(1999) 05 AHC CK 0108

In the Allahabad High Court

Case No : Writ Petition No. 662 (M/S) of 1998

Jai Narain Ojha APPELLANT

Vs

Gauri Shankar and Others RESPONDENT

Date of Decision : 20-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 05 AHC CK 0108

Hon'ble Judges : R.D.Shukla, J

Final Decision : Dismissed

Judgement

R.D.Shukla, J.—This writ petition has been filed for a writ of certiorari praying for quashing of judgment and order dated 2821998 in Annexure 10 to the writ petition passed by Additional Commissioner. Allahabad.

2. The aforesaid order passed by the Additional Commissioner set aside the order dated 6101997, passed by the Assistant Collector, Patti which was passed in appellate jurisdiction under Land Revenue Act and it set aside the order passed by the Tehsildar. These orders related to mutation proceedings on the basis of Will allegedly executed in favour of one of the parties before the Additional Commissioner. The genuineness of the Will had been contested in the mutation proceedings before these revenue authorities. The order of the Additional Commissioner upheld the Will dated 20th January, 1978 executed by one Ram Avadh in favour of Gauri Shankar and Surya Narain. It is not in dispute between the parties that decision given by the Land Revenue Authorities in mutation proceedings can be challenged in a regular suit. The decision given by the competent Court in such a suit when it becomes final shall be binding on the parties.

3. The petitioner contended in this writ petition that the Additional Commissioner was not competent to pass the impugned order under Section 219 of Land Revenue Act on the ground that the impugned order considered facts and decided the question of genuineness of Will. A bare reading of Section 219 of

Land Revenue Act clearly shows that when there is material irregularity in the exercise of jurisdiction, the revisional Court can interfere under Section 219 of the said Act. The question of material irregularity always relate to mixed question of facts and law and, therefore, the impugned judgment obviously has been passed under Section 219ofU.P. Land Revenue Act.

4. The petitioner raised other contentions regarding the date of death of the person who allegedly executed the Will, but again this is a question of fact and should not be gone into in this writ petition because Only competent Court can give its finding when a suit is filed before it after the decision given by the revenue authorities in mutation proceedings as is the case with Annexure10 to this writ petition.

5. Earlier the revisional power with reference to mutation proceedings vested with Board of Revenue and its exercise depended upon the reference made by the Commissioner. Now this revisidnal power of Board of Revenue has been given under Section 219 of UP, Land Revenue Act to the Commissioner.

6. In Akhtari Hussain and another v. Board of Revenue, Lucknow and others, 1987 RD 244, it has been held that question of title is not conclusively decided in mutation proceedings and parties can get a judgment from appropriate Court on question of their title over disputed property.

7. In Shiv Raj Gupta v. Board of Revenue, U.P, 1989 RD 35, it has been held that a writ petition under Article 226of the Constitution of India is not maintainable challenging an order passed by revenue authorities in mutation proceedings under Land Revenue Act because the judgment and order passed by the revenue authorities in mutation proceeding are not conclusive because competent Court in a regular suit for title can ignore the observations made by the revenue authorities in mutation proceedings.

8. These circumstances and the contentions on behalf of the parties having been considered in the light of grounds alleged in the writ petition and I am of the view that the petitioner can go to a regular Court to get the question of title decided by filing a regular suit if the mutation Courts have not recorded correct conclusions with reference to the factual and legal positions Between the parties and that being the case the writ petition is not maintainable,

9. In view of the consideration given above, writ petition is not maintainable and, therefore, it is dismissed with costs on parties. Petition dismissed.

