
(1986) 11 AHC CK 0020

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14639 of 1986

Akhtar Husain and Another

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 05-11-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Land Revenue Act, 1901 — Section 218

Citation : (1987) 1 AWC 290 : (1987) RD 33

Hon'ble Judges : S.K. Mookerji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mookerji, J.—This is a writ petition by Akhtar Husain and another challenging the order of the Board of Revenue dated 16-5-1986.

2. It appears that the Additional Commissioner made a reference, u/s 218 of the U.P. Land Revenue Act, in a mutation case. After the death of Karim Baksh, his sons applied for mutation, which was contested by the Petitioners. The Petitioners stated that they had purchased the land in-dispute from Karim Baksh by means of a registered sale-deed and on the basis of the same the mutation order had already been passed in their favour on 10-3-1978. The trial court allowed the application of the sons of Karim Baksh and ordered mutation in their favour. The appeal of the Petitioners against the order of the trial court was also dismissed by the Sub-Divisional Officer, Najibabad, district Bijnor. Thereafter, the Petitioners filed a revision. The Additional Commissioner, Moradabad Division, recommended the revision for acceptance to the Board of Revenue.

3. The principal point raised by the Additional Commissioner was that finding of the Additional Civil Judge, Bijnor in the judgment dated 26-3-1980 in the civil suit that the sale-deed, on the basis of which the Petitioners were relying, was void and could not act as res-judicata against the present Petitioners. The Board of Revenue by its impugned order rejected the revision and did not accept the

recommendation of the Additional Commissioner.

4. I have heard the learned Counsel for the Petitioners. Learned Counsel for the Petitioners has relied upon a decision of this Court reported in AIR 1975 Allahabad page 125. In the above decision, it has been ruled that where a mutation proceeding also involves the question of title, then the decision of the Board of Revenue can be interfered with by the High Court in appropriate cases in exercise of its jurisdiction under Article 226 of the Constitution. It has also, in substance, ruled that in a case of mutation if a shadow is created on the title of the parties, then such shadow should be removed.

5. I have examined the arguments of the learned Counsel for the Petitioners and also the above case. The impugned order arises out of the proceedings in respect of a mutation case. Normally, in mutation cases, the question of title is not conclusively decided. The impugned judgment has not adjudicated on the question of title of parties inter se, neither the said judgment has created any shadow on the question of title. This judgment cannot stand in the ways of the parties from getting a judgment from an appropriate court on the question of their title over the disputed property.

6. This writ petition has no merit. It is open for the parties to get the title settled in a competent court.

7. With the above observations, this writ petition is dismissed in limine.