
(2012) 04 AHC CK 0061
In the Allahabad High Court
Case No : C.M.W.P. No. 42751 of 2006

Gopal and others	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Citation : (2012) 4 AWC 4118

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

Bench : Single Bench

Advocate : Durga Tiwari, for the Appellant; A.K. Singh, N.K. Singh and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard Mrs. Durga Tiwari learned counsel for the petitioners and Sri. N.K. Singh for the contesting respondents.

This petition arises out of proceedings in relation to entries made in a Register maintained under the Uttar Pradesh Panchayat Raj (Maintenance of Family Registers) Rules, 1970.

The dispute relates to the date of death of one Balli. The petitioner claims his holding and property on the basis of an unregistered Will contending that Balli was the uncle of the petitioner who executed an unregistered Will on 15.6.1985 in his favour. Balli, according to the petitioner, died on 14th July, 1985 whereafter he got his names mutated in the revenue record.

The contesting respondents 4 and 5 are the sons-in-law of late Balli. The petitioner being the nephew contended that since he succeeded under the aforesaid Will, the contesting respondents cannot claim the holding of late Balli.

2. The respondents set up a case that Balli died on 15th January, 1987 and not in 1985 and as such the entire proceedings on the basis of the Will as claimed by the petitioner are fake. They also set up sale deeds in their favour said to have

been executed by Balli on 3.8.1985 and 7.8.1985.

3. The date of death, i.e., 14.7.1985 as recorded in the Family Register under the 1970 Rules aforesaid was, therefore, sought to be corrected by the contesting respondents to 15.1.1987, as the petitioner had filed a civil suit for cancellation of the sale deeds set up by the respondents which had been decreed ex parte on 11.8.1988.

4. The respondents, therefore, attempted to get the date of death corrected which according to the petitioner was an attempt made after 15 years and had no basis and it was only a device to somehow create evidence in their favour for the purpose of the suit.

5. This according to the learned counsel for the petitioner was done after a restoration application had been filed on 9.2.2000 in the suit. The restoration application was entertained and the suit was restored whereafter it was dismissed on merits on 24.5.2004. A copy of the judgment of the trial court, namely, Civil Judge (Senior Division), Kushinagar, Padrauna has been placed before the Court and the following finding has been recorded therein by the civil court while deciding Issue No. 1:

It is, therefore, evident that the civil court has proceeded to record its finding on the basis of the corrected Family Register and has made it a basis to record a finding against the petitioner.

6. Learned counsel submits that if the impugned orders are not set aside the same will continue to remain binding on the petitioner as the civil court has recorded a finding on the basis thereof.

It is undisputed that an appeal has been filed against the judgment of the civil court dated 24.5.2004 by the petitioner which is still pending.

7. In the opinion of the Court any order relating to the correction of entry of date of death in the Family Register is a summary proceeding under the 1970 Rules aforesaid.

8. If such an entry has been corrected and has been made the basis for evidence then in the opinion of the Court the same is rebuttal and it is open to the petitioner to challenge the said evidence before the civil court itself. Even if an incorrect finding has been recorded by the civil court according to the petitioner, and an appeal has been filed against the judgment and decree of the trial court, it is still open to the petitioner to contest the aforesaid entry before the appellate court itself as the judgment and decree of the civil court finally adjudicating such an issue would be binding on the parties.

9. Accordingly, I am not inclined to interfere with the order recorded by the authorities under the 1970 Rules which in my opinion is always subject to the findings recorded by the civil court. The appeal filed against the dismissal of the suit is still pending. It shall be open to the petitioner to contest the findings so

recorded in the summary jurisdiction under 1970 Rules before the appellate authority itself. In the circumstances aforesaid, this writ petition need not be kept pending any further and is consigned to records with the aforesaid observations.