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HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 48

Case :- WRIT - B No. - 40722 of 2014

Chauthi

.....

Petitioner

Through :- Sri Surendra Nath Chauhan,
Advocate

Vs.

D.D.C. and 10 others

.....

Respondents

Through:- S.C., Sri Anshu Chaudhary,
Advocate

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Surendra Nath Chauhan, learned counsel for petitioner, Sri Anshu Chaudhary, learned counsel for contesting respondent and learned Standing Counsel for State.

2. The present case is arising out of a proceeding under Section 12 of U.P. Consolidation of Holdings Act, 1953. In first round of litigation, the Consolidation Officer decided it by an order dated 20.07.1979, however, an appeal thereof was allowed and matter was remitted back to the Consolidation Officer to decide it afresh.

3. Subsequently, the Consolidation Officer on basis of rival pleadings, framed following three issues :-

- “1. क्या चौथी हीरा मृतक का लड़का व उत्तराधिकारी है?
2. क्या घूरा हीरा मृतक का वारिस जरिये वसीयत है?
3. क्या चौथी के पिता का नाम जवाहिर है?”

4. The Consolidation Officer after considering rival documents as well as statements of witnesses on record held that petitioner (Chauthi) was son of Jawahir and was not son of Heera as alleged by him and that registered Will dated 26.06.1976 executed by Heera in favour of his real brother

Ghoora was considered to be proved in accordance with law. The relevant part of order is mentioned hereinafter :-

“चौथी का कथन है कि वह जवाहर का लड़का नहीं है बल्कि हीरा का लड़का है। इस सम्बन्ध में उसने दुखन्ती, झंगटू, शीऊ व चौथी का बयान कराया है तथा मतदाता सूची व परिवार रजिस्टर की नकल दाखिल किया है। चौथी का यह भी कथन है कि घूरा द्वारा लिखित रजिस्टर्ड वसीयतनामा दिनांक 26.06.76 विश्वास करने योग्य नहीं है। चौथी ने जो परिवार रजिस्टर व मतदाता सूची की नकल दाखिल किया है उसमें उसकी वल्लियत हीरा अंकित है। चौथी द्वारा ये दाखिल नकलें वाद की है तथा मुकदमा बहुत पहले से चल रहा है। घूरा ने भी परिवार रजिस्टर दाखिल किया है जो सन् 09.01.77 का जारी है तथा मतदाता सूची भी दाखिल किया है घूरा द्वारा दाखिल पुराने परिवार रजिस्टर में जो प्रधान द्वारा प्रमाणित भी है चौथी की वल्लियत जवाहर अंकित है। चौथी ने यूनियन बैंक ऑफ इंडिया की पासबुक भी दाखिल किया है। चौथी का यह भी कथन है कि वह पढ़ा लिखा नहीं था तथा टी.सी. उसके नाम की गलत दाखिल है जबकि घूरा द्वारा दाखिल चौथी की टी.सी. उसके बचपन के समय की है। उस समय यह विवाद भी नहीं था न तो इसकी कोई सम्भावना थी इसलिए चौथी की गलती टी.सी. होने या दर्ज कराने का प्रश्न ही नहीं उठता। वह यानी चौथी जानबूझ कर अपने को पढ़ा-लिखा व साक्षर होने का तथ्य छिपाता है जिसका कोई औचित्य नहीं है। बीस गुना जमा करने से सम्बन्धित मुकदमा नं०- 335 जो तहसील न्यायालय में चला था, में चौथी ने आपत्ति दाखिल किया था, जिसकी नकल घूरा के तरफ से दाखिल की गयी है। उक्त नकल में भी चौथी का अंगूठा निशान अंकित नहीं है। बल्कि देखने से ऐसा लगता है कि चौथी ने ही उसे लिखा था। इस प्रकार इस मुकदमें में मात्र दो बिन्दु मुख्य रूप से हैं एक तो यह कि क्या हीरा ने रजिस्टर्ड वसीयतनामा घूरा के हक में सम्पादित किया था तथा दूसरा कि क्या चौथी हीरा का लड़का है या जवाहर का यदि यह बात स्पष्ट हो जाती है कि हीरा ने वसीयतनामा नियमानुसार लिखा था तो अन्य बातों का कोई अर्थ नहीं रह जाता। जहां तक चौथी के वल्लियत के सम्बन्ध में विवाद है तथा इस सम्बन्ध में उभय पक्षों द्वारा जो भी साक्ष्य व अभिलेख प्रस्तुत किये गये हैं उनको देखने से यह स्पष्ट हो रहा है कि घूरा के तरफ से दाखिल सम्पूर्ण अभिलेखीय साक्ष्य बहुत पहले के है तथा चौथी के बचपन से भी संबंधित है तथा चौथी की तरफ से प्रस्तुत अभिलेखीय साक्ष्य सब बहुत बाद के या मुकदमा दौरान के हैं जिन पर भरोसा नहीं किया जा सकता। साक्ष्यों के आधार पर यह स्पष्ट व साबित है कि चौथी जवाहर का ही लड़का है तथा उसने वाद में सम्पत्ति के लालच में हर जगह

