a delay of almost 36 years, was a plausible view. Thus, the present appeal came to be filed.

7. During the pendency of the present appeal, two applications being *CM No. 308/2023* and *CM No. 309/2023* were filed on behalf of the appellant under Order XXII Rule 4 of Code of Civil Procedure, 1908 (CPC) for bringing on record the legal representatives (LRs) of deceased respondent No. 3/Gian Chand, along with prayer for condonation of delay of 823 days in filing the application.

8. On behalf of the appellant, it is contented that respondent No. 3 expired in the year 2020. Thus, in terms of order dated 10.01.2022 passed by



Supreme Court in *Suo Moto Writ Petition (C) No. 3 of 2020*, the period from 15.03.2020 till 28.02.2022 was excluded for the purposes of limitation period. Further, period of 90 days from 01.03.2022 was available as limitation period as per the order of Supreme Court. Hence, there is delay of only 90 days in filing the application for bringing on record the legal representatives of deceased respondent No.3. It is contended that the appellant had a cardiac attack on 27.03.2022. He remained in hospital for a long time and was subsequently operated on 04.04.2022 for placing a pacemaker in his chest. He was discharged from hospital on 06.04.2022 and was advised bed rest. Thus, it is prayed that the delay of 90 days in filing the application for bringing on record the LRs of deceased respondent No. 3 be condoned.

9. The respondents vehemently oppose the aforesaid applications for bringing on record the legal representatives of deceased respondent no. 3 and for condonation of delay in filing the said application. It is submitted that respondent Nos. 3 and 4 had expired before filing of the appeal. It is further submitted that Smt. Chandro/respondent No. 4 expired on 18.04.2016 during pendency of the writ, *W.P. (C) No. 12178/2015* filed on behalf of the appellant. It was informed on behalf of the respondents that respondent No. 3, Shri Gian Chand was the only legal heir of deceased Smt. Chandro. Subsequently Shri Gian Chand also expired on 11.04.2020 after the decision in *W.P. (C) 12178/2015* and the said fact is in the knowledge of the appellant. Even in the appeal filed by the appellant, he himself has admitted that Shri Gian Chand has expired in the year 2020.

10. In rejoinder, learned counsel for the appellant submits that delay ought to be condoned and the appeal may be allowed. It is submitted that as



per Section 26 of the Delhi Land Revenue Act, there is no prescribed limitation under the Act for the purpose of correction/error/rectification in the revenue record. In support of his submissions, learned counsel for the appellant relies upon the following judgments:-

- (i) ***Chhoti Devi Vs The Financial Commissioner and Ors.***,
MANU/DE/0265/2003
- (ii) ***Kiran Diwania Vs Financial Commissioner, Delhi and Ors.***, MANU/DE/1804/2013
- (iii) ***Shakuntala Devi Vs FCI and Ors.***,
MANU/DE/1522/2009
- (iv) ***J. Kumaradasan Nair and Another Vs IRIC Sohan and Others***, (2009) 12 SCC 175

11. Having heard learned counsels for the parties, this Court is of the view that the present appeal stands abated qua deceased respondent No. 3. Perusal of the appeal filed by the appellant herein demonstrates that it has been clearly stated on behalf of the appellant that Gian Chand died in the year 2020. Thus, the appeal was filed on behalf of the appellant against a dead person. An appeal filed against a dead person is clearly not maintainable and is a nullity. Thus, provisions under Order XXII Rule 4 CPC for bringing on record the legal heirs of deceased respondent No. 3, cannot be invoked by the appellant herein. The provision of Order XXII Rule 4 CPC will apply only in a case when a party dies during the pendency of the proceedings. A bare perusal of provisions of Order XXII Rule 4 CPC manifest that the said provisions apply only in case of death of the respondent during the subsistence of the case.

12. Hence, there is no occasion for this Court to either allow the



application on behalf of the appellant under Order XXII Rule 4 CPC to bring on record the legal heirs of the deceased respondent No. 3 or condone the delay in filing the said application. The appeal, thus, has abated qua respondent No. 3.

13. Once the appeal has abated against respondent No. 3, the same cannot continue against the other respondents also. It is to be noted that respondents 2 to 4 are the contesting respondents. Respondent No. 4 had already expired in the year 2016 and the deceased respondent No. 3 was the legal heir of respondent No. 4. The appellant is challenging the mutation in favour of respondents 2 to 4 with respect to land, subject matter of the present proceedings, and disputing the title and ownership of the said respondents. The rights of the said respondents 2 to 4 qua the land in question wherein mutation is in their favour, are interdependent on one another. Their rights are joint and not severable. In view thereof, when the appeal has abated against the deceased respondent, it cannot continue against the other respondent, as any order against the surviving respondent would result in passing of two conflicting and contradictory decisions with respect to the same subject matter.

