

**(2019) 07 UK CK 0012**

**In the Uttarakhand High Court**

**Case No : Writ Petition No. 1813, 1814 Of 2015 (M/S)**

Nilesh Kumar And Others

APPELLANT

Vs

Record Officer/Collector Tehri And Others

RESPONDENT

**Date of Decision : 11-07-2019**

**Acts Referred:**

Code Of Civil Procedure, 1908 — Section 151, Order 1 Rule 10, Order 5 Rule 5, Order 6 Rule 17, Order 22 Rule 3, Order 22 Rule 5  
Indian Penal Code, 1860 — Section 120B, 420, 460, 466, 467, 468, 471  
Uttar Pradesh Land Revenue Act, 1901 — Section 39  
Government Of India Act, 1915 — Section 107  
Constitution Of India, 1950 — Article 227

**Citation : (2019) 07 UK CK 0012**

**Hon'ble Judges : Lok Pal Singh, J**

**Bench : Single Bench**

**Advocate : Mahavir S. Tyagi, Narain Dutt, V.K. Kohli, Kanti Ram Sharma**

**Final Decision : Dismissed**

## **Judgement**

Lok Pal Singh, J

1) Both these writ petitions have been filed seeking quashing of the impugned order dated 08.07.2015 passed by Record Officer/Collector Tehri Garhwal, New Tehri in Appeal No. 32 of 2014, Govind Singh Vs. Rakesh Agarwal & another; and Appeal No. 31 of 2014, Govind Singh Vs. Anand Singh & others, dismissing the substitution/amendment applications filed by the petitioners.

2) Since common question of law and facts are involved in the aforementioned writ petitions, therefore, the same are taken up together and are being decided by this common judgment for the sake of brevity and convenience.

3) Brief facts of the case are that one Kukru was the recorded owner of the land bearing Khasra No. 6, 9, 14, 23 & 84, admeasuring 1.84 acres, situated in Village Tapovan, Patti Dhamandsyun, Tehsil Narendra Nagar, District Tehri Garhwal. An application in the name of Govind Singh was filed in the court of Record Officer,

claiming that he is son of Kukru, and his father Kukru S/o Nardu died long back. It is stated that Kukru had executed a Will in favour of Govind Singh during his lifetime. After the death of Kukru, Govind Singh became owner of the said land, but during record operations, the name of respondent nos. 2 has been recorded in the Revenue Records. Govind Singh made a representation for correction of the entry in the Revenue Record. The said correction applications were registered as Correction Case no. 01 of 2010, Govind Singh Vs. Shiksha Sudhar Samiti and Case no. 25 of 2012, Govind Singh Vs. Rakesh Gupta and others. Thereafter, the Land Record Officer/District Magistrate, Tehri Garhwal by order dated 01.11.2012 directed the parties not to raise any construction and not to change the land use and to maintain status quo over the land in question and also directed the Assistant Record Officer/SDM Tehri Garhwal to produce the original record relating to the aforesaid correction cases. Thereafter, the Assistant Record Officer, Tehri Garhwal rejected the aforesaid correction applications vide order dated 16.06.2014.

4) Feeling aggrieved, Govind Singh filed Appeal No. 31 of 2014, Govind Singh Vs. Anand Singh & others and Appeal No. 32 of 2014, Govind Singh Vs. Rakesh Agarwal & another, respectively, before the Record Officer/Collector, Tehri Garhwal. Both the appeals were filed on 09.07.2014. During pendency of the aforesaid appeals, an application under Order 22 Rule 3, and Order 6 Rule 17 and Order 1 Rule 10 read with Section 151 of C.P.C. was filed by the petitioners stating therein that appellant Govind Singh S/o Kurku, who was the resident of Delhi, died on 28.12.2014. Govind Singh executed a registered Will dated 28.11.2013 in favour of petitioners and on the strength of the Will dated 28.11.2013 they have title over the property in dispute, thus they may be substituted as legal representative/legal heirs of late Govind Singh in the appeal. It contended that earlier they filed an application for substitution but no order has been passed on the said application so far, therefore, they filed another application and their previous substitution application was dismissed as not pressed.

5) Respondent nos. 2 & 3 filed their objections stating therein that the petitioners have procured forged death certificate in the name of Govind Singh, wherein the address of Govind Singh was shown as H.No. 124, Gali No. 9, Mangol Puri, Delhi. It is contended that it is not proved on record that Govind Singh has really passed away. Alongwith the objection they filed a death certificate and contended that the death certified filed by the applicants (petitioners herein) being registration number MCDOLRO5036769 is forged and respondents have obtained such information from the Municipal Corporation of Delhi.

6) It is also contended that as per the information received, aforesaid death certificate is in regard to Smt. Rampyari W/o Pyare Lal, who died on 23.06.2005 at Dr. Baba Saheb Ambedkar Hospital, Delhi. The Photostat copy of the death certificate of Govind Singh filed by the applicants is forged. This fact has not been denied by the applicants (petitioners herein).

