

(2011) 04 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32278 of 2008

Gayatri Devi

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 16-04-2011

Acts Referred:

Evidence Act, 1872 — Section 68

Succession Act, 1925 — Section 63

Uttar Pradesh Land Revenue Act, 1901 — Section 34

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

Citation : (2011) 5 ADJ 457 : (2011) 4 AWC 3853 : (2011) 113 RD 594

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard Sri K. Ajit, learned Counsel for the Petitioner and Sri S.K. Pal, learned Counsel for the contesting Respondent Nos. 4 and 5.

The parties do not dispute the following pedigree:

2. The dispute in this petition relates to the agricultural holdings of Tamesar, who died issueless on 4th May, 1982. The Respondents' predecessor Kodai claims to have inherited the property through a registered Will, stated to have been executed by Tamesar in his favour in the year 1978 during his life time. The Petitioner is the daughter of Jhagru and Ram Singari. Ram Singari claimed succession to the property on the basis of an unregistered Will, which is alleged to have been executed by Tamesar on 29th April, 1982 just five days before his death. Testamentary succession to the agricultural land is a recognized mode of inheritance u/s 169 of the U.P. Z.A. & L.R. Act, 1950.

3. Sri K. Ajit, learned Counsel for the Petitioner contends that Tamesar had been living with the husband of Ram Singari and, therefore, the Will was executed in favour of Ram Singari.

4. Ram Singari moved an application for mutation in proceedings u/s 34 of the U.P. Land Revenue Act. The name of Ram Singari was mutated in the basic year. The contesting Respondents filed an objection with the intervention of the consolidation operations and claimed succession to the property under the registered Will executed by Tamesar in favour of Kodai. The said objections were contested by the Petitioner's mother Ram Singari but as per the records available and in view of the admitted position, the Will on which reliance was being placed by Ram Singari, namely, the unregistered Will dated 29th April, 1982 was neither produced nor filed either before the Consolidation Officer or before the Settlement Officer Consolidation or before the Deputy Director of Consolidation during the revision. A copy of the said Will has been filed for the first time before this Court in this writ petition.

5. The Consolidation Officer after giving full opportunity and after having fixed various dates ultimately proceeded to decide the objections almost after more than 12 years. The matter went ex parte against the mother of the Petitioner as she had failed to appear and adduce evidence. The Consolidation Officer recorded that in the absence of any evidence being led by the Petitioner's mother, the issue was answered against her and so far as the claim of the contesting Respondents are concerned, the same was accepted on the basis of the evidence that was led by them.

6. Needless to mention that the order of the Consolidation Officer records that the Petitioner was given ample opportunity to object to the statement of the beneficiary of the Will as well as the marginal witness of the Will before the Consolidation Officer. The Petitioner did not avail the opportunity to cross examine the witness or contest the evidence that was allegedly led by the contesting Respondents. This fact has been clearly recorded in the order of the Consolidation Officer. The Consolidation Officer, therefore, proceeded ex parte and allowed the objections of the Respondents.

7. An appeal was filed by the Petitioner, as by that time Ram Singari had died. The appeal has been dismissed after recording clear findings that the Petitioner had been extended ample opportunity to prove her case and having failed to prove the same, there was no occasion to entertain the appeal which was accordingly, dismissed and the order of the Consolidation Officer was upheld.

8. In revision, the Deputy Director of Consolidation has affirmed the orders passed by the authorities below.

9. Sri K. Ajit contends that the contesting Respondents, who are relying on a registered Will had produced the same but the Consolidation Officer did not record any finding accepting the fact of the will being proved before him. The argument in essence is that no satisfaction has been recorded as required under law to establish the execution of the Will in favour of the contesting Respondents. He, therefore, submits that the Respondents having failed to prove their case and no finding having been recorded, the claim of the Petitioner cannot be

negated merely on the ground that the Petitioner had failed to adduce any evidence in respect of the unregistered Will dated 29th April, 1982. He therefore contends that the order on merits was vitiated.

10. So far as non filing of the objections is concerned, Sri K. Ajit submits that the objections can be allowed on imposition of costs if the Court comes to the conclusion that there was any negligence on the part of the Petitioner in holding the matter before the authorities.

11. Sri S.K. Pal, learned Counsel for the contesting Respondents submits that the entire case indicates that the unregistered Will which was being relied upon by the Petitioner was never produced nor was made available to contradict the evidence that had been adduced on behalf of the Respondents. He further submits that the Respondents were entitled to the order passed by the Consolidation Officer and even otherwise the Petitioner's conduct was clearly to the effect of harassing the answering Respondents. The Settlement Officer Consolidation in appeal has, therefore, proceeded to record the entire details and has thus arrived at a conclusion that the order of the Consolidation Officer did not deserve any interference. He further submits that the revision also was rightly dismissed and hence there being no merit, this petition also deserves the same favour.

12. Sri K. Ajit relying on the decision passed in the case of Rameshwar Dayal v. Banda (dead) through his L.Rs. 1993 (1) ARC 249 (SC), contends that since the Respondents had failed to prove their Will, even if it was registered, and the Court had failed to proceed to record specific findings after framing an issue thereon, then in that view of the matter, the order of the Consolidation Officer cannot survive and, therefore, the impugned orders deserve to be set aside. In respect of the allegations of negligence on the part of the Petitioner, the Court, if so chooses, may impose costs on the Petitioner.

13. Having heard learned Counsel for the parties, the admitted fact is that the Petitioner failed to produce the unregistered Will before the Consolidation Authorities or produce any evidence in support of the same before them, therefore, the authorities draw an adverse inference in respect of the conduct of the Petitioner and as such, the said findings, which could not be successfully disputed before this Court, do not deserve any interference.

14. So far as the question of proving of the Will set up by the Respondents, which is a registered will is concerned, suffice it to say that the burden had been discharged by the Respondents by producing a marginal witness and also getting his statement as well their own statement recorded, which has been noted in the order of the Consolidation Officer. This complies with the provisions of Section 63(c) of the Succession Act read with Section 68 of the Indian Evidence Act, 1872. The said evidence was not rebutted by the Petitioner.

15. These circumstances by itself, disentitle the Petitioner to get any discretionary relief. Even though the Consolidation Officer may not have

proceeded to write his judgment in accordance with the guidelines as indicated in the judgment of the Ramesh Dayal (Supra), yet the Petitioner having failed to prove his case inspite of a long opportunity that was not availed of she is not entitled to dispute the claim of the Respondent.

16. The writ petition lacks merit and is accordingly dismissed.