

(1989) 02 AHC CK 0071

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 333 of 1980

Rewa Ram

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 16-02-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Evidence Act, 1872 — Section 68, 69, 70, 71, 72

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171

Citation : (1989) 1 AWC 557 : (1989) RD 152

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

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant;

Final Decision : Allowed

Judgement

K.P. Singh, J.—Shorn of unnecessary details the Plaintiff-Petitioner has claimed Bhumidhari and Sirdari plot of one Nathu Lal, being adopted son, as well as placing reliance upon the Will dated 2-12-1966 alleged to have been executed by aforesaid Nathu Lal. The Plaintiff Petitioner is the S/o a brother-in-law of Nathu Lal.

2. The contesting Defendant Ram Sahai has denied the claim of the Plaintiff-Petitioner and has asserted that he being daughter's S/o Nathu Lai, is entitled to the property belonging to aforesaid Nathu Lal. He has also placed reliance on the Wills alleged to have been executed by Nathu Lal on 20-2-1966 as well as on 3-1-1967. Other legal pleas have been raised by the Defendant contesting opposite party as is evident from the issues framed in the seven suits filed by the Plaintiff- Petitioner.

3. The trial Court and the appellate Court have given judgment for the Plaintiff-Petitioner but in second appeal the Plaintiff-Petitioner has lost. Therefore, aggrieved by the judgment of the second appellate Court the Plaintiff-Petitioner has approached this Court under Article 226 of the Constitution.

4. The main contention of the learned Counsel for the Petitioner before me is that the second appellate Court has patently erred in interfering with the findings of fact recorded by the first appellate Court. It has been stressed before me that the second appellate Court had no jurisdiction to reappraise the evidence on record and to come to conclusions arrived contrary to the conclusions arrived at by the Court of fact.

5. The learned Counsel for the contesting opposite party has tried to support the impugned judgment of the second appellate Court. He has emphasized that the will relied upon by the Plaintiff-Petitioner was written in Urdu and that neither the attesting witnesses nor the executants of the will knew Urdu script, therefore, the document was not proved and the first two Courts had illegally accepted that document in evidence, therefore, the second appellate Court was fully justified in disturbing the judgment of the first two Courts.

6. Second submission raised on behalf of the learned Counsel for the contesting opposite party is to the effect that the will in favour of the Plaintiff-Petitioner is unnatural in the facts and circumstances of this case. Therefore, the first two Courts below acted illegally in accepting the document in favour of the Plaintiff-Petitioner. It has been stressed before me that the fight between the parties is between a legal heir u/s 171 of the U.P.Z. and L.R. Act and a person who is not legally entitled to the property of aforesaid Nathu Lal, tenure-holder. It has also been stressed that in the will dated 2-12-1966 there is no mention of the will alleged to have been executed on 20-2-1966 in favour of the contesting opposite party. Therefore, it can safely be inferred that the first two Courts took perverse view in accepting the will in favour of the Plaintiff-Petitioner.

7. After hearing the learned Counsel for the parties and perusing the impugned judgment, I think that the second appellate Court has exceeded its jurisdiction in reappraising the evidence on record after reappraising the evidence the second appellate Court has interfered with the findings of fact recorded by the first two Courts. It is noteworthy that the second appellate Court has given judgment for the Defendant contesting opposite party by placing reliance upon the will dated 3-1-1967 alleged to have been executed by Nathu Lal. The first two Courts have observed that the aforesaid will dated 3-1-1967 was not proved in accordance with law. There was a controversy between the parties as to whether Nathu Lal was alive on 3-1-1967 or not. On this question there is no categorical finding by any Court. Therefore, the second appellate Court has patently erred in placing reliance on the will dated 3-1-1967 without recording a categorical finding about the date of death of Nathu Lal, the deceased tenure-holder.

8. The discussion in paragraph 6 of the impugned judgment indicates that the second appellate Court has reappraised the evidence on record; therefore, it appears that the second appellate Court has exceeded its jurisdiction in examining the claim of the parties. No doubt, in para. 6 the second appellate Court has characterized the judgments of the Courts below as perverse and unsound but that conclusion the second appellate Court has arrived at after

reappraising the evidence on record and coming to a different conclusion. It is well known by now that findings of fact, however erroneous they may be cannot be interfered with in second appeal unless they are vitiated by error of law or no reasonable man can arrive at those conclusions. In the facts and circumstances of the present case on the observations made in the impugned judgment, it is difficult to say that no reasonable man would come to the conclusions arrived at by the Court of fact. However, the second appellate Court can interfere with the findings recorded by the first appellate Court in the facts and circumstances of this case if it comes to the conclusion that the document dated 2-12-1966 in favour of the Plaintiff-Petitioner was not validly proved. The aforesaid document was written in Urdu script and the attesting witnesses did not know Urdu script but the attesting witnesses can prove a document not knowing the script as is evident from a decision of this Court in *Gajraj v. Board of Revenue* 1965 AWR 841.

9. To my mind, the second appellate Court has patently erred in reappraising the evidence on record and giving judgment for the Defendant opposite party without deciding the controversy as to when the aforesaid Nathu Lal died.

10. In the facts and circumstances of this case it is necessary to examine as to whether the will dated 2-12-1966 is a natural will as it has deprived the legal heir of his right in the disputed land. Moreover, it has failed to mention the earlier will set up by the Defendant opposite party. This circumstance is a relevant circumstance which has not been considered by the first appellate Court. Therefore, a categorical finding should be recorded in the light of the circumstance that the will relied upon by the Plaintiff-Petitioner has deprived the legal heir of his right in the disputed land.

11. Since the impugned judgment suffers from patent error of law it deserves to be quashed. The second appellate Court should address itself hereafter as to whether the document dated 2-12-1966 was strictly proved in accordance with law, whether the ingredients of Sections 68 to 72 of the Indian Evidence Act and Section 63(c) of Hindu Succession Act have been satisfied by the evidence on record. A number of rulings such as AIR 1964 Raj 39 (b) *Naresh Charan Das Gupta Vs. Paresh Charan Das Gupta*, AIR 1966 All 570 at page 576 and *Dhruba Sahu (dead) and after him Nalumoni Sahu and Another Vs. Paramananda Sahu*, were cited to convince me that the will dated 2-12-1966 was proved according to law on the evidence on record. Since the impugned judgment of the second appellate Court suffers from patent errors of law pointed out above, it is not necessary for me to record categorical finding on the basis of evidence on record. If the second appellate Court comes to the conclusion that the document dated 2-12-1966 in favour of the Petitioner was not legally proved, it can interfere with the findings of fact recorded by the first appellate Court. Since this aspect of the matter has not been examined by the second appellate Court and it has been moved much by the circumstance that the document was written in Urdu, therefore it could not be proved, does not appear to me a sound basis. However,

in the ends of justice the parties are permitted to address before the second appellate Court on this legal plea and the second appellate Court will record categorical finding hereafter on the question involved. The second appellate Court may examine the controversy about the date of death of the aforesaid tenure-holder, namely Nathu Lai, and examine the validity of the will dated 3-1-1967 set up by the Defendant opposite party.

12. For the foregoing discussions, the writ petition succeeds and the impugned judgment of the second appellate Court dated 31-12-1979 is hereby quashed and the second appellate Court is directed to re-examine the claims of the parties in the light of the observations made above. Parties are directed to bear their own costs.