

Court No. - 49

Case :- WRIT - B No. - 3810 of 2023

Petitioner :- Abdul Khaliq

Respondent :- The Board Of Revenue Exp Lucknow And 5 Others

Counsel for Petitioner :- Anil Kumar, Wasim Alam

Counsel for Respondent :- C.S.C., Krishna Kant Singh

Hon'ble Syed Qamar Hasan Rizvi, J.

1. Heard Shri Wasim Alam, learned counsel for the petitioner and Shri Awadhesh Kumar Patel, learned Standing Counsel for State-respondents No. 1, 2 and 3 and Shri Pawan Kumar Singh holding brief of Shri Krishna Kant Singh, learned Standing Counsel for the Gaon Sabha-respondent No. 5 and perused the record.

2. The present writ petition has been filed by the petitioner assailing the judgment and order passed by the learned Board of Revenue-respondent No. 1 dated 18.9.2023 and the order dated 17.6.2016 passed by the Additional Commissioner (Judicial) respondent No. 2 and also the order dated 11.5.2015 passed by the Tehsildar, Tehsil Kasganj, district Kasganj-respondent No. 3.

3. The case of the petitioner is that respondent No. 4 claimed mutation in the Court of Tehsildar-respondent No. 3 on the basis of succession. The Tehsildar vide order dated 11.5.2015 allowed the said application for mutation. Against the said order, the petitioner filed an appeal before the Sub Divisional Officer-Ist, Kasganj. The said appeal was registered as case No. T20151875011658, under Section 210 of the Land Revenue Act. The appellate court relying upon a registered Will dated 13.01.2009 in favour of the petitioner, allowed the said appeal vide order dated 11.4.2016 and remanded

the matter to the court of Tehsildar to decide the matter afresh after affording opportunity of hearing and adducing evidences; to the parties concerned. Against the said order, a revision was filed before the court of Additional Commissioner (Judicial) Aligarh division Aligarh (respondent No. 2), which was registered as Revision No. 66/C-2016180000398 (Abdul Kasim vs. Abdul Khaliq and others), under Section 219 of the Land Revenue Act, which was allowed vide judgment and order dated 17.6.2016.

4. The petitioner challenged the said order dated 17.6.2016 before the learned Board of Revenue-respondent No. 1 by means of a revision bearing No. REV/1522/2016/Kasganj, computerized case No. R20161875001522 (Abdul Khaliq vs. Abdul Kasim). The said revision was also dismissed vide order dated 18.09.2023 upholding the judgment passed by the revisional court dated 17.6.2016 and the order passed by the trial court dated 11.5.2015. Aggrieved against the same, the petitioner preferred the present writ petition before this Court challenging the aforesaid order.

5. The contention of learned counsel for the petitioner is that the petitioner is the son of the deceased Abdul Malik and a registered Will was executed by his father in his favour. The Will is dated 13.1.2009. He further submits that although a suit for cancellation of the Will dated 13.1.2009 filed by respondent No. 4 is pending before the civil court, but since no adverse order in the said suit has been passed against the petitioner, as such, the Will should be treated to be valid, as on date, and accordingly the petitioner is entitled for the mutation in his favour on the basis of said Will. Further, contention of learned counsel for the petitioner is that the petitioner is in possession of the property in dispute.

6. Per contra, Shri Awadhesh Kumar Patel, learned Standing

Counsel appearing on behalf of the State has raised a preliminary objection regarding the entertainability of the present writ petition being arising out of the mutation proceedings. The contention of learned Standing counsel is that since the Will, on the basis of which, the petitioner is claiming his right is under challenge before the competent civil court, as such, the same cannot be made basis of the mutation proceedings. In support of this contention, he has relied upon the judgment passed by Hon'ble the Supreme Court in the case of ***Jitendra Singh vs. State of Madhya Pradesh and others*** reported in 2022 (1) AWC 231, wherein it has been held as under:-

"5.... Be that as it may, as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made."

7. He further relied upon the judgment passed by this court reported in ***Amritansh Pandey vs. State of U.P. and others*** reported in 2023 (161) RD 178.

8. It is the settled legal position that the revenue records do not confer title and even if the entries in the revenue records of right carry value that by itself would not confer any title upon a person claiming on the basis of the same. The mutation proceedings being of 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 right adjudicated in regular suit. The mutation in the revenue records neither creates

nor extinguishes the title of a person. Such, entries are relevant only for the purpose of collecting land revenue. In view thereof, this Court has consistently held that as such the writ petitions are not to be entertained in exercise of the discretionary power conferred under Article 226 of the Constitution of India. Normally, the High court in exercise of its discretionary power does not entertain the writ petitions under Article 226 of the Constitution of India against the orders passed by the revenue court in mutation proceedings, except under the conditions, as formulated by this Court in the case of ***Smt. Kalawati vs. The Board of Revenue and others*** reported in 2022 (4) ADJ 578 and

9. It is well settled that the orders for mutation are based on the basis of possession of the parties and since no substantive rights of the parties are decided in mutation proceedings, ordinarily the writ court 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.

10. In view of above, as no substantive rights of the parties has been decided or are likely to be decided in the mutation proceedings, no case for exercise of extraordinary writ jurisdiction under Article 226 of the constitution of India is made out.

11. Needless to say, it is always open to the petitioner to get his rights/title in respect of the land in question be crystalized by the competent civil court.

12. Accordingly, without interfering with the merits of the impugned orders passed by the revenue record, the instant writ petition, is disposed of with the liberty to the parties to get his rights/titles 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 :- 23.11.2023

Sumaira