(2004) 05 AHC CK 0182

In the Allahabad High Court

Case No : C.M.W.P. No. 2778 of 2004

Vishwa Nath and Another APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 18-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Land Revenue Act, 1901 — Section 34, 35, 40, 40A

Citation : (2004) 4 AWC 3141

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant; Sudhakar Pandey, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Rajesh Kumar. counsel for the petitioners and Sri Sudhakar Pandey, advocate appearing for respondent Nos. 4 and 5.

2. By this writ petition, the petitioners have prayed for quashing the order dated 29th November, 2003 passed by Board of Revenue, order dated 3rd January, 1998 passed by Sub-Divisional Officer, Ballia and the order dated 13th November, 1997 passed by Naib Tahsildar, City, Ballia in proceedings u/s 34 of U. P. Land Revenue Act, 1901.

3. Brief facts giving rise to this writ petition are ; one Ram Sunder was recorded tenure holder. Ram Sunder died on 12th April, 1993 leaving behind the petitioners as his two sons, respondent No. 5 as widow of predeceased son Jadunath and respondent No. 4 as widow of predeceased grandson. A report u/s 34 of U. P. Land Revenue Act, 1901 claiming mutation was submitted by the petitioners on 19th April. 1993 on the basis of registered Will dated 5th June, 1989 claimed to be executed by Ram Sunder in favour of the petitioners. The petitioners'' case was that Will has been executed in favour of the petitioners, hence their names be mutated. On issue of proclamation objections were filed by

respondent Nos. 4 and 5. The contesting respondents stated in the objection that no Will was executed by Ram Sunder, deceased, and respondents being heirs of Ram Sunder are entitled to be recorded over the land in dispute. It was further stated in the objection that contesting respondents are in possession of their l/3rd share on the land in dispute. Oral evidence was led before the Naib Tahsildar by both the parties. One attesting witnesses was also got examined by the petitioners to prove the Will. The Naib Tahsildar after considering the evidence on the record found the Will suspicious and directed mutation of names of the petitioners and contesting respondents as heirs of deceased. Ram Sunder. An appeal was filed by the petitioners challenging the order of Tahsildar. The appellate court also affirmed the order of Naib Tahsildar and observed that the Court is in agreement with the reasons given by the Naib Tahsildar for holding the Will suspicious. A revision was filed by the petitioners before the Board of Revenue, which too has been rejected on 29th November, 2003, affirming the orders passed by courts below. This writ petition has been filed by the petitioners challenging the aforesaid orders.

4. Sri Rajesh Kumar, learned counsel for the petitioners, challenging the orders, contended that mutation was claimed on the basis of registered Will which was proved by one attesting witness, hence it was not open for the Naib Tahsildar to ignore the Will and direct for mutation of both, the petitioners and respondent Nos. 4 and 5. The contention of petitioners'' counsel is that Naib Tahsildar while deciding the mutation application has no jurisdiction to ignore a registered Will. Reliance has been placed by counsel for the petitioner on paragraph 381 of U. P. Revenue Court Manual as well as Appendix-10 of the said U. P. Revenue Court Manual. Following judgments of this Court as well as other High Courts have been cited by counsel for the petitioners in support of his submissions :

(i) Roop Narain and Anr. v. Ram Chandra and Ors. 1973 RD 444

(ii) Rudra Pratap and Another Vs. Board of Revenue, U.P. and Others, ;

(iii) Chandra Kanta Medhi and Ors. v. Lakheshwar Nath and Ors. AIR 1976 Gau 94 ;

(iv) Har Gopal Jaiswal and Another Vs. The Cantonment Board, Kanpur and Another, ;

(v) Smt. Pitmo Vs. Shyam Singh, :

(vi) Awadesh and Ors. v. Jang Bahadur and Ors. 1962 RD (SUMC) 26.

5. Sri Sudhakar Pandey, learned counsel appearing for the respondents, refuting the submissions of the petitioner''s counsel contended that writ petition be not entertained since it arises out of proceedings u/s 34 of U. P. Land Revenue Act, 1901 which are summary proceedings-Reliance has been placed by counsel for the respondents on judgment of this Court in Sri Lal Bachan Vs. Board of Revenue, Uttar Pradesh and Others, . The counsel for the respondents further contended that names of the respondents have already been recorded in the

record along with the petitioners.

6. I have considered the submissions and perused the record.

7. This writ petition arises out of proceedings u/s 34 of U. P. Land Revenue Act, 1901 which is a summary proceeding. The principal submission which has been advanced by the counsel for the petitioners is that Will being registered and having been proved by one of the attesting witnesses, mutation court has no jurisdiction to mutate the name of the respondents. The scope of interference by this Court under Article 226 of the Constitution in mutation proceeding arising out of proceedings u/s 34 of U. P. Land Revenue Act, 1901 is very limited. As held by this Court in Lal Bachan''s case (supra), this Court can interfere with the order in case the order passed by the courts below was without jurisdiction. It is, thus, to be considered as to whether it was within the jurisdiction of the Naib Tahsildar to ignore the registered Will while passing an order u/s 35 of U. P. Land Revenue Act, 1901. For considering the submission raised by counsel for the petitioners, it is necessary to note the scheme of U. P. Land Revenue Act, 1901 and the scope of enquiry in the said Act.