अपनी वल्लियत हीरा अंकित कराने का प्रयास किया है। इस प्रकार उभय पक्षों के अधिवक्ताओं की लिखित बहस तथा पत्रावली में उपलब्ध जबानी व अभिलेखीय साक्ष्यों के पूर्ण अवलोकन के उपरान्त में इस निष्कर्ष पर पहुंचता हूं कि हीरा ने रजिस्टर्ड वसीयतनामा दिनांक 26.06.76 नियमानुसार एवं स्वाभाविक रूप से घूरा अपने सगे भाई के पक्ष में उसके सेवाभाव से खुश होकर सम्पादित किया जिसे नियमानुसार इस न्यायालय में हासिया के गवाहान व लेखक वसीका नवीस का बयान कराकर साबित भी कराया गया है। पुराने प्रधान ने इस न्यायालय में बयान किया कि चौथी, जवाहिर का लड़का नहीं बल्कि हीरा का लड़का है जबकि उसने कलेक्टर के न्यायालय में अपने द्वारा प्रस्तुत वाद में स्वयं चौथी की वल्लियत जवाहिर अंकित किया। इसलिए उसके इस कथन पर भरोसा नहीं किया जा सकता। वर्तमान प्रधान ने इस न्यायालय में आकर इस आशय की बयान हल्फी दिया है कि चौथी जवाहिर का लड़का है न कि हीरा का। पत्रावली के सम्पूर्ण साक्ष्यों के परिप्रेक्ष्य में यह भी साबित है कि चौथी जवाहिर का ही लड़का है। इस प्रकार रजिस्टर्ड वसीयतनामा दिनांक 26.06.76 के आधार पर हीरा मृतक का कानूनी व जायज वारिस, उसका सगा भाई घूरा है तदनुसार तीनों वाद बिन्दु तय किये गये। ”

(Emphasis supplied)

5. Petitioner, being aggrieved, filed an appeal which was rejected by an order dated 21.6.1997 passed by the Settlement Officer of Consolidation and relevant part thereof is mentioned hereinafter:-

“पत्रावली के अवलोकन से यह स्पष्ट है कि घूरा ने अपने साक्ष्य में असल दस्तावेज रजिस्टर्ड वसीयतनामा दिनांक 26.06.76 दाखिल किया है जो हीरा पुत्र बलदेव द्वारा घूरा पुत्र बलदेव के पक्ष में लिखा गाय है। इस वसीयतनामा के हासिया के गवाह गनेश पुत्र खरपत्तू तथा बचन व वसीयतनामा के लेखक व वसीका नवीस पुत्र खरपत्तू तथा बचन व वसीयतनामा के लेखक व वसीका नवीस श्री सुदामा सिंह का भी बयान कराया गया है। रजिस्टर्ड वसीयतनामा दिनांक 26.06.76 धारा- 68 साक्ष्य अधिनियम के अनुसार नियमानुसार साबित कराया गया है। मैं घूरा के विद्वान अधिवक्ता के इस तर्क से सहमत हूँ कि नियमानुसार रजिस्टर्ड वसीयतनामा साबित है और उसे न मानने का कोई प्रश्न ही नहीं है। पत्रावली से यह साबित है कि हीरा ने रजिस्टर्ड वसीयतनामा घूरा के पक्ष में लिखा जिसको साबित कराया गया है अतः अन्य बातों का कोई अर्थ नहीं रह जाता है। यदि यह मान भी लिया जाय कि चौथी हीरा के लड़के है जैसा कि उनके विद्वान अधिवक्ता द्वारा तर्क दिया जा रहा है और कहा गया कि प्राकृतिक उत्तराधिकारी के रहते

