

Court No. - 6

Case :- WRIT - B No. - 970 of 2023

Petitioner :- Dev Narayan

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue Deptt., Lko And Others

Counsel for Petitioner :- Vinod Mishra, Mahesh Kumar Sharma, Ram Naresh Singh

Counsel for Respondent :- C.S.C., Manju Nagaur

Hon'ble Rajnish Kumar, J.

1. Ms. Manju Nagaur learned counsel has filed vakalatnama on behalf of respondent nos. 4 to 7 and 11 and she has already filed caveat for respondent nos. 8 and 9.
2. Heard Sri Vinod Mishra learned counsel for the petitioner and Ms. Manju Nagaur learned counsel for the respondents.
3. This petition has been filed challenging the order dated 10.01.2022 passed by the opposite party no. 3/Sub Divisional Officer, Tehsil Ram Sanahi Ghat, District Barabanki in an Appeal no. 00464 of 2021 (Shivanand and another vs Dev Narain and others) under Section 207 U.P. Revenue Code, 2006 and the order dated 17.08.2023 passed by the opposite party no. 2/Board of Revenue in Revision No. 430 of 2022 (Dev Narain vs Shivanand) under Section 210 of U.P. Revenue Code, 2006.
4. Learned counsel for the respondents raised a preliminary objection that this petition is not maintainable because it has been filed against the remand order and the petitioner has opportunity before the trial court.
5. Per contra, it is submitted by the learned counsel for the petitioner that the appellate court as well as revisional court without any basis have allowed the appeal and dismissed the revision without considering that the trial court has passed the order after considering the evidence on record in deference to the order, passed by this Court in Petition Misc. Single no. 1459 of 2010 (Suresh Chandra vs The Board of Revenue Lko Through its Member and ors) dated 21.05.2012. He further submits that after remand by this Court, the opportunity of evidence was afforded and lastly the date was fixed for evidence on 28.11.2020, when the parties stated that the evidence has been completed, accordingly, the case was fixed for arguments and after hearing the parties trial court decided the same by means of the order dated 21.01.2021 after considering the evidence of the parties. Thus, the impugned orders are not sustainable in eyes of law and liable to be quashed.

6. Having considered submissions of the learned counsel for the parties, I have perused the records.

7. The dispute in regard to succession arose after death of Devkali s/o Santu on 14.07.1993. Four claims were filed. One by his wife Shyama Devi @ Kusuma Devi on the basis of succession being w/o Devkali (deceased), the other was filed by Girija Devi claiming herself to be the real sister of Devkali. The third claim was filed by Deo Narain and Vishnu Narain sons of Sheetla Prasad and Girija Devi claiming right in respect of the said land on the basis of Will. Fourth claim was filed by Suresh Chandra s/o Lal Bahadur claiming the right on the basis of registered Will deed executed by Shyama Devi.

8. During pendency of the proceedings Shyama Devi died, therefore, Suresh Chandra moved application for substitution. The said application remained pending and the case was decided finally on 18.04.2001. The said order was challenged in the appeal, which was allowed by the Sub-Divisional Officer recording finding that the said application could not have been kept pending for such a long time and even the case could not have been proceeded against the dead person and accordingly allowed but the appellate court did not remand the matter for deciding question of substitution in accordance with law. It appears that the said order was challenged in revision, which was allowed by the Additional Commissioner and the matter was remanded to the Tehsildar to decide substitution application in accordance with law. Thereafter, the substitution application was decided on 14.07.2003 and case was fixed for final disposal. Against the said order an appeal was preferred, which was dismissed on 04.08.2003 and the order of the Revisional Court was acted upon. The order of the Additional Commissioner/Additional Tehsildar and Sub Divisional Officer were challenged before the Board of Revenue. The Board of Revenue allowed the revision on merit and decided the case in favour of the opposite parties.

