
(2015) 01 AHC CK 0137
In the Allahabad High Court
Case No : Writ-B No. 871 of 2015

Subhash Chaubey

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Registration of Births and Deaths Act, 1969 — Section 15
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12

Citation : (2015) 127 RD 129

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Sunil Kumar Singh, for the Appellant; R.C. Upadhyay and R.K. Singh Baghel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.

1. Heard Sri Sunil Kumar Singh, for the petitioner and Sri Chandra Kumar Rai and Sri R.K. Singh Baghel, for respondent-4. The writ petition has been filed against the order of Deputy Director of Consolidation dated 20.12.2014, passed in proceeding under section 12 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "Act").

2. The dispute relates to the land of khata 6 and 7 of village Barawan, tahsil Mohammadabad Gohna, district Mau, which was recorded in the name of Ram Sudhar son of Kalika Chaube, who died on 15.1.2005. Subhash Chaubey filed an application under section 12 of the Act, for mutation of his name over the land in dispute on the basis of an unregistered Will dated 20.4.2004, allegedly executed by Ram Sudhar, in his favour. Smt. Sumitra alias Sunita also filed an application under section 12 of the Act, for mutation of her name over the land in dispute, claiming herself as the widow of Ram Sudhar. Assistant Consolidation Officer referred aforesaid applications to Consolidation Officer on 8.7.2005, where it was registered as Case No. 221, Subhash Chaubey v. Ram Sudhar, under section 12

of the Act. The Consolidation Officer called for a report from Assistant Consolidation Officer, who submitted his report dated 15.5.2006, along with a Death Certificate issued by Pradhan, showing that Smt. Sumitra alias Sunita also died on 1.10.2005. The Consolidation Officer, without issuing any proclamation, by his order dated 25.5.2006, directed for mutation of the name of Subhash Chaubey (the petitioner) as an heir of Ram Sudhar, being his real brother, over the land in dispute.

3. On coming to know about the ex-parte order dated 25.5.2006, Smt. Sumitra alias Sunita filed an application dated 23.6.2006 for recall of the order before Consolidation Officer. However hearing in the recall application was delayed as such, Smt. Sumitra alias Sunita also filed an appeal (registered as Appeal No. 1983/2605) along with delay condonation application on 5.8.2006. The appeal was heard by Settlement Officer Consolidation, who by his order dated 13.2.2007, condoned the delay but dismissed the appeal on merit, holding that mutation application was signed by Sunita Chaubey and not by Sumitra Chaubey. From the Death Certificate issued by Nagar Nigam Allahabad, it was proved that Sumitra Chaubey had died on 1.10.2005. Pass Book of Indian Overseas Bank was in the name of Sunita Chaubey, on which her photograph was affixed and Certificate issued by Pradhan was in respect of that lady Sunita Chaubey, who was not widow of Ram Sudhar and not in respect of Sumitra Chaubey widow of Ram Sudhar. Signature of Sumitra Chaubey made on the memorandum of the appeal is different from on the restoration application.

4. Smt. Sumitra alias Sunita filed a revision (registered as Revision No. 146/217/2014-15) against the aforesaid orders. The revision was heard by Deputy Director of Consolidation, who by order dated 20.12.2014 found that Subhash Chaubey filed the mutation application on the basis of Will but could not adduce attesting witnesses of the will to prove its due execution. Smt. Sumitra alias Sunita filed Inheritance Certificate, Sale Deed dated 25.4.2001, Pass Book of Indian Overseas Bank of the name of Sunita Chaubey, on which her photograph was affixed, which was fully tallied with the lady appearing in the Court of Deputy Director of Consolidation and compared by him, Order of Assistant Development Officer dated 24.9.2013, directing to delete the entry of death of Smt. Sumitra alias Sunita, holding her as alive and Smt. Sumitra and Smt. Sunita was one and same lady and was daughter of Ramapati Tiwari of village Bhikhampur, district Ghazipur, Extract of Pariwar Register as corrected, Voter Identity Card, Resident Certificate issued from Sub-Divisional Officer, order of Nagar Ayukta, Allahabad dated 25.9.2013, cancelling death certificate of Sumitra Chaubey, Report of Naib Tahsildar dated 14.6.2013, holding Smt. Sumitra alias Sunita as alive. It was further held that the petitioner could not give identity of that lady who was contesting the litigation. On these findings the revision was allowed and the orders of Consolidation Officer dated 25.5.2006 and Settlement Officer Consolidation dated 13.2.2007 were set aside and the name of Smt. Sumitra alias Sunita was directed to be recorded over the land in dispute. Hence this writ petition has been filed.

