

(2003) 01 DEL CK 0111

In the Delhi High Court

Case No : Civil Writ Petition No. 427 of 2003

Mrs. Seema Dhingra through Power of Attorney Holder Mr. Amit Dhingra and Smt. Seema Dhingra, Mr. Amit Dhingra and Smt. Seema Dhingra, Mr. Sumit Dhingra and Smt. Seema Dhingra through Power of Attorney Holder Mr. Amit Dhingra and Smt. Seema Dhingra and Mr. Vinod Kumar Dhingra

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 13-01-2003

Acts Referred:

Citation : (2003) 01 DEL CK 0111

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Jeevesh Nagrath, for the Appellant; Lovkesh Sawhney, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—Rule

2. With the consent of the learned Counsel for the parties, the matter is taken up for disposal at this stage.

3. The perpetual leasehold rights were granted in respect of property known as A - 3/34, Janak Puri, New Delhi in favor of S/Shri Sada Lal Dhingra, Vijay Kumar Dhingra and Vinod Kumar Dhingra in pursuance to a lease deed dated 30.03.1976. Shri Vijay Kumar Dhingra passed away on 30.09.1978 and his 1/3rd share was transferred equally in favor of the petitioner Nos. 1 to 3 and Smt. Ram Devi Dhingra, who are his legal heirs being his wife, two sons and mother. The mutation letter was issued on 04.06.1981. Smt. Ram Devi Dhingra passed away on 19.03.2000 and prior to her death had executed a Will on 24.04.1989 bequeathing her 1/12th share in favor of petitioner Nos. 2 and 3. Petitioner No. 1 and Smt. Ram Devi Dhingra had executed registered Relinquishment Deeds in favor of petitioner Nos. 2 and 3 on 21.12.1999.

4. The petitioner Nos. 2 and 3 requested the respondent for mutation of the share of petitioner No. 1 and Smt. Ram Devi Dhingra in their favor on the basis of the said Relinquishment Deeds and the request was made on 22.12.1999. The requisite documents were also submitted. During pendency of the request, Smt. Ram Devi Dhingra passed away.

5. On 31.03.2000, the request of petitioner Nos. 2 and 3 was denied and the petitioner No. 1 was asked to execute a gift deed in favor of petitioner Nos. 2 and 3.

6. On 11.08.2000, the petitioner No. 4 informed the respondent about the demise of Smt. Ram Devi Dhingra and furnished the requisite documents.

7. In order to avoid further delay, the petitioner No. 1 executed a gift deed on 20.10.2000 and submitted it to the Sub-Registrar for Registration. The Sub-Registrar, however, refused to register the gift deed since the property was leasehold and demanded "No Objection Certificate" from the respondent. This fact was brought to the notice of the respondent on 06.11.2000. Further documents were also submitted by the petitioner No. 4.

8. Finally, letter dated 24.09.2002 was issued by the respondent informing the petitioner that the share of petitioner No. 1 could be mutated in favor of the petitioner Nos. 2 and 3 only by way of registered gift deed and the gift permission can be applied on specimen document.

9. In the counter affidavit, the facts are not disputed, but it is stated that the petitioner No. 1 had only a life-time interest, which could be transferred only by a gift deed. It is stated that the same is a policy for residential plots.

10. Learned Counsel for the petitioner has referred to the judgment of the learned Single Judge of this Court in *Jatinder Nath v. Delhi Development Authority* reported as 2001 1 AD (DEL) 233, where it has been held relying on the basis of the decision of the Supreme Court in *Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another*, that the registered instrument in the form of release deed or relinquishment deed releasing right, title and interest of releaser without consideration may operate as transfer by way of gift when document clearly shows intention to effect the transfer.

11. In the present case, it is the mother, who has released the interest in favor of her two sons.

12. In my considered view, the matter in controversy is squarely covered by the judgments in *Jatinder Nath's* case (Supra) and *Kuppuswami Chettiar's* case (Supra), as the transfer is not for consideration and it is a release out of natural affection. Insofar as the question of petitioner No. 1 only having a life-time interest is concerned, it only shows that the interest are even narrower than the absolute interest. Life-time interest is a limited interest as compared to absolute interest. I fail to appreciate how by relinquishment deed, an absolute interest can be transferred, but a life-time interest cannot be transferred.

13. I am, thus, of the considered view that the mutation is liable to be made in favor of the petitioner Nos. 2 and 3 in view of the relinquishment deeds also executed by the petitioner No. 1.

14. A Writ of Mandamus is, thus, issued directing that the share of Smt. Ram Devi Dhingra, who had already passed away, as also the share of petitioner No. 1 Smt. Seema Dhingra to be mutated in favor of the petitioner Nos. 2 and 3 and the mutation letter be issued in favor of the petitioner Nos. 2 and 3 within a period of 4 weeks from today.

15. The petitioner Nos. 2 and 3 have already paid conversion charges for converting the property into freehold and, thus, a Writ of Mandamus is further issued directing the respondent to execute the conveyance deed on a freehold basis in favor of the petitioner Nos. 2, 3 and 4 and Shri Sada Lal Dhingra in pursuance to the application dated 23.12.1999 within a maxim period of two months from today.

16. The writ petition is allowed in the aforesaid terms with costs of Rs. 5,000/-.