

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

**Second appeals under section 66 of the Delhi Land Revenue Act,
1954**

1. Case No. 204/2013

In the matter of:

1. Sh. Malkhan Singh
2. Sh. Chander Has
Both S/o Late Sh. Kehar Singh.
3. Sh. Sanjit Sehrawat
4. Sh. Vishal Sehrawat
Both S/o Late Sh. Samay Singh
All R/o Village Mohammadpur
Ramzanpur, Delhi-110036. Appellants

Versus

1. Smt. Savitri Devi.
W/o Shri Girdhari
R/o 82-83/19, Kailash Colony,
Near ITI Gate, Sonepat,
Haryana.
2. Smt. Bimla Devi
3. Smt. Darshna
Both Ds/o Late Layak Ram
Both R/o Village Rathdhana
Distt. Sonepat, Haryana.
And also at : Vill. Mohammadpur
Ramzanpur, Delhi-110036.
4. Sh. Hari Singh
5. Sh. Sultan
Both Ss/o Shri Desh Raj
6. Sh. Aman Kumar
7. Sh. Amit Kumar
8. Sh. Anil Kumar
All Ss/o Late Sh. Baljit Singh
S/o Shri Desh Raj
All R/o Village Mohammadpur
Ramzanpur, Delhi-110036. Respondents

2. Case No. 212/2013

In the matter of:

1. Sh. Hari Singh S/o Late Sh. Des Raj
2. Sh. Sultan
through his sons
(a) Sh. Sanjeev Kumar
(b) Sh. Rajeev Kumar
3. Sh. Aman Singh
4. Sh. Amit Kumar
5. Sh. Anil Kumar
All Sons of Late Sh. Baljeet Singh
Deceased son of Late Sh. Desraj
All Residents of:
Village Mohammadpur Ramzanpur,
Delhi-110036.

Appellants

Versus

1. Smt. Savitri Devi.
W/o Shri Girdhari
R/o 82-83/19, Kailash Colony,
Near ITI Gate, Sonepat,
Haryana.
2. Smt. Bimla Devi
3. Smt. Darshna
All Ds/o Late Laik Ram
Both Residents of
Village Rathdhana
Distt. Sonepat, Haryana.
Also at:
Village & P.O. Mohammadpur Ramzanpur,
Delhi-110036.
4. Sh. Malkhan Singh
5. Sh. Chanderhas
Both Sons of Late Sh. Kehar Singh
6. Sh. Sanjit Sehrawat
7. Sh. Vishal Sehrawat
Both Sons of Late Sh. Samay Singh

All Residents of:
Village & P.O. Mohammadpur Ramzanpur,
Delhi-110036. Respondents

D.M. Spolia, Financial Commissioner

(Order Dated: 31.07.2014)

1. This common order shall dispose of two second appeals filed before this court by the appellants, Sh. Malkhan Singh & Ors. (Case No. 204/13) and the appellants, Sh. Hari Singh & Ors. (Case No. 212/13) under section 66 of Delhi Land Revenue Act, 1954 against the impugned order dated October 7, 2013 passed by the First Appellate Authority i.e Collector/District Magistrate (North). The First Appellate Authority vide the said impugned order had dismissed the appeals of both the set of appellants and upheld the mutation order of Tehsildar (Alipur) dated January 18, 2013 in favour of respondents no. 1 to 3 (Smt. Savitri Devi, Smt. Bimla Devi and Smt. Darshna) in respect of land of village Mohammadpur, Ramzanpur, Delhi bearing Khasra Nos.75(4-16), 76(4-16), 77(4-16), 78 min. (1-16), 115(4-16), 231(1-8), 230(1-12), 233(4-12), 336(3-9), 339(4-10) and 340(2-3), 227(4-16), 228(4-16) and 232(4-13) total measuring 52 bigha 19 biswa (hereinafter called suit land).

Brief facts of the case are:

2. Sh. Layak Ran S/o Sh. Kanhiya was the recorded co-owner of 1/3 share in the agriculture land compromised in Khata no. 81/69 vide Khasra nos. 164(0-6), 165(3-8), 172(1-12), 174(1-14), 176(0-7), 227(4-16), 228 (4-16), 231(1-8), 236(0-3), 237(4-13), 238(4-16), 239(4-16), 240(4-16), 241(4-16), 242(4-16), 247(4-16), 248(4-16), 249(0-3), 250(4-13), 275(4-16), 278(4-16), 334(0-12), 335(1-18), 336(3-9), 337(5-10), 338(5-12) total measuring 88 bigha 11 biswa and he was also co-owner of 1/2 share in the land comprised in Khata no. 73/62 vide Khasra nos. 66(0-3), 75(4-16), 76(4-16), 77(4-16), 78 min(1-16), 134(4-16), 155(4-16), 156(4-16), 159(0-14), 230(1-12), 232(4-13), 233(4-12), 339(4-10) & 340(2-3) total measuring 48 bigha 19 biswa situated within the revenue estate of village Mohammadpur, Ramjanpur, Delhi.