7) The record Officer/Collector, Tehri Garhwal by impugned order dated 08.07.2015, rejected the substitution application for the reasons that it is not proved on record that Govind Singh had passed away and the death certificate filed by the applicants, being registration number MCDOLRO5036769, is forged as the aforesaid certificate is in regard to the death of Smt. Rampyari who died on 23.06.2005 at Dr. Baba Saheb Ambedkar Hospital, as such, it is not proved on record that Govind Singh has passed away. It was held that since the applicants could not prove the death of Govind Singh, as such, the death certificate filed by them is forged. Hence, the substitution application filed by the applicants was dismissed. Consequently, both the appeals were also dismissed for want of prosecution by the Record Officer/Collector, Tehri Garhwal, vide order dated 08.07.2015.

8) Feeling aggrieved, the petitioners have approached this Court under Article 227 of the Constitution of India.

9) In the writ petition, the averments made in the substitution application have been reiterated. A counter affidavit has been filed on behalf of first respondent stating therein that the forged Will procured by the applicants (petitioners herein) was moved just to grab the property in question. It is stated that an FIR/ Case Crime No. 5 of 2015, under Sections 420, 460, 467, 468, 471 & 120-B IPC was lodged against the petitioners in this regard. The Investigating Officer, after completion of investigation, submitted charge sheet against the petitioners and they are facing criminal trial in regard to interpolation made in the records and for procuring forged death certificate from the Registrar of Birth and Death, Municipal Corporation of Delhi. Respondent nos. 2 & 3 also filed their counter affidavit, stating therein, that the petitioners have themselves manipulated the records and also succeeded in procuring forged Will and death certificate of Govind Singh.

10) I have heard learned counsel for the parties and perused the material available on record.

11) Learned counsel for the petitioners, urged that Govind Singh died on 28.12.2014 after executing registered Will in favour of the petitioners nos. 1 & 2 and one Daleep Singh (husband of petitioner no. 3). Petitioners became owners of the property in question on the strength of the Will executed by Govind Singh in their favour and since Govind Singh died on 28.12.2014 at Delhi, therefore, his name was recorded in the death certificate issued by the Municipal Board, Delhi.

12) Learned counsel for the petitioners has supplied photocopy of alleged death certificate of Govind Singh and submitted that Govind Singh died on 28.12.2014, his death certificate was registered in the office of North Delhi Municipal Corporation on 19.05.2015 and in this regard death certificate bearing registration no. MCDOLIR-0215-004784207 has been issued.

13) Learned counsel for the petitioners has admitted the fact that death

certificate relied upon before the court below was not issued in regard to the death of Govind Singh. He would submit that since another death certificate has been issued, being registration no. MCDOLIR05036769, therefore, applicants/petitioners being the legal heirs/legal representative of the deceased on the strength of registered Will dated 28.11.2013 are entitled to be substituted and the Court below has committed illegality in dismissing their substitution application. Learned counsel for the petitioners would further submit that in view of provisions contained under Rule 5 of Order 22 of Code of Civil Procedure, it was incumbent upon the court below to determine the question as to the legal representative.

14) Rule 5 of Order 22 of Code of Civil Procedure, 1908, is extracted below:

"5. Determination of question as to legal representative.- Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reason, therefor, and the Appellate Court may take the same into consideration in determining the question."

15) On the other hand, Mr. V.K. Kohli, Senior Advocate appearing on behalf of respondent nos. 2 & 3 urged that the petitioners could not prove the death of Govind Singh. He would submit that there is no proof on record whether Govind Singh is dead or alive. Death certificate and alleged Will are forged. The petitioners have no relation with Govind Singh and just to grab the property in dispute, they have fabricated the forged Will and the death certificate. Mr. Kohli would further submit that unless it is proved on record that Govind Singh was the son of Kukru, who died during the pendency of case, the question of substitution of his legal heirs does not arise. Since, the death of Govind Singh is not proved, therefore, the second question as to who is the legal heirs of Govind Singh also does not arise. Therefore, there is no question to ascertain the fact as to who is legal heir/legal representative of Govind Singh. It is contended that the proceedings under Section 39 of U.P. Land Revenue Act, 1901 (hereinafter referred to as 'the Act') as applicable in the State of Uttarakhand, are summary in nature. No right can be decided in summary proceedings, and if it be presumed for the sake of argument that the petitioners have any right over the title of property in dispute, they have a remedy to approach the regular court having jurisdiction seeking declaration over the property in question. It is contended that the land bearing aforesaid Khsara numbers is not vacant and there is already construction over it, thus, the proceedings cannot continue in revenue Court for correction of the entries under Section 39 of the Act.

