

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No.282/2012

**Second Appeal under Section
66 of Delhi Land Revenue
Act,1954**

In the matter of:-

- 1. Sh. Om Parkash**
 - 2. Shri Kishan Singh
Both S/o Late Sh. Raje Ram
R/o VPO Surehera
Delhi**
-Appellants
(Represented by Shri
B.S. Kharb, Counsel for
Appellants)**

VERSUS

- 1. Shri Dheeraj Yadav
S/o Shri Radha Kishan
R/o VPO Surehera
Delhi
And also at:
R/o Vill Balawas (Kishangarh)
P.O. Boria Kamalpur
Distt Rewari (Haryana)**
 - 2. Shri Ishwar Singh
S/o Late Shri. Raje Ram
R/o VPO Surehera
Delhi**
 - 3. Shri Manohar Lal
S/o Late Shri. Raje Ram
R/o VPO Surehera
Delhi**
- Respondents
(Represented by Shri Ghansyam
Mishra for R-1,)**

JITENDRA NARAIN, FINANCIAL COMMISSIONER

Dated 28th January, 2016

1. The present appeal filed under Section 66 of Delhi Land Revenue Act, 1954 against impugned order dated 29.06.2012 passed by Dy. Commissioner/Collector (South West) in appeal no. 40/2011 titled Om Prakash & Ors. Vs. Dheeraj Yadav & Ors. whereby the appeal of petitioners was dismissed for being time barred. The appellants vide present appeal

prayed for set aside the impugned order dated 29.06.2012 of Dy. Commissioner/Collector(South West).

The impugned order states-*"After hearing the applicant hereinabove and perusing the material on record it is observed that though the impugned order is more than 15 years old but no proper reason has been given for such a long delay and no justified ground has been forwarded in support of prayer of condonation. Therefore, without going into the merits of the case I am of the opinion that the application for condonation of delay accompanied with the present application does not hold much ground and the same is devoid of any valid justification. Hence, the order:*

In view of the conclusions arrived at in the judgment the application dated 14/09/2011 filed by the applicants/appellants hereinabove u/s 185 of DLR Act, 1954, against the mutation order of the Tehsildar(Najafgarh) dated 28/08/1997 issued u/s 64 of DLR Act, 1954 in Case No. 451/TNG/95-96 is dismissed for being time barred."

2. The brief facts of the case as submitted by the **appellants** are as under:-

a. That appellants and respondent no. 2 & 3 are real brothers and sons of Late Sh. Raje Ram who was the recorded bhoomidhar and in possession of agricultural land in khata khatauni no. 49/43 having 1/4th share total measuring 52 Bigha 17 Bishwa of village Surehera, Delhi and Sh. Raje Ram expired on 14.8.93 leaving behind the appellants and respondent no. 2 & 3 as legal heirs as per Section 50 of Delhi Land Reforms Act.

b. Appellants stated that one of the brother of appellants and respondent no. 2 & 3 namely Rama Nand was expired in 1990 who was married with Smt. Kashmira Devi but having no issue out of the wedlock of Sh. Rama Nand & Smt. Kashmira Devi. After the death of their father, respondent no. 2 & 3 moved an application before Tehsildar for sanction of mutation and Tehsildar sanctioned the said mutation to the extent of 1/5th Share in the name of Smt. Kashmira Devi out of 1/4th share.

c. The appellants claimed they and respondent no. 2 & 3 were in joint cultivatory possession of the said land and the order of mutation was never communicated to appellants. It is further stated by the appellants that as per Section 50 of Delhi Land Reforms Act, Smt. Kashmira Devi was not the legal heir of Sh. Raje Ram. Smt. Kashmira Devi also expired on 19.08.2008 leaving behind no issue. It is also contended by the counsel for appellants that as per section 50 of DLR Act, the widow does not have any right to

inherit the bhumidhari rights in case the male lineal descendants are alive as if a woman has inherited the bhumidhari rights in capacity as a widow, in such eventuality, she is legally debarred from executing the WILL in favour of anyone in view of Section 48 of Delhi Land Reforms Act

d. The appellants claim that after the death of Smt. Kashmira Devi, respondent no. 1 moved an application on 13.10.2008 for sanction of mutation on the basis of WILL dated 30.03.2005 alleged to have been executed by Smt. Kashmira Devi and prior to that the appellants have no knowledge of mutation dated 28.08.1997 in favour of Smt. Kashmira Devi. The respondent no. 1 is claiming the share on the ground that Smt. Kashmira Devi had executed a registered WILL dated 30.03.2005. However, upon receipt of mutation application Tehsildar sent the mutation case to SDM/RA in Nov. 2009 under section 23 of Delhi Land Revenue Act and the said application for mutation is pending before SDM/RA.

e. The appellants further claim that WILL dated 30.03.2005 is false, fabricated and had never executed by Smt. Kashmira Devi in favour of respondent no. 1. That appellants were advised by the their Counsel in third week of August 2008 that mutation in favour of Smt. Kashmira Devi is illegal as she was not entitled to inherit the share of her father-in-law as she is not the legal heirs as per Section 50 of Delhi Land Reforms Act. Therefore, appellants applied for certified copy of said mutation and the same was received on 25.08.2011. The appellants has no knowledge about the wrong and illegal mutation dated 28.08.97 in favour of Smt. Kashmira Devi prior 13.10.2008.

f. That appellant filed an appeal before Collector(South West) alongwith an application u/s 5 of the Limitation Act for condonation of delay. However, Dy. Commissioner/Collector vide impugned order has dismissed the appeal being the time barred.

