

Court No. - 49

Case :- WRIT - B No. - 2696 of 2023

Petitioner :- Kapuri

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Mahesh Kumar Dubey

Counsel for Respondent :- C.S.C.

Hon'ble Syed Qamar Hasan Rizvi,J.

1. Heard Sri Mahesh Kumar Dubey, learned counsel for the petitioner and Sri Jitendra Narain Rai, learned Additional Chief Standing Counsel for the State-respondent nos. 1 to 3.

2. By means of the present writ petition, the petitioner has assailed the order dated 04.07.2023 passed by the learned Board of Revenue, U.P. at Lucknow / Respondent no. 2 in Review Case No. REW/1090/2023/ Mirzapur (Kapuri Vs. Rajiv) and also the order dated 01.03.2023 passed in Revision No. REV/615/2017/Mirzapur (Kapuri Vs. Rajiv) and further the order dated 07.01.2017 passed by the respondent no. 3 / Tehsildar, Lalganj, District Mirzapur in Case No. T20161653021822, under Section 34 of the U.P. Revenue Code, 2006.

3. The contention of the learned counsel for the petitioner is that the name of the petitioner was entered in the revenue records by way of P.A.11 vide order dated 07.07.2016. The mother of the respondent nos. 4 & 5 filed an application for mutation of her name over the land in question, on the basis of an alleged Will dated 19.05.1986. On the said application, the Tehsildar / respondent no. 3 passed an ex-parte interim order dated 07.01.2017 whereby the parties were restrained from alienating the property in question. Against the said order dated 07.01.2017, the petitioner preferred a revision under Section 219 of the U.P. Land Revenue Act, 1901. The learned Board of Revenue vide order dated 01.03.2023 dismissed the said revision. The petitioner thereafter filed a review application under Section 220 of the Land Revenue Act, 1901 before the learned Board of Revenue which was also dismissed vide order dated 04.07.2023.

4. Learned counsel for the petitioner contended that the aforesaid Will dated 19.05.1986 on the basis of which the respondents are claiming their rights is not a genuine document and a suit bearing no. 754 of 2016 for cancellation of the same is pending before the court of learned Civil Judge (Junior Division), Mirzapur.

5. Sri Jitendra Narain Rai, learned Additional Chief Standing Counsel appearing on behalf of the State has raised a preliminary objection regarding the maintainability of the writ petition. He submits that the present writ petition is arising out of a mutation proceedings which is summary a nature and the writ petition under Article 226 of the Constitution of India is not at all entertainable.

He further submits that the validity of the Will is under challenge before the civil court, as such the revenue courts cannot take any final decision on the genuineness of the Will unless the validity of the Will is crystalized by the competent civil court.

6. It is settled law that the revenue records do not confer title and even if the entries in the revenue record of rights carry value that by itself would not confer any title upon the person claiming on the basis of the same. The mutation proceedings being of a summary nature drawn on the basis of possession do not decide any question of title and the orders passed in such proceedings do not come in the way of a person in getting his rights adjudicated in a regular suit. Mutation in revenue records neither creates nor extinguishes title of the person nor it has any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. In view thereof, this Court has consistently held that such writ petitions are not to be entertained in exercise of discretionary power conferred under Article 226 of the Constitution of India.

7. It is well settled that the orders for mutation are passed on the basis of the possession of the parties and since no substantive rights of the parties are decided in mutation proceedings, ordinarily the Writ Courts decline to entertain the writ petition as not entertainable in respect of orders passed in mutation proceedings, unless found to be totally without jurisdiction or contrary to the title already decided by the competent court.

8. In view of the above, as no substantive rights of the parties have been decided or are likely to be decided in the mutation proceedings, no case for exercise of extra-ordinary writ jurisdiction under Article 226 of the Constitution of India is made out. Needless to say, it is always open to the petitioner to get his rights/title in respect of the land in question be crystallised by competent Civil Court.

9. Accordingly, without interfering with the merits of the impugned orders passed by the Revenue Courts, this writ petition is **disposed of** with liberty to the parties to get their rights/title in respect of the land in question, if necessary, adjudicated or declared by the competent court of jurisdiction. The order passed in the mutation proceedings would abide by the decision of the competent court, if any, and the said court would not, in any manner, be influenced by any finding or observation made in the mutation orders or during mutation proceedings.

Order Date :- 28.11.2023

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