

(2016) 07 AHC CK 0253

In the Allahabad High Court

Case No : Writ Petition No. 14157 of 2016 (Conso.)

Bindra Prasad

APPELLANT

Vs

Deputy Director of Consolidation Barabanki

RESPONDENT

Date of Decision : 04-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 121 ALR 588 : (2017) 1 CivCC 827 : (2017) 134 RD 4

Hon'ble Judges : Shabihul Hasnain, J.

Bench : Single Bench

Advocate : Virendra Kumar Shukla, Advocate, for the Petitioners; C.S.C, Shashi Kant Mishra, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Shabihul Hasnain, J. - Heard Sri V. K. Shukla, learned counsel for the petitioners and Sri R. D. Sahi for private opposite party Nos .4 and 5 while learned Standing counsel appears for the State.

2. Petitioner has challenged order dated 8.3.2006 passed by Deputy Director of Consolidation (D.D.C.), Barabanki along with order dated 12.11.2014 passed by Settlement Officer of Consolidation (S.O.C.), Barabanki. The impugned orders of D.D.C. and S.O.C. are against order of Consolidation Officer dated 22.9.2010 which is in favour of the petitioner.

3. Crux of the matter is that one Chhedda is said to have executed a sale deed in favour of Sant Ram-petitioners" brother on 16.2.1984. Mutation of the sale deed was made on 5.9.1991. The sale deed dated 16.2.1984 as well as Vasiyatnama dated 30.9.1985 both are registered documents which have neither been challenged nor cancelled by any competent Court till date. According to the petitioners Chhedda is said to have died in 1987. The opposite parties, however, have submitted that Chhedda died on 25.4.1982. The contents of the sale deed and the Vasiyatnama have been disbelieved by the S.O.C. as well as D.D.C. on

the basis of death certificate, which has been annexed as Annexure No.CA-2 to the counter affidavit filed by the opposite parties on page 4. Counter affidavit has been filed in the registry. For ready reference a copy of the counter affidavit has been filed by Sri R. D. Sahi and it is on record.

4. A perusal of the death certificate goes to show that it has been issued on 28.2.2003. The said orders have been passed on the directions of Khand Vikas Adhikari, Deva vide his letter No.6092 Tehsil Diwas/2003-04 dated 17.7.2003. The death certificate has to be issued under Section 13 of Registration of Birth and Death Certificates Act, 1969 read with Registration of Birth and Death Certificates Rules 2002, which came into existence on January 03, 2002. It appears that certificate of death which has been issued under sub-section 3 of Section 13 of the aforesaid Act was not issued by competent Magistrate and could not have been made the basis for nullifying the registered documents which were registered under the Registration Act in presence of the Registrar. The S.O.C. as well as D.D.C. have laid too much emphasis on their instincts. In the order the D.D.C. has relied upon the spelling mistakes in the name of Chhedda's daughter Sundara and her husband. Such presumptions or common instincts or common knowledge cannot be substituted in law. When death certificate itself is not tenable in law the presumption has to be in favour of registered sale deed as well as registered Vasiyatnama. The sale deed as well as Vasiyatnama have not been challenged anywhere. The witnesses of registration of sale deed as well as Vasiyatnama have not been said to have been put to interrogation or cross examination. As such, the presumption is always in favour of registered documents. Personal whims or ideas about laws cannot be a guiding factor for presumption taken otherwise.

5. Moreover, the opposite parties have obtained the death certificate after a period of nearly two decades. They were themselves sleeping over their rights, if any.

6. The Court is satisfied that the orders passed by S.O.C. as well as D.D.C. are based on conjectures and surmises. There is no challenge to the registration of sale deed and the will. So long the registered documents are available and they are not challenged, no presumption can be made in favour of anybody else.

7. In view of above, both the orders are liable to be set aside. They are hereby set aside. Consequences to follow.

8. The petition is allowed.