

(2011) 02 AHC CK 0320

In the Allahabad High Court

Case No : Civil Miscellaneous Recall Application No. 110043 of 2010 in Writ B
No. 17405 of 1994

Smt. Shankuntala

APPELLANT

Vs

B.R.

RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Citation : (2011) 02 AHC CK 0320

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—This recall application has been filed by three brothers who are the sons of original Petitioner and who all are very well placed. It is supported by affidavit of applicant No. 1, Siddharth who is shown to be permanently a resident of United State of America (USA). In Para-5 of the affidavit filed in support of recall application, it is mentioned that applicant No. 1, Sri Siddharth since very beginning of his career shifted to USA in the year 1968 and became citizen of USA. The husband of the original Petitioner (father of the applicants) was an I.P.S. officer.

2. The writ petition was filed by Smt. Shakuntala Devi, which was dismissed in limine on 19.04.1994. Thereafter, review petition was filed, which was dismissed through a detailed judgment by me on 05.10.2006. The writ petition was filed by Smt. Shakuntala Devi through her power of attorney holder, Sri Rampat. Smt. Shakuntala Devi died on 17.07.2001. Substitution application was filed on 23.12.2004 stating therein that Smt. Shakuntala Devi had died on 17.07.2001; that Smt. Shakuntala Devi was issue-less, hence she was residing with Ashwini Singh, son of real brother of Ram Singh, who was husband of Smt. Shakuntala Devi and Smt. Shakuntala Devi had executed a Will in favor of Ashwini Singh. Accordingly, substitution of Ashwini Singh was sought. The substitution application was allowed on 06.05.2005. Now Siddharth, Dr. Ashok Singh and

Brigadier Vikram Singh have filed this recall application on 13.04.2010 claiming that they are the sons and only legal representatives of Smt. Shakuntala Devi.

3. The applicants have sought recall of my judgment dated 05.10.2006 dismissing the review petition. The prayer in this recall application is quoted below:

It is therefore, most respectfully prayed that this Hon''ble Court may graciously be pleased to allow this application and recall the order dated 05.10.2006 passed by Hon''ble S.U. Khan, J. contained in Review Application No. 45821 of 1997 and in the interest of justice this Hon''ble Court may be pleased to summon the imposters who has filed the fake and frivolous writ petition and substitution application before this Hon''ble Court and or pass such other and further order which this Hon''ble Court may deem fit and proper in this circumstances of the case.

4. From the above quoted prayer it is quite clear that according to the case of the applicants Smt. Shakuntala Devi had not filed the writ petition and Ashwini Singh was not entitled to be substituted at the place of late Smt. Shakuntala Devi. In Para-3 of the affidavit filed in support of recall application, it is mentioned that Smt. Shakuntala Devi had not executed power of attorney in favour of Rampat. In Para-4 of the affidavit, it is mentioned that Ashwini Singh was not concerned with the family of Smt. Shakuntala Devi and pedigree given by him in substitution application was wholly false and frivolous. However it has not been specifically denied that Ashwini Singh was son of real brother of applicants' father. If according to the case of the applicants in this recall application, Smt. Shakuntala Devi did not file the writ petition then writ petition deserved to be dismissed on this ground alone. If applicants who claimed to be sons of Smt. Shakuntala Devi did not care about the property of their mother and Smt. Shakuntala Devi herself who was wife of an I.P.S. officer did not care about her property, then nothing can be done. If writ petition was not filed by Smt. Shakuntala Devi, then matter ends. Nothing remains to be recalled because writ petition was dismissed and review petition was also dismissed.

5. Smt. Shakuntala Devi shown to be original Petitioner herself filed declaratory suit, which was dismissed by S.D.O., appeal was allowed on 19.05.1993, however Board of Revenue allowed the second appeal and restored the order of the trial court dismissing the suit of Smt. Shakuntala Devi. In the entire affidavit it has not been stated that Smt. Shakuntala Devi did not file the suit, which was dismissed on 31.03.1993 by S.D.O. or the First Appeal No. 28 of 1992-93, which was allowed on 19.05.1993.

6. It appears that the land in dispute had been allotted by Gaon Sabha to some other persons and they had filed impleadment application in the earlier review petition on 13.02.2006. Whether the allotment was valid or not cannot be made subject matter of this recall application in this writ petition.

7. Accordingly, this recall application is dismissed. However applicants are at

liberty to lodge FIR against Ashiwini Singh as according to them he made false claim in substitution application that Smt. Shakuntala Devi died issue-less and had executed Will in his favour.