8. Section 34 of U. P. Land Revenue Act, 1901 (hereinafter referred to as Act) provided that every person obtaining possession of any land by succession or transfer shall report such succession or transfer to the Tahsildar of the Shall in which the land is situate. Section 35 provides procedure on report. Section 35 is extracted below:

"35. Procedure on report.-On receiving a report of succession or transfer u/s 34, or upon facts otherwise coming to his knowledge, the Tahsildar shall make such inquiry as appears necessary, and if the succession or transfer appears to have been taken place, he shall direct the annual registers to be amended accordingly."

9. Section 40 provides for settlement of disputes as to entries in annual register. Section 40A is with regard to saving as title suits. Sections 40 and 40A of the Act is quoted below :

"40. Settlement of disputes as to entries in annual register.- (1) All disputes regarding entries in the annual registers shall be decided on the basis of possession.

(2) If in the course of inquiry into a dispute under this section the (Collector or the Tahsildar} is unable to satisfy himself as to which party is in possession, he shall ascertain by summary inquiry who is the person best entitled to the property and shall put such person in possession.

Explanation.-The term "possession" in this section means possession based on succession or transfers.

40A. Saving as title suits.-No order passed u/s 33. Section 35, Section 39. Section 40, Section 41 or Section 54 shall bar any suit in a competent court for relief on the basis of a right in a holding."

10. Section 234 of the Act empowers the Board to make rules with the previous sanction of the State Government. In exercise of powers u/s 234 of the Act, Rules have been framed. Chapter A-XXXVII was inserted vide notification dated 14th January, 1966 regarding mutation of names due to succession or transfer under Sections 34 and 35 of the Act. Rule A-378 (b) which is relevant in the present as is extracted below ;

"A-378 (b). If the succession is disputed, the Tahsildar shall make a summary enquiry in accordance with Section 40 and shall record such evidence as the parties may produce and also take into consideration such other evidence as may otherwise be placed before him for determining the dispute. If the succession is found to have taken place and it is in accordance with the provisions of the Z. A. and L. R. Act. 1950, he shall order it to be recorded in the Annual Register."

11. Rule A-378 (b), as quoted above, provides that if the succession is disputed, the Tahsildar shall make a summary enquiry in accordance with Section 40 and shall record such evidence as parties may produce, Section 40, as extracted above, provides that disputes shall be decided on the basis of possession and if in course of enquiry Collector or Tahsildar is unable to satisfy himself as to which party is in possession, he shall ascertain by summary inquiry who is the person best entitled to the property.

12. Rule 381 relied by counsel for the petitioner as contained in Chapter XXXVII of U. P. Revenue Court Manual was rule relating to mutation prior to insertion of Chapter A-XXXVII. Rule 381 (c) is with regard to disputed case which itself contemplate making of summary inquiry and taking evidence. Rule 381 (c) is extracted below :

"381, Procedure on completion of enquiry required by Section 35.- Upon the completion of the inquiry required by Section 35 the Tahsildar shall :

(a) ....

(b) ....

(c) In a disputed case, u/s 35 the Tahsildar shall only make a preliminary enquiry to determine the dispute and its nature before referring the case to the Collector for disposal as required by the section. The Collector shall then make a summary enquiry himself and shall take such further evidence as the parties may desire to produce and as may be necessary in his opinion for completing the enquiry. He may also take into consideration in his opinion for completing the enquiry. He may also take into consideration the evidence. If any, recorded by the Tahsildar or a qualified Naib-Tahsildar."

13. From perusal of Rule A-378 (b) of the U. P. Revenue Court Manual as well as Rule 381 and Section 40 of the Act, it is clear that in a disputed case of succession, the inquiry is contemplated and in the said inquiry the Tahsildar/ Collector is also entitled to take evidence of the parties. Furthermore, Section 35 of the Act provides for making such inquiry as appears necessary and the

relevant words used in Section 35 are, "if the succession or transfer appears to have taken place, he shall direct the annual registers to be amended accordingly." The inquiry, thus, is for finding out if the succession or transfer appears to have taken place. However, inquiry is summary in nature and the order passed therein has no bearing in title suit in which relief is claimed on the basis of right in a holding. Section 40A of the Act specifically provides that no order passed u/s 35 of the Act shall bar any suit in a competent court for relief on the basis of a right in a holding.

