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**(2012) 07 AHC CK 0024**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 24850 of 2008

Smt. Savita Shukla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 27-07-2012

**Acts Referred:**

**Citation :** (2012) 10 ADJ 108 : (2013) 1 AWC 55

**Hon'ble Judges :** Arun Tandon, J

**Bench :** Single Bench

**Advocate :** V.S. Kushwaha, for the Appellant; Shashank Tripathi and C.S.C., for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Hon'ble Arun Tandon, J.—Petitioner seeks quashing of the order dated 6.2.2008 and dated 7.2.2007. Facts in short leading to the present writ petition are as follows:

Respondent Smt. Ashok Lata, married daughter of Jagdish Narain Misra @ Jagdish Prasad filed Original Suit No. 374 of 2002 for the following relief:

(a) for cancellation of the sale-deed dated 16.11.1999, said to have been executed by one Om Prakash in favour of the present petitioner, namely Smt. Savita Shukla, as also for a permanent injunction restraining the defendant from interfering in the possession of the plaintiff over the agricultural plot No. 52, village-Kukradeo, tehsil-Bilhaur, district-Kanpur.

In the aforesaid suit the defendant-petitioner Smt. Savita Shukla put in appearance and raised a preliminary objection that the suit was not maintainable before the civil Court as the proper remedy available to the plaintiff was to file a suit u/s 229-B before the revenue Court. Such preliminary objection raised by the defendant-petitioner was rejected by the trial Court vide order dated 15.7.2002. Not being satisfied, the defendant-petitioner filed Civil Revision, which was numbered as Revision No. 52 of 2007, which has also been dismissed

by the District Judge, Court No. 5, Kanpur Dehat vide order dated 6.2.2008. Hence this petition.

2. On behalf of the petitioner it is contended that since the plaintiff was not the recorded tenure holder and further since she was the married daughter of the original tenure holder, namely Jagdish Prasad, alongwith other married daughters, the proper remedy available to her was to file a Revenue Suit wherein her share and title could be determined and it is only thereafter that the issue of the cancellation of the sale-deed could be considered. For the proposition the petitioner has placed reliance upon the judgment of the Apex Court in the case of Kamla Prasad and others v. Krishna Kant Pathak and others, 2007 (102) RD 378.

3. Counsel for the respondent however opposes the plea and submits that the suit as presented was maintainable before the civil Court.

I have heard learned counsel for the parties and have examined the records.

4. It is not in dispute that the plaintiff is the married daughter of Jagdish Prasad, the original tenure holder of the agricultural holdings. Jagdish Prasad did not have any male issue. He left behind only three married daughters, including the plaintiff.

5. By means of the supplementary affidavit the plaintiff has brought on record an order passed by the Tehsildar Bilhaur, District-Kanpur Dehat in case No. 204 dated 29th June, 1984 wherein, after affording opportunity of hearing to Om Prakash (the person executing the sale-deed in favour of the plaintiff) it has been recorded in the said order that the plaintiffs were entitled to be substituted subsequent to the death of Jagdish Prasad, and that Om Prakash was not the son of Jagdish Prasad and had no right or title over the property of Jagdish Prasad. Against this order Om Prakash filed an appeal, being Appeal No. 62 of 1984, which has also been dismissed on 29th August, 1984.

6. Therefore, knowledge of the order of mutation to Om Prakash is writ large on record, yet the said Om Prakash, on the basis of a power of attorney said to have been executed by the brother of Jagdish Prasad, is stated to have executed the impugned sale-deed. The only case pleaded by the petitioner before this Court is that the order of the Tehsildar directing mutation in favour of the plaintiff was never acted upon.

7. I am of the considered opinion that the order passed by the Tehsildar, after affording opportunity of hearing to the parties, shall continue to hold the field even if the ministerial work of making necessary correction in the revenue records had not been done by the subordinate authority, specifically when against the said order Om Prakash had filed an appeal, which was dismissed.

8. In this set of circumstances, this Court has no hesitation to record that the plaintiff had to be treated as recorded owner of the property and there is no need for her to seek any declaration of the title before instituting the suit for cancellation of the sale-deed, which has been executed by Om Prakash on the

strength of the power of attorney executed by the brother of Jagdish Prasad.

9. So far as the judgment relied upon by the counsel for the petitioner is concerned, suffice is to refer to the fact that in same judgment an earlier judgment of the Apex Court in the case of Shri Ram and Another Vs. Ist Addl. District Judge and Others, , has been distinguished only on the ground that the person filing the suit was not the recorded tenure holder. As already noticed above there is already an order of the competent authority directing mutation in the name of the daughter of Jagdish Prasad over the landed property. In view of the aforesaid, the judgment relied upon by the counsel for the petitioner is clearly distinguishable and the facts of the case in hand are more akin to those of Shri Ram and another (supra).

In view of the aforesaid, no case for interference is made out.

Writ petition is dismissed. Interim order, if any, stands discharged.