

(2011) 08 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37352 of 2000

Madhuri Devi and Another

APPELLANT

Vs

Board of Revenue, U.P. at Lucknow and Others

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171, 229B, 343

Citation : (2011) 7 ADJ 917

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

Bench : Single Bench

Advocate : Sankatha Rai, for the Appellant; Mohan Yadav and V.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri Ashok Singh, learned counsel for the petitioners and Sri Sunil Kumar Yadav, learned counsel for the respondent No. 6. The petition arises out of a suit u/s 229-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "the U.P.Z.A. & L.R. Act") for a declaration to the effect that the respondent No. 6 plaintiff be declared to be the successor of the holding in dispute that was recorded in the name of late Jagdeo.

2. The petitioner No. 1 is the daughter of the petitioner No. 2 and the petitioner No. 2 is the natural son of late Jagdeo. When the suit was instituted by the respondent No. 6 claiming himself to be the son of late Jagdeo then Jagdeo was alive and he was arrayed as a defendant in the suit. Jagdeo had executed a sale-deed in favour of the petitioner No. 1 and it is alleged that she was a minor at that point of time. The plaintiff respondent No. 6 contended that the sale-deed was without consideration as the petitioner who was a minor then had not paid any consideration and it was a sham transaction.

3. Late Jagdeo contested the suit and denied being the father of respondent No. 6 and instead gave a statement to the effect that the mother of Chhote Lal, respondent No. 6 came to live with him and when she came, she had brought with her Chhote Lal, who had been borne out of the wedlock of one Mahavir.

4. The clear case, therefore, setup was that Chhote Lal was the natural son of Mahavir, even though, Jagdeo after arrival of Chhote Lal had looked after him and had also extended certain benefits including the construction of house and purchase of property in his name. Another objection taken by Jagdeo was that consolidation operations have intervened and Chhote Lal has never claimed his title separately and as such any such plea through a suit u/s 229-B would be barred. It was further agitated by Jagdeo that the family register that was set up by Chhote Lal did not contain the correct entries and a photo-stat copy had been produced, which was inadmissible in evidence and otherwise had not been proved. The suit was decreed.

5. It was further contended that the issues though framed, the same were not decided separately, and therefore, the judgment and decree of the trial Court was not in accordance with Order XX of the CPC read with Paragraph 34 of the Revenue Court Manual.

6. The appeal filed against the same was dismissed and the second appellate Court also upheld the same holding that there was no substantial question of law involved. The first appellate Court accepted the contention that the issues have not been decided separately yet on the basis of the evidence that was brought on record, the first appellate Court upheld the judgment and decree of the trial Court. The land was treated to be ancestral and Chhote Lal, the plaintiff, was treated to be the heir of late Jagdeo, Thus, having a share in ancestral property it was further held that Jagdeo could not have executed the sale-deed in respect of the ancestral share of the plaintiff. Coupled with this, it was also held that the trial Court has not committed an error in treating the sale-deed in favour of the petitioner No. 1 as invalid.

7. This petition, therefore, has been instituted by the heirs of late Jagdeo contending that the Board has committed an error as pure questions of law with regard to the nature of claim of the respondent No. 6 were involved. The question is as to whether the respondent No. 6 who claims himself to be the uterine brother of the petitioner No. 2 could have succeeded to the holding of Jagdeo. The other legal issue, which is involved, is as to whether in a matter relating to succession of agricultural holdings governed by the provisions of the U.P.Z.A. & L.R. Act, the principles of Hindu Law would apply or not.

8. Learned counsel for the petitioners contends that the aforesaid two substantial questions arose yet the Board failed to advert to the same and proceeded to decide the dispute which violates the principles of Section 100 CPC read with Section 343 of the U.P.Z.A. & L.R. Act. Apart from this, it was also contended that the bar of Section 49 of the U.P. Consolidation of Holdings Act, 1953

prevented the filing of the suit, which aspect has been overlooked and was also a substantial question of law. The reliance placed on the family register without it having been proved in accordance with law and on the basis of the photostat copy was another substantial question of law on which the judgment and decree deserves to be set aside. It was also urged that whether Jagdeo had a right to transfer the land and whether the sale-deed in favour of the petitioner No. 1 is valid or not was totally foreign to the controversy unless it was established that Chhote Lal had any right to succeed to the land in dispute. Chhote Lal being the plaintiff had no right, title or interest and if his claim was without any basis then the suit had to be dismissed on the short ground without entering into the issue relating to the validity of the sale-deed in favour of the petitioner No. 1.