14. The question posed is as to whether if a registered Will or any registered document is filed before a mutation court whether it is obligatory for the mutation court to direct for mutation on the said basis and whether in any circumstances the mutation court has jurisdiction to ignore the said document. When statute gives power to Court to conduct an inquiry to find out as to whether transfer or succession has taken place or not, the Court will have all necessary power to arrive at a decision. In case it is held that mutation court has to always direct for mutation on the basis of registered document, the power of the Court under the aforesaid section will be hedged with restriction, which cannot be read in the statutory scheme. The interpretation as canvassed by counsel for the petitioners will put restraint on exercise of Jurisdiction by the mutation court, which is not envisaged in the provisions, and the Rules. The provisions of U. P. Revenue Court Manual, as quoted above, provide taking of evidence by the Court. When the Court takes evidence, it has Jurisdiction to decide the issue raised. The report of mutation can be given on the basis of a transfer. Let us take an example that a sale-deed is claimed to be executed by a person, which is registered document produced before the mutation court. An objection is filed to the application that person claiming to have executed the sale deed is dead or the person was not present in the district at the time of execution and the sale deed is by an impostor. Obviously the Court is empowered to take evidence and decide the objection. In case Interpretation is taken that the sale deed is to be always accepted if one of the attesting witnesses comes and proves the execution, that Will be fettering the power of the Court. The Court is empowered to take evidence of both the parties and decide the dispute as to whether deed was executed by person claimed to have executed the deed or not, same can be an example with regard to a Will also. In a case of registered Will, if an objection is taken that Will was not executed by the person claims to have executed the Will, the Court can take evidence and decide the issue. The mere fact that one of the attesting witness comes and proves the Will does not oblige the Court to accept the Will in all circumstances. It is. however, relevant to note that for ignoring the registered document, there has to be valid reasons and a registered document cannot be ignored on insufficient grounds.

15. From the foregoing discussions, it is clear that it is in the Jurisdiction of the mutation court on the basis of evidence brought before it to either accept the Will or not accept the Will.

16. The counsel for the petitioners has placed reliance on Appendix-10 Note 10 of U. P. Revenue Court Manual which is extracted below ;

"10. But cases do arise e.g., when the Collector has taken charge of an estate immediately on the death of the owner, when the dispute must be decided on a summary inquiry into title. The difficulty in such cases arises on the interpretation of the word ''summary'', vide Board''s letter No. 13/Judlclal 384B of June 2, 1930. If only all Courts would get this word fixed in their minds the Board feel that mutation work. will be enormously reduced, perhaps by half. It is the fear of having a case returned for further hearing, that forces the majority of Sub-Division Officers to convert themselves into extra civil courts. At the same time the Board must enter a caveat ; the word ''summary'' does not mean ''scamped'' ; it is not to be used as a cloak for the delinquencies of the idle officer. It is impossible to avoid entering into points of civil law in discussing questions of title ; and the rules of civil law must be observed. It is difficult to give instructions which will cover all cases ; but a few illustrations of cases in which time can be saved may help :

(i) If the deceased has executed a deed of adoption which has been duly registered, it should be left to the opposite-party to prove in the civil courts that the adoption was invalid or for any reason.

(ii) If a transfer is made with all due formality including as assertion that possession has been given, and a prompt application for mutation is challenged by the transferor on the ground that the consideration has not been paid. it should be for the transferor to go to the civil courts.

(iii) If the transferor, a recorded proprietor, admits the transfer and delivery of possession inter vivos no third party should be allowed to challenge the possession of the transferee.

(iv) If a Muslim woman produces a formal nikahnama signed by her husband, duly registered that is sufficient evidence for the revenue court that she is duly married.

(v) If a properly executed registered Will in favour of some one other than the heir is produced. It is not for revenue courts to decide as to the competence of the testator.

(vi) Ordinarily Civil Court''s dakhalnama in pursuance of a decree should not be questioned."

Reliance has been placed on Note 10 (v) which provides that if a properly executed registered Will in favour of someone other than the heir is produced. It is not for Revenue Court to decide as to the competence of the testator. It is not necessary to examine the submission any further since the present case is a case in which Will is executed in favour of two sons who are admitted heirs under the provisions of U. P. Zamindari Abolition and Land Reforms Act. Thus, Note 10 (v) is not attracted strictly in the present case.