9. The orders dated 27.01.2010 and 23.02.2010 were challenged in the Writ Petition Misc. Single no.1459 of 2010 before this Court. This Court found that none of the opposite parties were allowed to adduce evidence at any point of time and only the application for substitution was allowed and case was fixed for final disposal. Accordingly, recorded a finding that the Board of Revenue could not have taken one view or the other on the basis of material before it as there was no evidence before the Board of

Revenue to assess the claim of the parties and record the finding as to case of which party is established in accordance with law. This Court allowed the petition by means of the order dated 21.05.2012 and remanded the matter to the Tehsildar/Additional Tehsildar with a direction that he shall give opportunity to the parties to adduce evidence and decide the case in accordance with law.

10. In compliance of the aforesaid order passed by this Court, the Tehsildar proceeded to decide the matter and after affording opportunity of evidence decided by means of the order dated 21.01.2021 in favour of the petitioner. The said order was challenged before the Sub Divisional Officer in Appeal no.00464 of 2021, which has been allowed by means of the judgment and order dated 10.01.2022 and the order dated 21.01.2021 passed by the Tehsildar has been set aside and the matter has been remanded back with a direction to decide a fresh after taking evidence of the parties and re-examining the date of death of the deceased Shyama @ Kusuma. The appellate court, after examining the order passed by the trial court, found that the evidence of the appellants have not been considered and examined. The relevant portion of the order dated 10.01.2022 is extracted hereinbelow:

“उपरोक्त विवेचना के आधार पर मैं इस निष्कर्ष पर पहुंचता हूं कि अवर न्यायालय द्वारा पारित आदेश दिनांक 21.01.2021 मृतक देवकली की जायदाद के सम्बन्ध में है। मुख्यतया अवर न्यायालय के द्वारा पारित आदेश दिनांक 21.01.2021 में मृतक देवकली पुत्र सन्तू जिनकी विधवा श्यामादेवी पत्नी देवकली की मृत्यु दिनांक 09.01.1993 होना अवर न्यायालय में संलग्न मृत्यु प्रमाण व परिवार रजिस्टर नकल तथा ए0डी0ओ0 पंचायत कन्धईपुर की आख्या दिनांक 12.02.2001 इत्यादि के आधार पर श्यामादेवी की मृत्यु दिनांक 09.01.1993 सिद्ध करते हुये मृतक श्यामादेवी के द्वारा निष्पादित वसीयत के आधार पर दिनांक 06.06.1995 को योजित को विफल सिद्ध करते हुये रेस्पान्डेन्ट संख्या-1 व 2 हक में आदेश पारित किया गया है, जबकि अपीलकर्ता जन की ओर से दाखिल अभिलेख साक्ष्य, छायाप्रति परिवार रजिस्टर नकल दिनांकित 23.07.1993 में मृतक होने का कोई उल्लेख नहीं है एवं संलग्न छायाप्रति ग्राम प्रधान द्वारा निर्गत मृत्यु प्रमाण-पत्र के अवलोकन से यह प्रमाणित होता है कि की श्यामादेवी पत्नी स्व0 देवकली की मृत्यु दिनांक 09.01.1995 को हुई है। इसके अतिरिक्त प्रमाण-पत्र ग्राम प्रधान बावत उत्तराधिकारी देवकली छायाप्रति साक्ष्य के रूप में दाखिल किया गया। जबकि अवर न्यायालय द्वारा दिनांक 24.05.1995 को सुरेशचन्द्र की ओर से मृतका श्यामादेवी उर्फ कुसुमादेवी का कायम मुकाम बनाये जाने हेतु प्रस्तुत प्रार्थना-पत्र पर रेस्पान्डेन्ट जन की ओर से आपत्ति दिनांक 19.06.1995 को इस आशय के साथ प्रस्तुत की गयी कि श्यामादेवी उर्फ कुसुमादेवी देवकली की विधवा नहीं है, बल्कि श्यामादेवी की मृत्यु दिनांक 09.01.1993 को हो चुकी है, इसलिए प्रश्नगत वाद प्रस्तुत कायम मुकाम विधि-विरुद्ध है, जिसे निरस्त किया जाय। अवर न्यायालय द्वारा दिनांक 14.07.2003 को उभय पक्षों को सुनकर सुरेशचन्द्र को कायम-मुकाम बनाते हुये पत्रावली साक्ष्य में नियत की गयी।