9. Replying to the said submissions, Sri Sunil Kumar Yadav, learned counsel for the respondent No. 6 submits that the property being ancestral and having been proved as such on the own statement of late Jagdeo, there was no occasion for the petitioners to claim any title and they setup a sham transaction of a sale-deed in favour of the petitioner No. 1 which has rightly been disbelieved. He contends that the same being a pure question of fact and concurrent findings having been recorded by the Courts below, there was no substantial question of law available to be entertained by the Board. Learned counsel for the respondent further submits that the sale-deed in favour of the petitioner No. 1 was invalid as she was a minor, and without consideration, and Jagdeo having no right to dispose of the said land being ancestral in nature, the sale-deed even otherwise was void.

10. Having heard learned counsel for the parties and having perused the records as also the statement of Jagdeo, it appears that the entire claim of the respondent plaintiff Chhote Lal has been decreed on the admission of late Jagdeo as recorded in his statement. The same has also been extracted and dealt with by the trial Court as well as also by the first appellate Court. In order to appreciate the controversy as to whether such a question of law did arise or not on the statement of Jagdeo, it would be appropriate to extract paragraphs 5 to 7 of the judgment of the first appellate Court dated 18th March, 1998.

11. The findings recorded by the first appellate Court in paragraph 7 of the judgment firstly establish that the Courts have believed the statement of Jagdeo which- admits that Chhote Lal was an infant when he came alongwith his mother to live with him. The conclusion drawn by the trial Court and the appellate Court that Chhote Lal was the son of late Jagdeo, was based on an erroneous inference of the statement of Jagdeo. Jagdeo nowhere admits that Chhote Lal was his natural son, and therefore, both the Courts below had committed an error and there being a patent error of law, was a substantial question of law, which ought to have been entertained by the Board of Revenue in second appeal. The Board having failed in its duty to frame the said question, the order cannot be sustained in law.

12. The finding on the issue of Chhote Lal being the son of Jagdeo was based on

the recital in the extract of the family register. The said extract of the family register does not appear to have been proved by producing the authority in whose custody such register was maintained or by the person who had made the entry. On the contrary, Jagdeo himself had denied the said family register. The plaintiff had not been able to dislodge the fact that he was the natural son of Mahavir. The only evidence was the statement of Jagdeo which has been discussed by the first appellate Court and as extracted hereinabove. The conclusion drawn by the trial Court and the two Courts of appeal are absolutely perverse to the effect that Chhote Lal was the son of Jagdeo. An entry in a revenue record or in the family register is no final proof of the parentage of a person. In the instant case, Jagdeo himself who was alleged to be the father had denied the same and had also categorically clarified the position of the circumstances in which Chhote Lal came along with his mother when she allegedly came to associate herself with Jagdeo through a customary marriage.

13. Apart from this, the claim that the property was ancestral even if believed to be correct, Chhote Lal not being the natural son of late Jagdeo cannot claim ancestry in the family tree of Jagdeo. In such a situation, also the respondent plaintiff could not have succeeded in the suit. The Courts below, therefore, have completely overlooked this substantial issue which was another substantial question of law that has escaped the notice of the Board.

14. Thirdly, the issue relating to the applicability of principles of tenancy, suffice it to say that tenancy in this province is governed by the provisions of the U.P.Z.A. & I.R. Act and succession is also governed by the provisions of the said Act and is not governed by the principles of Hindu Law or any personal law. This aspect was clearly raised before the Board, but the Board did not frame any question and has passed the impugned order. This Court would have permitted the Board of Revenue to have framed the said questions and then to proceed to hear the matter again. Nonetheless on the facts of this case, the dispute being one of the year 1986, the matter requires to be put to rest without remitting it to the Board of Revenue as this Court has ample powers to exercise judicial review in such matters. The conclusions, which have been drawn hereinabove, leave no room for doubt that the claim of the plaintiff was on the basis of the fact that the property being ancestral he had a share in it as noted above. The plaintiff failed to prove that he was the heir of Jagdeo or his ancestors and accordingly, he was not entitled to claim any succession in view of the provisions of Section 171 of the U.P.Z.A. & L.R. Act. There being no other view possible and the Courts below having erroneously proceeded to decide the case on the basis of personal law the impugned judgment and order has to be set aside. Since the plaintiff cannot claim title by way of any other mode and he is not one of the heirs of late Jagdeo as defined under the U.P.Z.A. & L.R. Act, 1950 it is not necessary for this Court to remand the matter on the said issue. The plaintiff having failed to establish his right or title, the question of examining the validity of the sale-deed does not arise.

In view of the conclusions drawn hereinabove and the questions of law that have been arisen, it is clear that the respondent-plaintiffs suit could not have been decreed on the basis of the title as claimed by him. In such a situation, the writ petition has to be allowed.

Accordingly, the impugned orders are quashed. The judgment and decree of the trial Court is set aside and the suit shall stand dismissed.

The writ petition is allowed with the aforesaid observations.