(2011) 11 AHC CK 0095

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4572 of 2006

Ram Mani Mishra APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:
Uttar Pradesh Land Revenue Act, 1901 — Section 33AO, 34, 40(3)

Citation : (2012) 1 ADJ 96

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble Sunil Hall, J.—On the basis of the unregistered will deed dated 9.6.1987 in respect of Plot No. 455 area 1 Bigha 5 Bishwar 12 Dhoor, entry in the revenue record in respect of the estate of Ramakant Mishra was attested in favour of the respondent No. 5.

2. Facts of the case are that brother of the petitioner namely Ramakant died issue less and after his death the property in dispute would devolve on the petitioner by way of succession. Petitioner being the real brother of the said Ramakant Mishra was natural heir of the said property. The mutation in favour of respondent No. 5 has been attested in absence of the petitioner vide order dated 15.9.1990 on the basis of the unregistered will deed. On coming to know of this fact that the said mutation was attested vide order dated 15.9.1990, an application seeking recall/restoration of the order was filed on 19.3.1991 which was dismissed vide order dated 27.8.1997 on the ground that it was barred by time. Aggrieved against the said order, an appeal was preferred before Sub-Divisional Officer, Gyanpur and the same was also dismissed vide order dated 25.8.1999 on the same ground. Thereafter, against this order petitioner preferred a revision before Addl. Commissioner, Mirzapur who vide order dated 11.11.2005 dismissed the revision and confirmed the orders passed by Sub-Divisional Officer and Nayab Tahsildar.

3. It is under these circumstances the present writ petition has been filed.

4. Heard learned counsel for the parties and perused the material on record.

5. Learned counsel for the petitioner has contended that no notice or proclamation was issued before making the mutation in the revenue record and the impugned orders have been passed mechanically and without application of mind.

6. Section 34 of the U.P. Land Revenue Act provides that every person obtaining possession of any land by succession or transfer shall report such succession or transfer to the Tahsildar. Section 34 of U.P. Land Revenue Act is quoted below for ready reference :

34. Report of succession or transfer of possession.--(1) Every person obtaining possession of any land by succession or transfer (other than a succession or transfer which has already been recorded u/s 33-AO, shall report such succession to the Tahsildar of the Tahsil in which the land is situate.

7. Section 34 of U.P. Land Revenue Act uses two words, namely, "succession" and "transfer". Any person on the basis of Will cannot claim that by virtue of Will, the land has been transferred to him and his name should be mutated. Section 34 uses the word "succession" also. Will is a mode of succession. The word "succession" has been defined in P. Ramanatha Aiyar''s Law Lexicon (2nd Edition) as :

the word "succession" is a word of technical meaning, and refers to those who by descent or will take the property of a decedent. It is a word which clearly excludes those who take by deed, grant, gift or any form of purchase or contract.

8. Entry affected in proceedings u/s 34 of the Land Revenue Act is for the purpose of recording the physical possession of the property and it does not decide the issue of title. Revenue record is primarily maintained for revenue purposes and an entry therein has reference only to possession. Such an entry does not ordinarily confer upon the person in whose favour it is made or any title to the property in question, and his right to establish his title thereto is expressly reserved by Section 40(3) of the Land Revenue Act. As averred above, mutation proceedings do not decide the right or title of the parties rather these proceedings are just fiscal in nature. They have just got legal effect of entering name of vendee in place of the vendor or the name of lessee in place of lessor. These mutation proceedings are to enable the State to receive revenue from vendee. However, while initiating proceedings u/s 34 of the Act the competent authority is also required to determine as to who is in actual possession of the property and on what basis. Moreover, Section 34 of the Act clearly envisages that on the basis of valid transfer or by succession such order can be affected.

9. Will does not confer any title on a person unless same is authenticated under the law by issuance of a letter of probate. Admittedly there is no authentication as provided under the law. In the present case there is no authentication of the

will which would confer a title on the respondent No. 5.

10. In the circumstances, the writ petition is allowed. The impugned orders dated 11.11.2005, 25.8.1999, 27.8.1997 and 15.9.1990 are hereby set aside. The matter is remanded back to the prescribed authority to examine the question of entry by looking to the fact that an unregistered will deed does not confer any title unless the same is authenticated by letter of probate. He shall also take into consideration the claim of the petitioner that the property in dispute was inherited by him in succession being the real brother of the deceased.