g. The appellants stated that present second appeal is filed on the grounds that Tehsildar has exercised his jurisdiction illegally and with material irregularity as Smt. Kashmira Devi was not entitled to inherit the agricultural land left by her father in law as such she was not the legal heirs in view of section 50 of DLR Act and only appellants and respondent no. 2 & 3 are legal heirs as provided under Section 50 of DLR Act.

h. It is further stated by appellants that first appellate court ignored that fact that entry in revenue record does not create right, title or interest in the property but it is the succession which provides right title and interest and it

is settled law that the courts are not supposed to condone the delay without hearing the other party. It is further averted by appellants that learned Tehsildar ignored the fact that possession of land has never been transferred in favour of Smt. Kashmira Devi so that the question of sanction of mutation in her favour does not arise at all, as when Smt. Kashmira Devi could not have inherited property as per law then the question of executing any will in favour of respondent no. 1 does not arise at all as no better title can transfer without the title.

i. It is stated by appellants that no notice was served by the Tehsildar before sanctioning the mutation and respondent no. 1 did not inherit any property on the basis of alleged WILL as Smt. Kashmira Devi was not entitled to inherit the property of her deceased father in law and appellants had no knowledge about the sanction of mutation dated 28.8.97 prior to 13.10.2008 when R-1 applied for sanction of mutation in his favour on the basis of WILL executed by Smt. Kashmira Devi in favour of R-1.

j. It is also contended by counsel for appellants that substantial justice has been denied by the lower appellate court on the ground of limitation and the first appellate court ignored the findings and observations made by Apex Court in AIR 1987 SC 1353.

k Hence, by present appeal the appellants prayed for set aside the impugned order of Dy. Commissioner (South West).

3. Notices were issued to parties who filed the reply through their counsel. **Respondent no.1** in his reply has contended that present appeal is not maintainable as the appellants has not been able to disclose, either on facts or on the law as to how the impugned judgment is not maintainable or appeal against it is maintainable.

a. The respondent no. 1 states that the impugned judgment specifically states that the appellants had not been able to make a case of condonation of delay of about 15 years. The appellants are challenging the mutation order on merits, though their application and appeal were dismissed by the courts below on the ground of inordinate delay.

b. It is further contended by R-1 that mutation was sanctioned in favour of appellants, respondent no. 2 & 3 and said Smt. Kashmira Devi on a joint application and on consent of all the parties. The question of non-communication of mutation order on the appellants and respondent no. 2 & 3 does not arise at all since the order of mutation was passed on a joint application of parties and the same was never challenged by any one till

date and the said order attains finality. The mutation application clearly mentioned that there are five legal heirs including the name of Kashmira Devi.

c. It is further stated by R-1 that WILL dated 30.03.2005 is a genuine and bonafide and executed by Smt. Kashmira Devi. The mutation order dated 28.8.97 was within the knowledge of appellants and respondent no. 2 & 3 since they were party to the mutation proceedings, who also appeared before Tehsildar and got his statement recorded admitted thereby that there are five legal heirs including Smt. Kashmira Devi.

d. Hence, respondent no. 1 prayed that the present appeal may be dismissed as the impugned order was passed vide a reasoned order and after appreciating the entire facts and circumstances of the case and Smt. Kashmira Devi was entitled to get her name recorded in the revenue records and same was done after considering the consent of other parties.

e. During the course of arguments, it is pointed out by the counsel for the respondent no. 1 that appellants are approaching multiple fora the same issue and further stated that appellants have filed a civil suit which is pending adjudication in the court of Civil Court, Dwarka, Delhi wherein the wherein the legality of WILL executed by Smt. Kashmira Devi and mutation is under challenged.

4. **Respondent no. 2 & 3** are performa respondents and no relief is sought by the appellant against R-2 and R-3. However, R-2 and R-3 in their reply has mainly contended that after the death of Bhumidhar the succession is to be governed by Section 50 of Delhi Land Reforms Act and the widow does not have any right to inherit the bhumidhari rights in case the male liens descendants are alive. It is further contended by R-2 and R-3 that if a woman has inherited the bhumidhari rights in capacity as a widow, in such eventuality, she is legally debarred from executing the WILL.

5. I have heard the detailed arguments of parties and perused the materials placed on record. As it is a admitted fact that an application for mutation was moved by respondent no. 2 on 16.11.1995 mentioning therein all the five LRs including the name of Kashmira Devi. Thereafter, on 19.08.1997 another application for mutation was moved by respondent no. 3 mentioning therein all the five LRs including the name of Kashmira Devi. Moreover, respondent no.3 appeared before the Tehsildar and got his statement recorded that the suit land be mutated in the name of all five LRs including the name of Smt. Kashmira Devi. Further, it is admitted by

appellants that this fact came to their notice on 13.10.2008, when an application for mutation was filed by R-1 on the basis of WILL. However, they filed the appeal before DC on 14.09.2011 i.e. approximately after three years. But the appellants had not given cogent reason why appeal was filed after so much delay.

6. It goes without saying that the niceties of a title and title documents can only be decided by a court of competent jurisdiction which is a Civil Court and as it is admitted by the parties to this suit that a case is already pending before the Ld. Civil Court, Dwarka, Delhi and needless to say their findings on title, ownership and entitlement will be binding on all including revenue authorities and the winner therein will take it all. Moreover, it is settled principle of law that mere entry in revenue record is without prejudice and does not confer any right, title or interest in the suit property.

7. I find no reason to interfere with the impugned order dated 29.06.2012 passed by Dy. Commissioner/Collector(South West). Hence, appeal dismissed.

9. Announced in open Court on 28.01.2016.

(JITENDRA NARAIN)
FINANCIAL COMMISSIONER, DELHI
Dated 28th January, 2016