
(2014) 11 AHC CK 0109
In the Allahabad High Court
Case No : Writ-B No. 7970 of 2009

Ram Autar Yadav

APPELLANT

Vs

Board of Revenue

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Evidence Act, 1872 — Section 50

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

Citation : (2015) 126 RD 18

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Vivekanand Srivastava, Abhay Raj Yadav, Aniruddh Chaturvedi, Harish Chandra Singh and N.L. Srivastav, Advocates for the Appellant; V.K. Singh and Nitin Agarwal, Advocates for the Respondent

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Aniruddh Chaturvedi, for the petitioner and Sri Nitin Agrawal, for the contesting respondents. This writ petition has been filed against the orders of Additional Deputy Collector dated 21.1.2009, decreeing the suit filed by Maiyadeen and others (respondents-11 to 13) (hereinafter referred to as the "respondents") and holding them as sole bhumidhar of the land in dispute and Board of Revenue, U.P., dated 6.2.2009, dismissing the revision of the petitioner against the aforesaid order.

2. The respondents filed a suit (registered as Suit No. 84 of 2008), under section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the "Act"), for declaring them as sole bhumidhar of plot 1536 (area 0.124 hectare) of village Sitapur Mafi, tahsil Karwi and district Chitrakoot. It has been stated in the plaint that the land in dispute was self-acquired property of Kaluwa. Kaluwa was inherited by his son Sukhiwa and after death of Sukhiwa they inherited it. Chunku common ancestor had two sons Janki and Kaluwa. Janki had one son Dukhiwa. Dukhiwa had one son Parsad alias Parsadawa, who in collusion with the Lekhpal got his name mutated over the land in dispute. Thereafter Parsadawa executed two sale-deeds, showing his 1/2

share in the land in dispute, in favour of Awadhesh Prasad (respondent-8) and Jagdish Prasad (father of respondents-9 and 10). Jagdish Prasad executed a sale-deed dated 5.7.1993 in favour of Ram Autar (the petitioner) whose names were illegally mutated in the revenue records, although they had no interest in it.

3. The suit was contested by the petitioner, who filed his written statement and denied plaintiff allegations. It has been stated in additional plea that the land in dispute was ancestral property coming from the time of Chunku. Chunku had one son Kaluwa alias Janki, who had two sons Dukhiwa and Sukhiwa. Dukhiwa died during life time of his father, leaving behind him his one son Parsad alias Parsadawa. After death of Kaluwa alias Janki, the land in dispute was jointly inherited by Sukhiwa and Parsad alias Parsadawa and their names were mutated over the land in dispute. Thereafter Parsadawa executed two sale-deeds, of his 1/2 share in the land in dispute, in favour of Awadhesh Prasad (respondent-8) and Jagdish Prasad (father of respondents-9 and 10). Jagdish Prasad executed a sale-deed dated 5.7.1993 in favour of Ram Autar (the petitioner) whose names were also mutated in the revenue records. The plaintiff jointly have 1/2 share in the land in dispute and Ram Autar has 1/4 share in it.

4. The suit was tried by Additional Deputy Collector. Apart from documentary evidence, the respondents examined Prem Das, Mahipal and Chandra-pal. The petitioner adduced documentary evidence and examined Ram Autar, Indrapal and Jageshwar as witness. Additional Deputy Collector by judgment dated 21.1.2009, held that a family member is the best witness to prove pedigree. Prem Das, Mahipal and Chandrapal belong to the family of Dukhiwa and Sukhiwa and have stated that Janki and Kaluwa were two different persons. Their statement in respect of pedigree was admissible under section 50 of the Evidence Act, 1872. In khatauni 1369 F-1371 F and 1391 F-1396 F, father's name of Dukhiwa was recorded as Janki. Kaluwa had only one son Sukhiwa. On these findings, the suit was decreed holding that the respondents were sole bhumidhar of the land in dispute. The petitioner filed a revision (registered as Revision No. 28 of 2008-09) which was dismissed by Board of Revenue, U.P. at admission stage by order dated 6.2.2009. Hence this writ petition has been filed.

5. The Counsel for the petitioner submitted that Parsad alias Parsadawa sold his 1/2 share in the land in dispute to Awadhesh Prasad and Jagdish Prasad and Jagdish Prasad sold his share to the petitioner. After selling the property, sons of Parsad alias Parsadwa have colluded with the respondents and gave false statements in the Court that Janki and Kaluwa were two different persons. They are stopped from denying title of their father in the land in dispute. The petitioner filed khataunis, 1362 F, of khata 184, 1365 F, in which in khata 194, 1366 F-1368 F, of khata 205, 1369 F-1371 F, of khata 28, 1372 F-1374 F, of khata 269 and in municipal records father's name of Dukhiwa was mentioned as Kaluwa. The land recorded in these khata are still recorded in the names of sons of Parsadwa. Courts below have illegally ignored mass of documentary evidence on record and relied upon oral statements of the respondents witnesses, which

were apparently false. Judgments of the Courts below are illegal and liable to be set aside.

6. I have considered the arguments of the petitioners and examined the record. A perusal of judgment of Additional Deputy Collector shows that the petitioner had filed 15 documentary evidence but none of the documentary evidence of the petitioner was referred/considered in the judgments. Findings regarding parentage of Dukhiwa and Sukhiwa were recorded only on the basis of oral evidence which were contrary to the documentary evidence. There is absolutely no explanation of various documents filed by the petitioner, in which name of father of Dukhiwa and Sukhiwa were mentioned as Kaluwa. In such circumstances, judgments of the Courts below are illegal and liable to be set aside. In view of the aforesaid discussion, the writ petition succeeds and is allowed. The orders of Additional Deputy Collector dated 21.1.2009, and Board of Revenue, U.P., dated 6.2.2009 are set aside. The matter is remanded to Deputy Collector, who shall decide the suit afresh after hearing the parties and considering entire evidence on record. Since the matter is lingering from a long time, he shall make effort to decide the suit expeditiously without granting unnecessary adjournments to the parties, preferably within period of four months from the date of producing certified copy of the order before him.