16) The core question before this Court is that as to whether Govind Singh, who

filed the appeals, is dead or alive? If he is dead, who are his legal heirs/legal representative? Petitioners are claiming that Govind Singh died on 28.12.2014. The burden lies upon the petitioners to prove that Govind Singh died on 28.12.2014. The death certificate issued by Municipal Corporation of Delhi, being registration number MCDOLR05036769, was filed but the same has been found forged. So far as, another death certificate is concerned, the same was not part of the record before the Court below and its genuineness cannot be verified at this stage. It is the duty of every court to make serious endeavour to separate chaff from the grain, so that, no one may succeed in taking false claims before the courts as the tendency is developing now a days to grab the property on false claims. The purpose of initiating the false litigation is not only to grab the property but to compel other side or real owner of the property to come across the compromise table.

17) Hon'ble Apex Court has elaborately discussed that truth alone has to be the foundation of justice in the judgment rendered by it in Maria Margarida Sequeira Fernandes & others vs Erasmo Jack De Sequeira (2012) 5 SCC 370. Paragraph nos.32 & 33 of said judgment are extracted hereunder:

"32. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies.

33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth."

18) This Court while directing the Secretary, THDC Education Society and Chief Education Officer, Tehri Garhwal, to remain present in person before the Court on the next date fixed had came down heavily after noticing that the Secretary, THDC Education Society has filed a false affidavit before the Court. This Court passed said order in Writ Petition no. 2536 of 2018 (S/S), Meharban Singh Panwar Vs THDC Education Management Committee and others, on 24.06.2019 and observed as under:

"Now-a-days, the trend of filing false affidavit is prevailing in the Courts, in order to get a favourable order from the Courts. Hon'ble Apex Court in M/s Sciemed Overseas Inc. Vs BOC India Limited (2016) 3 SCC 70, has expressed the view that unhealthy trend of filing false affidavits should be discouraged before it gets to be treated as a routine and normal affair, and that filing of a false affidavit should be effectively curbed with a strong hand."

19) Again, vide order dated 28.05.2018, passed in Writ Petition no. 2929 (S/S) of 2017, Bhuwan Tamta and others Vs. State of others, this Court having found interpolation being made in the record by making signatures in the affidavit, reprimanded such practice and ordered the Registrar General of this Court to

lodge FIR against the erring Government Pleader under Section 466 of IPC.

20) Perusal of impugned order would reveal that Record Officer/Collector has categorically recorded its finding that the applicants (petitioners herein) could not prove the death of Govind Singh. The death certificate filed by them was forged and on the complaint of second respondent, an F.I.R. was lodged against the petitioners and chargesheet has been submitted against them for fabricating forged death certificate and Will in the name of Govind Singh.

21) The submission of learned counsel for the petitioners is that Record Officer failed to discharge its legal obligations in conducting the enquiry as provided under Rule 5 Order 5 of CPC to determine the question involved. The submission is misconceived, inasmuch as unless the death of Govind Singh is proved, the second question as to who are the legal heirs/legal representatives of the deceased does not arise.

22) I am of the considered view that petitioners who filed the substitution application claiming themselves to be the legal heirs/legal representative of Govind Singh, firstly, could not prove his death, secondly the death certificate filed by them is forged. Thus, in view of the dictum of Hon'ble Supreme Court they are not entitled for any relief from this Court. Even otherwise, the proceedings initiated under Section 39 of the Act are summary in nature. If the petitioners are aggrieved by the order of the Assistant Record Officer they have a right to initiate the proceedings for declaring their rights on the strength of alleged Will of Govind Singh but the same cannot be considered in a writ jurisdiction arising out of summary proceedings under Section 39 of the Act.

23) The jurisdiction under Article 227 of the Constitution of India is a limited jurisdiction. In *Radhey Shyam vs Chhabi Nath* (2015) 5 SCC 423, it has been held by Hon'ble Apex Court that proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

24) Unless the petitioners succeed in convincing this Court in regard to the three ingredients as mentioned above necessary to invoke the jurisdiction of this Court under Article 227 of the Constitution of India as held by the Hon'ble Apex Court

in *Radhey Shyam vs Chhabi Nath* (2015) 5 SCC 423, Court should be loath to exercise such jurisdiction to differ with the reasons and the conclusion arrived at by the competent authority or court of law.

25) Both the writ petitions, accordingly, fails and are dismissed with costs as the petitioners have raised their claim on false death certificate. Cost of Rs. 25,000/- is saddled upon the petitioners. The cost so imposed be deposited by the petitioners before the Registrar General of this Court within a period of one month from today. The Registrar General shall deposit the same in 'Bharat Ke Veer Corpus Fund' dedicated for providing financial assistance to the families of the brave soldiers of the Country. In case, the petitioners fail to deposit the cost so imposed within the time stipulated, the Registrar General shall proceed to recover the cost from the petitioners as arrears of land revenue.