

(2013) 01 AHC CK 0460
In the Allahabad High Court
Case No : Writ-B No. 379 of 2013

Abhishek

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Citation : (2013) 118 RD 644

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Anil Kumar Tiwari, for the Appellant; Ajendra Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Ran Vijai Singh, J.—Learned Counsel for the petitioner is permitted to correct the date of the order of the Settlement Officer Consolidation mentioned in the prayer. Through this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the orders dated 26.10.2012, 30.7.2012 and 23.2.2012 passed by the respondents No. 1, 2 and 3. Vide order dated 23.2.2012, the Consolidation Officer has closed the opportunity of cross-examination of the petitioner whereas by the subsequent order dated 30.7.2012, the Settlement Officer Consolidation has dismissed the petitioner's appeal as not maintainable against the order dated 23.2.2012. On the same principles, the petitioner's revision filed against the order dated 30.7.2012 was also dismissed by the Deputy Director of Consolidation.

2. Learned Counsel for the petitioner contends that the petitioner as well as his Counsel both have not appeared before the Court and his right of cross-examination has been closed by the consolidation authorities, due to which serious prejudice has been caused.

3. Refuting the submissions of learned Counsel for the petitioner, Sri Ajendra Kumar as well as Sri Arvind Srivastava, learned Counsel appearing for

respondents No. 4 to 6 contend that on the basis of forged will-deed, the petitioner has got his name mutated in the revenue record after death of late Janmejaya Singh the father of respondents No. 4, 5 and 6. In their submissions, their father was passed away in the year 1976 whereas the alleged will is of the year 1984. When the respondents came to know about this fact, they have filed an objection u/s 9-A(2) of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act). In the said objection, on number of occasions, the petitioner was granted time to adduce the evidence and was also given opportunity for cross-examination of the witnesses but the petitioner is habitual of seeking adjournment and delaying the matter. The attention has been invited towards the order of this Court dated 14.2.2011 passed in Writ Petition No. 8368 of 2011 (Smt. Mithilesh and another v. Deputy Director of Consolidation, Shahjahanpur and others). In the aforesaid writ petition also, this type of order was passed and taking liberal view of the matter, this Court has quashed that order and provided one opportunity for the purpose prayed for. The petitioner has again adopted the same tactics and by now the Consolidation Officer has closed the opportunity of cross-examination and thereafter petitioner's appeal as well as revision has been dismissed. In the submissions of learned Counsel for the respondents, the order passed by the Consolidation Courts are perfectly illegal and that requires no interference under Article 226 of the Constitution of India.

4. Heard Sri Anil Kumar Tiwari, learned Counsel for the petitioner, Sri Ajendra Kumar and Sri Arvind Srivastava, learned Counsel for the respondents and perused the record.

5. Learned Counsel for the respondents has shown the Court the photo stat copy of the order-sheet. From the perusal of the same, it transpires that on 7.6.2010, statements of some witnesses were recorded and an application was filed by the petitioner's Counsel seeking time for cross-examination. On that application, filed by the petitioner for cross-examination, the date was fixed for 17.1.2012. On 17.1.2012, another application was filed on behalf of the petitioner seeking time for cross-examination. The said application was allowed on the payment of Rs. 100/- cost by fixing 25.1.2012. On 25.1.2012, another application was filed. On that, 2.2.2012 was fixed with the observation that no further time shall be given. On 2.2.2012, the petitioner did not appear and right of cross-examination has been closed by the consolidation officer. For recall of the aforesaid order, an application was filed but that application was rejected by the Court on 23.2.2012, and thereafter the petitioner has filed the appeal challenging the order dated 23.2.2012 rejecting the petitioners' restoration application. The Settlement Officer Consolidation has rejected the petitioner's appeal as not maintainable vide order dated 30.7.2012. Aggrieved by that order, the petitioner has filed revision, that too has been dismissed as not maintainable.

6. After hearing learned Counsel for the parties, I am of the view that so far as the dismissal of the appeal as well as the revision holding it as not maintainable,

no infirmity can be attached with these orders as admittedly the order on the appeal as well as the revision are interlocutory in nature therefore the Settlement Officer Consolidation and the Deputy Director of Consolidation have rightly rejected the petitioner's appeal and revision. This Court also finds that the petitioner has through out been negligent and trying to linger on the proceedings which is apparent from the fact that earlier the petitioner has approached this Court for the same kind of order through Writ Petition No. 8368 of 2011 and that writ petition was allowed on 14.2.2011 with the following observation.

Admittedly, the objection was filed only in the year 2010 and the petitioners absented themselves on one day on which date the order closing the evidence was passed. The said order was sought to be recalled by filing an application on the ground that due to illness the petitioner No. 1 who was doing pairvi could not appear. From a perusal of the entire facts and circumstances, it appears that the two authorities have taken a hyper technical view in the matter and wrongly deprived the petitioners from contesting the proceedings on merits. Endeavour of the Courts should be to decide the dispute between the parties on merits rather than on technicalities.

In view of above facts and discussions, the impugned order dated 21.6.2010 and 2.8.2010 passed by the Consolidation Officer as well as revisional order dated 14.1.2011 are hereby quashed. The recall application filed by the petitioners stands allowed.

The petition stands allowed.

The Consolidation Officer, Jalalabad, district Shahjahanpur is directed to proceed with the disposal of the objection on merits in accordance with law expeditiously.

7. After this order, the petitioner has again adopted same tactics and on three consecutive dates, the consolidation officer has granted time providing opportunity of cross examination of the witnesses. Again neither the petitioner has appeared nor his counsel. In the order dated 2.2.2012, the Consolidation Officer has noted that in case the petitioner again chooses not to appear, his right of cross-examine shall be closed. The petitioner did not appear and the Consolidation Officer has closed the right of cross-examination and the petitioner's restoration application has also been rejected by the Consolidation Officer.

8. I do not find any illegality in the order impugned. No ground has been made for interference under Article 226 of the Constitution of India. The writ petition is dismissed.