

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 73/2014

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

In the matter of :-

**Sh. Parvesh Kumar
S/o Sh. J.K. Tyagi
R/o VPO Burari Delhi**

...Appellant

Versus

1. Sh. Mahender Singh

2. Sh. Tilak Ram, deceased through Lrs:-

a. Smt.Boby

b. Master Shivam

Through mother/Natural Guardian

3. Sh. Shyam Sunder

4. Sh. Sunder

Sons of Late Sh. Chandru R/o VPO Burari, Delhi

...Respondents

NAINI JAYASEELAN, FINANCIAL COMMISSIONER

Order dated 28th July, 2015

1. This order shall dispose off the 2nd appeal filed under Section 66 of the Delhi Land Revenue Act, 1954 against the impugned order dated 03.03.2014, passed by Additional Collector(Central) in appeal no.06/2009 titled Mahendra Singh S/o Chandru Vs. Mahendra Singh, appeal no.07/2009 titled Mahinder Singh vs.

Tapsi Ram and appeal no. 08/2009 titled Mahinder Singh vs. Balbir Singh.

2. The brief facts of the case as submitted by the appellant is as under:-

- (a) That Sh. Chandru S/o Sh. Khushali was the recorded owner/ bhumidar of land comprised in Khasra no. 12/24 measuring 03 bigha 06 bishwa of village Burari, Delhi and that he transferred the aforesaid land to Sh. Mahendra Singh S/o Sh. Giani, Tapsi Ram S/o Sh. Harbans and Sh. Balbir Singh S/o Shiv Charan respectively through three registered sale deeds for area measuring 01 bigha 02 bishwa each. Thus the total holding of 03 bigha 06 bishwa of Sh. Chandru was sold through three registered sale deeds.
- (b) That after executing the sale deeds and after having received the consideration amount, Sh. Chandru handed over the actual and physical possession of the land to the vendees and thereafter the vendees continued to be in possession over the said land. However, due to inadvertence, the vendees did not get the mutation sanctioned in their favour though they were in actual and physical possession of the land in question.
- (c) Thereafter the vendee transferred those land to one Sh. J.K. Tyagi for consideration and executed an agreement to sell, GPA, upon receipt of the consideration. Thereafter, Sh. Tyagi

transferred the land in favour of appellant and appellant was put in possession over the land.

- (d) However, respondents herein moved an application before Tehsildar for sanction of mutation on the basis of inheritance. Since, the mutation application being disputed one was referred by Tehsildar to SDM/RA. During the pendency of mutation application before SDM/RA, a compromise between parties is reached that LRs of Sh. Chandru have no objection in case mutation are sanctioned on the basis of sale deed executed by Sh. Chandru. Accordingly, the mutation was sanctioned in favour of the vendees. However, later on LRs of Chandru withdrew from the compromise and filed an appeal before Dy. commissioner, wherein, they challenged the compromise as the same having been obtained by fraud. Ld. Dy. Commissioner had remanded the case to SDM/RA for holding a fresh inquiry and to dispose off the mutation application afresh.
- (e) Thereafter, SDM/RA took up proceeding and finally held that since the mutation has been sanctioned on the strength of the 3 registered sale deeds, therefore, the mutation was valid. However, aggrieved by the order of SDM/RA, the respondents filed an appeal before Additional Collector and Additional Collector vide its impugned order dated 03.03.2014 has set aside the order of SDM/RA and sanctioned the mutation in favour of appellants(respondents herein).

(f) The appellant further stated that in view of the facts mentioned above, the impugned order dated 03.03.2014 passed by Additional Collector(Central) be set aside.

3. Notices were issued to parties, who appeared and filed reply through their counsel. The main contention of respondents can be summarised in following paras:-

- (a) that the sale deeds which the appellants claiming were obtained by fraud through their deceased father, who was a illiterate person, as he had never executed such sale deed in favour of appellants as claimed by appellants. It is claimed by the respondents that entire 100 bighas of land which his father owns was snatched by the appellants and their aids.
- (b) That the land in question remained in possession of his father and his family members and even after the death of their father it remained in their possession.
- (c) After the death of their father they moved an application before Tehsildar for mutation on the basis of inheritance however, since the appellants herein filed objection hence the case was referred to SDM/RA.
- (d) That there was no compromise at all between the appellant and the respondents. That the land in question is remain in possession with the LRs of the deceased Chandru.

- (e) The respondents have also furnished the certified copy of order dated 27.09.2014 in Suit No. 709/08 titled Mahinder Singh & Ors. Vs. Sh. Balbir Singh, wherein, Under order 1 Rule 10 read with section 151 CPC seeking impleadment of Sh. Parvesh Kumar was dismissed. As regards the suit no. CS(OS) no. 1929/2012 titled Balbir Singh & Ors. Vs. Jitender Tyagi & Ors. vide order dated 04.08.2014 the suit was dismissed as withdrawn and it was noted that parties had settled their disputes.
- (f) In view of the submission made it is prayed by the respondents that the appeal is not maintainable and the same is liable to be dismissed with heavy cost.

4. I have carefully gone through the records and heard the averments of both the parties. Upon perusal of the impugned order dated 03.03.2014, it is observed that Ld. Additional Collector/ADM(Central) framed certain issues regarding obtaining of NOC and delivery of possession and validity of sale deed without handing over possession. However, while addressing these issues Ld. ADM(Central)/Additional Collector erred in his order that in the instrument itself it is mentioned that NOC has been obtained and that vendor has delivered the actual physical possession of the said land to the vendee after receiving full and final consideration which also have the thumb impression of the vendor i.e. Chandru the same is reflected in the page 3 of the registered sale deed. As regard, the mutation in entry in revenue record, it is a set principle of law that "***mutation does not create any right or title by itself***". Supreme Court in case **Suraj Bhan & Ors. Vs Financial**

Commissioner & Ors. (2007) 6 SCC 186 has held in para-9 that *"An entry in revenue records does not confer title on a person whose name appears in record of right. 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 title to the property is concerned; it can only be decided by a competent civil court.*

5. The lower court has stated that the possession of the land was never handed over by the deceased Chandru to the Respondents. However, the registered Sale Deed itself states that *" The vendor has delivered the actual physical possession of the said land to the vendee, on the spot."* This is reflected on the page 3 of the sale deed. The NOC is at back side of page 2 of registered Sale Deed bearing No.10892 dated 13.07.1987. Therefore, it cannot be said that the Sale Deed was registered without NOC.

6. Therefore it is absolutely erroneous to say that the Sale Deed was wrong and validity of the execution of the documents is doubtful. To come to the conclusion that the document are not valid and they were obtained without NOC from the Revenue Authorities and are fraudulent, is not borne out by the registered sale deed. If the documents were obtained as a result of fraud and cheating as alleged by the ADM, action should have been taken to lodge a criminal case, which was never done.

7. In view of the above observation, the impugned order dated 03.03.2014 does not hold good in the eyes of law, hence, the

same is set aside. The appeal of the appellant are allowed. The appeal is disposed off accordingly.

8. Pronounced in open court on 28th July 2015.

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**NAINI JAYASEELAN,
FINANCIAL COMMISSIONER, DELHI
28th July, 2015**