3. Sh. Layak Ram was co-sharer in both the khatas but as per family settlement/partition Sh. Layak Ram got the land in khasra nos. 75(4-16), 76(4-16), 77(4-16), 78 min. (1-16), 115(4-16), 231(1-8), 230(1-12), 233(4-12), 336(3-9), 339(4-10) and 340(2-3), 227(4-16), 228(4-16) and 232(4-13) total measuring 52 bigha 19 biswa in both the khatas.

4. Sh. Layak Ram expired on January 13, 1995. There were no male class-1 legal heirs of the deceased, Sh. Layak Ram and he had only three daughters namely Smt. Savitri Devi, Smt. Bimla Devi and Smt. Darshna who were already married at the time of his death.

5. After death of Sh. Layak Ram, the recorded owner in respect of suit land, his three daughters, respondents no. 1 to 3 herein applied for mutation of the same on the basis of they being the class-I legal heirs of the deceased.

6. Meanwhile, some relatives of the Sh. Layak Ram also put in claims for their share in the said agricultural land. Accordingly proceedings u/s 145 Cr. P.C. were initiated where both sets of appellants, Sh. Malkhan Singh & Ors. as well as Sh. Hari Singh & Ors. were also impleaded. The said proceedings under Section 145 Cr. P.C culminated in an order dated August 27, 1993 passed by the then SDM, Shri S.S Sidhu, by virtue of which, he held that the respondents No. 1 to 3 are in possession of the suit land. This order of the SDM dated August 27, 1993 was challenged by the appellants by way of a revision petition before the Additional Sessions Judge, Delhi who vide his order dated December 04, 2007, upheld the order of the SDM. The Ld. ASJ in his detailed judgement also recognized the family partition between the parties and held that the respondents no. 1 to 3 herein have got possession of property in question from their father, Late Sh. Layak Ram who had got the same as his exclusive share by way of family settlement in the year 1975. Sh. Malkhan Singh one of the contesting appellants had also admitted the factum of family settlement and possession of the land in question in favour of respondents no. 1 to 3 as recorded by Ld. ASJ in para 20 of his judgement . The appellants or any other party have not challenged the

judgment passed by the Ld. ASJ, Delhi affirming the factum of possession of the respondents No. 1 to 3 over the property in question and factum of partition recorded in the said judgment between the parties which means that the judgment passed by the Ld. ASJ has attained finality and neither the appellants nor any other party to those proceedings can now raise questions over the correctness of the findings therein.

7. That in the meantime, other set of appellants Sh. Hari Singh etc. and one Sh. Azad Singh who is the son of Sh. Malkhan Singh, one of the appellants herein tried to seek claim in respect of the share of Late Sh. Layak Ram, Sh. Hari Singh & Ors. on the basis of WILL dated May, 01, 1991 and Sh. Azad Singh on the basis of WILL dated January 9, 1995. Though at one stage Sh. Azad Singh managed to get the said land mutated in his favour but subsequently the WILL propounded by Sh. Azad Singh was disbelieved by the probate court. Sh. Hari Singh etc. on the other hand filed a probate petition in respect of alleged WILL in his favour dated May 01, 1991 whereas Sh. Azad Singh set up his own WILL dated January 9, 1995 in the probate case. The Ld. ADJ however rejected both the WILLS as both Sh. Azad Singh as well as Sh. Hari Singh etc. failed to prove before the probate court that the respective WILLS in their favour were validly executed by Late Sh. Layak Ram. The said order of Ld. Addl. Distt. Judge was upheld by Hon'ble High Court vide order dated January 28, 2011. This order of Hon'ble High Court was further challenged by the appellants, Sh. Hari Singh & Ors. in the Hon'ble Supreme Court by way of SLP. The Hon'ble Supreme Court dismissed the said SLP vide its order dated August 7, 2013. Also, the mutation order dated May 18, 1995 in favour of Sh. Azad Singh was also later on set-aside by the Ld. Addl. Collector as mentioned by the Tehsildar in this order dated January 18, 2013.

