

Court No. - 51

Case :- WRIT - C No. - 35430 of 2023

Petitioner :- Kishun Shankar

Respondent :- State Of U.P. And 13 Others

Counsel for Petitioner :- Dan Bahadur Yadav, Prem Chandra

Counsel for Respondent :- C.S.C, Dinesh Singh Yadav

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Dan Bahadur Yadav, learned counsel for the petitioner, Mr. S.P. Singh, learned Additional Chief Standing Counsel for the State-respondents, Mr. Bhupendra Kumar Tripathi, learned counsel for the respondent- Gaon Sabha and Mr. Dinesh Singh Yadav, learned counsel for respondent nos.6 to 8.

2. Brief facts of the case are that on the basis of unregistered Will deed dated 3.7.1973 name of Mst. Bilasi recorded tenure holder was expunged and the name of Hari Nath, father of private respondent nos.6 to 8 was ordered to be recorded by the Additional Tahsildar on 3.5.1995 in the proceeding under Section 34 of U.P. Land Revenue Act, 1901. Against the order passed by the Tahsildar dated 3.5.1995, restoration application dated 19.5.2005 / 7.5.2005 were filed along with the prayer for condonation of delay of 10 years on behalf of the petitioner's mother, Smt. Phekana and one Nand Lal son of Kunmun, which were rejected by Tahsildar vide order dated 8.12.2008 on the ground of limitation. Against the order dated 8.12.2008, petitioner's mother filed a Revision No.233 of 2015 on 29.1.2015. One Nand Lal (father of respondent nos.9 & 10) has also challenged the order dated 8.12.2008 through Revision No.142 of 2008. Revisional Court vide order dated 28.7.2023 dismissed the revision filed by the petitioner's mother on the ground of limitation, hence this writ petition on behalf of the petitioner challenging the order of the revisional Court dated 28.7.2023 only.

3. Learned counsel for the petitioner submitted that the mutation order was passed by the Additional Tahsildar in arbitrary manner without notice and opportunity of hearing to the petitioner. He further submitted that unregistered Will-deed relied upon by the Will holder is forged and fictitious document, as such, the mutation order cannot be passed on the basis of alleged unregistered Will-deed dated 3.7.1973. He next submitted that the restoration application and the revision filed on behalf of the petitioner's mother have been also dismissed on technical grounds, as such, the impugned order be set aside and the matter be remitted back to the revisional Court to decide the revision afresh on merit.

4. On the other hand, Mr. Dinesh Singh Yadav, learned counsel for respondent nos.6 to 8, Mr. S.P. Singh, learned Additional Chief Standing Counsel for the State-respondents and Mr. Bhupendra Kumar Tripathi, learned counsel for the respondent- Gaon Sabha submitted that the writ petition arises out of mutation proceeding, as such, the same is not maintainable as the Tahsildar has passed the order on the basis of Will-deed in accordance with law. They further submitted that Will-deed has not been cancelled till date, as such, the continuance of the mutation proceeding will be abuse of process of law. They further submitted that restoration application before Tahsildar was barred by limitation of about 10 years and revision was also highly time barred, as such, no interference is required in the matter.

5. I have considered the argument advanced by learned counsel for the parties and perused the records.

6. There is no dispute about the fact that Additional Tahsildar has passed the mutation order dated 3.5.1995 in favour of Hari Nath on the basis of Will-deed alleged to be executed on 3.7.1973. There is also no dispute about the fact that petitioner's restoration application dated 19.5.2005 against the mutation order dated 3.5.1995 has been rejected on the ground

of limitation and revision filed after seven years from the date of order of the Tahsildar, has also been rejected on the ground of limitation.

7. In order to appreciate the controversy involved in the matter, perusal of finding of fact recorded by Additional Tahsildar, Jaunpur while passing the order dated 3.5.1995 will be relevant, which is as follows:

"न्यायालय अपर तहसीलदार, जौनपुर।
वाद सं०- 1999 धारा-34 एल०आर० एक्ट
सा०मौ० जगदीश पट्टी, परगना हवेली
हरिनाथ बनाम मु० बिलासी

यह नामान्तरण का वाद श्री हरिनाथ के प्रतिवेदन पर संचालित किया गया जिन्होंने दिनांक 3.7.73 को एक वसीयतनामा कराकर दाखिल खारिज का अनुरोध किया है।

प्रस्तुत वाद में नियमानुसार इश्तहार जारी किया गया जो तामिला संलग्न पत्रावली हुआ। कोई आपत्ति नहीं आयी। वादी ने अपने साक्ष्य में इन्तखाफ खतौनी मूल वसीयतनामा दाखिल किया है तथा वसीयतनामा लेखक व हासिया गवाह का बयान करवाया है जिससे वाद में वसीयतनामा की पुष्टि होती है।

अतः आदेश हुआ कि ग्राम जगदीशपट्टी परगना हवेली खतौनी सन 1396 ल० 1401 फ० के खाता सं० 66 व खाता सं० 4 में बिलासी पत्नी गनेश सा० मौजा जगदीशपट्टी परगना हवेली का नाम खारिज करके श्री हरिनाथ पुत्र महेश प्रसाद सा० मौ० जगदीशपट्टी परगना हवेली का नाम बतौर वसीयतदार दर्ज हो। अर्थदण्ड देय नहीं है। बाद अमल दरामद पत्रावली दाखिल दफतर हो।

ह०अ० 3/5/95

अपर तहसीलदार,
जौनपुर"

8. Perusal of finding of fact recorded by the Additional Tahsildar reveals that after considering the statement of the marginal witness as well as scribe, the mutation order was passed by the Additional Tahsildar in the year 1995. The order for mutation passed in the year 1995 cannot be examined again and again in exercise of summary jurisdiction by the Tahsildar by way of highly belated restoration proceeding. Civil Suit is stated to be pending in respect to the Will-deed in question, as such, the parties should avail remedy before the Civil Court rather before the Tahsildar in exercise of

summary jurisdiction.

9. The writ petition is ***dismissed*** accordingly. Needless to say that the order passed in the mutation proceeding will not come in the way of the petitioner to establish his claim before the civil Court in accordance with law.

Order Date :- 7.11.2023

Rameez