
(1995) 09 DEL CK 0105

In the Delhi High Court

Case No : Interim Application No. 11986 of 1991 and Suit No. 549 of 1981

Jado Ram Gupta

APPELLANT

Vs

Kehar Singh and Others

RESPONDENT

Date of Decision : 29-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Delhi Land Reforms Act, 1954 — Section 50

Citation : (1995) 4 AD 405 : (1995) 60 DLT 431 : (1995) 35 DRJ 308

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : L.R. Gupta, Mahendra Rana and S.S. Vats, for the Appellant;

Judgement

Devinder Gupta, J.

(1) This application under Order 1 Rule 10 of the CPC is by Smt. Champa and Smt. Nando, widow of late Dr. Kehar Singh of village Mundka, Delhi for being imploded as defendants in the suit filed by the plaintiff against the four sons of Dr. Kehar Singh and another.

(2) plaintiff filed the suit for specific performance against five defendants, four of whom are the sons of Dr. Kehar Singh. Fifth one is Ram Parkash. It is alleged that on 1.12.1978 Dr. Kehar Singh agreed to sell 3 bighas 4 bids was of land out of khasra No.683/2, situate in village Mundka, Delhi in favor of the plaintiff. By virtue of another agreement of the same date, the plaintiff agreed to purchase and defendant Ram Parkash agreed to sell land measuring 2 bighas 10 biswas, which land also belonged to Dr. Kehar Singh and which he had agreed to sell to defendant No.5 through another agreement dated 28.10.1978. plaintiff has further alleged that on 28.1.1979 another agreement was entered into between him and Dr. Kehar Singh which provided that the plaintiff will purchase and Dr. Kehar Singh will sell 5 bighas 14 bids was of land out of khasra No.683/2 (old) and new No.562, Lal Dora Phirni, situate in village Mundka and that the agreement dated 28.10.1978 between Dr. Kehar Singh and defendant No.5 will

be treated as between the plaintiff and Dr. Kehar Singh. It is further alleged that Dr. Kehar Singh during his life time failed to abide by his part of the contract despite requests. Dr. Kehar Singh expired on 7.4.1979 and after his death his legal representatives also failed to execute sale deed in favor of the plaintiff despite service of notice dated 14.4.1991 and in these circumstances the plaintiff had no option but to file a suit for specific performance of agreement to sell. Suit was instituted on 4.6.1991. It was contested by defendants 1 to 4 and on the pleadings between the parties issues were framed on 31.3.1986. One of the issues framed in the suit is:

"ARE the defendants 1 to 4 the only legal heirs of late Dr. Kehar Singh and if not, is the suit maintainable in the absence of all legal heirs being parties in the suit?"

(3) Parties closed their evidence on 31.7.1991 and the suit was directed to be posted for 9th December, 1991 in the category of Finals.

(4) Instant application was moved on 14.11.1991 of which notice was given to the plaintiff. In the absence of the plaintiff, the application was allowed on 12.2.1993. Applicants were directed to be added as parties. On an application made by the plaintiff (IA 806/93) the order dated 12.2.1993 was recalled and this is how the application has now come up for disposal.

(5) It is stated by the learned counsel for the applicants that the order dated 27.1.1994 allowing plaintiff's application (IA.8086/93) is under challenge in appeal. Irrespective of the pendency of the appeal, I heard the learned counsel for the parties at length, who took me through the pleadings as well as documents on record.

(6) Applicants contend that Dr. Kehar Singh held and possessed agricultural land in village Mundka wherein consolidation of agricultural land holding had been in progress since 1975. such proceedings are still in progress. The entire land of Dr. Kehar Singh came to be induced within the extended "LAL DORA". Dr. Kehar Singh having two wives and four sons requested for allotment of entire land in the extended Lal DORA. His request was acceded to and he was allotted amongst other, land in Khasra No.562 measuring 6 bighas 2 bids was in the extended Lal DORA. Subsequently 1 bigha of the allotted area out of khasra No.562 was withdrawn by the consolidation authorities. Thus, Dr.Kehar Singh was left with only 5 bighas 2 bids was of allotted area within the extended Lal Dora, which was re-numbered as Khasra No.562/2. According to the applicants, on Dr. Kehar Singh's death, his holding within Lal Dora has been inherited by his legal heirs including two wives and four sons. It is also contended that consolidation authorities subsequently, without knowledge and without notice of the legal heirs of Dr. Kehar Singh withdrew an area 2 bighas 4 bids was out of khasra No.562/2 and allotted the same to one Attar Singh and Surat Singh vide order dated 17.5.1990. When Lakshmi Singh, one of the sons of Dr. Kehar Singh came to know of the passing of this order, he intended to challenge the same before the Financial Commissioner. Since names of the applicants along with the four sons

