

Court No. - 51

Case :- WRIT - C No. - 39220 of 2023

Petitioner :- Mukarram Ali

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

Counsel for Petitioner :- Amit Kumar

Counsel for Respondent :- C.S.C., Akash Khare, Shahrukh, Sunil Kumar Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard Sri Amit Kumar Chaudhary, learned counsel for the petitioner, Sri Akash Khare, learned counsel for respondent no.5, Sri Sunil Kumar Singh, learned counsel for respondent no.4 and Sri Abhishek Shukla, learned Addl. C.S.C. for the state-respondents.

2. Brief facts of the case are that petitioner and respondent no.5, who are brother and sister, are the children of one Dilshad Ali. Dilshad Ali alleged to have executed a registered will deed on 28.7.2008 in favour of respondent no.5 in respect to plot no.1619, area 0.6100 hect. of khata no.257, situated in village Garh Bangar, Tehsil Garh Mukteshwar, District Hapur. Dilshad Ali expired, accordingly, respondent no.5 applied for mutation on the basis of will deed dated 28.7.2008, under Section 34 of the U.P. Land Revenue Act, 1901. Tehsildar vide order dated 4.7.2009 allowed the mutation application filed by respondent no.5 but on the recall application of the petitioner, order dated 4.7.2009 has been recalled vide order dated 22.9.2016 and mutation case has been restored for fresh decision in accordance with law. Respondent no.5 filed an application against the order dated 22.9.2016. Tehsildar vide order dated 18.4.2018 allowed the application filed on behalf of respondent no.5, setting aside the order dated 22.9.2016 and affirmed the order of mutation dated 4.7.2009. Petitioner challenged the order dated 18.4.2018 in revision before respondent no.2 which was allowed vide order dated 24.4.2019, setting aside the order dated 18.4.2018 and matter was remanded back before respondent no.3/Tehsildar to decide the mutation case in the light of direction/observation made in the revisional order. Respondent no.3-Tehsildar vide order dated 4.8.2021 allowed the mutation of respondent no.5 in place of deceased Dilshad Ali. Revision filed by petitioner against the order dated 4.8.2021 has been also dismissed by respondent no.2 vide order dated 16.10.2023, hence, this writ petition on behalf of petitioner for the following reliefs:-

"Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 16.10.2023, passed by respondent no.2 in Revision No.1412/2021 (Computerized Case No.C202111000001412) (Mukarram Ali vs. Noor Jahan and Others) as well as the order dated 4.8.2021 passed by respondent no.3 in Case No.RST/00486/2018

3. Counsel for the petitioner submitted that the Tehsildar has illegally allowed the mutation application in favour of respondent no.5, on the basis of the alleged will deed dated 28.7.2008 and the case of the petitioner is founded on the basis of succession which has not been considered in accordance with law. It is further submitted that the appeal and revision filed by the petitioner have also been dismissed without considering the case of the petitioner. It is further submitted that proper opportunity for cross-examination in respect to will deed in question has not been afforded to the petitioner inspite of the order dated 24.4.2019 passed by the revisional court while remanding the matter back before the Tehsildar as such impugned orders be set aside and mutation case be decided afresh in the light of earlier revisional order dated 24.4.2019.

4. Sri Akash Khare, learned counsel for private respondent no.5 submitted that the writ petition arises out of the mutation proceeding, as such, the same is not maintainable. It is further submitted that concurrent finding has been recorded by the court for recording the name of the respondent no.5 on the basis of will deed dated 28.7.2008 which has not been cancelled till date by any court of law. He further submitted that Civil Suit No.89/2016, although has been filed on behalf of the petitioner for declaration in respect to the will deed dated 28.7.2008 is pending before the Civil Court. He further placed the true copy of the plaint of Suit No.89 of 2016 which has not been disputed by learned counsel for the petitioner. He further submitted that no proper affidavit has been filed in support of the instant petition, as such, the same is liable to be dismissed.

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

6. There is no dispute about the fact that the Tehsildar has passed an order for mutation in favour of respondent no.5 on the basis of will deed alleged to be executed on 28.7.2008. There is also no dispute about the fact that the order of mutation passed in favour of respondent no.5 has been maintained in appeal and revision. There is also no dispute about the fact that Civil Suit No.89/2016 in respect to the will deed in question is pending before Civil Court.

