
(2002) 03 DEL CK 0081
In the Delhi High Court
Case No : CR No. 24 of 1998

Dharam Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 13-03-2002

Acts Referred:

Citation : (2002) 5 AD 65 : (2002) 97 DLT 538

Hon'ble Judges : Mahmood Ali Khan, J

Bench : Single Bench

Advocate : R. Bhardwaj, for the Appellant; Devinder Verma, for the Respondent

Final Decision : Allowed

Judgement

Mahmood Ali Khan, J.—This civil revision petition u/s 115 of the CPC has been filed assailing the order of an Additional District Judge (Land Acquisition Court) dated 18.9.1997 by which he had dismissed the application of the petitioner and had allowed the application of the respondents No. 2 to 6 for their substitution in place of their deceased mother Smt. Khazani Devi in a proceeding u/s 18 of the Land Acquisition Act pending before him.

2. The facts leading to this revision petition, briefly stated, are that Mr. Jagdish, father of the petitioner and respondents No. 2 to 6, was the owner of certain agricultural land in village Rithala which was acquired by respondent No. 1. Union of India. Mr. Jagdish was aggrieved with the compensation awarded by the Land Acquisition Collector so he preferred the reference u/s 18 of the Land Acquisition Act. It is pending before the learned Additional District Judge. On the death of Sh. Jagdish, the petitioner, respondents No. 2 to 6 and his widow Smt. Khazani Devi were brought on record as his legal representatives. Mr. Jagdish had married twice. The petitioner is the son of his first wife Smt. Bhagwani Devi. After the death of Smt. Bhagwani Devi he married her real sister Smt. Khazani Devi. Respondents No. 2 to 6 were born to Smt. Khazani Devi in her marriage with late Mr. Jagdish. Respondents 2 to 6 are all married and are settled in their

respective matrimonial home. Smt. Khazani Devi dies on 6.5.1996. The petitioner as well as respondents 2 to 6 filed two separate applications for their substitution in place of deceased Smt. Khazani Devi.

3. The petitioner in his application alleged that Smt. Khazani Devi had been living with him and she had all the love and affection for him as a son. She executed a relinquishment deed dated 12.4.1996 relinquishing her right to receive 1/7th share in compensation in respect of the lands of her husband. He prayed that he has become entitled to receive her share in the compensation, Therefore, he should be substituted as her legal representative also. The defendants No. 2 to 6, on the other hand, wanted their substitution in place of Smt. Khazani Devi as her class-I heir of the deceased. The Additional District Judge by the impugned order rejected the application of the petitioner but had allowed the application of the respondents 2 to 6 and had substituted them as legal heirs of deceased Smt. Khazani Devi. The petitioner is aggrieved and has filed the present revision petition.

4. The arguments of the counsel for the petitioner are that learned Additional District Judge has erroneously held that the registered relinquishment deed was unreliable since it was registered after the death of Smt. Khazani Devi and further that there was some interpolation in the recitation made in the deed. He has referred to the provisions of Section 23 of the Registration Act which provided that no document other than a will shall be accepted for registration unless it was presented within four months from the date of the execution. He also drew attention to Section 36, 47 and 60 of the Registration Act. Section 36 laid down that if a person who had presented the document for registration, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer in his discretion may get the summons issued to such a person by an officer/court to appear before him. Section 47 laid down the time from which the registered document would operate. According to this provision the registered document would operate from the time from which it would have commenced to operate if no registration of the said document had been required or made, and not from the time of its registration. Section 60 on the other hand require the registering officer to make an endorsement on the certificate containing the word "registered" together with the number and page of the book in which the document has been copied. Such certificate shall be signed, sealed and dated by the registering officer and it will become admissible for the purpose of proving that the document has been duly registered in the manner provided in the Act and the facts mentioned in the endorsements referred to in Section 59 had occurred as therein mentioned.

5. His argument is that in accordance with the provision of Registration Act a document can be presented for registration even after the death of the executor i.e. Smt. Khazani Devi and that endorsement of a certificate by the Registrar on the document was a proof of due presentation and registration of a document in accordance with the above provisions. Therefore, the learned Additional District

Judge was in error in holding that the genuineness of the document had become doubtful since it was registered after the death of the executor of the document. He has further submitted that the learned Additional District Judge has also wrongly observed that there was tampering of the document since the names of "Smt. Bhagwani Devi" has been typed over the name of "Smt. Khazani Devi" in one of the paragraph of the document since this recitation was of not any material consequence. It was further submitted that the photocopy of the relinquishment deed had already been filed along with the application and the original relinquishment deed was also produced after taking opportunity on one date. He Therefore, submitted that the learned Additional District Judge had wrongly made an observation that the original relinquishment deed had not been produced by the petitioner despite availing of the opportunities and on the date of hearing he had produced a certified copy of the relinquishment deed. Lastly it was argued that the learned Additional District Judge has not given opportunity to the petitioner for production evidence and substantiate his allegations. He has relied upon the judgments in Kanwarani Madna Vati and Another Vs. Raghunath Singh and Others, ; Ramdayal and Others Vs. Bhanwarlal and Others, and Shiv Das and Others Vs. Devki and Others, in support of his arguments.

6. On the other hand the counsel for respondents 2 to 6 has stated that these respondents were real daughters and class-I heir of the deceased Smt. Khazani Devi, and there was no reason for Smt. Khazani Devi to relinquish her right in the compensation amount in favor of the petitioner who was her step son and deprive her own daughters of the inheritance in the compensation money. It was further stated that there was apparent interpolation in the recital of the relinquishment deed and that the relinquishment deed was presented for registration after the death of the deceased and all these facts were taken into consideration by the learned Additional District Judge and that cogent reasons were given by him for disbelieving the case of the petitioner.

7. I have given careful consideration to the submissions made at the bar and I have perused the record. The relinquishment deed relied upon by the petitioner is a registered document. Endorsement /certificate of the Sub-Registrar on the deed give rise to prima facie due presentation and registration of this document. Still the question whether the document was, in fact, executed by the deceased Mrs. Khazani Devi and the document is genuine can be decided only after an opportunity was granted to the petitioner for proving it. Same is about the allegation of overtyping/ interpolation in the document allegedly done after the document was executed. It can be decided upon consideration of the evidence adduced by the parties. The learned Additional District Judge has decided the application raised could not have been decided without providing the parties an opportunity to adduce evidence. The petitioner on the one hand and the respondents 2 to 6 on the other hand were claiming right to receive compensation which was awardable to Smt. Khazani Devi in the proceedings pending before the Land Acquisition Court. It is not disputed that the copy of the relinquishment deed had been filed by the petitioner along with the application.

It has been disputed that the original document was produced by the petitioner before the court but the learned Additional District Judge has, at least, noted in his order that the certified copy of this deed was produced before him by the petitioner. Anyhow the court ought to have granted an opportunity to the petitioner to prove the relinquishment deed.

8. From the aforesaid discussion it is held that the learned Additional District Judge committed error of jurisdiction, illegality and material irregularity in exercise of jurisdiction which warranted interference by this court. Accordingly, the petition is allowed. The impugned order dated 18.9.1997 passed by the Additional District Judge is set aside and the case is remanded back to the Additional District Judge for deciding the application of the petitioner and the respondents 2 to 6 afresh after giving them an opportunity to produce evidence.

9. The parties shall appear before the learned Additional District Judge on 18.3.2002. The trial court record shall be sent back immediately.