of Dr. Kehar Singh stood entered in revenue records, the order dated 17.5.1990 could not have been successfully challenged, without obtaining the signatures of the applicants. Lakshmi Singh accordingly consulted the applicants on 1.6.1991 and informed them that he had come to know of the passing of order dated 17.5.1990 from the office of Consolidation Officer on 27.5.1991. This information was conveyed to the applicants on 1.6.1991 and at this stage the applicants were also informed about the pendency of the instant suit by the plaintiff only against four sons of Dr. Kehar Singh. The applicants were not aware of the pendency of the suit and, thus, wanted to apply for being impleaded as parties but were advised to await the outcome of the revision petition which was to be preferred against the order passed by the Consolidation Authorities on 17.5.1990. The revision petition, according to the applicants was decided on 28.10.1991 when the area of 2 bighas 4 bids was which had been withdrawn was again restored to the four sons and two widows of Dr. Kehar Singh by the Financial Commissioner. The application was then moved along with a certified copy of the order passed by Financial commissioner. Applicants' case is that they are the recorded holders of the property along with defendants 1 to 4 with respect to the land for which decree is claimed by the plaintiff for specific performance and since they will be directly affected by the decree, if passed in favor of the plaintiff, they are necessary parties to the suit and deserve to be impleaded as such.

(7) The plaintiff has vehemently opposed the application urging that moving of the application itself is a malafide act on the part of the applicants, which has been moved at the behest of defendants 1 to 4 with a view to defeat plaintiff's rights. During pendency of the litigation defendants and applicants in collusion with their son-in-law procured an arbitration award, which was got made a rule of court. On the basis of that award names of the applicants were got entered in the revenue record. It is a clever device on the part of the applicants to get the proceedings in the suit prolonged further for an unlimited period. Suit had become ripe for final hearing and at that stage the application was moved and an attempt has been made to almost non-suit the plaintiff. It is also alleged that after the death of Dr. Kehar Singh, the land was mutated in favor of four sons only. The mutation proceedings were duly contested by the two applicants on which the Settlement Officer (Consolidation) on 16.2.1981 passed an order in exercise of the powers of Revenue Assistant and Tehsildar under the Delhi Land Reforms Act, 1954 and Delhi Land Revenue Act. That order having not been challenged had become final. Applicants were not treated as successors to the estate of Dr. Kehar Singh qua the suit property. The decree obtained on award being void and contrary to law cannot confer any right on the applicants. Moreover, it is also contended that on an application moved under Order 39 Rules 1 & 2 of the Code of Civil Procedure, an order of injunction was passed on 1.7.1981 restraining alienation of the suit land in any manner. This order was confirmed on 6.8.1981. Recording of the names of the two applicants on the basis of a procured award amounts to transfer of land, which transfer by virtue of

the order of restraint is void ab-initio and cannot confer any right on the applicants.

(8) Having considered the respective submissions made at the bar by the counsel for the parties, I am of the view that the application, though having been made after the trial of the suit was over and before arguments could be heard, deserves to be allowed.

