

Court No. - 18

Case :- WRIT - C No. - 7130 of 2023

Petitioner :- Someshwar Sirohi

Respondent :- State Of U.P. Thru. Prin. Secy. Rev. Civil Sectt. Lko.
And 6 Others

Counsel for Petitioner :- Rakesh Kumar Srivastava, Ankit Pande

Counsel for Respondent :- C.S.C., Mohammad Aslam Khan

Hon'ble Saurabh Lavania, J.

1. Rejoinder affidavit filed by learned counsel for the petitioner is taken on record.

2. Heard Shri R. S. Pandey, learned Senior Advocate assisted by Shri Rakesh Kumar Srivastava, learned counsel for the petitioner, learned Standing Counsel for State-respondent nos. 1 to 4, Shri Mohd. Arif Khan, learned Senior Advocate and Shri Vivek Raj, learned Senior Advocate assisted by Shri Mohammad Aslam Khan, learned counsel for opposite party no. 6 and Shri Akshat Kumar, learned counsel for opposite party no. 5, respectively.

3. In view of order proposed to be passed, no prejudice would be caused to opposite party no. 7, as such issuance of notice to the private-opposite party no. 7 is hereby dispensed with and with the consent of learned counsels present before this Court, the instant writ petition is being finally decided at the admission stage.

4. The present petition has been filed for following main prayer:

"issue a writ, order or direction in the nature of Certiorari quashing the order dated 09.08.2023 passed by opp. party no. 2 i.e. Additional Commissioner (Judicial) First Lucknow Division, Lucknow in Revision No. 592 of 2023 (Computerised Case No. C202310000000592) Kunwar Surendra Singh Vs Kunwar Mohit Singh Others & Revision No. 1035 of 2023 (Computerised Case No. C202310000001035) Kunwar Jagjit Singh Vs Kunwar Mohit Singh & Others U/S 219 of U.P. Land Revenue Act 1901, order dated 30.12.2003 passed by opp. party no. 4 i.e. Tehsildar Sadar,

Raebareli in Case No. 517 U/S 34 of U.P. Land Revenue Act 1901 as well as the entire proceedings relating to Mutation initiated by opp. parties no. 5, 6 & 7 on the basis of a forged and fictitious unregistered will dated 25.11.1994 being without jurisdiction as contained in Annexures No. 1 & 2 to the writ petition."

5. A perusal of the averments made in the present petition as also from the above quoted relief it is apparent that the petitioner has assailed the orders passed in mutation proceedings and he has also challenged the entire proceedings related to mutation of name(s) in revenue records initiated by the opposite party nos. 5, 6 & 7 namely Kunwar Surendra Singh alias Goldi, Kunwar Jagjir Singh alias Vineet & Kunwar Raj Singh alias Amit, respectively.

6. The claim of the petitioner as appears from the record is based upon the registered Gift Deed dated 29.05.1959 executed by one Sardar Shamsher Singh in favour of Daljeet Kumari (mother of the petitioner) and Indrajeet Kumari.

7. The claim of the side opposite party is based upon the "Will" dated 25.11.1994 executed by Sardar Shamsher Singh as also the statement made by Shri Daljeet Kumari in the mutation proceedings based upon which the initial order in the mutation case was passed on 30.12.2003.

8. Before the revenue Courts, the petitioner has not raised his claim and he has directly approached this Court by means of present petition challenging the different orders passed in the mutation proceedings as also the entire mutation proceedings initiated by the opposite party nos. 5, 6 & 7 on several factual aspects and grounds.

9. The present petition has been opposed by filing a short counter affidavit in which also several factual pleas have been raised.

10. Having considered the factual pleas raised by the parties, this Court is of the view that in entering into the factual aspects of the case and deciding the same, this Court would touch and observe on the

issue of title over the property involved in the case. The observations made by this Court on the issue of title would prejudice the case/claim of the parties before the regular Court.

11. The aforesaid observations are in view of settled proposition of law that mutation proceedings are summary in nature and they do not decide any right or title between the parties and in the mutation proceedings, the issue of title cannot be decided.

12. Furthermore, the order passed in mutation proceedings are always subject to declaration of rights which may be sought by the parties concerned by instituting a regular suit.

13. Section 40A of the U.P. Land Revenue Act, 1901, (now repealed) as also Section 39 of U.P. Revenue Code, 2006, which is applicable w.e.f. 11.02.2016, make it clear that no mutation order shall debar any person from establishing his rights in the land by means of a regular suit. Mutation of a property in revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue. The mutation proceedings do not adjudicate the rights of the parties and orders passed in mutation proceedings are always subject to adjudication by competent Court.

14. In addition to above, this Court is of the view that the several disputed question facts touching the issue of title over the property involved in the case, which are based upon the factual pleas raised by the parties, should be adjudicated by the regular Court.

15. For the reasons aforesaid, I am not inclined to entertain the present petition and accordingly, the petition is finally **disposed of** with the liberty to the petitioner to institute a regular suit for declaration of rights over the property in issue alongwith an application seeking interim protection within a period of three months from today before

appropriate Court/forum.

16. In view of consent of learned counsels for the parties as also to protect, the property in issue, it is provided that the property in issue shall neither be transferred nor alienated nor over the same, the charge shall be created till the disposal of the application for interim relief preferred by the petitioner.

17. Concerned Court/authority concerned is directed to consider and dispose of the application for interim relief preferred by the petitioner, as per law, expeditiously.

18. Taking note of the facts and circumstances of the case including that the initial order in a mutation case was passed way back on 30.12.2003, it is further provided that concerned Court/authority shall make all endeavour to consider and decide the suit, most expeditiously after affording full opportunity of hearing to the parties to the litigation within a period of one year from the date of institution of suit, if possible and if there is no other legal impediment in this regard.

19. It is further provided that in case the petitioner prefers a suit for declaration of his right and the said fact is brought to the notice of concerned Revenue Authority, he shall indicate the details of the suit in the revenue record. It is to avoid further litigation, which can be on account of transfer/alienation of property in issue or creating charge over the same.

20. The benefit of this order would be available to the petitioner if he institutes a suit in terms of this order.

Order Date :- 17.10.2023

Mohit Singh/-