(2008) 02 AHC CK 0098

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 15379 and 15380 of 1996

Mahendra Singh APPELLANT

Vs

Board of Revenue, Allahabad and others RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Citation : (2008) 02 AHC CK 0098

Hon'ble Judges : S.K.Singh, J

Judgement

S.K. Singh, J.—Heard Sri H.O.K. Srivastava, learned Advocate who appeared in support of this petition and Sri Agnihotri, learned Advocate who appeared for the respondents.

2. As the pleadings are complete, writ petition is of the year 1996, as requested by both sides after hearing the arguments this Court is to decide the writ petition finally.

3. The judgment of the Board of Revenue is under challenge in this petition by which two appeals filed by the respondent side has been allowed and the suit filed by the petitioner side has been dismissed and that of the respondent side has been allowed.

4. For disposal of the writ petition the facts in brief will suffice.

5. A suit was filed by the petitioner under section 176 of the U.P.Z.A. and L.R. Act claiming half share through registered Will executed by Narain dated 4.1.1968. Suit was initially decreed. It is at this stage the respondent side filed a suit under section 229B claiming their own rights on the basis of another Will which is said to have been executed by the same person i.e. Narain. After evidence was led the Trial Court dismissed the suit filed by the respondent side. Two appeals came to be filed by the respondent side which was dismissed by the First Appellate Court upon which two second appeals came to be filed and they were allowed, thus this writ petition.

6. Besides various submissions on the merits Sri Srivastava submitted that the judgment of the Board of Revenue can be said to be faulty on the ground that powers of the Appellate Court being limited, Board of Revenue cannot be excepted to go into questions of fact and that too after reassessment of the entire evidence so as to record its independent finding on the question of fact is whether the Will in favour of the respondent was genuine or not and it is thereafter to decree/dismiss the suit straightaway arid, therefore, submissions is that judgment of the Board of Revenue is liable to be quashed on this ground alone. It was then submitted that Second Appellate Court could intervene in the matter only when substantial question of law is involved and, therefore, no substantial questions of law even having been proposed in the memo and not even framed by the Appellate Court while writing the judgment, allowing of the appeal cannot be justified.

7. Lastly, it has been submitted that if the Board of Revenue found the decisions by Court below to be faulty then it was obligatory on the part of the Board of Revenue to remit the matter to the First Appellate Court for deciding the matter again as the Board may not substitute its own finding on the fact so as to finally decide the suit on the merits.

8. It is on the aforesaid premises submission is that judgment of the Board of Revenue needs interference.

9. Sri Agnihotri, learned Advocate being fair to the petitioner side and the Court submits that mainly the question involved before the Board of Revenue is about validity and genuineness of the Will and, therefore, as the Board of Revenue found the judgment of the two Courts to be faulty instead of recording its own finding by substituting the finding on the question of fact matter should have been remitted for fresh decision and that could have been in accordance with law. Submission is that observation can be made by this Court that on remand of the matter from this Court Board is to remit the matter for fresh consideration if the grounds taken by the petitioner side finds favour of the Board of Revenue.

10. In view of the aforesaid, this Court has to decide the claim of the parties. There is no dispute about the fact that two Courts have accepted the Will which was the basis of the claim of the petitioner and at the same time Will which was basis of the claim of the respondent i.e. 22.8.1988 was not accepted to be genuine document. Reasons were given by both Courts. The question whether Will in favour of the respondent is genuine document or not can be said to be a question of fact but at the same time if the consideration and the reasons given by two Courts are vitiated by any error then Board of Revenue has got power and after pointing out any error, matter has to be remitted back as the Board has no power to record/substitute its own finding on the question of fact by not accepting the findings recorded by the two Courts below. Sri Srivastava rightly submits that Board has to point out substantial questions of law in favour of the appellant side while interfering in the judgment of the two Courts. Be as it may, it is for the Board of Revenue to consider the claim of the parties in accordance

with law, in the light of the arguments so advanced keeping in mind the reasoning and findings given by the two Courts below. Interference by the Board of Revenue straightaway in the findings of fact cannot be approved by this Court. Thus this Court instead of stating the facts and further arguments and the analysis so made is, to remit the matter to the Board of Revenue for fresh consideration in accordance with law.

11. Accordingly, both writ petitions succeeds and are allowed. Impugned judgment of Board of Revenue is quashed. Board of Revenue is directed to decide the case afresh on merits preferably within a period of three months from the date of receipt of certified copy of this order from either of the sides.

