

Court No. - 6

Case :- WRIT - B No. - 906 of 2023

Petitioner :- Shiv Kant Singh

Respondent :- State Of U.P. Thru. Addl Chief Secy., Revenue, Lucknow
And 3 Others

Counsel for Petitioner :- Saryu Prasad Tiwari

Counsel for Respondent :- C.S.C., Pramod Kumar Pandey

Hon'ble Rajnish Kumar,J.

1. 'Vakalatnama' filed by Shri Vishnu Dev Shukla, Advocate on behalf of opposite party No.4 is taken on record.
2. Shri Saryu Prasad Tiwari, learned counsel for the petitioner submits that the revisional court i.e. the Additional Commissioner (Judicial), Ayodhya Division, Ayodhya has decided the revision by means of the impugned order dated 04.02.2019 without complying the directions issued by this court by means of the order dated 10.03.2017 passed in Petition Misc.Single No.5514 of 2017 and considering the case in terms of the provisions made under Section 68 of the Indian Evidence Act 1872 read with Section 63 of the Indian Succession Act 1925 and the statement/evidence on record in respect of Will in question as well as also such issues which may be relevant for the purpose because the revisional court has not referred any of the witness produced before the trial court which were on record. The Board of Revenue has also upheld the order without considering the grounds and directions issued by this court.
3. Shri Vishnu Dev Shukla, learned counsel for opposite party no.4 submits that the Revisional Court has considered the case in terms of the directions of this court. However he failed to point out from the order as to how the evidence of any witness has been considered.
4. Having considered the submissions of learned counsel for the parties I have perused the record.
5. The petitioner had approached this court challenging the order passed by the Revisional Authority as also the Board of Revenue setting aside the order of Tehsildar by means of Petition Misc.Single No.5514 of 2017; Shiv Kant Singh Versus Board of Revenue, U.P., Lucknow and 2 others. This court, by means of order dated 10.03.2017, on the consent of learned counsel for the respondent had remanded the matter to the Commissioner for considering and deciding the revision afresh

keeping in mind the observations and the statement/evidence on record in respect of the Wills in question as also such other issues which may be relevant in the case and provided that till disposal of the revision by the Commissioner parties shall maintain the status quo. Relevant portion of the order is extracted here-in-below:-

"On being confronted with the arguments of the learned counsel for the petitioner, though initially Sri K.K. Singh urged that the writ was not maintainable, but subsequently when he was shown the provisions of section 68 of the Indian Evidence Act 1872 read with section 63 of the Indian Succession Act 1925, the findings of the Tehsildar and the contrary findings of the revisional courts which on the face of it are not in tune with the aforesaid statutory provisions and apparently are whimsical and purely conjectural, he fairly conceded that the matter be remanded back to the revisional court itself for a consideration afresh on merits.

As this court is convinced that findings recorded by the two revisional courts are not in terms of the statutory provisions referred hereinabove and are purely whimsical and perverse, therefore, without saying anything further as it would prejudice the merits of consideration before the first revisional court, the impugned orders are quashed. The matter is remanded back to the Commissioner for considering and deciding the revision afresh keeping in mind the aforesaid and the statements/evidence on record in respect of the Wills in question as also such other issues which may be relevant in the case.

Till disposal of the revision by the Commissioner the parties shall maintain the status quo and shall not alienate the land in question.

The writ petition is allowed to the aforesaid extent. "

6. Perusal of the order passed by the revisional court does not indicate that he has considered any of the evidence in terms of Section 68 of the Indian Evidence Act 1872 read with Section 63 of the Indian Succession Act 1925 and the findings have been recorded, which are whimsical on account of which earlier the matter was remanded.

7. At this stage learned counsel for the respondent no.4 does not dispute that the directions issued by this court have not been complied by the Revisional Authority and submits that the matter may be remanded to the Revisional Court i.e. to the Commissioner to decide afresh in terms of the directions issued by this court in the order dated 10.03.2017 passed in Petition Misc. Single No.5514 of 2017. To which there is no objection by learned counsel for the petitioner.

8. In view of above, the impugned order dated 04.02.2019 passed by the Additional Commissioner (Judicial), Ayodhya Division, Ayodhya and the order dated 03.07.2023 passed by the Board of Revenue, U.P., Lucknow are hereby set aside and

the matter is remanded back to the Revisional Authority to decide afresh strictly in terms of directions issued by this court by means of order dated 10.03.2017 passed in Petition Misc.Single No.5514 of 2017.

9. Till disposal of the revision by the Commissioner the parties shall maintain status quo and shall not alienate the land in question.

10. Since the matter is old one, the Revisional Authority is directed to decide the revision expeditiously say within a period of three months from the date of submission of a certified copy of this order in accordance with law and without granting unnecessary adjournment to either of the parties.

11. With the aforesaid, the writ petition is **allowed**. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 12.10.2023

Banswar