(2016) 08 AHC CK 0247

In the Allahabad High Court

Case No : Writ-B No. 17678 of 2012

Hari Saran APPELLANT

Vs

Prakash Chandra @ Guddu RESPONDENT

Date of Decision : 10-08-2016

Acts Referred:
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39

Citation : (2016) 132 RD 722

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Shachindra Nath Upadhyay, B.D. Mishra and Murlidhar, Advocates, for the Petitioner; C.S.C, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Civil Misc. Review Application No. 203476 of 2014 Heard Sri R. S. Parihar along with Sri B. D. Mishra for the review applicant.

2. The writ petition was dismissed by judgment dated 20.5.2014. Now the petitioner has moved this application for review of the judgment dated 20.5.2014.

3. The writ petition was filed against the order of Collector dated 17.8.2010 by which revision was allowed and the order of Tehsildar dated 9.1.2007 was set aside and the matter was remanded to Sub Divisional Officer to decide the case under Section 33/39 of UP Land Revenue Act, 1901 (hereinafter referred to as the Act) on merit.

4. Since the order of Collector was simple order of remand, therefore this Court declined to interfere in the matter as the petitioner has every opportunity to agitate his grievance before the Sub Divisional Officer. The reason for allowing the revision as recorded by the Collector in the impugned order dated 17.8.2010 was that the proceeding for correction of revenue record under Section 33/39 of the Act was maintainable before the Sub Divisional Officer and the Tehsildar had no jurisdiction to make any correction in the revenue record. Therefore, the

order of Tehsildar dated 9.1.2007 is without jurisdiction. So far as the claim of the petitioner on merit is concerned, the petitioner has opportunity to satisfy genuineness of his case before the Sub Divisional Officer as the matter was remanded to the Sub Divisional Officer.

5. The counsel for the review applicants submits that the village has undergone under consolidation operation, therefore, in view of Section 49 of UP C. H. Act, 1953 the revenue and Civil Court has no jurisdiction to pass any order in the matter in which the notification under Section 52 has been issued. He relied upon the judgement of Supreme Court in Zafar Khan v. Board of Revenue, UP and others 1984 AWC page 834 (SC) and Judgement of this Court in Jagardev v. Board of Revenue and others 1986 RD page 292.

6. I have considered the arguments of the counsel for the review applicants.

7. A perusal of the aforesaid judgements shows that in those cases relying upon Section 49 of UP C.H. Act, 1953 and it has been held that no fresh suit before the civil or revenue court are maintainable, in respect of the matters which ought to have been raised before the consolidation authorities or the matter has been raised and decided by the consolidation authorities. So far as the proposition of law in this respect, is not in dispute in the present case. The present case is related to correction of revenue record. The revenue record finally prepared by the consolidation authorities were submitted to the Collector in view of Section 27 of U.P.C.H. Act, 1953. In final record the name of the petitioner was not there, it is only by way of amaldaramad made purporting on the basis of the order of Tehsildar name of the petitioner came to be entered in the revenue record. Thus amaldaramad is in dispute in the present case.

8. Section 27, Sub -Section 3 of UP C. H. Act, 1953 provides as follows:-

"27 (3) After the issue of notification under Section 52, the Collector shall, instead of the map, field -book and record -of-rights previously maintained by him, maintain the map, field-book and record of rights prepared in accordance with the provisions of sub-section (1) [and the provisions of the UP Land Revenue Act, 1901, relating to the maintenance and correction of such map, field book and record of rights shall mutatis mutandis apply]."

9. Thus the final consolidation record as prepared by the consolidation authorities is required to be maintained and corrected by the revenue court according to the provisions of UP Land Revenue Act. If any forgery or unauthorised entry has been done in the final record prepared during consolidation then certainly it is within the jurisdiction of revenue court to correct it in exercise of powers under Section 33/39 of UP Land Revenue Act, 1901 as held by Division Bench of this Court in Gafoor v. Additional Commissioner and others 1979 RD 76 (DB) and Ali Khan v. Ram Prasad, 1981 RD 77 (DB).

10. The matter has been remanded to the Sub Divisional officer who is competent authority in the proceeding under Section 33/39 of the Act. Therefore,

the impugned order does not suffer from any illegality. There is no need to review the judgement dated 20.5.2014.

11. The review application is rejected.

