(2013) 10 AHC CK 0145

In the Allahabad High Court

Case No : Writ-B No. 54654 of 2013

Nasir Ahmad and Others APPELLANT

Vs

Board of Revenue and Another RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2013) 121 RD 782

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : A.B. Singh, for the Appellant; Sayed, for the Respondent

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri A.B. Singh, learned Counsel for the petitioners, and Sri Mir Sayed, who has filed his Vakalatnama and Caveat on behalf of the respondent No. 2. Learned Standing Counsel has been heard for the respondent No. 1. After the learned Counsel for the parties were heard, they pray that no further affidavits are required to be filed and the matter be disposed of finally on the grounds that have been raised by the petitioners relating to the finding recorded by the Board of Revenue.

2. This is a dispute relating to succession and a consequential mutation proceeding u/s 34 of the U.P. Land Revenue Act, 1901. The Tehsildar, while passing the order at the first instance, found that the petitioners, who had set up an unregistered Will, had failed to prove the same. The order of the Tehsildar categorically records that the second page of the Will was on a plain paper whereas the first page of the Will was of Rs. 5/- Stamp paper. It was unregistered and the second page of the Will did not contain the signature of the executor.

3. An appeal was filed by the petitioner which was also dismissed similarly affirming the said findings.

4. The matter went up in revision before the Commissioner which was allowed and the matter was remanded back for reconsideration on a specific finding having been recorded in the order of the Commissioner dated 5.4.2010 to the effect that the trial and the appellate Court have completely overlooked the basic evidence on record, namely the second page of the Will, which does contain the signatures of the executor. Thus, non-consideration of relevant material and perversity in the finding recorded was recited in the order of the learned Addl. Commissioner for remanding the matter back to be tried again.

5. The respondent No. 2 appears to have approached the Board of Revenue questioning the correctness of the said remand order and the Board has now set aside the same by the impugned order dated 17.6.2013 recording that the order of the Trial Court and the Appellate Court were well founded and the Will having not been proved, there was no occasion for the revising authority namely the Addl. Commissioner for remanding the matter back for consideration afresh.

6. Sri Singh submits that when the Addl. Commissioner had categorically, after perusal of the Appellate Court record, come to the conclusion that the signatures of the executor did exist on the second page, then it was obvious that the finding recorded by the Tehsildar and Sub-Divisional Officer were perverse. This finding of the learned Addl. Commissioner, according to Sri Singh, has not been reversed by the Board of Revenue and, therefore, the Board has committed a manifest irregularity in setting aside the order without reversing the said finding.

7. This is the only short question, which has been raised before this Court, to which the learned Counsel for the respondent No. 2, contends that the Tehsildar categorically recorded a finding of the non-existence of the signatures on the second page which was affirmed in appeal. There was nothing before the Addl. Commissioner to reverse the said finding and, therefore, the Board of Revenue has rightly set aside the said order.

8. Learned Standing Counsel has also adopted the same arguments.

9. Having considered the aforesaid submissions raised, the finding recorded by the Addl. Commissioner is specific and categorical about the existence of the signature of the executor of the Will on the second page as per the records of the Appellate Court. In this view of the matter, the Board of Revenue ought to have addressed itself to this issue before setting aside the order of the learned Addl. Commissioner. The Board has completely overlooked this recital contained in the order of the Addl. Commissioner which related to perversity and if this perversity did exist, then there was material irregularity which could have been corrected by the Addl. Commissioner in revision. The Board of Revenue was, therefore, under an obligation to have proceeded to consider the said finding before reversing the order of the Addl. Commissioner. Since this has not been done, the impugned order is vitiated. The writ petition is allowed. The order dated 17.6.2013 is hereby quashed. The matter is remitted to the Board of Revenue for decision afresh in the light of the observations made herein above within 6

months from the date of production of a certified copy of this order.