

(2011) 09 AHC CK 0137
In the Allahabad High Court
Case No : C.M.W.P. No. 53140 of 2011

Smt. Arti Srivastava and others

APPELLANT

Vs

Additional Commissioner (Judicial), Gorakhpur Mandal,
Gorakhpur and others

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2012) 1 AWC 982 : (2011) 114 RD 395

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri M.D. Singh Shekhar, learned Senior Counsel appearing on behalf of the petitioners, Sri Ashok Singh and Dr. Vinod Rai, learned Counsel for the respondent Nos. 8 and 11, learned Standing Counsel for the respondent Nos. 1, 2 and 3 and learned Counsel for the Gaon Sabha appearing on behalf of respondent Nos. 13 and 14.

2. This petition arises out of a dispute between the petitioners, who are the married daughters of late Sampati, the last recorded tenure holder, and the contesting respondents, who claim themselves to be the sons of the brother of the husband of late Sampati. The respondents claimed the property on the basis of an unregistered Will dated 16.7.1984 alleged to have been executed by late Sampati, who died on 19th January, 1985.

3. Sri Shekhar submits that the impugned orders are erroneous, inasmuch as, they are based on mere imagination and have been passed without considering the evidence led on behalf of the petitioners, inasmuch as, the respondents have not been able to clear the cloud that exists in relation to the unregistered Will. It also does not recite any reason for excluding the natural heirs, namely, the petitioners.

4. Sri Shekhar submits that late Sampati at the time of the alleged execution of the Will was suffering from paralysis and, therefore, was medically and physically unfit to execute the same. Even otherwise, she had prior to that executed several sale-deeds, precisely five in number where she had put her thumb impression and not her signatures, whereas the Will set up by the respondents contains an alleged signature of late Sampati which aspect has not been correctly dealt with by the Courts below. He further submits that the witnesses, who had been produced by the respondents, also through their statement could not clear the cloud over the alleged Will and in the absence of any cogent finding with regard to the evidence led by the petitioners, the impugned orders are vitiated. He, therefore, submits that the impugned orders deserve to be set aside and the entries should be maintained in favour of the petitioners, who are the married daughters of late Sampati and are also the natural heirs falling within the provisions of section 171 of the U.P. Z.A. and L.R. Act, 1950.

5. On the other hand, Sri Ashok Singh and Dr. Vinod Rai, learned Counsel for the contesting respondents, submit that the findings in relation to the aforesaid contention raised about the signatures of late Sampati on the Will have been dealt with by the authorities and since she belonged to a well educated family, the Courts below have not committed any error in treating the claim of the respondents as correct, which is based not on mere imagination, but on the basis of the evidence led before the Courts below. He contends that the Will was executed by late Sampati and the two witnesses of the Will were produced and they have proved the Will in favour of the respondents. He further submits that not only this, the reason for the execution of the Will is also recited therein and none else than the Gram Pradhan of the village had deposed in favour of the answering respondents. He further submits that the reason for believing the signatures of Smt. Sampati are based on the relevant consideration of the evidence led and in such a situation the order cannot be said to be perverse. He, therefore, submits that the entire evidence having been considered concurrently by all the Courts below, this petition should not be entertained under Article 226 of the Constitution of India as it does not fall within any of the exceptions as carved out by this Court in the case of Sri Lal Bachan Vs. Board of Revenue, Uttar Pradesh and Others,

6. Having heard learned Counsel for the parties and perused the writ petition as well as the supplementary affidavit filed on behalf of the petitioners today, the findings which have been recorded in relation to the aforesaid contentions are contained not only in the order of the Tehsildar but also in the appellate order passed by the Sub-Divisional Magistrate. The said findings on which the entire arguments are based are contained at page Nos. 63 to 65 of the writ petition. A perusal thereof leaves no room for doubt that the authorities below have gone through the evidence which was led before them and have drawn the inference on the basis of the evidence so placed before them. The said findings cannot be said to be based on any extraneous material or perverse material and hence the scope of interference by this Court under Article 226 automatically stands

reduced. In view of the aforesaid findings that have been recorded, I do not see any reason to interfere with the impugned orders.

7. Accordingly, the writ petition is dismissed leaving it open to the petitioners to contest their claim in relation to succession by filing an appropriate suit before the Court of competent jurisdiction.

8. Needles to say that these findings about which observations have been made are all prima facie observations and are not conclusive and they shall be subject to the out come of the suit to be filed by the petitioners in accordance with law.