

(2010) 04 AHC CK 0062

In the Allahabad High Court

Case No : Writ Petition No. 2416 (M/S) of 2010

Chandrapal Singh and Another

APPELLANT

Vs

Board of Revenue, U.P. and Others

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 169, 171, 173

Citation : (2010) 6 AWC 5516

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Heard learned Counsel for the Petitioners and learned standing counsel and perused the record.

2. Through this writ petition the Petitioners have assailed the judgments passed by the Board of Revenue on 4.1.2010, by the Additional Commissioner on 9.11.1994 and by the Additional Tehsildar, Tehsil Kaiserganj, Now Mahsi, District Baharaich.

3. It emerges from the record that the Petitioners are nephews, i.e., brother's son of Late Sri Kant Singh in respect of whose land the dispute has arisen. Late Sri Kant Singh had died on 15.11.1985 leaving behind his wife Raghuraji alias Dharma and a married daughter Durgawati. During mutation proceedings before the concerned Additional Tehsildar objections were raised by the Petitioners staking their claim in the agricultural land left behind by their Uncle Lt. Sri Kant Singh. The Additional Tehsildar had taken note of the versions of the contesting parties, applying the line of succession as given in Section 171 of U. P. Zamindari Abolition and Land Reforms Act. He has ordered the mutation in favour of Smt. Raghuraji alias Dharma wife of Sri Kant Singh. The order was passed by the Additional Tehsildar, Kaiserganj, Now Mahsi, District Baharaich on 16.11.1988. It was challenged by the Petitioners by filing an appeal before the Sub-Divisional

Officer, appellate authority. This appeal was allowed on 5.10.1989. Being aggrieved by the order of the appellate authority Smt. Raghuraji alias Dharma, wife of Late Sri Kant Singh preferred a revision u/s 210 of Land Revenue Act before the Additional Commissioner (Judicial) Faizabad. The revision was dealt with, reference was made to the Board of Revenue with the recommendation that the revision be allowed and the appellate court's order dated 5.10.1989 be set aside. Accordingly the matter was dealt with by the Board of Revenue. It has affirmed the findings recorded by the Additional Tehsildar in his order dated 16.11.1988.

4. Sri Suresh Chandra, learned Counsel for the Petitioner has laid much emphasis on an unregistered Will dated 12.11.1985 by which 2/3 of the share in the land in dispute was given by his Uncle Lt. Sri Kant Singh to the Petitioners. During course of litigation the said unregistered Will was not found to be genuine, legal and valid Will by the Additional Tehsildar, Additional Commissioner and the Board of Revenue. Detailed findings have been recorded by the Court of Additional Tehsildar and Additional Commissioner. These courts have placed reliance on the provisions contained in Section 171 of U. P. Zamindari Abolition and Land Reforms Act as this stood on 15.11.1985 when the tenure holder had died. The relevant provisions of Section 171 is given below:

171. Subject to the provisions of Section 169 and 173, when a bhumidhar, sirdar or asami being a male dies, his interest in his holding shall devolve in accordance with the order of succession given below:

(a) male lineal descendant in the male line of descent:

Provided that the son of a pre-deceased-son how-low-so-ever shall inherit the share which would have devolved upon the deceased if he had been then alive:

(b) widow;

(c) father;

(d) mother, being a widow;

(e) father's father;

(f) father's mother, being a widow;

(g) widow of a male lineal descendant in the male line of descent;

(h) step-mother, being a widow;

(i) unmarried daughter;

(j) daughter's son:

(k) brother, being the son of the father as the deceased;

(l) unmarried sister;

(m) brother's son, the brother having been a son of the same father as the deceased;

(n) father's father's son;

(o) brother's son's son;

(p) father's father's son's son.

5. Naturally when at the time of death of the husband, i.e., Late Sri Kant Singh his widow/wife Smt. Raghuraji alias Dharma was alive certainly as per above provisions she will be entitled to be owner of the agricultural land held by her husband. After her death, i.e., on 9.9.1996 her daughter whether married or unmarried were entitled for the land in dispute as the land came to a female member in order of succession as per Section 171 of the U. P. Zamindari Abolition and Land Reforms Act.

6. All the three courts have recorded concurrent findings of fact in dealing with the matter. These are based on appreciation of oral documentary evidence and law. The Petitioners have failed to persuade this Court to form any other opinion other than the one already formed by the Additional Tehsildar, Additional Commissioner and the Board of Revenue. This Court has taken note that the tenure holder Late Sri Kant Singh had died on 15.11.1985, more than 25 years has passed his widow and daughter have been dragged in an unnecessary litigation for all these 24-25 years.

7. This Court is of the view that Rs. 10,000 be awarded as costs to be paid by the Petitioners to the Respondent No. 4-Durgawati daughter of Late Sri Kant Singh.

The Collector, Baharaich, Additional Tehsildar, Tehsil Kaiserganj, Now Mahsi, Baharaich are directed to implement the Orders passed by the Board of Revenue and Additional Tehsildar. The concerned entries in the revenue and consolidation records shall be corrected immediately and the possession of the land in dispute shall be provided to the Respondent No. 4-Durgawati, if the same is not available to her.

The compliance report shall be sent by the Collector, Baharaich to the Registry of this Court by 15th June, 2010 and a copy of the said report shall be placed on record of the writ petition.

In view of the above, the writ petition fails and the same is dismissed.