9. Since the claims of both the sets of appellants Sh. Malkhan Singh & Ors. as well as Sh. Hari Singh & Ors. had fallen flat being divorced of any substance and also keeping in view the fact that the mutation order dated May 18, 1995 in favour of Sh. Azad Singh has been set-aside by the Ld. Addl. Collector, the Tehsildar (Alipur) vide

his order dated January 18, 2013 held that the three daughters of the deceased, Sh. Layak Ram namely Smt. Smt. Savitri Devi, Smt. Bimla Devi and Smt. Darshna be recorded as his legal heirs with regard to the suit land.

10. Aggrieved by this order of Tehsildar both sets of appellants filed appeals before the first appellate authority i.e. Collector (North). The Collector/District Magistrate (North) vide his common order dated October 7, 2013, which is impugned herein, upheld the order dated January 18, 2013 passed by the Tehsildar and dismissed the appeals of the appellants being devoid of any merit. The operative paragraphs of the said order of Collector/Distt. Magistrate (North) reads thus:

.... I found nothing wrong in decisions of the Tehsildar in recognizing factum of family partition and exclusive possession of the respondent no. 1 to 3 in land in question in view of finding returned by the SDM and Ld. ASJ in their orders/judgements between the parties. In my considered view, the order dated 18-01-2013 passed by the Tehsildar is perfectly legal and in accordance with law and I therefore uphold the order dated 18-01-2013 passed by the Tehsildar.

In view of above, I do not find any infirmity in the impugned order dated 18-01-2013 passed by the Tehsildar (Alipur) and the same is upheld. Therefore, the appeals of the appellants are hereby dismissed being devoid of any merit....

11. Now, both the sets of appellants have filed second appeals before this court against the common order dated October 7, 2013 of first appellate authority/Collector (North) and have prayed for setting aside the impugned order on the following grounds:

(i) That the lower courts below have erred to the extent of sanctioning mutation order and upholding the same in respect of undivided joint land belonging to both the sets of appellants as well as the predecessor-in-interest of the respondents no. 1 to 3.

(ii) That the Ld. Collector got wrongly swayed by the contentions of the respondents to the effect that the judgement passed in the proceedings u/s 145 Cr. P.C had attained finality since the appellants had not challenged the judgement of Ld. ASJ whereby the possession of the respondents No. 1 to 3 (Smt. Savitri Devi, Smt. Bimla Devi and Smt. Darshna) was alleged to have been affirmed. As a matter of fact

the proceedings u/s 145 Cr.P.C were only in respect of possession and no title in respect of the land was ever decided in the said proceedings.

(iii) That the Ld. Collector also erred in not appreciating that admittedly prior to sanctioning the mutation in favour of the respondent Nos. 1 to 3, no notice was issued to the appellants and the proceedings were kept a guarded secret. In fact the appellants were required to be notified about the mutation proceedings since they were the successors in interest of late Shri. Layak Ram in accordance with Section 50 of Delhi Land Reforms Act, 1954 (hereinafter referred to as ~~DLR~~ Act).

(iv) The Ld. Collector erred in law in not appreciating that the provisions of DLR Act, in so far as succession of late Shri Layak Ram was concerned, were still applicable in as much as the succession of his holding opened up at the time of his death on January 13, 1995 when admittedly the succession was to be governed by the provisions of Section 50 of DLR Act.

(v) That both the Ld. Collector as well as Tehsildar have wrongly applied the provisions of The Hindu Succession(Amendment) Act 2005 in sanctioning and upholding the mutation in favour of the daughters. The Ld. First Appellate Court has wrongly upheld the order by holding that the daughters of a deceased bhumidhar in view of amendment in section 6 of the Hindu Succession Act are entitled to succeed as class-I heirs. In fact at the time of the death of Shri Layak Ram in the year 1995 the succession was governed by Section 50 of DLR Act and the amending Act of 2005 has not been given any retrospective effect.

12. I have heard the averments and contentions of both sets of appellants as well the respondents no. 1 to 3 in detail. I have also gone through the record, particularly the impugned order of the first appellate authority i.e. Collector/Distt. Magistrate as well as order dated January 18, 2013 of the Tehsildar (Alipur). Written Submissions of both the parties have also been considered. The observation of this court is as under:

(i) The contention of the appellants that the lower courts below have erred to the extent of sanctioning mutation order and upholding the same in respect of undivided joint land belonging to both the sets of appellants as well as the predecessor-in-interest of the respondents no. 1 to 3 is wrong because the property in question was devolved exclusively in favour of Sh. Layak Ram by way of family partition held in the year 1974 which has been recognised by the Ld. SDM as well as by the Ld. ASJ. In fact, Sh. Malkhan Singh one of the appellants herein had acknowledged the family partition amongst co-shares as duly recorded in the order dated December 04, 2007 of the Ld. ASJ.