वसीयत का कोई लाभ नहीं मिल सकता है। लेकिन चूंकि वसीयतनामा उत्तरवादी द्वारा सिद्ध किया गया है और उक्त वसीयतनामा को अपीलान्ट द्वारा दीवानी न्यायालय में चैलेंज नहीं किया गया है अतः उसे न मानने का कोई कारण नहीं है। विद्वान चकबन्दी अधिकारी ने वसीयतनामा के आधार पर जो घूरा पुत्र बलदेव को हीरा पुत्र बलदेव के स्थान पर वारिस माना है वह सही है इसमें किसी परिवर्तन की आवश्यकता नहीं है। आदेश कायम रहने योग्य है।

अतः अपील खारिज की जाती है। वाद अमलदरामद दाखिल दफ्तर हो।”

(Emphasis supplied)

6. The revision petition thereof was rejected by the Revisional Authority vide order dated 23.01.2014, and relevant part thereof is mentioned hereinafter :-

“उभयपक्षों द्वारा लिखित तर्क दाखिल किया गया है। मुख्य विवाद मात्र यह है कि चौथी हीरा का पुत्र है अथवा जवाहिर का। दूसरा बिन्दु यह है कि क्या हीरा ने अपने भाई घूरा को रजिस्टर्ड वसीयतनामा निष्पादित किया है।

पत्रावली में जो साक्ष्य प्रस्तुत किये गये हैं जिसमें प्राथमिक पाठशाला की टी०सी० दाखिल की गयी है तथा श्री कृष्ण राय, प्रधानाध्यापक को टी०सी० रजिस्टर के साथ तलब करके उनका बयान कराया गया है जिसमें स्पष्ट रूप से चौथी के पिता का नाम जवाहिर अंकित है। यह एक ऐसा अकाट्य साक्ष्य है जिसके विरुद्ध अन्य कोई साक्ष्य पत्रावली पर उपलब्ध नहीं है। घूरा द्वारा जिलाधिकारी न्यायालय में गांव सभा बनाम चौथी धारा- 198 (4) के अंतर्गत एक वाद संस्थित किया गया था जिसकी नकल दिनांक 03.03.86 में नायब तहसीलदार की आख्या दिनांक 17.04.86 से स्पष्ट है कि चौथी के पिता का नाम जवाहिर है। इसी प्रकार तहसील में 20 गुना लगान जमा करने से संबंधित चलने वाले वाद हीरा बनाम चौथी मु०नं०-335 हीरा का बयान दिनांक 21.07.76 को हुआ है। जिसकी नकल दाखिल की गयी है और जिसमें हीरा ने स्वयं चौथी को जवाहिर का पुत्र होना बताया है। कोई भी पिता अपने जायज पुत्र को किसी दूसरे का पुत्र क्यों बतायेगा।

निगरानीकर्ता चौथी की तरफ से जो साक्ष्य प्रस्तुत किये गये हैं वे सारे साक्ष्य मुकदमे के दौरान निर्मित किये गये हैं जबकि उत्तरदाता के सारे साक्ष्य मुकदमे के पूर्व के हैं। सबसे बड़ा प्रमाण तो यही है कि स्वयं हीरा एक अन्य मुकदमे में चौथी को जवाहिर

