



IN THE COURT OF DISTRICT MAGISTRATE KAPASHERA
DISTRICT: SOUTH - WEST
OLD TERMINAL TAX BUILDING
KAPASHERA NEW DELHI -110037.

REF NO. 12837
APPEAL NO.: 1/40/2019

DATED: 24/02/2020

CASE I.D.: 23128

U/S: 65 DLR ACT

SMT SURESH

..... APPELLANT

VERSUS

KHILENDER & ORS.

..... RESPONDENTS

ORDER

Vide this order I shall dispose off the present appeal filed under section 65 of the Delhi land Revenue Act ,against the order dated 29.10.2015 passed by SDM/RA in Case no. M-32/TNG/2018-2019, to set aside the mutation order and order for mutation in favor of appellant and Master Pratham/ respondent no.2 herein, with respect to land comprising in khata no.376/377-378 bearing khasra no.29//11/1(3-4), 11/2(1-12), 12/2(3-12), 20(04-16), 21(4-16), 30//15 (4-16);16(4-16), 25/2(0-16), 69//4/1(2-0), 4/2(2-16), 7(4-16),11(4-16),12/1(3-0),12/2(1-16), 14(4-14) measuring 52 bigha 6 biswa in village Dichaun Kalan (herein after referred as **SUIT LAND**).

BRIEF FACTS OF THE CASE:

That the late sh. Raghbir S/o. Late Sh. Asha Ram was recorded bhumidhar of the suit land.

Further, Late Sh.Raghbir is the recorded owner of the land in Khata no.619/652-653 bearing kh.no.29//8(3-15);13(2-14);69//3(4-16);13/2(4-15); 74//2/3 (1-16), 23(4-16),&97//17/1/2(0-1) in village Dichaun Kalan.

Furthermore, Late Sh.Raghbir is also the recorded owner of 1/8th share of the land in Khata no.431/433 bearing kh.no.29/1 (4-16); 10(4-16); 12/1(5-17);69//2(4-16); 8 (4-16), 9(4-16), 10(4-16); 120//23/1(5-10) 125//3 (4-16) 4/1(2-18), 7/1(5-4), 8/1(3-15), 8/2(1-1), 9/1(1-19), 128//19(2-8), 22/2(4-13) & 23(2-8) in village Dichaun Kalan.

That Sh. Raghbir died on date 04.05.2018, and as per general law of Hindu Succession Act, the mutation was sanctioned in the name of class I heirs of the late Sh.Raghbir, thus land was mutated in the name of appellant (Wife of Raghbir), respondent no.1 (Son Of Raghbir), respondent no.3 (Daughter of Raghbir) and respondent no.4 (Daughter of Raghbir).

GROUND OF APPEAL:

1. Appellant submitted that the respondent no.1 has quarrelsome behavior with late sh. Raghbir and appellant and thus the respondent have been debarred from the by the late sh. Raghbir and appellant by notification and publication. And the copy of that is filed before the tehsildar and same has not been considered by the Tehsildar while passing the mutation order.
2. That during the life time of Late Sh. Raghbir , respondent no.1 ,3 & 4 pressurized , him for selling the land and for this purpose a civil suit of injunction vide no.143/2014 was also filed by late Sh.Raghbir Singh



- Late Sh. Raghbir Singh.
3. That in June 2019, in a folder in the almirah of Late Sh. Raghbir Singh, a registered Will was found by the appellant, which was executed on date 11.04.2014 along with an old Will of date 24.04.2001 and original copy of disownment affidavit. The copy of the aforesaid Will are filed in record.
 4. That the factum of execution of will was not in knowledge of the appellant and any other person unless the almirah and files have not been cleaned by the appellant and the said WILL dated 11.04.2014 is a registered WILL.

CONTENTION OF RESPONDENT:

1. That the appeal is not maintainable as the order under challenge was passed by the consent of the parties and no objection was raised at the time of passing of mutation order.
2. That the factum of the WILL was never disclosed at the time of mutation proceedings before the tehsildar and the Will be a subsequent event shall not be considered in appeal of the mutation order.
3. That the present appeal is time barred as the limitation period of appeal under section 67 of Delhi Land Revenue Act is 30 days.
4. That the present appeal is barred by Estoppel under section 115 of Indian evidence Act, as appellant herself had given her consent in mutation while impugned order was passed.

OBSERVATION:

That on perusal of the material on record and arguments of the parties, it is observed that the appellant, respondent no.1, 3 & 4 are the beneficiary parties of the impugned mutation order dated 29.10.2018. And it is only respondent no.2 who is a minor has not get any share in the said impugned mutation order.

Further, the fact of non-availability of WILL at the time of Mutation proceedings and no knowledge of the WILL dated 11.04.2014 at the time of mutation order cannot be ruled out.

Further, at the time of arguments there is nothing material present by which the sanctity and authenticity of the registered will dated 11.04.2014 can be challenged.

However, the filing of case of permanent injunction against the respondent no.1 further affirms the strenuous relationship between late Sh. Raghbir Singh and respondent no.1.

Apart from this during the court proceedings, it was also observed that respondents no.1, 3, 4(A) who were the beneficiaries of the mutation which was carried out by the lower court, themselves confessed to the presence and authenticity of the alleged registered WILL.


In the court proceedings dated 04.10.2019, it was observed that Respondent No. 1 and Respondent No. 3 agreed to the contention of the appellant that Late Sh. Raghbir executed a WILL in favour of the appellant and Respondent no. 2.

Similarly, in the court proceedings dated 29.11.2019, respondent No. 4 (A) Sh. Vikram was present in the court and stated in open court that he do not wish to contest this matter and also requested his counsel to not argue on his behalf. Again respondent no. 1 submitted in open court that the registered WILL is authentic and that he is aware he has been debarred from the property by his father Late Sh. Raghbir.

CONCLUSION:

In the view of the above facts and observations, the undersigned allow the present appeal to set aside the mutation order dated 29.10.2018, and remand back the matter to the lower court to decide the matter afresh considering the registered WILL as per the provisions of DLR Act.

Given under my hand and seal and signatures on 24.02.2020.



**(RAHUL SINGH)
COLLECTOR (SOUTH WEST)**

COPY TO:

1. Concerned Parties
2. Tehsildar (Najafgarh) with direction to update revenue records accordingly.
3. Guard File



**(RAHUL SINGH)
COLLECTOR (SOUTH WEST)**