

Court No. - 18

Case :- WRIT - C No. - 4828 of 2023

Petitioner :- Awadh Naresh Singh

Respondent :- Addl. Commissioner, (Admin) Lucknow
Division Lucknow And 5 Others

Counsel for Petitioner :- O.P. Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Shree Prakash Singh,J.

1. Heard Sri O.P. Tiwari, learned counsel for the petitioner, Sri Hemant Pandey, learned standing counsel for the State and perused the record.

2. Matter is decided at admission stage, hence notices to the private respondents are hereby dispensed with.

3. Instant petition has been filed with following reliefs:-

a. Issue a writ, order or direction in the nature of certiorari thereby quashing the the impugned order dated 12.07.2021, passed by the opposite party no.1 i.e. Additional Commissioner (Administration), Lucknow Division Lucknow in case no.00553/2021, computerized case no. C202110000000553, U/S-219 of the U.P.Z.A. & L.R. Act 1901 (Awadh Naresh Singh Vs. Krishna Kumar Singh alias Manu & others), impugned judgment and order dated 10.02.2021, passed by the opposite party no.2 i.e. Sub Divisional Officer /Joint Magistrate, Sadar, Unnao in case no. 06373/2018, computerized case No. T201810690406373, U/S-207 U.P. Revenue Code 2006 (Awadh Naresh Singh Vs. Krishna Kumar Singh @ Manu and others) and the impugned judgment and order dated 15.10.2018, passed by the opposite party no. 3 i.e. Tehsildar (Judicial) Hasanganj, Unnao in case No. 6753/2016, computerized case No. T2016106940046753, U/S- 34/35 of the U.P.L.R. Act.

b. Issue a writ order or direction in the nature of mandamus thereby commanding the opposite party no. 3 i.e. Tehsildar (Judicial) Hasanganj, Unnao to stay/abate the mutation proceeding until disposal of the original civil suit no. 157/2012 which is pending before the Civil Court, in the interest of justice.

c. Issue any other suitable order or direction which this Hon'ble Court may deem, fit, just and proper under the circumstances of the case in favour of the petitioner.

d. Allow the writ petition of the petitioner with costs.

4. Learned counsel appearing for the petitioner submits that after the death of the original tenure holder namely, late Kanhaiya Bux Singh, the entries vide P.A.-11 were made on 13.12.2011 and 12.01.2012 by the revenue inspector in favour of the legal heirs namely, Awadh Naresh Singh, Krishna Kumar Singh @ Manu, Shiv Kumar Singh @ Tanu and Smt. Savita Singh (opposite party no. 4 to 6) in respect of both villages, and on the other hand , the opposite party no. 4 and 5 filed two mutation applications on 02.01.2012 before the Tehsildar Hasanganj, Unnao, in respect with land in question, while claiming their right by way of submitting the will deed dated 23.11.1998 which is alleged to have executed by late Kanhaiya Lal in their favour, and on such applications, the witnesses were called and recording the statement of witnesses, the learned court below passed the impugned order dated 15.10.2018 while deciding the title in favour of the private respondents, which is impermissible under law.

5. Further contention of learned counsel for the petitioner is that the aforesaid order was assailed by way of instituting an appeal bearing no. 6373 of 2018 (Awadh Naresh Singh Vs. Krishna Kumar Singh) under section 219, which was also dismissed while upholding the order passed by the Tehsildar. He submits that though, the petitioner has assailed the will-deed before the civil court, but the same is pending consideration, but during this period, the respondents nos. 4 to 6 have sold out the land in question and therefore, submission is that the concerned parties should restrain to alienate the property further.

6. Learned counsel appearing for the State has vehemently opposed the contentions aforesaid and submits that the order impugned dated 15.10.2018 has rightly been passed as the court below recording the statement of marginal witnesses of the will-

deed proceeded in the matter and recorded the name of private respondents in the revenue record. He added that the petitioner himself has admitted that he has moved a suit for cancellation of the will-deed before the civil court and therefore, he can move the appropriate application before the court concerned, seeking interim injunction. He also added that the proceedings under section 34 of the land revenue code, 2006 is a summary proceeding and as per the settled law, the same cannot be assailed by way of instituting the writ petition, unless those are challenged on the ground that the order is passed without jurisdiction or it is the case where the opportunity of hearing was not accorded.

7. Considering the submissions of learned counsel for the parties and after perusal of material placed on record, it transpires that the dispute arose after the death of the original tenure holder namely, late Kanhaiya Bux Singh and thereafter, the heirs claimed their right on the basis of their inheritance through P.A.- 11 and further the private respondents instituted application under section 34/35 of the Code, 2006 by way of submitting the will-deed and claiming their entries in the revenue record.

8. When this Court examines the aforesaid orders in fact and law, it transpires that learned trial court after recording the statement of the marginal witnesses has passed the impugned order dated 15.10.2018 and the issue with respect to the title has not been decided. Further the petitioner has already assailed the will-deed before the civil court, which is still pending and the door for pressing the application for interim injunction, if pending any, is open for the petitioner.

9. This Court has also noticed the contention of learned counsel for the petitioner that the private respondents have sold out the

land, after it was recorded in their name and therefore, in this event no fruitful purpose would sub-serve if any direction is given, unless the issue is decided by the civil court, in civil suit preferred by the petitioner.

10. In view of the aforesaid submissions and discussions, this Court finds no merit in the instant writ petition hence, it is hereby **dismissed**.

11. However, it is open to the petitioner to approach the civil court concerned, while moving appropriate application so as to raise his grievance, if any.

12. Consigned to records.

Order Date :- 13.12.2023
Mayank