

Court No. - 49

Case :- WRIT - B No. - 3706 of 2023

Petitioner :- Narendra Pal Singh

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

Counsel for Petitioner :- Saurabh Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Syed Qamar Hasan Rizvi,J.

1. Heard Sri Saurabh Srivastava, learned counsel for the petitioner; Sri Anshul Nigam, learned Standing Counsel for the State-respondent no.1.

2. By means of the present writ petition, the petitioner has assailed the order dated 20.12.2022 passed by the learned Board of Revenue passed in Case No. 2408/2012-13, under Section 219 of the U.P. Land Revenue Act and further the order dated 07.06.2012 passed by the learned Additional Commissioner (Administration), Muradabad Division, Muradabad, passed in Revision No.38/2011-12.

3. Being aggrieved by the impugned orders, the present writ petition has been filed on the ground that the Additional Commissioner while allowing the Revision No.37/2003-04 committed an error of law by ignoring the admission of Smt. Rampa Devi, mother of Jag Dei who stated before the court below that the alleged Will was never executed and as such no mutation proceedings were initiated for about 16 years on the basis of the alleged Will.

4. The contention of the learned counsel for the petitioner is that the courts below did not have considered the factual matrix of the

case and passed the impugned orders without application of mind.

5. Per contra, learned counsel for the State has raised a preliminary objection regarding the maintainability of the writ petition. He submits that the proceedings arisen out of the mutation are summary in nature and the writ petition against the summary proceedings is not maintainable under Article 226 of the Constitution of India. Since the order under challenge in the instant writ petition has arisen out of the proceedings under Section 34 of the Land Revenue Act, 1901 which are admittedly summary proceedings.

6. Considering the rival submissions as advanced by the learned counsel for the parties, this Court is of the view that it is a settled legal proposition that the orders for mutation are passed on the basis of the possession of the parties and since no substantial 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 the orders passed in mutation proceedings, unless found to be totally without jurisdiction or contrary to the title already decided by the competent court. It is further observed that the mutation proceedings being of a summary nature drawn on the basis of the 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.

7. In view of above, as no substantive rights of the parties are decided or 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 right/title in respect of the

land in question be crystallized by the competent court of jurisdiction.

8. Accordingly, without interfering into the merits of the impugned orders passed by the Revenue Courts, this writ petition is **disposed of** with the liberty to the parties to get their rights/titles in respect of the land in question, if necessary, adjudicated or declared by the competent court of jurisdiction.

9. It is further provided that 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 findings or observations made in the mutation order or during mutation proceedings.

Order Date :- 3.11.2023

Abhishek Gupta