
(2012) 01 AHC CK 0078
In the Allahabad High Court
Case No : C.M.W.P. No. 53800 of 2011

Madan Lal and Another

APPELLANT

Vs

D.P.C., Badaun and Others

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146
Evidence Act, 1872 — Section 68
Land Reforms Act, 1950 — Section 171, 172
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 34

Citation : (2012) 2 AWC 2117

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

Bench : Single Bench

Advocate : Rama Shanker Mishra, for the Appellant; C.B. Kushwaha and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard Sri R.S. Mishra, learned counsel for the petitioners.

The pedigree as disclosed in paragraph 5 of the writ petition, which is necessary to understand the present controversy, is reproduced hereinunder :

The petitioners are the nephews of late Ved Ram. The respondents herein are claiming their rights through Gomti widow of Ved Ram. The petitioners set up a Will said to have been executed and registered on 1st November, 1991 by Ved Ram. They alleged that Ved Ram died on 2nd of November, 1991. The name of Gomti widow of Ved Ram came to be mutated in revenue records even prior to the consolidation operations on a report submitted by the Revenue Officials under PA-11. However, the said mutation order is alleged to have been stayed. Gomti is said to have executed sale deeds on 10.1.1992 and 15.1.1992 in favour of the respondents 3 to 13. The petitioners claim to have filed Original Suit No. 47 of 2010 before the learned Civil Judge for cancellation of the said sale deeds which is said to be pending.

2. The consolidation operations had set in under the provisions of the Uttar Pradesh Consolidation of Holdings Act. 1953 and accordingly objections were filed by the petitioners claiming title over the disputed land on the basis of their registered Will dated 1.11.1991.

3. The matter proceeded and one Pratap Singh, said to be the attesting witness of the Will was produced and whose statement was recorded whereafter he was cross-examined. A copy of his statement is Annexure-4 to the writ petition. The Consolidation Officer, vide order dated 22.12.2009, allowed the objections filed by the petitioners accepting the statement of the attesting witness and held that the petitioners are entitled to succeed to the holding of Ved Ram.

4. It is relevant to note that in between an ex parte order had been passed by the Consolidation Officer on 17.7.2003 which came to be recalled on 25.11.2003. The Consolidation Officer in a very cryptic manner while finally deciding the issue Nos. 1, 2, 3 and 4 recorded his conclusions, vide order dated 22.12.2009. Aggrieved, the respondents filed an appeal against the said order. The Settlement Officer Consolidation after threadbare disclosing the statement of the attesting witness recorded categorical findings to the effect that the witness has failed to prove the Will as his statement was self contradictory, and that the second attesting witness Nain Sukh had not been produced who was reported to be dead. No other witness was produced to prove the execution of the Will. The scribe of the Will Ramesh Chandra Mishra was also not produced. The appellate court also entertained additional evidence in the shape of a death certificate indicating that Ved Ram had died on 2nd of April, 1991 and not on 2nd of November, 1991. Accordingly, he held that the death certificate which has been relied upon by the Consolidation Officer stands contradicted and the Will appears to have been forged and got prepared later on. Aggrieved, the respondents filed a revision which has also been dismissed by the Deputy Director of Consolidation.

5. Learned counsel for the petitioners submits that the Deputy Director of Consolidation has failed to advert to any of these findings and has simply passed an order of affirmance and, therefore, the impugned order deserves to be set aside. He further submits that the death certificate which had been relied upon by the petitioners could not have been disbelieved on the basis of a subsequent death certificate filed at the appellate stage. He, therefore, contends that the order of the Settlement Officer. Consolidation is also erroneous on merits.

6. Having heard learned counsel for the petitioners, the petitioners have contended before the Consolidation Officer that the order passed by the Revenue Authorities u/s 33/34 of the Uttar Pradesh Land Revenue Act, 1901 for mutation are summary proceedings and, therefore, they need not be accepted on their face value. The mutation in favour of Gomti is of no relevance.

7. It is true that the orders of mutation are summary in nature but their relevancy in terms of the Indian Evidence Act. 1872 has to be taken into account at least for the purpose of possession and not for the purpose of adjudicating

title. This issue as to what is the impact of an order of mutation vis-a-vis title proceedings, came to be considered in the case of Bhurey v. Pir Bux and others, 1973 AWR 279, which came up for further consideration by way of a reference before a Division Bench in the case of Algoo and Others Vs. Dy. Director of Consolidation and Others, , and the law was further reiterated in the case of Rajpati and Another Vs. The Deputy Director of Consolidation and Others, . A perusal of the aforesaid decisions indicates that the relevancy of mutation orders is adjudged for the purpose of possession even though it may not be binding for the purpose of adjudicating title.

