(2015) 03 AHC CK 0137

In the Allahabad High Court

Case No : Writ-C No. 7319 of 2015

Surendra Singh APPELLANT

Vs

Board of Revenue, U.P., Agra and Others RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 49
Uttar Pradesh Land Revenue Act, 1901 — Section 34

Citation : (2015) 127 RD 694

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Yogendra Kumar Srivastava, for the Appellant

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.—Heard Shri Y.K. Srivastava, learned Counsel for the petitioner and learned Standing Counsel for the State-respondents. This writ petition arises out of proceedings under section 34 of the U.P. Land Revenue Act and is directed against the order dated 28.2.2014 passed by the Board of Revenue.

2. The dispute in the writ petition relates to land which was recorded in the name of one Gokul. The petitioner is the maternal grandson of Gokul and he claims on the basis of Will alleged to have been executed in his favour by Gokul. On the basis of the said will, the petitioner was mutated over the land in question after the death of Gokul, vide order dated 7.8.2002.

3. A recall application was filed by Smt. Phoolwati, aunt of the petitioner. The recall application was allowed on 31.1.2005. Subsequently on 10.2.2005, an order was passed that the name of the petitioner be expunged and the name of respondent, Phoolwati and her sister Janki Devi (mother of the petitioner) be recorded.

4. Aggrieved by the order, the petitioner preferred a revision No. 151 of 2005

before the Additional Commissioner. This revision was allowed by the Additional Commissioner, Agra, Division Agra vide order dated 22.1.2007 and the mutation, order dated 7.8.2002 in favour of the petitioner was maintained.

5. The order passed by the Additional Commissioner was subjected to revision by the respondent Phoolwati. This revision has been allowed by the impugned order dated 28.2.2014 and the appellate order has been set aside. The effect of the order is that the respondent and her sister Janki Devi are to be recorded over the land in question. Hence this writ petition challenging the order dated 28.2.2014 passed by the Board of Revenue.

6. Learned Counsel for the petitioner has submitted that the impugned order has been passed on the reasoning that during the consolidation operations in the unit, the names of the respondents. Phoolwati and her sister Janki were ordered to be recorded over the land in question in proceedings under section 12 of the U.P. Consolidation of Holdings Act and that the consolidation operations in the unit have closed in the year 1998. The petitioner never challenged the order passed by the consolidation Courts and, therefore, his claim is barred by section 49. Moreover, the order passed by the consolidation Courts has become final and no order to the contrary can be'' passed in mutation proceedings.

7. The submission of the learned Counsel for the petitioner is that the proceedings under section 34 of the U.P. Land Revenue Act as also the proceedings under section 12 of the U.P. Consolidation of Holdings Act are summary in nature and, therefore, the order passed by the consolidation authorities are not binding upon the mutation courts.

In support of his contentions, he has relied upon the decision reported in:--

1. Ghashitu (Since Deceased and Substituted by Legal Heirs) and Others Vs. Assistant Custodian, Enemy Property and Others, (2013) 10 ADJ 692 : (2014) 102 ALR 293 : (2013) 121 RD 851 , prior to 1958 amendment.

2. Radhey Shyam and others v. Board of Revenue U.P. Lucknow and others 2010 (5) ADJ 308.

3. Smt. Bhuni v. Sunder and others 1973 RD 201.

8. The second submission of the learned Counsel for the petitioner is that the question as to whether the bar of section 49 of the U.P. Consolidation of Holdings Act will apply over all other proceedings on the principle of estoppel, acquiescence or waiver has been referred to the Larger Bench and is still pending consideration.

9. The third submission raised that there was no adjudication before the consolidation Courts and, therefore, the bar of section 49 of the U.P.C.H. Act would not come into play. He has further submitted that in proceedings under section 12 of the U.P.C.H. Act only succession had been recorded by the Assistant Consolidation Officer in the name of all the heirs of deceased Gopal, namely,

respondent No. 4 and Smt. Janki, mother of the petitioner and, therefore the Bar of section 49 was not attracted.

10. Upon a consideration of the submissions made by the learned Counsel for the petitioner and upon a consideration of the case law cited, I do not find any substance in the arguments raised by the learned Counsel for the petitioner.

11. The proceedings under section 12 of the U.P.C.H. Act introduced by the amendment made in 1963 are in the nature of regular title proceedings, and the mutation proceedings under the Consolidation of Holdings Act prior thereto were summary proceedings as held by the apex Court in (Malkhan Singh Vs. Sohan Singh and Others, AIR 1987 SC 500 : (1985) 4 SCC 469 : (1985) 2 SCR 747 Supp : (1986) 1 UJ 51) especially, in paragraph 11 of thereof. There is not an iota of doubt that the proceedings under section 34 of the U.P. Land Revenue Act are summary proceedings. These proceedings are purely fiscal in nature and their object is only to determine as to the person from whom the land revenue is to recovered by the Government. These proceedings under section 34 do not determine the title of the parties thereto and the findings returned therein operate neither as res-judicata nor estoppel.

12. It is, therefore, clear that in the names of the respondent No. 4 and the mother of the petitioner have been recorded as the heirs of the deceased Gopal under section 12 in regular title proceedings and this order has attained finality after the consolidation operations in the unit closed in 1998.

13. The mutation Courts are found by the orders passed in regular title proceedings and for this reason alone the submission made by the learned Counsel for the petitioner is wholly devoid of merits. The Board of Revenue by the impugned order has rightly accepted the order passed by the consolidation Courts which has become final.

14. It is also not denied on record that during the consolidation operations no right was claimed by the petitioner on the basis of the alleged Will in his favour and for this reason also the impugned order cannot be faulted with.

15. In the aforesaid scenario the judgments relied upon by the learned Counsel for the petitioner have no application in the instant case. Accordingly and for reasons given above, I find that the impugned order calls for no interference. The writ petition is devoid of merits and is accordingly dismissed.