
(1995) 05 AHC CK 0057

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 9093 of 1 979

Algoo

APPELLANT

Vs

D.D.C.,Jaunpur and Another

RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 05 AHC CK 0057

Hon'ble Judges : Binod Kumar Roy, J

Final Decision : Disposed Of

Judgement

Binod Kumar Roy, J.

1. The petitioner prays to quash the order dated 7979 passed by the Assistant Director of Consolidation, Jaunpur in Revision No. 1136 rejecting his application seeking substitution in place of the deceased revisionpetitioner and closing the revisional proceedings.

2. The relevant facts are in a narrow compass. One Mst. Mangri widow of Ramdeo claimed to be cotenure of original Respondent No. 2 Fazihat asserting, inter alia, to the effect that Fazihat was brother of her deceased husband. Her claim was resisted by Respondent No. 2 Fazihat on the grounds that Ramdeo was not son of his father Ram Swarup and that neither her husband nor had she any concern with the disputed lands rather he alone is sirdar of the disputed lands. Her claim was accepted only in part i.e. to say in regard to only one plot by the Consolidation Officer, She went up in appeal. Appeals were also filed by other parties. The appellate authority, namely the Assistant Settlement Officer, rejected her claim in entirely holding that her husband Ramdeo does not belong to the family of Ram Swarup. She went up in revision. Even though the Revisional Authority held that Ramdeo was son of Ram Swarup and brother of Fazihat and her to be widow of Ramdeo yet she is not cotenure holder of Fazihat. She came to this Court in C.M. Writ Petition No. 2068 of 1971. During the pendency of the said writ petition she died and on a substitution petition filed by the petitioner he

was substituted by order dated 13177 passed by the Additional Registrar of this Court. The aforesaid writ petition, by order dated 14.7.1978 was finally allowed, the Revisional Order was set aside and the revision was remitted back for deciding afresh in accordance with law after recording a finding that the revisional order is suffering from manifest errors and cannot be sustained. An application was filed by Fazihat for review of the order dated 14th July, 1978 aforementioned, on the ground that in his affidavit the present petitioner described himself as pairokar of the writ petitioner and had claimed to be son of Ramdeo. This Court vide order dated 14.7.1978 rejected the review application holding as follows:

"Be that as it may, the applicant never chose to file an affidavit denying the allegation supported by an affidavit. Obviously, therefore, the Registrar was justified in passing an order on the basis of the application for substitution, which was not opposed. When a party dies during the pendency of the proceeding and a substitution application is allowed, it is only for the purpose of prosecuting the case and he is allowed to represent the estate of the deceased. But if there is another person, who was really the heir, he may always come forward and get his right adjudicated in any competent court.

Therefore, the applicant has not prejudiced anything on account of the substitution of Algoo, in place of Smt. Mangari. In any case the applicant has to blame himself for such a situation. It was open to him to challenge the allegation made in the application and the affidavit. That he did not choose to do and now has woke up to agitate the matter. After the case has been disposed of, there seems to be no justification for recalling the order dated 14th July, 1973."

It further appears that after remand the petitioner filed an application before the Revisional Court that he is legal representative of deceased revisionist petitioner Mangari and accordingly her name be expunged and his name be substituted. This application was opposed by Respondent No. 2 again alleging that the applicant (writ petitioner) is son of Ram Balak. By the impugned revisional order the aforementioned application of the writ petitioner was rejected after holding that the writ petitioner happens to be son of Ram Balak and there does not appear to be any legal basis to hold him to be son of Mangari and Ramdeo and the proceeding was closed.

3. Mr. S.N. Singh, the learned counsel appearing on behalf of the petitioner, contended that the petition filed by the petitioner was merely informatory in nature inasmuch as his prayer for substitution was already allowed by order dated 1311977 by this Court in the earlier writ petition filed by his mother and accordingly only records of the revisional court were required to be corrected as a followup action and as a matter of course and the revision was required to be disposed of on its merit. This apart it was not open for Respondent No. 2 to reagitate the question that the petitioner was son of Ram Balak which was earlier raised by him in his review but rejected by this Court. The petitioner is an illiterate person who puts his thumb impression and did not know that he was

shown as son of Ram Balak and Respondent No. 2 wanted to derive advantage due to a sad mistaken Learned counsel further pointed out that in paragraphs 2, 4 and 7 of his affidavit. AnnexureIII filed before the Revisional Authority the petitioner has referred to the admissions of Fazihat admitting the fact that the petitioner was son of Ramdeo but this admissions were not considered.

4. Mr. Faujdar Rai, the learned counsel appearing on behalf of Respondent No. 2, on the other hand, contended as follows : As the petitioner had filed a fresh substitution petition before the Revisional Authority and Respondent No. 2 in terms of the orders of this Court, got an opportunity to prove his case that the petitioner was son of Ram Balak, which he supported by filing documents and a finding accenting his objection was correctly recorded on the basis of the materials adduced by one or the other party which cannot be set aside by this Court under Article 226 of the Constitution "of India. He further contended that the learned counsel for the petitioner could not show any error apparent on the face of the record in the impugned order.

5. The statements made in Paragraph 14 of the writ petition that the petitioner is an illiterate person who puts his thumbimpression and did not know that he has been shown as son of Ram Balak have been replied in paragraph 12 of the counter affidavit that they are not admitted in the manner they have been stated. In my view this is no denial of the facts stated by the petitioner. Similarly no comment has been made in the counter in regard to the facts stated in the affidavit (AnnexureIII).

6. In my view there is substance in the contentions of the learned counsel for the petitioner which must be accepted. This Court had already adjudicated the question of substitution of the petitioner in place of Mst. Mangri who was widow of Ramdeo in earlier writ petition. Even the petition seeking review of the said order filed by Respondent No. 2 was rejected. Undisputedly Respondent No. 2 had not claimed to be the real heir of Mst. Mangri and thus could not challenge the effect of the order of the petitioner's substitution. In this view of the matter the further adjudication of the same question by the Revisional Authority, who is under the judicial superintendence of this Court was[^] unfortunate. The earlier adjudication was binding on the Revisional Authority who misconstrued this apparent legal constitutional position, the writ of this Court went the Regional Authority alongwith The substitution of the petitioner in place of her mother and the Revisional Authority was required to correct the revisional record accordingly. There was no scope for Respondent No. 2 to raise the settled issue.

7. In view of my findings as above the impugned order cannot be sustained. It is accordingly, set aside and Revision No. 1136 is directed to be disposed of on its merit by the Revisional Authority, who will correct the records by expunging the name of the revisionpetitioner and add the name of the petitioner in her place in terms earlier directions of this Court, which I reiterate.

8. However, in the peculiar facts and circumstances I make no order as to cost.

9. Let a writ of certiorari issue accordingly.