14. Supreme Court in the case of ***Budh Ram and Others Vs. Bansi and Others***, (2010) 11 SCC 476 has held as follows:-

16. In Shahazada Bi v. Halimabi [(2004) 7 SCC 354] this Court considered the same issue and held as under : (SCC p. 360, para 9)

“9. ... That, so far as the statute is concerned, the appeal abates only qua the deceased respondent, but the question whether the partial abatement leads to an abatement of the appeal in its entirety depends upon general principles. If the case is of such a nature that the absence of the legal



representative of the deceased respondent prevents the court from hearing the appeal as against the other respondents, then the appeal abates in toto. Otherwise, the abatement takes place only in respect of the interest of the respondent who has died. The test often adopted in such cases is whether in the event of the appeal being allowed as against the remaining respondents there would or would not be two contradictory decrees in the same suit with respect to the same subject-matter. The court cannot be called upon to make two inconsistent decrees about the same property, and in order to avoid conflicting decrees the court has no alternative but to dismiss the appeal as a whole. If, on the other hand, the success of the appeal would not lead to conflicting decrees, then there is no valid reason why the court should not hear the appeal and adjudicate upon the dispute between the parties.”

(emphasis added)

17. Therefore, the law on the issue stands crystallised to the effect that as to whether non-substitution of LR of the respondent-defendants would abate the appeal in toto or only qua the deceased respondent-defendants, depends upon the facts and circumstances of an individual case. Where each one of the parties has an independent and distinct right of his own, not interdependent upon one or the other, nor the parties have conflicting interests inter se, the appeal may abate only qua the deceased respondent. However, in case, there is a possibility that the court may pass a decree contradictory to the decree in favour of the deceased party, the appeal would abate in toto for the simple reason that the appeal is a continuity of suit and the law does not permit two contradictory decrees on the same subject-matter in the same suit. Thus, whether the judgment/decreed passed in the proceedings vis-à-vis remaining parties would suffer the vice of being a contradictory or inconsistent decree is the relevant test.

15. There is another aspect of the matter. Though Supreme Court in the



case of *Pankajbhai Rameshbhai Zalavadiya Vs. Jethabhai Kalabhai Zalavadiya*, (2017) 9 SCC 700 has held that an application under Order XXII Rule 4 CPC, if not considered maintainable, could be treated as an application under Order I Rule 10 CPC if it finds that such person is a necessary or proper party in order to do justice between the parties, in the facts and circumstances of the present case, this Court does not find it to be a fit case to exercise such discretion. Firstly, the appellant has approached belatedly before this Court for bringing on record the legal representatives of deceased respondent No. 3. Secondly, the appellant filed appeal under Section 64 of the Delhi Land Revenue Act, 1954 challenging the mutation in favour of respondents 2 to 4 after a long delay of almost 36 years. The mutation in favour of respondents 2 to 4 was carried out vide order dated 21.07.1975. Suit for partition was filed on behalf of the appellant only in the year 1992. When the said suit was dismissed for want of pecuniary jurisdiction, petition was filed before the Court of Revenue Assistant challenging the mutation in favour of respondents 2 to 4. The said petition before the Revenue Assistant was dismissed vide order dated 24.12.2010 on the ground that the prayer made on behalf of the appellant challenging the mutation in favour of respondents 2 to 4 herein, was beyond the jurisdiction of the Revenue Assistant. Subsequently, appeal under Section 64 of the Delhi Land Revenue Act, 1954 was filed before the learned Deputy Commissioner in the year 2011 along with application for seeking condonation of delay in filing the said appeal. The learned Deputy Commissioner did not condone the delay and dismissed the appeal. Likewise, learned Financial Commissioner and thereafter learned Single Judge of this Court dismissed the challenge on behalf of the present



appellant. There is a categorical finding by the learned Single Judge that the view taken by the learned Financial Commissioner and the Deputy Commissioner holding that there was lack of due diligence and bona fide on the part of the appellant herein in pursuing the appeal, is a plausible view.

16. The appellant has initiated the present proceedings after a delay of almost 36 years. Therefore, the present proceedings as initiated on behalf of the appellant are hopelessly barred by delay and laches. The appellant is not entitled to any indulgence or any lenient view in his favour for either condoning the delay in filing appeal before the Deputy Commissioner challenging the mutation in favour of respondents 2 to 4 after a delay of almost 36 years; or for bringing on record the legal heirs of the deceased respondent No. 3 by considering the application under Order XXII Rule 4 CPC as an application under Order I Rule 10 CPC; or for condoning the delay in approaching this Court for bringing on record the legal representatives of deceased respondent No. 3.

17. The title of the appellant in the present case is not undisputed and the respondents 2 to 4 claim their title over the land, subject matter of the present proceedings. Even in the judgment in the case of **Kiran Diwania** (Supra), as relied upon by the appellant, this Court has held that in the proceedings under Section 26 of the Delhi Land Revenue Act, 1954 for correction of mistake or error in the Annual Register, if question of title arises, then same would have to be decided by Civil Court of competent jurisdiction in terms of Section 186 of The Delhi Land Reforms Act, 1954. In this regard it is to be noted that the suit filed on behalf of the appellant for partition, which essentially involved the issue of title of the appellant to the land in question, was returned for want of pecuniary jurisdiction vide order



dated 01.05.2003 by the Civil Court. Admittedly, the suit for partition was never re-filed by the appellant in the court of competent jurisdiction. Thus, the judgments as relied upon by the appellant, do not come to his aid.

18. In view of the aforesaid detailed discussion, the present appeal is found without any merits. The same is dismissed accordingly.

MINI PUSHKARNA, J

MANMOHAN, J

JULY 11, 2023

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