

SURAJ BHAN AND ORS.
v.
FINANCIAL COMMISSIONER AND ORS.

APRIL 16, 2007

[C.K. THAKKER AND P.K. BALASUBRAMANYAN, JJ.]

Hindu Law:

Hindu Succession Act, 1956:

Succession—Agricultural land—Mutation of land in the names of children of the deceased owner—Share of married daughters—Execution of Will by deceased married daughter in favour of legal heir—Genuineness of 'Will'—Challenge to—Dismissed by Civil Court—Appeal against the order of dismissal pending in the High Court—Held: Validity and genuineness of 'Will' could only be decided by a competent Civil Court—A suit on such ground was already filed and dismissed by the Civil Court—Appeal filed there-against is pending in High Court—The question will be decided by the High Court—Mutation has been effected in favour of legal heir in the revenue records by the concerned authority on the basis of the Will executed by the deceased married daughter of the land owner—The said order was affirmed by the Collector, Financial Commissioner and also by the High Court—No infirmity is found.

Constitution of India, 1950; Article 136:

Jurisdiction under—Exercise of—Held: Entry in Revenue records does not confer title on a person whose name appears in records of right—Such an entry has only fiscal purpose/payment of Revenue and no ownership could be conferred on the basis of such entry/entries—Hence, no reason is found to interfere with the order passed by the High Court in exercise of jurisdiction under Article 136 by the Supreme Court.

Appellants as also respondent No.5 are the descendants from the common ancestor, who was the owner of the agricultural land, he died in the year 1948. He was survived by six sons and two daughters from two wives. After his death, the land in question was mutated in the names of his eight

- A children and each of them was given 1/8th share. In 1987, his two sons instituted a suit for declaration and permanent injunction averring therein that two daughters of the deceased had no right in the land and they could not have inherited any share in the land since they were already married. The suit was ultimately compromised. Names of the appellants were added as legal heirs from one of the daughters of the deceased who died in the year 1989.
- B It is alleged by the appellants that respondent No.5 forged a Will purported to have been executed by the deceased daughter before her death stating therein that she was the full and absolute owner of 1/8th share which she inherited from her deceased father and that she had given the said share to respondent No.5 who was her step-brother's son. On the basis of the said Will, respondent
- C No.5 applied to Tehsildar under the Delhi Land Revenue Act, 1954 to mutate the land said to have been inherited by the deceased in the name of respondent No.5 and to enter his name in the Revenue records. No notice was given to the appellants nor principles of natural justice were complied with and Tehsildar entered the name of respondent No. 5 in Revenue records by effecting mutation in the name of respondent No.5 in Khatauni. As soon as
- D the appellants came to know about the fact of mutation entry in Revenue records in favour of respondent No.5, they preferred an appeal to Collector. The appeal was dismissed by the authority. A further appeal before the Financial Commissioner, Delhi was also dismissed. A Writ petition to the High Court of Delhi was filed by the appellants, which was also dismissed.
- E Hence the present appeal.

Appellants also alleged that in 1997-98, certain lands were acquired by the Government under the Land Acquisition Act, 1894 and an award was passed for Rs.3,60,00,000/-. Being heirs of the deceased, the appellants made an application under Sections 29-31 of the Act asserting that they were the real heirs of deceased and were entitled to compensation of Rs. 45 lakhs, being the share of the deceased and substantial amount of Rs. 45 lacs had been paid to respondent No. 5 on March 23, 1998. The said action was also challenged in the present appeal as illegal and unlawful.

- F
- G Appellants further alleged that on April 22, 1998 they had instituted a suit challenging validity and genuineness of the Will alleged to have been executed by the deceased daughter in favour of respondent No.5. The appellants, however, came to know that the Advocate who was engaged by the appellants and instructed to file a suit had not filed such suit for cancellation of Will. Hence, the appellants filed another suit. The said suit, however, was
- H dismissed by the Court on the ground of limitation. Aggrieved, the appellants

preferred an appeal which is pending in the High Court of Delhi. Appellants had also made complaint against the conduct on the part of Advocate in the Bar Council of Delhi for his misconduct. A

Disposing of the appeal, the Court

HELD: 1.1. The main question in the present appeal relates to genuineness or otherwise of Will dated April 14, 1989 said to have been executed by the deceased daughter in favour of respondent No. 5. The validity and genuineness of the Will can only be decided by a competent Civil Court. A suit had already been instituted in a Civil Court and though it was dismissed, the order is subject matter of appeal pending in the appellate court. It is, therefore, neither desirable or advisable to express any opinion on that question and as and when the matter will come up for hearing, it will be decided on its own merits by the High Court where it is pending. [Para 7] [160-H, 161-A-B] B C

