
(2010) 05 AHC CK 0195

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14580 of 1981

Raghubir Singh

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 13-05-2010

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (2010) 05 AHC CK 0195

Hon'ble Judges : Prakash Krishna, J

Final Decision : Dismissed

Judgement

Prakash Krishna,J.

1. The present writ petition arises out of suit No. 50 of 1970 filed by the petitioner under Section 229 B of the U.P.Z.A. & L.R. Act for declaration that he being brother of Komal Singh, the last male tenant of the land in dispute is entitled on the death of Smt. Mohni Kunwar to succeed his property. The property in dispute, indisputably, belonged to one Sardar Singh son of Bhoop Singh. The case of the petitioner was that Sardar Singh had adopted Komal Singh as his son on 23.1.1927. Komal Singh married with Smt. Mohni Kunwar, who died on 27th of February, 1965. The petitioner Raghuveer Singh claims that there were four brothers namely Sardar Singh, Baldev Singh, Lakshman Singh and Lochan Singh. The petitioner is from the branch of Lochan Singh claiming himself as his one of the grandsons of Lochan Singh.

2. The suit was contested by Awadhesh Kumar, the respondent No. 3 herein on the ground that he was adopted by Mohni Kunwar on 16.2.1964 and therefore, after the death of Komal Singh and Mohni Kunwar, his adoptive father and mother, he has inherited the property left by Sardar Singh.

3. Gaon Sabha also contested the suit and pleaded that after the death of Sardar Singh it was inherited by his adopted son Komal Singh and after death of Komal Singh and his widow Smt. Mohni Kunwar and thereafter, there being no heir, the

property in dispute has vested in Gaon Sabha. The Gaon Sabha also contested the claim of Awadhesh Kumar by disputing the alleged adoption as was set out by him. The parties led evidence in support of their respective cases and the suit was decreed by the trial Court by its judgment and decree dated 17.7.1970 holding that the adoption of Awadhesh Kumar as pleaded by him is not proved nor the land vests in Gaon Sabha. Being aggrieved, two appeals one by Awadhesh Kumar and another by the Gaon Sabha were preferred before the First Appellate Court who by its judgment and decree dated 16th of August, 1973 set aside the judgment and decree of the trial Court and accepted the appeal No. 4 filed by the Gaon Sabha and dismissed the appeal being appeal No. 3 filed by Awadhesh Kumar.

4. Against the aforesaid judgment of the First Appellate Court two second appeals being second appeal nos.181 and 43 of 1973/74 were preferred before the Board of Revenue, U.P. at Allahabad one by Raghuveer Singh, the present petitioner and another by Awadhesh Singh (Awadhesh Kumar). The Board of Revenue by its impugned judgment dated 14th of September, 1981 dismissed the appeal No. 181 preferred by Raghuveer Singh and allowed the appeal No. 43 filed by Awadhesh Singh. It has been held that there is evidence on record to show that Komal Singh was adopted son of Sardar Singh. The said fact finds corroboration from the extract of the death register dated 23.1.1927 and various other documents such as oral statement recorded in Civil Suit No. 4 of 1955 and also finds corroboration from the consolidation proceedings. Having held so, the suit of the petitioner was dismissed on the ground that after adoption of Komal Singh by Sardar Singh, the petitioner Raghuveer Singh is not entitled to succeed the property of Komal Singh as he ceases to be real brother of Raghuveer Singh. It proceeded further and examined the issue with regard to the adoption of Awadhesh Kumar Singh by Smt. Mohni Kunwar widow of Komal Singh. After discussing the evidence led by the parties, it was concluded that adoption of Awadhesh Singh (Awadhesh Kumar) is proved and therefore, after the death of Mohni Kunwar, it is Awadhesh Kumar who inherited the property in dispute which originally belonged to Sardar Singh.

5. Sri N.K. Chaturvedi, learned counsel for the petitioner submits only one point for consideration i.e. the Board of Revenue could not have set aside the findings recorded by the two Courts below to it with regard to the adoption of Awadhesh Kumar. The trial Court and the First Appellate Court as well have held that Awadhesh Kumar has failed to prove his adoption and the said finding being finding of fact could not have been interfered with in second appeal filed under Section 100 C.P.C.. Elaborating the argument, it was submitted that the evidence was in the nature of oral depositions of witnesses produced by the defendant Awadhesh Kumar. The oral testimony was rejected by the trial Court and the First Appellate Court and the witnesses produced on behalf of Awadhesh Kumar were disbelieved. This being so, it was not open to the Board of Revenue to reverse the said finding of fact by believing the testimony of those witnesses, a course which is not permissible in view of the limited jurisdiction under Section 100

C.P.C..

6. Sri V.P. Shukla, learned counsel for the contesting respondent, on the other hand, submits that the name of the contesting respondent has been recorded by the consolidation authorities holding that adoption of Awadhesh Kumar is valid. The order passed by the consolidation authority has attained finality and as such the present writ petition has lost its efficacy. A reference was made to the order of Consolidation Officer dated 11th of August, 2000 passed by the Consolidation Officer, Etah in case No. 288, a copy whereof has been filed as Annexure1 to the counter affidavit. Even otherwise also, no case for interference under Article 226 of the Constitution of India has been made out, submits the learned counsel for the contesting respondent.

7. Considered respective submissions of the learned counsel for the parties and perused the record.

8. A family pedigree has been given in the judgment and order of the suit No. 50 of 1970. There appears to be no dispute with regard to the said family pedigree. It may be noted that Narain Singh had four sons Mahendra Singh, Komal Singh, Raghubir Singh (petitioner) and Doongar Singh.

