(2012) 10 AHC CK 0149

In the Allahabad High Court

Case No : Writ Petition No.3973 (MIS) of 2012

Ashok Kumar APPELLANT

Vs

Chairman Board of Revenue U.P., Lucknow and Another RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:
Constitution of India, 1950 — Article 226
Uttar Pradesh Land Revenue Act, 1901 — Section 34

Citation : (2012) 10 AHC CK 0149

Hon'ble Judges : Anil Kumar, J

Final Decision : Dismissed

Judgement

Anil Kumar, J.

Heard Sri Arun Kumar, learned counsel for the petitioner, learned State Counsel as well as Sri Angrej Nath Shukla, learned counsel for contesting respondents and perused the record.

The factual matrix involved in the present case is that one Sri Shitla Prasad was recorded as owner and Bhumidhar of Khasra/Gata No. 304/2.314 hactare and land Gata no. 330/0.032 hactare situated at village Balwa Bahuta, policestation Itia Thok, District Gonda in the revenue record. After death of Sri Shitla Prasad, Smt. Gaya Devi moved an application for mutation of the land in question in her name on the ground that in her favour a registered Will deed has been executed by the deceased. In the said proceedings, petitioner has set up the case that the land in question should be recorded in his name by way of succession.

The trial court by an order dated 11.3.2002 allowed the mutation in favour of the Gaya Devi by virtue of will deed.

Aggrieved by the said fact, petitioner filed an appeal before the Sub Division Magistrate, Sadar, Gonda under Section 210 of the Land Revenue Act (Ashok Kumar Vs. Gaya Devi and others), dismissed by order dated 12.12.2006. The said order has been challenged by the present petitioner by way of revision

(Revision No. 674, Ashok Kumar Vs. Smt. Gaya Devi and others), allowed by order dated 25.10.2008.

Accordingly, Smt. Gaya Devi filed a revision (Revision No. 501(LR) 200809, Gaya Devi Vs.Ahok Kumar) before Board of Revenue, Lucknow, dismissed by order dated 19.9.2009.

Thereafter, a review application was moved on behalf of Smt. Gaya Devi registered as Restoration No.407(LR)/200910 (Smt. Gaya Devi Vs. Ashok Kumar) in which an order dated 29.11.2010 (Annexure no.5) has been passed by the Board of Revenue thereby allowing the restoration application and setting aside the order dated 19.9.2009 passed by the court below.

Aggrieved by the said facts, the petitioner filed Writ Petition No.5823 (M/S) of 2011 (Ashok Kumar Vs. Chairman Board of Revenue Lucknow and others), allowed with the following directions:

"The matter is remand back to the Board of Revenue to reconsider the matter of recall/restoration of the order passed in Revision No. 501(LR)/200809 and pass a fresh order after giving opportunity of hearing to the parties concerned, expeditiously in accordance with law."

Accordingly, in pursuance of the order dated 1.12.2011 passed by this Court in Writ Petition no. 5823(MS) of 2011, matter again came up for consideration before the Board of Revenue who by by means of order dated 18.6.2012 (Annexure no.1), allowed the restoration application bearing Restoration No. 407(LR) of 20092010 (Smt. Gaya Devi Vs. Ashok Kumar) thereby recalling the order dated 19.9.2009 as well as allowed the revision revision no. 501(LR)/200809 filed by Smt. Gaya Devi. Aggrieved by the same, present writ petition has been filed.

After hearing learned counsel for the parties and going through the record, it is not disputed between the parties that the petitioner has already filed a Regular Suit no. 416 of 1984 for cancellation of Will deed which is pending for consideration in the Court of IVth Additional Civil Judge (Junior Division), Gonda.

It is settled proposition of law that the proceedings under Section 34 of the Land Revenue Act do not decide the right and title of the parties. The object of mutation proceedings is as to form whom the State has to recover the land revenue. It becomes immediately imperative to have got the name of some successor mutated in place of the deceased so that the land revenue can be recovered from him. The scope of these proceedings are not that any right or title of any body is sought to be decided.

Further, it is settled view of this Court that it should not interfere with the order issued by the authorities while deciding the proceedings under Section 34 of the Land Revenue Act, as in the said proceedings the issue only in respect to record the name of tenure holder in the revenue record is under consideration. Such an entry does not ordinarily confer upon the person in whose favour it is made any title of property in question and his right is to be established as per the procedure provided under law (See Jaipal Vs.Board of Revenue, U.P., Allahabad and others, 1956 ALJ 807, Smt. Lakhpati and another Vs. Board of Revenue, U.P. 1984 RD 378, State of U.P. through Collector, Agra Vs. Board of Revenue at Lucknow and others, 1993 RD, 206, Shiv Raj Gupta Vs. Board of Revenue, U.P., Lucknokw and others, 1989(2) AWC 947, Pooran Singh Vs. Baord of Revenue and others, 2004(1) AWC 853 and Ram Kumar Vs. Board of Revenue U.P. Lucknow and others, 2003 (1) AWC 505).hence I do not find any illegality or infirmity in the impugned order dated 18.6.2012 (Annexure no.1) passed by opposite party no.1/Board of Revenue, Lucknow .

The writ petition is dismissed accordingly. However, right of the parties in respect of the land in question will be governed by the final order/decision taken by the competent civil court .