1.2. So far as mutation is concerned, it clear that entry has been made and mutation has been effected in Revenue Records by Tehsildar on the basis of an application made by respondent No.5 and his name has been entered in Record of Rights on the basis of the Will said to have been executed by the deceased daughter. Therefore, it cannot be said that by entering the name of respondent No.5 in Revenue Records, any illegality had been committed by Tehsildar. It is true that no notice was issued to the appellants but the Tehsildar had taken the action on the basis of Will said to have been executed by deceased daughter in favour of respondent No. 5. The said order has been confirmed by the Collector as also by Financial Commissioner. When the grievance was made against the said action by filing a Writ Petition, the High Court also confirmed all the orders passed by Revenue Authorities under the Act. Hence, no infirmity is found so far as that part of the order is concerned. [Para 8] [161-C-D] D E F

1.3. There is an additional reason for not interfering with the impugned order under Article 136 of the Constitution. It is well settled that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is settled law that entries in the Revenue Records or Jamabandi have only 'fiscal purpose' i.e. payment of land-revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent Civil Court. Civil Proceedings in regard to genuineness of Will are pending with High Court of Delhi. In the circumstances, no reason is found to interfere with the order G H

A passed by the High Court in the writ petition. [Para 9] [161-E-F]

Jattu Ram v. Hakam Singh and Ors., AIR (1994) SC 1653, relied on.

B 2.1. It is clarified that no opinion has been expressed on correctness on genuineness of the Will said to have been executed by deceased in favour of respondent No. 5. It was stated at the Bar that against dismissal of the suit by the trial Court on the ground of limitation, an appeal is filed by the appellants which is pending before the High Court of Delhi. As and when the said appeal will be taken up for hearing, it will be decided on its own merits without being influenced by observations made in this judgment.

[Para 10] [161-G-H; 162-A]

C 2.2 It is clarified further that no opinion has been expressed on the entitlement of compensation said to have been awarded in land acquisition proceedings. All contentions of all parties are kept open and all questions will be decided in appropriate proceedings by Competent Authorities or Courts without being inhibited by the present decision. [Para 10] [162-A-B]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1971 of 2007.

E From the Judgment and Order dated 25.04.2003 & 08.12.2003 of the High Court of Delhi at New Delhi in C.W.P. No. 4560 of 1998 & R.A. No. 7696 of 2003 in C.W.P. No. 4560 of 1998 respectively.

Naresh Kaushik, Lalita Kaushik, Satish Kayanadan, Parag Goel and Amita Kalkal for the Appellants.

F Rajiv Dutta and Mukul Rohtagi, M.F. Humayunisa, Kiran Bharadwaj, Kumar Dushyant Singh, D.S. Mahra, Suruchii Aggarwal, Deepak Khosla, Ved P. Sarlonki and Amit Kumar (NP) for the Respondents.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Leave granted.

G 2. The present appeal arises out of judgment and order passed by the High Court of Delhi on April 25, 2003 in Civil Writ No. 4560 of 1998. By the said order, the High Court confirmed the order passed by Revenue Authorities by which the name of respondent No. 5 was mutated in the Revenue Records.

H 3. Shortly stated the facts are that one Data Ram was the common ancestor of the appellants as also respondent No. 5. He was the owner of

agricultural land admeasuring 216 Bighas and 19 Biswas comprised of several Khasra numbers, situated in the Revenue Estate of village Bawana, Delhi. Data Ram died in the year 1948. He was survived by six sons and two daughters; three sons and one daughter from the first wife and three sons and one daughter from the second wife. Ratni Devi was a daughter from the second wife. After the death of Data Ram, the land was mutated in the names of his eight children and each of them was given 1/8th share. In 1987, two sons of Data Ram, namely, (i) Bhagwana, and (ii) Hari Singh instituted a suit No. 81/87 for declaration and permanent injunction averring therein that two daughters of deceased Data Ram, namely, (i) Smt. Jee Kaur, and (ii) Smt. Ratni Devi had no right in the land and they could not have inherited any share in the land since they were already married. The suit was ultimately compromised. Names of the appellants were added as legal heirs of Ratni Devi who died on June 14, 1989. It is alleged by the appellants that respondent No. 5 forged a Will purported to have been executed by Ratni Devi on April 14, 1989 stating therein that she was the full and absolute owner of 1/8th share which she inherited from her father Data Ram and that she had given the said share to respondent No. 5 who was her step-brother's son. On the basis of the above Will, respondent No. 5 applied to Tehsildar, Narela, Delhi under the Delhi Land Revenue Act, 1954 to mutate the land said to have been owned by deceased Ratni Devi in the name of respondent No. 5 and to enter his name in the Revenue Records. No notice was given to the appellants, no opportunity of hearing was afforded, nor principles of natural justice were complied with and Tehsildar entered the name of respondent No. 5 in Revenue Records by effecting mutation in the name of respondent No. 5 in khatauni on March 19, 1997. As soon as the appellants came to know about the fact of mutation entry in Revenue Records in favour of respondent No. 5, they preferred an appeal to Collector, North District, Kanjhawala, Delhi. The appeal, however, was dismissed. A further appeal before the Financial Commissioner, Delhi also met with the same fate. A Writ Petition to the High Court of Delhi being C.W.P. No. 4560 of 1998 was, therefore, filed by the appellants. It was also dismissed as observed earlier, against which the appellants have approached this Court.

