
(2013) 12 AHC CK 0089
In the Allahabad High Court
Case No : Writ-B No. 67145 of 2013

Sundar Lal and Others

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Citation : (2014) 122 RD 43

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

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri V.S. Kushwaha, Counsel for the petitioners. The writ petition has been filed against the order of the Consolidation Officer dated 22.12.2011 by which he has held that the application filed by Dinesh and Sudesh (respondents 3 and 4) u/s 12 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act") on 22.9.2009/5.11.2009 was maintainable and the order of the Deputy Director of Consolidation dated 19.2.2003 dismissing the revision of the petitioner against the aforesaid order.

2. One Madan filed an objection u/s 9 of the Act claiming co-tenancy in the land in dispute. Madan died on 8.9.1996 and thereafter Smt. Sajji Devi, mother of Dinesh and Sudesh (respondent Nos. 3 and 4) was substituted in his place as his legal heir and representative. Smt. Sajji Devi also died on 5.8.2003 and in her place the names of the Dinesh and Sudesh were substituted. Thereafter Dinesh and Sudesh filed an application u/s 12 of the Act on 22.9.2009 claiming themselves as heirs of Madan on the basis of a Will executed by him in their favour. The petitioners raised objection with the application filed by Dinesh and Sudesh was not maintainable inasmuch as Madan died on 8.9.1996 and they had set up their claim for the first time in the year 2009 on the basis of a Will which was a highly suspicious document and appears to be a forged document. In any case if they had Will in their favour, they would have claimed their right on the basis of the Will immediately after the death of Madan on 8.9.1996. The

objection of the petitioners was heard by the Consolidation Officer, who by order dated 22.12.2011 held that on the death of Madan his daughter Smt. Sajji Devi was substituted and thereafter on the death of Smt. Sajji Devi, Dinesh and Sudesh were substituted, accordingly, they are already contesting the claim on behalf of Madan. In such circumstances in case an application u/s 12 of the Act has been filed by Dinesh and Sudesh on the basis of Will, then it cannot be said that the application u/s 12 of the Act was not maintainable. Accordingly, the objection of the petitioners regarding maintainability was rejected and the case was fixed for evidence of the parties. The petitioners filed the revision (registered as Revision No. 436/285) from the aforesaid order which was dismissed by order dated 19.2.2013 of the Deputy Director of Consolidation.

3. The Counsel for the petitioners submits that a person is required to set up his case on the basis of Will as early as possible. In this case the death has occurred on 8.9.1996 and respondents 3 and 4 set up their case on the basis of Will only on 22.9.2009. However, they have been substituted after the death of Smt. Sajji Devi in the case in the year 2003. Even at the time of substitution they have not disclosed the alleged Will in their favour and it is only subsequent to the substitution, when they realised that they would not inherit the property of Madan since their mother was a married daughter in preference to the brother's son of Madan then they have manufactured and fabricated the alleged Will and set up a fake claim. In such circumstances the objection is merely an harassment of the petitioners and was not maintainable and ought to have been rejected.

4. I have considered the arguments of the Counsel for the petitioners and examined the record.

5. Non-disclosure of a Will for a long time creates suspicious circumstance only. However on its basis alone, it cannot be said that the Will is forged or fabricated. In such circumstances, it is always open for the propounder of the Will to remove the suspicious circumstance in order to get his title on the basis of the Will. However on its basis alone it cannot be said that the objection filed by respondents was not maintainable and they were not entitled to contest the matter. In these circumstances, the Consolidation Officer has not committed any illegality in holding that the objection filed by the petitioners was not maintainable.

6. The Counsel for the petitioners, however, submits that the original case is pending since 1993 and now the application filed by respondents 3 and 4 is pending since 2009, accordingly the Consolidation Officer may be directed to conclude the trial within a stipulated time.

7. Without entering into the controversy involved in the writ petition, as it is clear that the objection of Madan is pending since 1993 and Madan also died on 8.9.1996 and thereafter the matter relating to his inheritance is also pending since long, it is imperative for the Consolidation Officer to consolidate all the cases and decide them expeditiously, preferably within a period of four months

from the date of production of a certified copy of this order before him. With the aforesaid direction the writ petition is disposed of.