(9) On persual of the agreement dated 28.1.1979 (P-3) it can be noticed that the suit land for which decree has been prayed has been describing as land comprised in old khasra No.683(2), new khasra number 562 situate in village Mundka in Lal Dora Phirni. In case of purely agricultural holding the order of succession is provided u/s 50 of the Delhi Land Reforms Act, 1954 and it is not disputed that when a Bhumidar or an Asami dies, his interest in the agricultural holding devolves in accordance with the order of succession contained in clause (a) to (b) of Section 50 firstly in male line of descent and in their absence on the widow. It is also not in dispute that an order had been made, when the applicants contested the mutation proceedings, holding that only defendants 1 to 4 had succeeded to the rights of Dr. Kehar Singh in the land. The question whether such an order passed on 16.2.1981 had or had not become final or that whether the same can or cannot be challenged will be a serious question which will have to be decided on merits, only in the event of applicants being allowed to be impleaded as parties. It also cannot be disputed that during the consolidation of holding proceedings an award came to be made amongst other properties belonging to Dr. Kehar Singh for the suit property also, between defendants 1 to 4, the applicants, and the four daughters of Dr. Kehar Singh. This award made on 27th April, 1984, on being filed in court was made a rule of court on 12.11.1984 by Shiv Charan, Sub Judge First Class, Delhi in Suit No.313/84 and decree in terms of the award was passed. It also cannot be disputed that it was on the basis of this award that names of the two applicants were incorporated in revenue records along with defendants 1 to 4 with respect to the property, for which decree is claimed by the plaintiff. Such incorporation of the names of the two applicants can be said to be in consonance with the provisions of Section 22 of Delhi Land Revenue Act, 1954. It enjoins upon a person acquiring any right on succession or transfer to make a report of such transfer or succession to the concerned revenue officer, namely, Tehsildar, who by virtue of Section 23 is required to make an enquiry and pass an appropriate order in making entry in the revenue record. Word "transfer" in Section 22 of the Delhi Land Revenue Act, includes a family settlement by which the holding or part of holding recorded in the record of right in the name of one or more members of the family, if declared to be belonging to another. Even if assuming that the order of the Revenue Assistant, passed on 16.2.1981 had become final, nothing prevented the members of the family to make a family settlement through the process of arbitration with respect to the estate of Dr. Kehar Singh and in case by virtue of award and decree passed thereupon the applicants acquired any right and got their names incorporated in the revenue record, u/s 22 of the Delhi Land

Revenue Act, they will be deemed to be having a right in the land for which decree is sought by the plaintiff. The question whether award made and decree passed thereupon is collusive one or not itself is a serious question which, if agitated after the applicants are impleaded as parties will of course have to be decided in the suit but cannot be decided while disposing of application under Order 1 Rule 10 of the Code of Civil Procedure.

(10) In case land is not agriculture holding, it is not disputed that widows and the daughters along with sons will inherit the estate of deceased as class I heirs under the provisions of Hindu Succession Act. To the land in case it is within Lal Dora, section 50 of Delhi Land Revenue Act will not apply.

(11) Learned counsel for the plaintiff further submitted that in proceedings, which one of the widows initiated earlier by filing a suit in forma pauperis land had not been included in the schedule of properties belonging to her. From this circumstance also it deserves to be inferred that the two applicants acquired no right on the death of Dr. Kehar Singh in the suit land and the names have wrongly recorded subsequently in the revenue records on the basis of a collusive decree. In view of what has been observed above, this question also, if raised after the two applicants are added as party will have to be decided at appropriate stage and cannot be decided while deciding this application.

(12) It is a suit where the plaintiff has claimed a decree for specific performance and he is seeking a decree with respect of land which in the revenue records presently is also shown in the names of two applicants. The two applicants allege that they have a share in the land by virtue of an award made in their favor and a decree has been passed and the same is in their possession. Applicants would definitely be necessary parties to the suit where decree is claimed by the plaintiff on the basis of agreement to sell, which the plaintiff claims to have been entered between him and Dr. Kehar Singh. Presence of the applicants otherwise will also be necessary for complete adjudication of the rights of the parties. Power to add party at any stage of the proceedings cannot be disputed and applicants have given a plausible Explanation as to why application could not be made by them earlier, since according to them they were not aware of the pendency of the proceedings and when they came to know they waited only for a few months for the result of the revision petition preferred before the Financial Commissioner and on decision thereof they immediately applied for certified copy and moved this application. Applicants being necessary parties, their application is allowed and are allowed to be added as defendants 6 & 7 subject, however on payment of costs quantified at Rs.3,000.00 payable to the plaintiff. The plaintiff is directed to file corrected memo of parties within a week.