
(2015) 03 AHC CK 0132
In the Allahabad High Court
Case No : Writ-C No. 4443 of 2015

Hakim Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 34

Citation : (2015) 127 RD 600

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Manjari Singh, for the Appellant

Final Decision : Partly Allowed

Judgement

Anjani Kumar Mishra, J.

1. Heard Shri Kunal Ravi Singh, learned Counsel for the petitioner and Shri Ansar Ahmad, who has filed caveat on behalf of respondent No. 4. This writ petition is being decided finally without calling for a counter affidavit in view of the order passed on 19.1.2015 while reserving the judgment in this case. The relevant portion of the order is quoted below:--

"It has been stated by the learned Counsel for the petitioner that respondent No. 5 in the writ petition is only a formal party inasmuch as he had set up a claim on the basis of an un-registered Will, which was discarded by the Courts below. These orders have never been challenged by him any further and, therefore, he has no interest in the writ petition as such.

As far as respondent No. 6 is concerned, it has been stated that she has, in fact, supported the case of the petitioner. Therefore, the writ petition can be decided finally without issuing any notice to respondent No. 6, as also to respondent No. 5."

2. This writ petition arises out of a mutation case under section 34 of the U.P.

Land Revenue Act and is directed against the order dated 27.1.2014 passed in Revision No. 2006/LR/2011/12, the order dated 15.12.2014 passed on a review application filed by the petitioner and the order dated 20.4.2012 passed in Revision 91 of 2012.

3. The facts of the case are that the dispute between the parties pertains to land of village Bilhati, Mauja Pipripur, Pargana Bharthana, District Etawah which admittedly belong to Durjan Singh who died on 9.8.2010. The petitioner claims on the basis of a Will dated 11.12.2003 said to have been executed by Durjan Singh in his favour. This will has been registered on 27.9.2010.

4. It appears that on the death of Durjan Singh, the property in question was recorded in the name of his two wives on the basis of a PA-11 entry.

5. The petitioner filed an application under section 34 claiming on the basis of the Will in his favour.

6. It is the contention of the petitioner that despite a stay order having been granting staying the proceedings under PA-11, the two wives of Durjan Singh were mutated. However, the PA-11 entry was set aside on 9.2.2011 on the ground that it had been made during the pendency of the mutation case.

7. Against the order dated 9.2.2011, two revisions were filed, one by Smt. Sukhrani and Smt. Vidyawati which was subsequently withdrawn. The other revision being revision No. 91 of 2011 was filed by Ganga Singh who claimed on the basis of a sale deed executed by Smt. Vidyawati in his favour. In this revision, an objection was filed by Smt. Vidyawati accepting the Will and stating that the sale deed in favour of Ganga Singh had been obtained by fraud.

8. The revision filed by Ganga Singh was allowed on the ground that the Will in favour of the petitioner was an un-registered Will, the order dated 9.2.2011 was quashed and the matter was remanded back for a decision after hearing the parties.

9. Aggrieved by this order, the petitioner preferred a revision before the Board of Revenue which was also dismissed on the ground that the Will in his favour was an un-registered one. Since it is the categorical case of the petitioner that the Will in his favour was a registered document, a review application was also filed before the Board of Revenue which has also been dismissed on 12.2.2014. Hence this writ petition.

10. The primary contention of the learned Counsel for the petitioner is that the Will in his favour was a registered document. A photostat copy of the Will has been annexed with the writ petition and its perusal reveals that it has been registered and, therefore, it is clear that the very basis of the impugned orders is incorrect. The Courts below have misread and misconstrued a registered document holding it to be un-registered and have decided against the petitioner on the basis of such misreading.

11. Learned Counsel for the caveator-respondent on the other hand submitted that Will was executed in 2003 but it has been registered two months after the death of Durjan Singh the testator. Besides, another subsequent will, executed by Durjan Singh in favour of his wives exists. This Will was executed after the year 2003 and, therefore, is subsequent in time and Will prevail over the Will set up by the petitioner which was executed in 2003.

12. I have considered the submissions made by the learned Counsel for the parties and have perused the record.

13. As already noticed herein above, the copy of the Will in favour of the petitioner annexed to the writ petition is clearly a registered will. The finding recorded by the Court below that this Will is un-registered, therefore, is clearly incorrect. It is also not in dispute that the matter stands remanded back for a fresh decision on merits.

14. The petitioner is only aggrieved by the finding that the Will in his favour is an un-registered one. It is, therefore, his submission that the matter be decided afresh in pursuance of the order of remand treating his Will to be a registered one.

15. As regards the submission made by the learned Counsel for the caveator-respondent it would suffice to state that the objections that are being raised are on the merits of his claim. He is not in a position to dispute the factual position that the Will in question in favour of the petitioner has been registered. His only contention in this regard, is that it was registered after the death of the testator and, therefore, the same will confer no right, title or interest upon the petitioner.

16. The submissions made by learned Counsel for the respondent in my considered opinion, are required to be considered by the Court where the matter has been remanded. Admittedly these aspects have not been considered by any of the Courts and the Will in favour of the petitioner has been discarded only on the incorrect reasoning that it is un-registered and, therefore, I refuse to consider the submissions made by the learned Counsel for the caveator-respondent.

17. In the aforesaid facts and circumstances, I dispose of the writ petition and direct the Court concerned to decide the dispute between the parties on its merits, treating the Will in favour of the petitioner to be a registered will.

18. It is further clarified that this Court has not considered the submissions of the respondent No. 4 as regards the efficacy or genuineness of the Will in favour of the petitioner and it is for the Court concerned to consider and decide these questions in accordance with law, after hearing the parties without being influenced by any observation in the body of this judgment. Accordingly, the writ petition is allowed in part. The matter shall be decided on its merits by the Tehsildar pursuant to the order of remand, treating the Will in favour of the petitioner to be a registered document.