4. It was also the case of the appellants that in 1997-98, certain lands were acquired by the Government under the Land Acquisition Act, 1894 and an award No. 1 of 1997 was passed for Rs.3,60,00,000/-. Being heirs of deceased Ratni Devi, the appellants herein made an application under Sections 29-31 of the said Act asserting that they were the real heirs of deceased Ratni Devi and were entitled to compensation of Rs. 45 lakhs, being the share of the

A deceased. In spite of the above facts, substantial amount of Rs.45 lacs had been paid to the respondent No. 5 on March 23, 1998. The said action was also illegal and unlawful.

5. It is asserted by the appellants that on April 22, 1998, the appellants instituted a suit challenging validity and genuineness of the Will alleged to have been executed by deceased Ratni Devi in favour of respondent No. 5. The appellants, however, came to know that advocate Satbir Singh Gulia, who was engaged by the appellants and instructed to file a suit had not filed such suit for cancellation of Will. Hence, the appellants filed another suit being Civil Suit No. 79 of 2002. The said suit, however, was dismissed on the ground of limitation. Being aggrieved by the dismissal of the suit, an appeal has been instituted by the appellants which is pending in the High Court of Delhi. According to the appellants, all actions are taken contrary to law by respondent No. 5 and the orders passed by the Authorities were violative of principles of natural justice and fair play. The High Court had also committed an error of law in dismissing the writ petition. They had also made complaint against the conduct on the part of advocate Satbir Singh Gulia and filed a complaint in the Bar Council of Delhi for his misconduct. The appellants, therefore, have prayed that appropriate order be passed by this Court setting aside the orders passed by the Authorities by deleting the name of respondent No. 5 which had been wrongfully entered in Record of Rights, by directing the Authorities to afford opportunity of hearing to the appellants and to take appropriate action in accordance with law. A prayer is also made to order respondent No. 5 to deposit the entire amount received by him under the award with interest.

6. On April 1, 2004, when the matter was placed for admission hearing, limited notice was issued on the question "whether the original mutation was done upon notice to the natural heirs of Smt. Ratni Devi, the alleged testatrix". The matter was, thereafter, ordered to be placed for final hearing. Affidavits and further affidavits were filed. On December 9, 2005, notice was also issued to the Secretary, Bar Council of Delhi to state whether any complaint was filed by the complainant before the Bar Council and the status of that complaint. On February 17, 2006, the Court noted that a complaint had been received by the Bar Council from the appellants and was pending before the Bar Council.

7. We have heard learned counsel for the parties. We have also perused the relevant record. From the record, it is clear that the main question relates to genuineness or otherwise of Will dated April 14, 1989 said to have been executed by Ratni Devi in favour of respondent No. 5. The validity and

7 genuineness of the Will can only be decided by a competent Civil Court. A suit had already been instituted in a Civil Court and though it was dismissed, the order is subject matter of appeal pending in the appellate court. It is, therefore, neither desirable nor advisable to express any opinion on that question and as and when the matter will come up for hearing, it will be decided on its own merits by the High Court where it is pending.

8. So far as mutation is concerned, it is clear that entry has been made and mutation has been effected in Revenue Records by Tehsildar on the basis of an application made by respondent No.5 herein and his name has been entered in Record of Rights on the basis of the Will said to have been executed by Ratni Devi. In our opinion, therefore, it cannot be said that by entering the name of respondent No. 5 in Revenue Records, any illegality had been committed by Tehsildar. It is true that no notice was issued to the appellants but the Tehsildar had taken the action on the basis of Will said to have been executed by deceased Ratni Devi in favour of respondent No. 5. The said order has been confirmed by the Collector as also by Financial Commissioner. When the grievance was made against the said action by filing a Writ Petition, the High Court also confirmed all the orders passed by Revenue Authorities under the Act. We see no infirmity so far as that part of the order is concerned.

9. There is an additional reason as to why we need not interfere with that order under Article 136 of the Constitution. It is well settled that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is settled law that entries in the Revenue Records or Jamabandi have only 'fiscal purpose' i.e. payment of land-revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent Civil Court (vide *Jattu Ram v. Hakam Singh and Ors.*, AIR (1994) SC 1653). As already noted earlier, Civil Proceedings in regard to genuineness of Will are pending with High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition.

10. For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed. We may, however, clarify that we may not be understood to have expressed any opinion on correctness on genuineness of the Will said to have been executed by deceased Ratni Devi in favour of respondent No. 5. It was stated at the Bar that against dismissal of the suit by the trial Court on the ground of limitation, an appeal is filed by the

- A** appellants which is pending before the High Court of Delhi. As and when the said appeal will be taken up for hearing, it will be decided on its own merits without being influenced by observations made by us in this judgment. We may also make it clear that we are not expressing any opinion on the entitlement of compensation said to have been awarded in land acquisition proceedings.
- B** All contentions of all parties are kept open and all questions will be decided in appropriate proceedings by Competent Authorities or Courts without being inhibited by the present decision.

11. The appeal is accordingly disposed of. In the facts and circumstances of the case, however, there shall be no order as to costs.

- C** S.K.S. Appeal disposed of.