5. The Counsel for the petitioner submitted that Smt. Sumitra Devi, real widow of Ram Sudhar was residing at A-1/267, Badari Avas Yojana, Mehdauri, Teliyarganj, Allahabad, where she died on 1.10.2005, which was duly recorded in Birth and Death Register of Nagar Nigam Allahabd. in Pariwar Register of village Barawan, district Mau also death of Sumitra Devi widow of Ram Sudhar was recorded. The order of Assistant Development Officer dated 8.5.2006 was challenged by the petitioner in appeal, which was allowed by Sub-Divisional Officer by order dated 11.2.2013. The petitioner is the real brother of Ram Sudhar and after death of widow of Ram Sudhar, he has inherited the land in dispute under section 171 of U.P. Act No. 1 of 1951. In such circumstances, claim on the basis of Will dated 20.4.2004, executed by Ram Sudhar in his favour was no more required to be proved as such no evidence for proving due execution of the Will was adduced. Sunita Devi, who is now contesting the case was in fact a tenant of Ram Sudhar, in his house in Agra. She is having a daughter Pratima Chaubey as is proved from her affidavit filed before the Trustee, SBI Mutual Fund, Agra. Admittedly Ram Sudhar was issueless and name of his widow was Sumitra and not Sunita. Assistant Consolidation Officer submitted his report holding Smt. Sumitra widow of Ram Sudhar was dead. Deputy Director of Consolidation, without examining the findings and reasons given by Settlement Officer Consolidation allowed the revision and set aside the findings of facts. The order of Deputy Director of Consolidation is illegal and liable to be set aside.

6. I have considered the arguments of the Counsel for the parties and examined the record. The petitioner has deliberately concealed the material fact and has made false allegations in paragraph-13 of the writ petition that order of Sub-Divisional Officer dated 11.2.2013 has become final. A copy order of Sub-Divisional Officer dated 11.2.2013 has been filed as Annexure-7 to the writ petition. A perusal of the order shows that it was a remand order. Deputy Director of Consolidation found that after remand, Assistant Development Officer again by order dated 24.9.2013 found that Smt. Sumitra widow of Ram Sudhar was alive and directed for correction of Birth and Death Register.

7. The petitioner also filed a Death Certificate of Smt. Sumitra widow of Ram Sudhar issued from Nagar Nigam Allahabad. On the complaint made by Smt. Sumitra widow of Ram Sudhar an inquiry was held by Nagar Ayukta Allahabad, who by order dated 25.9.2013 cancelled the Death Certificate and on its basis compliance was made by Nagar Swasthy Adhikari on 21.10.2013. Thus it was proved that Birth and Death Registers as maintained for village Barawan district Mau and Nagar Nigam Allahabad were corrected according to the provisions of section 15 of Registration of Birth and Death Act, 1969.

8. Admittedly name of Smt. Sunita was mutated over the land of Ram Sudhar of village Khurdharpur, district Mau on report on PA-11-A dated 7.4.2005. Ram Sudhar was having his ancestral properties in villages Khurdharpur and Barawan of district Mau and was having a house in Agra city. There was no occasion for his widow to reside at A-1/267, Badari Avas Yojana, Mehdauri, Teliyarganj,

Allahabad, after his death. The petitioner earlier set up his claim on the basis of unregistered will dated 20.4.2004, allegedly executed by Ram Sudhar in his favour although will for agricultural holdings is required to be registered compulsorily under section 169 of U.P. Act No. 1 of 1951. Later on the petitioner realized his difficulties then he tried to show Smt. Sumitra as dead and procured fake Death Certificates in this respect from Gram Panchayat Barawan and Nagar Nigam Allahabad, which were cancelled by the competent authorities.

9. So far as the alleged affidavit of Sunita Chaube filed before the Trustee SBI Mutual Fund, Agra (filed as Annexure-11) is concerned, there is nothing to prove that this affidavit was filed by respondent-4. Admittedly Ram Sudhar died issueless as such showing Pratima as daughter in this affidavit is also suspicious. In case there had been any daughter, she would be also an heir under section 171 of U.P. Act No. 1 of 1951 and respondent-4 would have disclosed her also in the mutation application. So far as findings of Settlement Officer Consolidation that mutation application was signed by Sunita Chaubey and not by Sumitra Chaubey, is concerned, from the conduct of the petitioner it is apparent that he is adopting all tactics. Deputy Director of Consolidation found that photograph of Sumitra alias Sunita as affixed on the Sale Deed dated 25.04.2001, Pass Book of Indian Overseas Bank were fully tallying with the lady appearing in the Court of Deputy Director of Consolidation and compared by him. In view of aforesaid discussions, order of respondent-1 does not suffer from any illegality. The writ petition has no merit and is dismissed.