8. An order of mutation, particularly in relation to immovable property is basically for fiscal purposes. The realisation of revenue and taxes is based on such entries. A revenue entry of mutation is not a declaration conferring title. It is at best a prima facie indication of the holder of the title. The reason is that while passing an order of mutation, there is no adjudication of title before a court of law. It is, therefore, a summary proceeding subject to any declaration or adjudication by a competent forum. If the revenue official entrusted with powers of mutation is presumed to be possessed of such authority it will amount to appointing him an authority of arbitration which, as in such cases is generally not the intendment of the Legislature, A Lekhpal or any subordinate revenue official or a record keeper is not entrusted with authority to adjudicate and, therefore, any entry endorsed by them is a summary act subject to the orders of statutory authorities duly authorized for the same.

9. In my opinion also an order of mutation may be of a persuasive value yet the Court deciding a matter of title in regular proceedings can proceed independently to assess the evidence and arrive at its own findings. This is not to say that the evidence has to be ignored but to assert that the jurisdiction of the Court conducting an original trial includes the power to either believe or disbelieve any such summary nature of orders which are pressed into service as evidence. The admissibility and relevancy of such evidence is a different matter altogether as against its acceptability or binding nature in the proceedings relating to title on the regular side before a court of competent jurisdiction. This is necessary in order to uphold the jurisdiction of the court to independently deal with any such evidence that may be pressed in the shape of a public document for raising a presumption in relation to entries under the revenue law. The Indian Evidence Act, 1872 enables a Court to treat public documents to be relevant if they are related to the facts in issue. Accordingly, the view that a summary nature of order will have no relevance at all may not be the correct position of law. It may not have a binding effect, yet it can be pressed into service as evidence and a rebuttable presumption can be raised in respect thereof.

10. To illustrate it further, proceedings relating to attachment under Sections 145 and 146 of the Criminal Procedure Code, 1973 of Immovable property are summary in nature for the purpose of enabling the party in possession to retain the same till their rights are decided by a regular forum. Even such orders that

are passed by the Magistrate are relevant as has been held by the Supreme Court in the case of Shanti Kumar Panda Vs. Shakuntala Devi, .

11. The relevancy of such orders in the present case arose as the petitioners did not institute any proceedings immediately and waited for consolidation operations to commence to file their objections. The Settlement Officer, Consolidation has also noticed this fact while reversing the order of the Consolidation Officer.

12. Coming to the main issue relating to the proving of the Will by the petitioners, the provisions of Section 68 of the Indian Evidence Act, 1872 require the proving of a Will by clearing all doubts about its execution.

13. In the instant case, the own witness of the petitioners who is the attesting witness namely Pratap Singh narrated the facts in a manner which have been recorded by the Settlement Officer, Consolidation to reflect serious contradictions which create an enormous doubt about the execution of the Will. The same attesting witness had also filed an affidavit denying any such execution and which affidavit has been treated to be a private document of the witness. The said affidavit also clearly substantiates the stand of the respondents that the Will appears to have been prepared within a short interval in close proximity of the date of death of Ved Ram. This, therefore, did cast a serious doubt and covered the Will with a cloud which has not been cleared by the petitioners by any further evidence. The Settlement Officer, Consolidation, therefore, in my opinion, rightly after threadbare dealing with the said statement of Pratap Singh came to the conclusion that the Will was not proved by the attesting witness and its execution being seriously doubtful, the petitioners cannot succeed.

14. One of the other reasons given by the Settlement Officer, Consolidation is that there is no explanation in the Will as to why the daughters of Ved Ram were being eliminated from the line of succession. For this, Sri Mishra submits that the recital in the Will indicates that the daughters wanted to usurp the property during his life time and, therefore, he was executing the Will. This expression in the Will is also ridiculous, inasmuch as, if the daughters intended to usurp the property during his life time then the executor could have taken steps for its protection during his life time and not for the period after his death through a Will. In such a situation, the Settlement Officer, Consolidation has rightly arrived at a conclusion that the reason to eliminate the valid and legal heirs under the provisions of Sections 171 and 172 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 are not available which also casts a doubt on the execution of the Will. The contention of Sri Mishra that the Deputy Director of Consolidation has not recorded any independent finding and, therefore, the order is vitiated. His argument deserves rejection, inasmuch as, the order of the Deputy Director of Consolidation is one of affirmance and he has accepted the findings of fact relating to the Will set up by the petitioners. In my view such an order of affirmance did not require giving of any separate reasons in view of the fact that the reasons afforded in support of the appellate order were sufficient to

reject the claim of the petitioners. I, therefore, find no error in the same.
The writ petition lacks merit and is hereby dismissed.