का पुत्र कहते हैं उनका यह बयान एक स्वतंत्र बयान है जिसे साक्ष्य अधिनियम के अन्तर्गत स्वीकार किया जायेगा। कोई भी पिता अपने पुत्र को सहजभाव से अस्वीकार नहीं करता। इस प्रकार स्पष्ट है कि चौथी हीरा के पुत्र नहीं थे, अपितु उनके पिता का नाम जवाहिर था। ग्राम बिजपुरा की उद्धरण खतौनी के खाता क्रमांक 66 पर चौथी पुत्र हीरा का नाम अंकित है परन्तु इसी स्थान पर ग्राम सरहरा जमीन सरहरा के उद्धरण खतौनी के खाता क्रमांक 116 पर सारे खातेदारों का नाम अंकित है जिसमें चौथी पुत्र जवाहिर का नाम अंकित है। ग्राम सरहरा जमीन सरहरा की उद्धरण खतौनी दिनांक 17.12.13 की है जो एकदम नवीन खतौनी है। निष्कर्ष यह है कि किसी व्यक्ति द्वारा कोई लाभ अर्जित करने के उद्देश्य से किसी दस्तावेज अथवा अभिलेख में अपने पिता का नाम कुछ और लिख देता है तो उससे उसका पितृत्व नहीं बदलेगा। यहीं पर सबसे बड़ा साक्ष्य स्वयं हीरा का वह बयान है जिसमें उसने चौथी को अपना पुत्र स्वीकार ही नहीं किया है।

जहां तक वसीयतनामे का प्रश्न है वसीयतनामा पंजीकृत है और यह इसके सीमान्त साक्षियों एवं लेखक द्वारा भली-भांति प्रमाणित कराया गया है और ऐसा कोई संदेह उत्पन्न नहीं हुआ है जिससे यह स्पष्ट हो कि हीरा ने अपने भाई घूरा के पक्ष में वसीयतनामा न लिखा हो। ऐसी स्थिति में वसीयतनामा भी युक्तियुक्त सन्देहों से परे पूर्णतया प्रमाणित है। इस सम्बन्ध में निगरानीकर्ता द्वारा दी गयी आर०डी० 1998 पेज 390 की व्यवस्था इस पर लागू नहीं होती है। अतः सहायक बन्दोबस्त अधिकारी चकबन्दी के आदेश में हस्तक्षेप की कोई आवश्यकता प्रतीत नहीं होती है। निगरानी बलहीन है निरस्त किये जाने योग्य है। ”

(Emphasis supplied)

7. Learned counsel for petitioner has submitted that documentary evidences submitted on behalf of petitioner that he was son of Heera were not considered in its correct perspective and all three authorities have wrongly placed reliance on documentary evidence submitted on behalf of respondents.

8. Learned counsel further submitted that relevant aspect of case that executor of Will was not empowered to execute it since that he was not owner of land in dispute, was not taken note of. That the Appellate Authority as well as Revisional Authority has merely upheld findings returned by the

Consolidation Officer without even referring grounds taken by petitioner in appeal as well as in revision.

9. Learned counsel has referred documentary evidence and part of statement of witnesses examined on his behalf.

10. Per contra, learned counsel for contesting respondents has submitted that since all three authorities have returned concurrent findings against petitioner, therefore, this Court may interfere only when findings returned by all three authorities are perverse or beyond jurisdiction but both factors are absent in present case.

11. Learned counsel further submitted that documentary evidences submitted by respondents were more reliable and, therefore, they were rightly considered and accepted by all three authorities. He further submitted that a registered Will was duly proved in accordance with provisions of the Indian Evidence Act, 1872.

12. Heard counsel for parties and perused the record.

13. In the above factual and legal background that all three authorities under U.P. Consolidation of Holdings Act have returned concurrent findings against petitioner, therefore, in view judgment passed by Supreme Court in the case of **Krishnanand (Dead) through legal representatives and others Vs. Deputy Director of Consolidation and others, (2015) 1 SCC 553**, this Court could interfere with it only when findings are perverse or passed beyond jurisdiction. The relevant part of **Krishnanand (Dead) through legal representatives and others (supra)** is reproduced hereinafter:-

"12. The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for reappreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse. In the present case, though the High Court reversed the concurrent findings of the authorities below and came to the opposite conclusion on matter of facts, the High Court did not do so on the ground that the authorities

below acted in excess of their jurisdiction or without jurisdiction or that the finding is vitiated by perversity.

13. We are of the view that the High Court ought not to have entered into reappreciation of evidence and reversed the findings of fact arrived at by the three authorities below, especially since the authorities had neither exceeded their jurisdiction nor acted perversely. The High Court has nowhere stated that it was of the view that there is any perversity, much less the High Court failed to demonstrate any such circumstances."

