(2014) 11 AHC CK 0110

In the Allahabad High Court

Case No : Writ-B No. 58376 of 2014

Ashish Shukla APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 34, 40-A

Citation : (2015) 126 RD 15

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Surendra Tiwari and Ashish Bajpayee, Advocates for the Appellant; Awadhesh Kr. Sharma and Diwakar Singh, Advocates for the Respondent

Judgement

Ram Surat Ram (Maurya), J.—Notice on behalf of respondents-1 and 2 has been accepted by the Chief Standing Counsel and on behalf of respondents has been accepted by Sri Diwakar Singh. Sri Awadhesh Kumar Sharma has filed caveat on behalf of respondent-4 and he has also instructions on behalf of respondents-3 and 5. The Counsel for the respondents-3 to 5 does not propose to file counter-affidavit.

2. The writ petition has been filed against the order of Board of Revenue, U.P. dated 9.10.2014 passed in the proceeding under section 34 of U.P. Land Revenue Act, 1901 (hereinafter referred to as "the Act").

3. On the death of one Gangadhar Shukla, a proceeding under section 34 of the Act was initiated by the petitioner, who claims to be son of the deceased, while the contesting respondents 3 to 5, were brother''s sons as well as grand-son of brother of the deceased. Tehsildar by order dated 22.2.2013 accepted the case of the petitioner and found him to be son of Ganga Ram alias Gangadhar Shukla (deceased) and directed for mutation of his name. The contesting respondents filed an appeal from the aforesaid order. The Sub-Divisional Officer by order dated 26.9.2013 found that Ganga Ram and Gangadhar Shukla were one and same person, accordingly, on the death of Ganga Ram, the petitioner, who is his

son has inherited the property and the appeal filed by the respondents was dismissed. The contesting respondents filed a revision against the aforesaid order, which has been allowed by the Board of Revenue by the impugned order dated 9.10.2014. The Board of Revenue by the impugned order found that the petitioner has filed only photostat copies of various documents and one of the witnesses, namely, Indra Bahadur has not been cross-examined by the petitioner and the orders of Tehsildar and Sub-Divisional Officer were liable to be set aside. On this finding the revision was allowed and the orders of Tehsildar and Sub-Divisional Officer were set aside and the matter has been remanded to Tehsildar for deciding the case afresh after giving opportunity of evidence to the parties. Hence this writ petition has been filed.

4. The Counsel for the petitioner submits that Tehsildar as well as Sub Divisional Officer has relied upon the oral statement of the petitioner, which was fully corroborated by the documentary evidence, accordingly, the finding recorded by the Sub Divisional Officer as well as Tehsildar were not liable to be set aside. So far as the opportunity for cross-examination of one of the witnesses is concerned, the finding is not totally based upon the statement of Indra Bahadur alone. Further, Indra Bahadur was examined by the respondents and in case he was not cross-examined by the petitioner no prejudice has been caused to the respondents and on this ground the revision could not have been allowed.

5. I have considered the arguments of the Counsel for the petitioner.

6. A perusal of the order of Board of Revenue shows that the Board of Revenue has interfered in the concurrent findings of both the Courts below only on the ground that photostat copies of the documents were filed and one of the witnesses, namely, Indra Bahadur was not cross-examined by the petitioner. The petitioner did not appear in the witness box. Accordingly, the matter has been remanded.

7. A perusal of the order of the Sub-Divisional Officer shows that the Sub-Divisional Officer relied upon the statements of Omkant Shukla and Kapil Mishra, who were common relations of the parties. The finding has been recorded that Ganga Ram and Gangadhar Shukla were one and same person and the petitioner was his son. The Board of Revenue has not considered the statements of the witnesses examined by the petitioner nor has given any reason to disbelieve them. In such circumstances the order of Board of Revenue dated 9.10.2014 is illegal and is liable to be set aside.

8. In the result the writ petition succeeds and is allowed. The order of the Board of Revenue dated 9.10.2014 is set aside. The aggrieved person may file a suit for declaration of his right within a period of three months in view of section 40-A of U.P. Land Revenue Act. For a period of three months the parties shall maintain status quo on the spot with regard to their possession over the land in dispute. In case the suit is filed an application for interim order may be filed for stay, which shall be decided in accordance with law. The suit shall be decided without

being influenced by the orders passed by this Court and the Revenue Courts.

