

(2013) 10 AHC CK 0071
In the Allahabad High Court
Case No : Writ C. No. 54280 of 2013

Dhirendra Pal Singh and Others	Vs	APPELLANT
Addl. Commissioner and Others		RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2013) 121 RD 610

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Rajeev Misra, for the Appellant; Mahesh Narain Singh and Neelam Pandey, for the Respondent

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Rajeev Misra learned Counsel for the petitioners, Sri Pankaj Rai, learned Counsel for respondents No. 4, 5 and 6, learned Standing Counsel for respondents No. 1, 2 and 9 and the learned Counsel for Gaon Sabha for respondent No. 8. The respondents No. 3 and 7 are the deceased-opposite parties in the proceedings. This writ petition has been filed questioning the order of the Sub-Divisional Officer dated 28.3.2012 and the revisional order dated 29.7.2013 whereby the Trial Court and the Revisional Court have both upheld an application filed by the respondents No. 4 to 6 who are the plaintiffs in the suit for staying the proceedings of their own suit.

2. The dispute appears to be about succession to the holdings of late Kushhal Singh, who died on 15.7.1990. The petitioners are the sons of the respondent No. 7 Late Sheesh Pal Singh who claim that they have a registered Will in their favour and accordingly in terms of section 169 of the U.P.Z.A. & L.R. Act, 1950, they have succeeded to the said holdings.

3. The respondents No. 4 to 6 are the married daughters of Narinder Pal Singh, one of the sons of Kushhal Singh, who died in 2006.

4. This claim has several dimensions of litigation between the parties including mutation, a suit filed by the respondent u/s 229-B of the U.P.Z.A. & L.R. Act,

1950 and a civil suit for injunction filed by the petitioners which is now engaging attention of this Court in a second appeal filed by the respondents and is pending.

5. The injunction suit filed by the petitioners was dismissed, but the appeal against the same succeeded and the petitioner's suit was decreed. The respondent filed second appeal No. 134 of 2011 in which this Court directed the parties to maintain status quo vide interim order dated 4.4.2011 and the same is admittedly continuing.

6. In the suit for declaration u/s 229-B of the 1950 Act as filed by the respondents No. 4 to 6 which has given rise to the present proceedings an application was filed by the said respondent to stay the proceedings of the suit in view of the said interim order passed by this Court in the second appeal.

7. So far as mutation is concerned, the petitioners" did not succeed before any of the authorities under the U.P. Land Revenue Act, 1901 and aggrieved they preferred a writ petition before this Court being Writ Petition No. 10491 of 2013 where an interim order has been passed directing the parties not to alienate the said land in dispute. The said interim order dated 27.2.2013 has been filed as Annexure 1 to the writ petition.

8. Sri Rajiv Misra, learned Counsel for the petitioners contends that the Will in favour of the petitioners is a registered Will and the same was never contested nor my proceedings were initiated for cancellation of the said Will. In the aforesaid background, Sri Rajiv Misra contends that there was no occasion for the Trial Court to have stayed the suit for declaration filed by the respondents and, as a matter of fact, the said declaratory suit should be concluded at the earliest.

9. Sri Pankaj Rai, on oral instructions, has informed the Court that a suit for cancellation of the Will has now been filed in 2013. Sri Misra submits that he has no knowledge about the filing of any such suit and in the aforesaid background the declaratory suit filed u/s 229-B of the U.P.Z.A. & L.R. Act, 1950 is an appropriate remedy and should be concluded at the earliest in order to avoid further complication.

10. After the matter was heard at length Sri Rai, learned Counsel for respondents No. 4 to 6 submits that the Trial Court can be commanded to conclude the proceedings at the earliest.

11. In the opinion of this Court, there is no impediment created by the pendency of the Second Appeal in the High Court which arises only out of a suit for injunction. The declaratory suit u/s 229-B of the 1950 Act can therefore proceed. Having heard the learned Counsel for the parties and in view of the aforesaid position, the impugned orders dated 28.3.2013 and the revisional order dated 29.7.2013 are set aside. The Trial Court, namely, the respondent No. 2 is hereby directed to proceed to dispose of the suit pending before it as expeditiously as possible preferably within a period of six months after providing an opportunity

to the contesting parties to lead their evidence and file submissions in accordance with law.