
(2009) 12 AHC CK 0084
In the Allahabad High Court

Smt. Sushila

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Citation : (2010) 2 AWC 2028

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Petitioner, mother and respondents No. 4 and 5, her sons have played fraud of the highest order in this case. One Khacheru Singh died in the year 1985 leaving behind some agricultural land and two sons, who are respondents No. 4 and 5, Manoj Kumar and Raj Singh (Para 4 of the writ petition). It has further been stated in the said para that at the time of death of Khacheru Singh, his sons respondents No. 4, and 5 were minors aged 10 and 9 years, hence on 9.12.1986 his agricultural land was mutated in the names of both of his minor sons under the guardianship of their mother, Smt. Sushila, the petitioner (True copy of the khatauni is Annexure-III to the writ petition). She willingly accepted this position of guardianship of her minor children.

2. After attaining majority, one of the sons, i.e., Raj Singh entered into an agreement for sale on 1.9.1995 with one Vidyawati for selling his share in the agricultural land. In para 7 of the writ petition, it is admitted that at that time he was aged 20 years. It has also been added thereafter that he was minor as age of majority is 21 years. This is an utterly absurd assertion. Age of majority is 18 years. Thereafter, petitioner filed mutation application asserting therein that her late husband had executed unregistered "Will" of the agricultural property in dispute in her favour on 5.2.1984 (Case No. 24, Sushila v. Khacheru). Somehow she persuaded the Tehsildar to pass order of mutation in her favour dated 23.11.1995. The said order was challenged by Smt. Vidyawati by filing restoration application which was allowed and mutation order in favour of the

petitioner was set aside through order dated 8.12.1995. The result was that mutation application of petitioner stood restored. Thereafter, on 1.7.1996, mutation application of the petitioner was dismissed in default. The assertion that on the said date, restoration application of Smt. Vidyawati was dismissed is utterly baseless as her restoration application had already been allowed on 8.12.1995 and thereafter it was the mutation application of the petitioner, which was pending.

3. Thereafter, on 8.11.2000, both the brothers, i.e., Manoj Kumar and Raj Singh, sold the agricultural land in dispute to respondent No. 3, Yogesh Kumar and his name was mutated through order dated 13.12.2000 (It appears that previous prospective purchaser Vidyawati agreed for this arrangement). Obviously till then, names of sellers respondents No. 4 and 5 were continuing in the revenue records. After six years, petitioner again filed an application before Tehsildar, Hapur, district Ghaziabad on 7.4.2006. Tehsildar again obliged the petitioner and through order dated 19.6.2006 directing that the names of Manoj Kumar and Raj Singh should be expunged and name of the petitioner should be entered. Tehsildar did not realise that at that time name of respondent No. 3, the purchaser was entered in the revenue records and not the names of respondents No. 4 and 5. It is apparent that the Tehsildar conveniently ignored the said fact. Against orders dated 1.7.1996 and 19.6.2006, Yogesh Kumar, respondent No. 3 filed two appeals, being Appeal Nos. 32 and 33, both of 2007 (It appears that as the order dated 1.7.1996 was being treated to be in favour of petitioner, hence appeal against the same was also filed).

4. Assistant Collector/Deputy Collector, Hapur allowed both the appeals on 7.7.2008. Against the said orders, Revision No. 3556/LR/2007-08 was filed, which was dismissed by Board of Revenue, Lucknow on 17.8.2009, hence this writ petition.

5. If there had been any "Will" in favour of the petitioner-widow, then she should have got her name mutated immediately after the death of Khacheru Singh and there would not have been any contest to her claim as her sons were aged about 9 and 10 years. However, she did not do it and she willingly agreed for entry of the names of her sons who were aged about 9 and 10 years under her guardianship which conclusively proves that there was no "Will" in her favour. Both the courts below has very rightly held that the forged Will has been put forward to defraud the purchaser.

6. Accordingly, there is absolutely no merit in the writ petition, hence it is dismissed.

7. It is further directed that no claim on the basis of the alleged "Will" dated 5.2.1984 shall be entertained by any Authority or Court subordinate to the High Court. If any proceedings on behalf of petitioner including any suit are pending on the basis of the said "Will", then the same shall immediately be abated and dismissed as such. If the petitioner pursues such proceedings or initiates fresh

proceedings on the basis of the aforesaid "Will", then she would be liable to be punished for contempt.

8. Learned Counsel for the petitioner has argued that the above directions are beyond the scope of the writ petition and after dismissing the writ petition, the Court may not issue any further direction as it will deprive the petitioner to pursue/file suit for declaration and for cancellation of the sale deed (orders passed on mutation applications are subject to the result of declaratory suit). This principle applies only to normal cases. However, in view of fraud of such high magnitude found to have been committed by petitioner herself, writ court will have to go a step further from the classical constraint of stopping at dismissing a case. Equity demands it and writ jurisdiction has come out of its womb.

9. Writ petition is accordingly dismissed with the above further directions.