
(2003) 11 AHC CK 0036
In the Allahabad High Court
Case No : C.M.W.P. No. 34072 of 1997

Puran Singh

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 11-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Land Revenue Act, 1901 — Section 34

Citation : (2004) 1 AWC 853 : (2004) 96 RD 98

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

Bench : Single Bench

Advocate : Rajendra Kumar and R.P.N.L. Srivastava, for the Appellant; S.R. Yadav, B.G. Singh, A.K. Srivastava and R.S.L. Srivastava and S.C., for the Respondent

Final Decision : Allowed

Judgement

S. K. Singh, J.—Heard counsel for the parties.

2. Challenge in this petition is the judgment of the Board of Revenue dated 4.7.1997 (Annexure No. 5 to the writ petition) by which after setting aside the orders of three courts below mutation of the name of the opposite been allowed.

3. There appears to be no dispute about the fact that Dulla happens to be recorded tenant of the land. On his death name of Babu Lal was recorded by the Supervisor Kanoongo on the basis of P.A. 11. An application for mutation u/s 34 of the Land Revenue Act was filed by Mst. Kalli claiming herself to be widow of the deceased. Another objection was filed by Babu Lal through Ram Rati, her mother, claiming himself to be the son of the deceased Dulla as Ram Rati was married to Dulla. After the evidence was led the Tehsildar recorded a finding that Ram Rati was not married to Dulla but was living with him and thus she can be said at the most to be concubine and, therefore, in view of the admitted position about Mst. Kalli being widow of the deceased her name was mutated. The order of Tehsildar was challenged by the opposite party in the appellate court but the

appeal was dismissed by the Sub-Divisional Officer on 10.1.1991 and thereafter the revision was also dismissed by Additional Commissioner on 16.4.1993. The opposite party then filed revision before the Board of Revenue which was initially dismissed on 2.12.1993 but thereafter on recall of that order the revision has been allowed by order dated 4.7.1997 (Annexure No. 5 to the writ petition), which is under challenge in this petition by the petitioner who claims to be the vendee from Mst. Kalli.

4. At the very outset counsel for the parties met each other on the question about maintainability of this writ petition which is admittedly against the mutation proceedings. Counsel for the respondents submits that the writ petition being against the order of mutation courts is not maintainable as has been held by series of decisions of this Court as in 2003 CRC 221, in the case of Ram Kumar and at page 245 in the case of Ishu, In response to the aforesaid, counsel for the petitioner submits that certain exceptions have been carved out by this Court after dealing with large number of single Judge judgment and also the Division Bench in which it has been held that the writ petition can be entertained subject to availability of the remedy to the party aggrieved after the decision of this Court. Reliance has been placed on a decision given by this Court in the case of Lal Bachan 2002 RD 6.

5. After hearing the arguments the Court has examined the matter. Needless to say that decision given in the case of Lal Bachan (supra), relied upon by the counsel for the petitioner has also laid down that ordinarily orders passed by mutation courts are not to be interfered as they are in summary proceedings, subject to regular suit. Exceptions has been carved out in various decisions of this Court including the decision in the case of Lal Bachan (supra), and even the decisions as has been given in the case of Ram Kumar (supra), on which the reliance has been placed by the learned counsel for the respondent which can be categorised as thus :

- (i) if the order is without jurisdiction ;
- (ii) if the rights and title of the parties has already been decided by any competent court and that had been varied by mutation courts ;
- (iii) if the mutation had been directed not on the basis of possession or simply on the basis of some title deed but after entering into debate of entitlement to succeed the property touching into merits of rival claim.

6. So far the case in hand is concerned three courts below rather the Board of Revenue also has given a finding that the mother of the opposite party was not married to Dulla and thus by differing with the orders of the three Courts directing the mutation in favour of Mst. Kalli who admittedly happened to be widow a decision has been given about the rights/entitlement of Babu Lal, opposite party even holding him to be illegitimate son, in the light of the certain provisions and a decision of Bombay High Court as has been referred in the judgment. In view of the aforesaid, it is clear that the Board of Revenue has

decided the claim of the opposite party like a court exercising the jurisdiction in the regular suit which is meant for declaration of rights. Thus, this Court is satisfied that the Board of Revenue has not decided the revision treating it to be just a proceeding coming out of the mutation courts rather it has entertained the matter like proceedings of the regular suit and has decided the entitlement of the opposite party by interpreting the legal position which appears to be beyond the scope of mutation proceedings, as has been held in all the cases. Of course on setting aside the order of the Board of Revenue by which the entitlement of the opposite party has been accepted, that cannot be taken against the opposite party in the regular suit and even the findings given by the other three Courts or even by Board of Revenue about status of the opposite party not being legitimate son can also be binding on the regular courts as and when a regular suit is filed by the opposite party. As and when regular suit is filed it will be the concern of the regular courts to entertain the evidence and decide the rights and title of the parties independently on the pleading and evidence so placed before them, without being influenced by the findings recorded by any of the Courts, deciding the matter in the mutation side or even by this Court.

7. Accordingly for the reasons given above this writ petition succeed and is allowed. The judgment of the Board of Revenue dated 4.7.1997 (Annexure-5) is hereby quashed. It is made clear that it is open for the opposite party to get his rights declared before the competent court by filing a regular suit which will be decided on merits.