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(2019) 07 GAU CK 0016

In the Gauhati High Court

Case No : Writ Petition (C) No. 3910 Of 2011

Siroja Begum And Anr — APPELLANT

Vs

State Of Assam And Ors — RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Mohammedan Law — Section 53

Citation : (2019) 07 GAU CK 0016

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : A R Sikdar

Final Decision : Disposed Off

Judgement

1. Heard Mr. A.R. Sikdar, learned counsel for the petitioners. Also heard Mr. P.S. Deka, learned standing counsel, Revenue Department appearing for the respondent Nos. 1 to 3 and Mr. D.K. Das, learned counsel representing respondent Nos. 4 to 8.

2. This writ petition has been preferred against the judgment and order dated 12-05-2011 passed by the Chairman, Assam Board of Revenue, Guwahati in Case No. 02 RA(Dhubri)/2010 allowing the appeal filed by the private respondents thereby setting aside the order dated 10-01-2009 passed by the Circle Officer, Chapar by means of which, the names of the predecessor-in-interest of the petitioners was recorded in place of his deceased father Mokshed Ali along with Md. Suleman Sk.

3. It appears that land measuring 4B-2K-16L situated in village- Kazipara Part-I covered by Dag No. 498 of Patta No. 20, Dag No. 497 of Patta No. 225 and Dag No. 742 of Patta No. 519 was recorded in the name of Md. Mokshed Ali. Md. Mokshed Ali had three sons, viz. Samsul Sheikh, Sirajuddin and Sheyesuddin and five daughters. Sheyesuddin died unmarried. Sirajuddin, i.e. the predecessor-in-interest of the writ petitioners predeceased his father Md. Mokshed Ali. After the

death of Mokshed Ali who died in the year 1992, the record was corrected by including the name of Md. Samsul Haque, i.e. the predecessor-in-interest of the private respondents in place of the pattadar Mokshed Ali. However, the names of the writ petitioners, being the legal heirs of Sirajuddin, were not included in the record of rights. Having come to know about the said fact, the petitioners had applied for inclusion of their names in the revenue record as legal heirs of Sirajuddin. By the order dated 10-01-2009 the learned Circle Officer had allowed the said prayer. The order dated 10-01-2009 was taken in an appeal by predecessor-in-interest of the private respondents which was rejected by the Settlement Officer, Dhubri and Kokrajhar by the order dated 27-10-2009 passed in Mutation Appeal No. 16/2006. Aggrieved by the order dated 27-10-2009, the respondent No. 4 to 8 had preferred the revenue appeal registered as Case No. 02RA(Dhubri)/2010 which was allowed by the impugned judgment and order dated 12-05-2011. Hence, this petition.

4. The learned Revenue Board had interpreted Section 53 of the Mohammedan Law and come to the conclusion that since Sirajuddin had predeceased his father Md. Mokshed Ali, hence, as per the procedure of Sunni Law, the legal heirs of the Sirajuddin would not inherit any share in the property left behind by Md. Mokshed Ali. Based on such interpretation, the order of mutation granted in favour of the writ petitioners was set aside by the learned Board of Revenue. The operative part of the judgment and order dated 12-05-2011 is reproduced herein below for ready reference:-

"The persons involved in the present appeal are Sunni Mohammedans and the law relating the Sunnis shall be applicable. The example given in the above mentioned Section is identical with the present situation. As per this provision, if a son of a land owner predeceases his father, his share in the father's property is lost and cannot be claimed by his children representing the dead father. In such a situation the impugned order of the learned Settlement Officer is evidently incorrect. The appeal is allowed. The impugned order is set aside. The mutation granted in favour of the private respondents in respect of the property of late Mokshed Rahman be cancelled."

5. Mr. Sikdar submits that the conclusion drawn by the learned Board of Revenue, apart from being erroneous, is also patently illegal on account of the fact that even under Section 53, the right of exclusion would at best be available to Samsul Sheikh but not to his legal heirs.

6. Mr. Das, learned counsel for the private respondents, on the other hand, has emphatically argued that since the legal heirs of Sirajuddin cannot claim any right, title and interest in the immovable property left behind by Md. Mokshed Ali, the learned Revenue Board had rightly struck off their names from the revenue record by interfering with the order of mutation passed by the Circle Officer.

7. It is trite that jamabandi is not a document of title and therefore, mutation

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entries would not confer any right, title and interest over immovable property. The mutation entries can at best be treated as supporting materials if there are other documentary evidences to establish the title of a person over the land. In the present case, as noted above, the learned Circle Officer had passed the order of mutation in a routine manner by including the names of the writ petitioners by treating them as the legal heirs of deceased Sirajuddin, i.e. one of the sons of Md. Mokshed Ali. Whether the writ petitioners have any right to inherit shares in the property left behind by Mokshed Ali is not a matter that would fall within the domain of scrutiny by the Circle Officer or for that matter the Board of Revenue. All questions of title including the question of existence of any right to inherit shares in ancestral property can be legitimately decided only by the civil court. While examining the validity of an order granting and/ or cancelling mutation, the learned Board of Revenue would not have the jurisdiction to declare or extinguish the title of any individual over immovable property by going into the question of validity of competing claim of title.

8. In the present case, as mentioned above, the order of mutation has been interfered with by the learned Board of Revenue practically by issuing a declaration that the writ petitioners would not have any right to inherit shares in the immovable property left behind by Md. Mokshid Ali. Such a declaration, in the opinion of this Court, was clearly beyond the scope and ambit of the power conferred upon the learned Board of Revenue under the law and therefore, the same cannot be sustained in the eye of law.

For the reasons stated above, the impugned judgment and order dated 12-05-2011 is hereby set aside.

The writ petition stands allowed.

Before parting with the record, it is made clear that notwithstanding the determination made by this Court in the present proceeding, it would be open for both the parties to approach the civil court seeking appropriate relief, based on proper cause of action, if so advised.

If any such civil suit is filed, the same may be adjudicated on merit, without being influenced by any observation made by this Court in the present order.

Writ petition, accordingly, stands disposed of.

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