(2011) 11 UK CK 0080

In the Uttarakhand High Court

Case No : Writ Petition No. 1425 of 2006 (M/S)

Mahant Janki Dass	APPELLANT
Vs	
Board of Revenue and others	RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 189

Citation : (2011) 11 UK CK 0080

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon''ble Tarun Agarwala, J.—Heard Shri Mahavir Singh Tyagi, the learned counsel for the petitioner, Shri Sudhir Kumar, the learned Brief Holder for the State and Shri Pankaj Miglani, the learned counsel for the respondent No. 4.

2. The name of Bhagwan Dass was recorded in the revenue records in Khata No. 115 which has an area of 12 bighas and 16 biswansi. Bhagwan Das was an aesthetic and, upon his death in 1980, respondent No. 3 Inder Singh applied for mutation u/s 34/35 of the Land Revenue Act. Inder Singh claimed mutation on the basis of an unregistered will dated 20th April, 1980. The petitioner objected to these mutation proceedings contending that his name should be mutated in the revenue records on the basis of an unregistered will dated 23rd November, 1975 as well as on the ground that the petitioner is a Chela of the deceased Bhagwan Das. It was alleged by the petitioner that the deceased Bhagwan Das had made the petitioner his Chela in the presence of the entire Sadhu Samaj and, accordingly, in view of the fact that the property passes from Guru to Chela, the name of the petitioner should be recorded.

3. The Tehsildar on the basis of the evidence that was brought on record rejected the claim of Inder Singh by his order dated 05/10/1982. The Tehsildar held that the will produced by Inder Singh was doubtful and not genuine. The Tehsildar

also found that the will produced by the petitioner was also doubtful and not genuine. The Tehsildar, however, accepted the contention of the petitioner that he was the Chela of Bhagwan Das and, accordingly, ordered his name to be mutated in the revenue records.

4. Respondent No. 3 being aggrieved by the said order, filed an appeal u/S 210 of the U.P. Land Revenue Act which was dismissed by an order dated 30th August, 1983. The respondent No. 3 thereafter preferred a revision u/S 219 of the Land Revenue Act before the Additional Commissioner. The Additional Commissioner by its order dated 20th June, 1984 found that since both the wills were not proved, it was appropriate that the Land Management Committee should have been made a party and should have been heard and, accordingly, made a reference u/S 218 of the said Act to the Board of Revenue recommending that the order of the Tehsildar as well as the order of the Assistant Collector be set aside and the matter be remitted to the Tehsildar to decide the matter afresh after hearing the Land Management Committee. On the basis of this reference, the Board of Revenue by an order dated 4th February, 1989 modified the orders of the Tehsildar as affirmed by the Assistant Collector to the extent that the disputed property should be mutated in the name of the Land Management Committee on the ground that Bhagwan Das had died issueless and that the wills produced by the parties could not be proved. The petitioner, being aggrieved by the said orders, has filed the present writ petition.

5. The learned counsel for the petitioner submitted that the impugned orders cannot be sustained for the reasons that the mutation u/S 34/35 of the Land Revenue Act can only be made in the name of that person who is found to be in actual and physical possession. The learned counsel for the petitioner submitted that the Land Management Committee never came forward to contest the matter when notices were issued and, therefore, the Board of Revenue committed a manifest error in directing the name of the Land Management Committee to be mutated in the revenue records. It was further urged that the finding with regard to Chela given by the Tehsildar has not been set aside in the absence of which the Board of Revenue committed an error in directing that the order of the Assistant Collector be modified and the name of the Land Management Committee be mutated in the revenue records.

6. Having heard the learned counsel for the petitioner and the learned Brief Holder for the State at some length, the Court finds that the petitioner is not entitled for any relief. From a perusal of the order of the Board of Revenue, a categorical finding has been given that the petitioner had taken a categorical stand that he is succeeding the property of the Bhagwan Das on the basis of the will. This statement was made by the petitioner not only in his examination-in-chief but also in his cross examination. On the other hand, the petitioner contends that the stand of the petitioner was not only the fact he succeeded on the basis of the will but also on the ground that he was made the Chela of the deceased Bhagwan Das.

7. No doubt, the petitioner in his objection has taken a dual stand but the Court finds from a perusal of the orders of various Courts that the consistent stand of the petitioner was succession of the property of the deceased Bhagwan Das on the basis of the will of 1975. There is no evidence that the petitioner was made the Chela of the deceased nor this allegation has been proved.

8. The will has not been proved, the Board of Revenue was justified in modifying the order of the Tehsildar and the Assistant Collector in directing the name of Land Management Committee to be mutated in the revenue records against the name of the deceased Bhagwan Das who had died issueless for which there is no controversy. In this regard, the Court finds that Section 189 of the U.P. Zamindari Abolition and Land Reforms Act clearly indicates that the interest of a bhumidhar with transferable rights in his holding or any part thereof shall be extinguished when he dies intestate leaving no heir entitled to inherit in accordance with the provisions of this Act. In the present case, admittedly Bhagwan Das was an aesthetic and he died issueless. Upon his death, the interest of the deceased in his holding stood extinguished and, consequently, in view of the provision of Section 195 of the Act, the Land Management Committee was entitled to take possession of the land in question. The Board of Revenue has only directed the name of the Land Management Committee to be mutated in the revenue records.

9. In so far as rights of the petitioner is concerned contending that he is liable to succeed the estate of the deceased Bhagwan Das as his Chela, the Court finds that in these mutation proceedings rights regarding title cannot be adjudicated and the same can be instituted and proved in a suit to be filed before the appropriate Court as is clear from a reading of Section 140-A of the Land Revenue Act which states that no order passed u/S 35 of the Act shall bar any suit in a competent court for relief on the basis of right in the holding. Consequently, it would be open to the petitioner to file a suit for his right in the holding in question.

10. For the reasons stated aforesaid, the Court does not find any error in the impugned orders. The writ petition fails and is dismissed.