(1981) 02 AHC CK 0064

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 739 of 1977

Lokman Dass APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 11-02-1981

Acts Referred:
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (1981) AWC 192

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : Prakash Gupta, for the Appellant; K.B. Garg and Kamta Natha, for the Respondent

Final Decision : Allowed

Judgement

A.N. Varma, J.—This petition is directed against an order of the Board of Revenue dated 27-1-1977 allowing a second appeal filed by the contesting Respondent No. 3 in respect of a suit filed by the Petitioner u/s 229-B of U.P. Zamindari Abolition and Land Reforms Act, for a declaration that the Petitioner be declared an exclusive bhumidhar of the land in suit.

2. The suit giving rise to this petition was filed by the Petitioner on the assertion that one Mansaram was the bhumidhar of the land in suit. He executed a will on 4-6-1965 whereby he bequeathed the property in suit in favour of the Petitioner. In the will, he also made a provision that hi? widow Shrimati Jhunnoo mother of Respondent No. 3 should be maintained by the Petitioner with the help of one-fourth of the profits from the proudce of the land in dispute. There were certain other provisions made in the will for Shrimati Jhunnoo. It is not necessary to set out the will in detail. Despite that will, Shrimati Jhunnoo got her name entered in the revenue records over the property which stood in the name of Mansaram. Hence the suit.

3. The suit was contested by Shrimati Jhunnoo, who died during the pendency of

the suit and is now represented by Respondent No. 3, her daughter. In defence, it was asserted that the will set up by the Plaintiff was not a genuine document. Mansaram did not execute any will. Shrimati Jhunnoo, as the widow of Mansaram, succeeded to the property left by Mansaram, and her name was, therefore! rightly mutated in the record. She was also in possession over the property as its rightful tenure-holder.

4 The trial Court dismissed the suit holding that the Plaintiff had failed to prove that Mansaram had executed any will in his favour.

5. Aggrieved, the Petitioner filed an appeal which has been allowed. The appellate Court upon a very exhaustive consideration of the oral and documentary evidence on the record disagreed with the trial Court and held that Mansaram did execute the will in question, and that on the basis of that will, the Petitioner was entitled to a declaration sought in the suit. The suit of the Petitioner was consequently decreed.

6. Against the decree passed by lower appellate Court, the Respondent No. 3 filed a second appeal before the Board of Revenue. The Board of Revenue Interfered with the aforesaid finding of the first appellate Court on the question of genuineness and execution of the will and held that on the evidence on record, it was not proved that Mansaram had executed any will in favour of the Plaintiff. The second appeal was allowed and the suit of the Plaintiff was dismissed. Hence, this petition.

7. learned Counsel for the Petitioner contends that the Board of Revenue acted with manifest illegality in setting aside the finding recorded by the first appellate Court on a pure question of fact upon a mere reassessment of the evidence on record. It was urged that the Board of Revenue could interfere with the findings of fact only if those findings were vitiated by some error of law and not otherwise. No error of law was found by the Board of Revenue to have been committed by the first appellate Court in arriving at that fining.

8. Having heard learned Counsel for the parties, I am of opinion that the contention raised by the petitioners'' counsel is well founded. The Board of Revenue has observed that the question whether the will was genuine or not was a question of law and could, therefore, be gone into in a second appeal. This observation clearly shows that the learned member of the Board of Revenue, who was hearing the second appeal, did not properly comprehend the limitations of his jurisdiction in a second appeal. It is indisputable that the question whether the will was executed or not or whether it was genuine or otherwise were pure questions of fact. The inference which was to be drawn from the proved facts were also questions of facts and not law - See Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras, . The Board of Revenue has set aside the finding on the aforesaid question on a mere reappraisal of the evidence on record. It has embarked upon an assessment of the statements made by various witnesses as well as of the value to be attached to various pieces of evidence

existing on the record. This was entirely impermissible in a second appeal. learned Counsel for the Respondent vehemently contended that the Board of Revenue was certainly entitled to go into the question whether the appellate Court had properly interpreted the application dated 6-10-1969 which had been filed by the Petitioner before the District Judge under the provisions of Lunacy Act. learned Counsel contended that this application contained a vital admission made by the Petitioners and the first appellate Court had brushed aside the same on a mis-appreciation of the basic facts. Even if it be assumed that this application contained some kind of admission attributed to the Petitioner, the first appellate Court had fully considered the effect and implication of this application. The inference which the first appellate Court had drawn from the recitals contained in this application cannot be said to be an impossible one. The first appellate Court having considered the said application and drawn an inference therefrom, which was a possible one, the second appellate Court could not legally interfere with the finding merely because it was persuaded to take a different view of that application.

9. Prom a reading of the judgment of the Board of Revenue, I do not find that the Board of Revenue discovered any error of law in the finding recorded by the first appellate Court. At least, Hone was established. Under the circumstances, it was not open to the Board of Revenue to set aside the judgment of the Additional Commissioner.

10. In the result, the petition succeeds and is allowed. The order passed by the Board of Revenue dated 27-1-1977 is quashed, and that passed by the Additional Commissioner dated 21-8-1972 is restored. There will be no order as to costs.

