
(2011) 03 AHC CK 0025
In the Allahabad High Court
Case No : Writ-B-No. 14443 of 2011

Sunil Kumar

APPELLANT

Vs

DY. Director Of Consolidation and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Citation : (2011) 112 RD 663

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—Heard learned Counsel for the Petitioner and learned Counsel for the Respondents.

2. The Petitioner claims himself to have succeeded through a registered Will to the share of one Chheddi @ Shiv Devi. The dispute was with regard to the share of the said lady, who claimed herself to be the wife of Chandra Bhan. Chandra Bhan was one of the three sons of late Ram Sanehi having an equal share in the holdings of Ram Sanehi along with his brothers Bhagwat Prasad @ Lalu and Mangal Prasad, who are Respondent Nos. 2 and 3 herein. Chandra Bhan is stated to have died during the life time of his father Ram Sanehi. It is the contention of the Respondents that Shiv Devi was the wife of Chandra Bhan but Chheddi @ Shiv Devi, is not the wife/widow of late Chandra Bhan. The Consolidation Officer before whom the objections were filed believed the case set up by Chheddi @ Shiv Devi and directed that the name of Ram Sanehi be expunged and the name of his heirs including Bhagwat Prasad, Mangal Prasad and Chheddi should be entered as the heirs of Ram Sanehi.

3. Being aggrieved, the contesting Respondents filed an appeal. The appellate authority recorded his conclusions without giving any cogent reasons and affirmed the order of the Consolidation Officer. In revision filed by the contesting Respondents, the said order has been reversed and the order of the

Consolidation Officer has also been set aside and the matter was remanded back to the Consolidation Officer for deciding the same afresh.

4. Sri P.K. Srivastava, learned Counsel for the Petitioner submits that the order of reversal is erroneous inasmuch as, the Deputy Director of Consolidation without advertent to the main issue of the identity of the wife of late Chandra Bhan has proceeded to carve out a new case and remanded the matter for examining the validity of the registered Will, set up by the Petitioner after the death of Chheddi @ Shiv Devi. He, therefore, contends that the Deputy Director of Consolidation has misdirected himself and hence the order impugned deserves to be set aside. He further submits that the order of the Consolidation Officer takes into account the entire evidence on record and as such there was no occasion to set aside the order of the Consolidation Officer.

5. Learned Counsel for the Respondents submits that the appellate authority committed a manifest error by not recording cogent reasons on the grounds of appeal taken and, therefore, the Revisional Authority has rightly set aside the same. He however, further submits that the order of the Consolidation Officer was equally erroneous inasmuch as, the Consolidation Officer without considering the evidence in correct perspective proceeded to pass the order on mere surmises and conjectures.

6. Having heard learned Counsel for the parties, it is evident that the Petitioner entered into the fray through a substitution application dated 22.5.2009 that a Will has been executed in his favour by Chheddi @ Shiv Devi on 19th March, 2009. The substitution was allowed on 3.11.2009 and the appeal was dismissed on 31.3.2010. The Deputy Director of Consolidation further found that the aforesaid course adopted by the appellate authority was erroneous inasmuch as the succession of the Petitioner through the Will, was subject matter of appeal and it was the same dispute, which had to be adjudicated but without entering into the validity of the Will, the appeal had been dismissed which was an erroneous approach.

7. The aforesaid finding of the Deputy Director of Consolidation in my opinion also does not suffer from any infirmity, inasmuch as, the claim of the Petitioner was very much dependent upon his succession including the validity of Will itself. The Will, therefore, having been set up by the Petitioner, had to be proved by him and the same could not have been assumed to be a valid document of succession on its mere presentation as a registered document.

8. The Deputy Director of Consolidation rightly held that the contentions raised in appeal by the Respondents were not at all addressed to nor did he take care to notice the submissions of the witnesses or the statement of the Pradhan that was required in matters of succession. The contesting Respondents had contended that Chheddi was never reflected as alias Shiv Devi and these aspects ought to have been taken notice and having appreciated the same in correct perspective, the appellate order and the order of the Consolidation Officer has been set aside.

9. The writ petition is accordingly dismissed. The Consolidation Officer shall now proceed to decide the matter afresh as expeditiously as possible preferably within a period of six months from the date of production of a certified copy of this order before him as per the directions of the Deputy Director of Consolidation.