17. Now coming to the cases cited by counsel for the petitioners, the first case relied is Roop Naain''s case (supra). The aforesaid case was a case which lay down that if the property is bequeathed under the valid Will, the provisions of Sections 171 and 172 of U. P. Zamindari Abolition and Land Reforms Act will not be attracted. The said Judgment further lay down principle for construing a Will, in the present case. It is not the case of the respondents that Will could not have been executed by the deceased. With regard to principle of construing a Will since findings given in the mutation proceedings are only summary subject to decision by competent court, it is open to the petitioners to establish their right on the basis of Will in competent court. The said case was not a case arising out of mutation proceedings nor the question of jurisdiction of mutation court has been considered in the said case, hence the said case is not attracted. Another case relied by petitioners is Rudra Pratap''s case (supra). In the aforesaid case, the learned single Judge took the view that Board of Revenue decided the title of the parties in a mutation proceedings, hence the petitioners can seek assistance of High Court to remove the shadow on its title. The said case was a case on its own fact. The learned single Judge for taking the said view has placed reliance on a Division Bench Judgment in Jaipal Minor v. Board of Revenue, U.P. Allahabad 1956 ALJ 807. Following was held in paragraph 2 of the judgment of learned single Judge:

"2. .... In support of this contention he has placed reliance upon a decision of this Court in Jaipal Vs. Board of Revenue and Others, . In that case no doubt it was held that, mutation proceedings ordinarily relate to the question of possession and do not decide the question of title for which there is a separate remedy by way of a suit and as such the High Court should not interfere in the order passed in mutation proceedings. But it was also observed in that case that this consideration should not be applied in cases where the question of title is also decided in mutation proceedings. In my opinion, the present case belongs to that category of cases inasmuch as the Board of Revenue has proceeded to decide the question of title ...."

In Jaipal Minor''s case (supra), the Division Bench did not lay down that whenever the question of title is decided in mutation proceeding, the writ petition can be entertained. Following was laid down by the Division Bench in Jaipal Minor''s case (supra) :

".............. The contention of learned counsel for the petitioner is that the Board of Revenue in passing this order exceeded its jurisdiction. It has however, been the consistent practice of this Court not to interfere with orders made by the Board of Revenue in cases in which the only question at issue is whether the name of the petitioner should be entered in the record of rights. That record is primarily maintained for revenue purposes and an entry therein has reference only to possession. Such an entry does not ordinarily confer upon the person in whose favour it is made any title to the property in question, and his right to establish his title thereto is expressly reserved by Section 40 (3) of the Act. The only exception to this general rule is in those cases in which the entry itself confers a title on the petitioner by virtue of the provisions of the U. P. Zamindari Abolition and Land Reforms Act. This petition does not fall in that class and we think therefore, this Court should not entertain it. It is accordingly dismissed with costs."

From above, it is clear that this Court does not interfere with the order made by Board of Revenue regarding recording of names. Only one exception was noted, i.e., cases in which the entry itself confers a title on the petitioner by virtue of the provisions of the U. P. Zamindari Abolition and Land Reforms Act. No such proposition was laid down by the Division Bench that whenever any decision on title is given, this Court may interfere. However, from the scheme of the Act and the Rules. It is clear that the decision of the dispute by Tahsildar on necessary inquiry and evidence has to be only with regard to prima facie title when he is unable to decide possession. Findings in summary proceedings have no bearing on the adjudication of title by the competent court nor the findings given in mutation proceedings can be treated to findings establishing any title. The case of Rudra Pratap (supra), thus, does not help the petitioners in the present case. Other judgments relied by counsel for the petitioners, namely. Chandra Kanta Medhi''s case (supra). Bala Prasad''s case (supra), Smt. Pitmo''s case (supra) and Awadeshs case (supra) were all on Indian Succession Act, 1925, with regard to registered Will. There is no dispute with regard to principles laid down for proof of Will under Succession Act. The above cases does not consider the jurisdiction of a mutation court nor are cases in which nature of jurisdiction u/s 35 of the Act was considered. The said cases, thus. do not support the contention of the petitioners in any manner.

18. In the present case, all the three Courts have not accepted the registered Will as claimed by the respondents. The Naib Tahsildar has noted various suspicious circumstances. The appellate court has also accepted the contention of Naib Tahsildar regarding holding of Will suspicious. The revisional court has also held that burden to explain the suspicious circumstances was on the respondents in which they did not succeed. The revisional court accepted the findings of the trial court which found the Will suspicious and not proved. All the three Courts having held the Will as suspicious after appreciating the evidence on record. It cannot be held that they exceeded in their Jurisdiction in deciding the mutation application. As observed above the mutation court has jurisdiction to examine the evidence to find out as to whether transfer or succession had taken place or not. The orders passed by mutation court cannot be held to be without Jurisdiction or in excess of jurisdiction under the provisions of the U. P. Land Revenue Act, 1901. However, findings recorded by mutation courts are findings only in summary proceedings and have no bearing when the title is adjudicated by competent court on the basis of right claimed by the petitioners. In view of the proposition laid down in Lal Bachan''s case (supra), I do not find it a fit case to be entertained under Article 226 of the Constitution it being arisen out of summary proceedings of mutation u/s 34 of. U. P. Land Revenue Act, 1901.

19. Subject to observations, as made above, the writ petition is summarily rejected.