7. In order to appreciate the controversy involved in the instant petition, the finding recorded by the Tehsildar will be relevant for perusal which is as under:-

न्यायालय: तहसीलदार

मण्डल: मेरठ जनपद: हापुड़, तहसील: गढ़ मुक्तेश्वर

वाद संख्या: RST/00486/2018

कंप्यूटरीकृत वाद संख्या: T201811730500486

नूर जहां बनाम दिलशाद अली

अंतर्गत धारा: 34/35, अधिनियम: उत्तर प्रदेश राजस्व संहिता-2006

नकल निर्णय दिनांक 04.08.2021

पत्रावली पेश हुई। प्रस्तुत वाद न्यायालय अपर आयुक्त मेरठ मण्डल मेरठ के आदेश दिनांक 24.04.2019 के अनुपालन में निर्देशानुसार निर्णीत किये जाने हेतु दिनांक 21.08.2019 को पेश हुई। पत्रावली का विधिवत अवलोकन किया गया। पत्रावली के अवलोकन से विदित है कि प्रस्तुत वाद न्यायालय अपर आयुक्त मेरठ मण्डल मेरठ के आदेश दिनांक 24.04.2019 के अनुपालन में पुनः योजित किया गया। न्यायालय अपर अयुक्त मेरठ मण्डल मेरठ के द्वारा निर्देशित किया गया है कि उभय पक्ष को समुचित साक्ष्य एवं सुनवाई का अवसर प्रदान करते हुए पुनः वाद का निस्तारण गुणदोष पर करें। दिनांक 21.01.2021 को उभय पक्ष को साक्ष्य अवसर दिया गया। वादी के अधिवक्ता द्वारा दिनांक 03.02.2021 को गवाहों के शपथ पत्र दाखिल किये गये। दिनांक 05.03.2021 को वादी द्वारा अपने साक्ष्य पूर्ण बताये गये। दिनांक 26.07.2021 को प्रतिवादी के साक्ष्य हेतु अंतिम अवसर प्रदान किया गया। प्रतिवादी न तो न्यायालय में उपस्थित हुआ और न ही कोई साक्ष्य प्रस्तुत किया।

"पत्रावली पर उपलब्ध साक्ष्यों के अवलोकन से स्पष्ट है कि प्रस्तुत वाद पंजीकृत वसीयत दिनांक 28.07.2008 पर आधारित है। जिसकी पृष्टि वसीयत के हासिये गवाहों ने अपने शपथ पत्र में की है। प्रस्तुत वसीयत एक पंजीकृत दस्तावेज है, जो किसी भी न्यायालय से निरस्त नहीं है। वर्तमान में वैध है। पंजीकृत वसीयत एक वैध दस्तावेज होने के कारण व गवाहों द्वारा वसीयत को पुष्ट किये जाने के कारण पत्रावली पर नामान्तरण आदेश पारित किये जाने में कोई विधिक बाधा नहीं है। पत्रावली पर निम्न आदेश पारित किया जाता है।

आदेश

अतः आदेश हुआ कि भूमि स्थित ग्राम गढ़ बांगर के खाता सं० 890 खसरा सं० 1619 रकबा 0.6100 है० मा० 80.0 रु० से मृतक दिलशाद अली पुत्र मुमताज अली निवासी मौ० चौधरियान गढ़मुक्तेश्वर का नाम खारिज करके उसके स्थान पर श्रीमति नूरजहां बेगम पत्नी शाहनवाज खां

निवासी मौजपुर दिल्ली का नाम का बतौर पंजीकृत वसीयत दिनांक 28.07.2008 बतौर संक्रमणीय

भूमिधर दर्ज होवें।

अमलदरामद बाद पत्रावली दाखिल दफ्तर होवे।

तहसीलदार

गढ़मुक्तेश्वर

04.08.2021”

8. Considering the finding recorded by the Tehsildar to the effect that the registered will deed has been executed by the recorded tenure holder in favour of respondent no.5, which has not been cancelled by any court of law till date, as well as in view of the pendency of the Civil Suit No.89 of 2016 in respect to the will deed in question at the instance of the petitioner himself, no interference is required in the matter.

9. The writ petition is dismissed.

10. Needless to say that the order passed in the mutation proceeding shall not come in the way of the petitioner to establish his claim in the pending suit before civil court in accordance with law.

Order Date :- 6.12.2023

C.Prakash