(ii) The contention of the appellants that the Ld. Collector had relied too much on the judgment passed in the proceeding u/s 145 Cr.P.C. is also baseless as the appellants or any other party have not challenged the judgment passed by the Ld. ASJ, Delhi affirming the factum of possession of the respondents No. 1 to 3 over the property in question and factum of partition recorded in the said judgment between the parties which means that judgment passed by the Ld. ASJ has attained finality and neither the appellants nor any other party to those proceedings can now raise questions over the correctness of the findings therein.

(iii) The contention of the appellants that notices should have been issued to them before sanctioning of mutation in favour of respondents no. 1 to 3 has been reasonably answered in the impugned order by the Collector (North) to the effect that:

"In the present case the respondents no. 1 to 3 being the only daughters and class-I heirs of their father had already succeeded to the estate/share of their father way back in 1974 which has been duly proved and upheld by Ld. ASJ, Delhi. It is also admitted(sic) fact that the possession of the respondent No 1 to 3 is recorded in khasra and Girdawari in respect of land in question. It is further submitted that all the appellants in both the appeals have exhausted all their remedy(sic) under law and been unsuccessful in disputing the title of the respondent No.1 to 3 in as much as the probate petition of the appellants have been dismissed and the High Court has upheld the decision of the probate court and as on today there is no stay from competent civil court against the respondent No 1 to 3 over their right on their property. In view of clear finding of various courts in favour of the respondent No 1 to 3 there was no necessity to issue notice

to the appellants by the Ld. Tehsildar while passing the mutation order in favour of respondent No 1 to 3”.

(iv) The contention of the appellants that the Tehsildar has committed error or violation of section 50 of Delhi Land Reforms Act, 1954 in treating the respondents no. 1 to 3 as class-I heirs of Late Sh. Layak Ram also does not hold, as the Hindu succession Act was amended in year 2005 and after amendment as per section 6 of the Hindu Succession (Amendment) Act 2005, daughters of a coparcener have got the same rights as sons. The law is well settled that after amendment in Hindu Succession Act, the daughters having acquired rights in co-parcenary property as coparcener as that of son, section 6 of Hindu Succession Act will have overriding effect over section 50 of the Delhi Land Reforms Act and daughters either married or unmarried have to be treated as class-I heirs of the bhumidhar after his death. This is also the stand taken by the first appellate authority in its impugned order.

(v) The contention of the appellants that since some remanded mutation case in respect of succession of Late Sh. Layak Ram was pending disposal before the SDM, the Tehsildar should not have entertained the application for mutation from the respondents no. 1 to 3 has also been answered satisfactorily by the first appellate authority in the impugned order which reads thus:

“Since the Hon’ble High Court of Delhi as well as probate court has disbelieved the will propounded by Hari Singh and Ors. and also disbelieved will in favour of Sh. Azad Singh, therefore any proceedings even if stated to be pending before SDM are inconsequential”.

13. Further, in the case, Nirmala & Ors. V/s Government of NCT of Delhi & Ors. the division bench of Hon’ble High Court of Delhi vide its order dated June 04, 2010 held that rule of succession contained in section 50 of the DLR Act has been repealed by virtue of the omission of the section 4(2) of the Hindu Succession Act, 2005 and that, as a result, the rule of succession would be the one prescribed under the Hindu Succession Act (as amended). Consequently, females have the right to succeed to the disputed agricultural land in as much as

succession opened out. Hon'ble Court further clarified that the provisions of the Hindu Succession Act would, after the amendment of 2005, have over riding effect over the provisions of section 50 of DLR Act.

14. Also, in the case, Manoj Jain V/s Smt. Krishna Jain & Ors. the Hon'ble High Court vide its order dated October 04, 2012 held that the legislature by conscious language has made section 6(1) of Hindu Succession (Amendment) Act, 2005 prospective only under certain facts, situation and retrospective under other facts, situations i.e. where there is no registered partition deed or decree of a court, the provisions of section 6(1) will be retrospective. Once there are no registered relinquishment deeds of sister, sisters will have rights equal to their brothers and mother in HUF properties.

15. In view of above, this court is of the opinion that the impugned order dated October 07, 2013 passed by the first appellate authority is a well-reasoned and speaking order devoid of any infirmity and there is no merit in the appeals preferred by the appellants. This being so both the appeals are dismissed and the concurrent findings of lower courts are upheld.

16. Announced in the open Court.

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(D.M. SPOLIA)
Financial Commissioner,
Delhi.