

(2012) 04 AHC CK 0150
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 57366 of 2006

Shailendra Kumar Singh

APPELLANT

Vs

Additional Commissioner, Varanasi and Others

RESPONDENT

Date of Decision : 12-04-2012

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 34

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171, 172

Citation : (2012) 6 ADJ 126 : (2012) 6 AWC 5564

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : M.N. Singh, Sandeep Chaudhary, V.K. Singhand Mahesh Narain Singh, for the Appellant; P.K. Srivastava, P.N. Pandey, R.N. Pandey and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble A.P. Sahi, J.—List has been revised. I have heard Sri Sandeep Chaudhary holding brief of Sri M.N. Singh for the petitioner and learned Standing Counsel for the State. A counter-affidavit has been filed on behalf of the contesting respondent but the learned counsel for the said respondent is not present when the matter is taken up.

2. This petition questions the legality of the order passed by the authorities below in mutation proceedings u/s 34 of the U.P. Land Revenue Act, 1901, on account of a dispute about succession to the holding of Smt. Umrai W/o Nand Kumar.

3. The admitted pedigree between the parties has been unfolded in paragraph No. 6 of the writ petition, which is reproduced hereunder :

4. It is undisputed between the parties that Smt. Umrai, wife of Nand Kumar, inherited her husband's holding and she died on 23.3.1992. It is undisputed that Smt. Umrai had three daughters, who were married.

5. On the death of Smt. Umrai, it is claimed by the petitioner that the holding was inherited by Reoti Ram and after his death on 16.4.1994, the petitioner, being his son, has inherited the same.

6. The contesting respondent Ram Dulari and Param Dulari, who were married daughter of Smt. Umrai, staked their claim for mutation over the holding. The petitioner set up an unregistered Will as against the same claim of the respondents. He also claimed that as per the provisions of Section 171 read with Section 172 of the U.P. Zamindari Abolition & Land Reforms Act, 1950, the petitioner is even otherwise entitled to inherit the holding.

7. The Tehsildar found that the petitioner had set up an unregistered Will in order to avoid the natural course of succession which could not be proved. Consequently, the claim of the petitioner was rejected and the same has been upheld by revisional order which is under challenge before this Court.

8. Having heard learned counsel for the petitioner, it is evident that the dispute relates to succession of the holding of Late Umrai, who in the capacity of a widow, had inherited the holding of Late Nand Kumar. Upon the death of Umrai, succession would be governed by Section 172 of the 1950 Act. The said provision makes it clear that the same line of succession would be adopted as contained in Section 171 in the circumstances referred to therein. It is also undisputed that the contesting respondents are married daughters and on the date of death of Umrai i.e. 23.3.1992 they were very much the heirs of Umrai.

9. Section 171 as it then stood i.e. prior to the present amendment, included a married daughter in clause (g) of Section 171 as an heir after an unmarried sister and brother, being the son of the same father as the deceased. A brother has been defined as the son of the same father.

10. Reoti Ram, the father of the petitioner, was not the real brother of Nand Kumar. The father of Nand Kumar is Gaya Deen and the father of Reoti Ram is Bhulan. Gaya Deen and Bhulan were brothers. It is, therefore, evident that Reoti Ram is not the son of the same father. Consequently, the claim of succession by the petitioner on the aforesaid ground u/s 171 cannot be accepted as against the married daughters, who are higher in the order of devolution for the purpose of succession u/s 171 of the 1950 Act as it stood when the succession opened. Consequently, it is the contesting respondents, who are the heirs u/s 171 of the Act.

11. Coming to the issue of Will set up by the petitioner, needless to mention that the Will could not be proved before the authority. However, these proceedings of mutation are summary proceedings and, as such, it is still open to the petitioner to file a regular Suit in order to claim succession on the basis of a Will before the appropriate forum. Consequently, I see no reason to interfere with the impugned orders in view of the observations made herein above, and hence the writ petition fails and is dismissed without prejudice to the rights of the claim of the petitioner to contest his claim before the regular Court on the basis of a Will as

set up by him.