9. The case of the contesting respondent is that brother of the petitioner Komal Singh was taken in adoption by Sardar Singh. The said adoption though was challenged by the petitioner but without any success. It has been found even by the Board of Revenue that Komal Singh was adopted by Sardar Singh. In support of the said finding, valid and cogent reasons have been given in as much as in the death certificate dated 23.1.1927 wherein Komal Singh has been recorded as adopted son of Sardar Singh. On the basis of the other documents also, the Board of Revenue has found that Komal Singh was adopted by Sardar Singh. It may be placed on record that no attempt was made by the learned counsel for the petitioner herein to challenge the said finding which is otherwise a finding of fact before this Court during the course of argument. He rather proceeded to press the writ petition on the ground that the petitioner is entitled for declaration as was sought for notwithstanding the above finding. He submits that the parties belong to a common ancestor namely Bhoop Singh and therefore the petitioner will be entitled for declaration of his respective share and he may not be entitled for declaration of his title qua the entire property left by Komal Singh and his widow Mohni Kunwar.

10. Having given careful considerations to the aforesaid submission of the learned counsel for the petitioner, I find it difficult to agree with him. The petitioner has based his claim for declaration of his title over the disputed property simply on the ground that since he is the brother of Komal Singh (both sons of Narain Singh) and that Komal Singh was last recorded tenure holder of the property in dispute, he is entitled for declaration sought for. As it has been found by the Court below that Komal Singh was adopted by Sardar Singh, naturally it follows that Komal Singh ceases to be son of Narain Singh (natural

father) and thus, ceases to be brother of petitioner namely Raghubir Singh son of Narain Singh. This being so, obviously the Board of Revenue has committed no error in dismissing the appeal preferred by the petitioner.

11. In view of the above, the question of validity of adoption of Awadhesh Kumar, respondent No. 3 herein, needs no consideration. As noted above, the petitioner has failed to prove his title to the land in dispute. The respondent No. 3 was the defendant in suit who is required to prove his title only when the plaintiff proves his title to the land in dispute. However, it may be noted that adoption of respondent No. 3 relates back to 16.2.1964. The suit was filed in year 1970. It has been found by the board of Revenue that adoption is proved by the statement of DW/1 to DW/4 and DW/6 who have got no enmity with the plaintiff. The essence of adoption is giving and taking of child by the natural father to the adoptive mother/father. However, as has been noted by the Apex Court in the case of L. Debi Prasad (Dead) by L.Rs. Vs. Smt. Tribeni Devi and others, 1970 (1) SCC 677 that in the case of old adoption it is but natural that positive oral evidence will be lacking. Passage of time gradually wipes out such evidence. Human affairs often have to be judged on the basis of probabilities. Rendering of justice will become impossible if a particular mode of proof is insisted upon under all circumstances. In judging whether an adoption pleaded has been satisfactorily proved or not, we have to bear in mind the lapse of time between the date of the alleged adoption and the date on which the concerned party is required to adduce proof.

12. The above ratio is fully applicable to the facts of the present case. Even otherwise also, the adoption of respondent No. 3 was challenged by Gaon Sabha and the said plea was found favour with the First Appellate Authority. But the judgment of the First Appellate Authority has been reversed by the Board of Revenue. The Gaon Sabha or the State of U.P. has not pursued the matter any further and the question of adoption of the respondent No. 3 has attained finality. This being so, the said question in the present writ petition has become academic. No relief could be given to the petitioner even if for the moment it is treated that adoption of respondent No. 3 is not proved. Even then, this will not lead to the conclusion that the plaintiff is entitled for declaration of his right over the property in question. At the most, the property in question would become escheat.

13. The learned counsel for the petitioner referred Sri Net Bharti and others Vs. Board of Revenue and others, 2001 (3) A.W.C. 2258 and Sri Thakur Ram Chandra Ji Maharaj Brijman Mandir Vs. Board of Revenue and others, 2007 (102) RD 1 in support of his contention that the Board of Revenue has committed illegality in allowing the appeal filed by the respondent No. 3 without framing any substantial question of law.

14. The Apex Court in Kannan (Dead) through L.Rs and others Vs. V.S. Pandurangam (Dead) through L.Rs. And others, 2008 (70) ALR 692 and Nangali Amma Bhavani Amma Vs. Gopal Krishnan Nair and others, (2004) 8 SCC 785 has

held that merely because no substantial question of law has been formulated by the High Court that does not mean that the judgment of the High Court automatically becomes a nullity or that it must necessarily be set aside by the Apex Court on that ground alone. The appellant must also show prejudice to him on this account. More or less, the same view has been expressed in the case of Nangali Amma Bhavani Amma (supra) wherein it has been laid down that although High Court had not framed substantial question of law in the strict sense, nevertheless it was found from para 3 of the impugned judgment that the High Court had indicated the question of law which arose out of the decision of the First Appellate Court and which required determination under Section 100 of C.P.C.. This was held to be substantial compliance with the requirement of Section 100 of C.P.C. and non framing of substantial question of law on these facts was not considered to be a ground to set aside the decision of the High court.

15. In the present case, the learned counsel for the petitioner could not place any material to show that any prejudice by non framing of substantial question of law has been caused to him.

16. For the reasons given above and in view of the finding that the petitioner has failed to prove his title to be land in question, in particular, on the facts of the present case, the said question is more or less academic and calls for no adjudication.

17. In view of the above discussion, the writ petition lacks merit. It is concluded by findings of fact. No interference under Article 226 of the Constitution of India is called for.

18. Accordingly, it is dismissed with cost of Rs. 3,000/ (Rupees Three Thousand).