(Emphasis Supplied)

14. I have carefully perused the impugned orders and as referred above, the Consolidation Officer has considered rival submissions on ‘facts as well as on law’ to decide three issues referred above. The petitioner, in order to substantiate his case that he is son of Heera, has recorded statements of ‘Dukhanti, Jhangtu, Shiv and of himself as well as submitted documentary evidences such as a copy of Family Register and a copy of Voter List wherein name of his father was shown as Heera.

15. Per contra, contesting respondents have submitted documentary evidence in support of their submission that petitioner was son of Jawahir such as transfer certificate issued from the school where petitioner studied, duly proved by Principal of school.

16. A copy of order dated 17.4.1986 passed in a case filed under Section 194 of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 wherein the ‘Pradhan’ of Gram Sabha has mentioned that father of petitioner was Jawahir was also placed on record. The Consolidation Officer has recorded statements of scribe and witnesses to Will and a reasoned finding was returned that registered Will was held to be proved.

17. In order to consider the rival submission on first issue whether petitioner was son of Heera or Jawahir, I have carefully perused the findings returned by all three authorities which are produced in preceding paragraphs. The authorities have placed more reliance on a transfer certificate of petitioner duly issued by school and which was proved by statement of Principal of concerned school. Such document could not be doubted since it was an old document when no circumstances exists to record a wrong

parentage. It would also be relevant that Heera in other proceeding has denied that petitioner was his son and said document was placed on record. There was ground for a father to deny that petitioner was not his son.

18. So far as contention of petitioner that he is uneducated person would not be sufficient to make doubt on transfer certificate and petitioner has also not come up with any documentary evidence which could contradict said document. In addition to above document, there are orders of the Court and statement of 'Pradhan' also recorded in other proceedings that petitioner was son of Jawahir and was not son of Heera.

19. The petitioner has placed reliance on a copy of Family Register and a Voter List but as recorded by the Consolidation Officer, it was issued on 09.01.1977 i.e. at a belated stage without any support of its basis and, therefore, it might be a newly created document and has held in case of **Sanjeev Kumar Gupta Vs. State of U.P., (2019) 12 SCC 370**, an educational document would be considered to be more reliable document. In these circumstances, statement of witnesses would have lesser evidentiary value, therefore, I do not find that there was any perversity in findings returned by all three authorities on this issue.

20. Counsel for petitioner has not seriously disputed execution of Will and that it was not proved in accordance with law as specifically held by the Consolidation Officer and further upheld by Appellate as well as Revisional Authority also that Will was duly proved by its scribe and its attesting witnesses. Heera has executed his Will to his real brother Ghora. An attempt was made that Heera was not competent to execute the Will since he was not bhumidhar of chak allotted to him on the date of execution of Will, however, it would also not have any effect since petitioner has failed to prove that he was son of Heera.

21. However, since all the materials were considered by three authorities and no suspicious circumstances has been brought on record to doubt Will as well as that issue raised in regard to competence of executor of Will does not appear to be sufficient since proceedings were initiated for Bhumidhari Sanad, therefore, it would not be a sufficient ground that Will suffered with

suspicious circumstances. In this regard, few paragraph of a judgment passed by Supreme Court in case of **Raj Kumari and Others Vs. Surinder Pal Sharma, (2021) 14 SCC 500** would be relevant :-

“14. Sections 68 and 71 of the Evidence Act, which relate to proof of documents required by law to be attested, read as under:

“68. Proof of execution of document required by law to be attested.

—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

71. Proof when attesting witness denies the execution.—*If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.”*

xxx

xxx

16. After referring to *H. Venkatachala Iyengar (supra)*, this Court in *Jaswant Kaur (supra)* had laid down the following propositions of law:

“10....(1) Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

(2) Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

(3) Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

(4) Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky

signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

(5) It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

(6) If a caveator alleges fraud, undue influence, coercion, etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.”

(Emphasis supplied)

22. In view of above discussion, no circumstances exist which could make the Will surrounded by any suspicious circumstances.

23. In the aforesaid circumstances, I do not find any ground to interfere with impugned order. Accordingly, this writ petition is **dismissed**.

Order Date :- 22.11.2023

P. Pandey

[Saurabh Shyam Shamsbery, J]