यहां यह सिद्ध किया जाना है कि अवर न्यायालय में मृतक देवकली की विधवा द्वारा देवकली मृतक के बाद उसके द्वारा एक नामान्तरण वाद जरिये वरासत दर्ज किये जाने हेतु दिनांक 02.08.1993 को योजित किया था। उक्त वाद में गिरिजादेवी द्वारा दिनांक 25.08.1993 को आपत्ति दाखिल की गयी, जिसमें श्यामादेवी को मृतक होने का कोई उल्लेख नहीं है, जिसका जवाब भी दिनांक 28.02.94 को श्यामादेवी द्वारा दाखिल किया गया। जिसके निशानी अंगूठा लगे हुये हैं जिसकी स्वीकृत श्यामादेवी के अधिवक्ता द्वारा की गयी है। अपीलकर्ता जन के कथनानुसार श्यामादेवी की मृत्यु दिनांक 09.01.1995 को होने की बात कही जा रही है। श्यामादेवी मृतक के बाद दिनांक 06.08.1995 को सुरेशचन्द्र की ओर से पंजीकृत वसीयतनामा द्वारा निष्पादित मृतका श्यामादेवी उर्फ कुसुमा मृतक देवकली की जायदाद की वारिस होने के नाते नामान्तरण वाद योजित किया गया।

इसके अतिरिक्त अवर न्यायालय में दाखिल प्रतिलिपि रिपोर्ट थाना रामसनेहीघाट दिनांकित 31.12.1994 द्वारा न्यायालय सब डिवीजनल मजिस्ट्रेट रामसनेहीघाट वाद संख्या 68/58/29 सन 1995 अन्तर्गत धारा-145 दंडप्र0सं0 सुरेशचन्द्र बनाम श्रीमती गिरजा में यह दर्शाया गया कि श्यामादेवी उर्फ कुसुमा जो देवकली की पत्नी है, जो जीवित है। देवकली की मृत्यु दिनांक 14.07.1993 को हो गई है। देवकली की सम्पूर्ण जमीन व जायदाद की वारिस श्रीमती श्यामादेवी उर्फ कुसुमा को होना चाहिए।

उक्त तथ्यों के आधार पर यह सिद्ध होना विफल पाया जाता है कि मृतक देवकली की विधवा श्रीमती श्यामादेवी उर्फ कुसुमा की मृत्यु दिनांक 09.01.1993 को हुई है। यहां तक यह सिद्ध किया जाना उचित प्रतीत होता है कि अवर न्यायालय में संलग्न मतदाता सूची दिनांक 25.03.1996 एवं ग्राम पंचायत अधिकारी द्वारा जारी परिवार रजिस्टर की नकल 23.07.1993 व उक्त धारा-145 दंडप्र0सं0 की रिपोर्ट दिनांकित 31.12.1994 में से यह प्रतीत है कि श्यामादेवी की मृत्यु दिनांक 09.01.1995 को हुई है एवं रेस्पान्डेन्ट द्वारा प्रस्तुत परिवार रजिस्टर नकल दिनांक 28.07.1993 व 08.02.2000, 23.09.2000 एवं प्रधान द्वारा जारी प्रमाण-पत्र दिनांक 04.08.93 से सिद्ध होता है कि देवकली की विधवा की मृत्यु दिनांक 09.01.1993 को हुई है।

इस प्रकार उक्त साक्ष्यों के परीक्षण से यह प्रतीत होता है कि अवर न्यायालय ने गिरिजादेवी द्वारा वरासत के आधार पर प्रस्तुत नामान्तरण वाद की स्वीकृत न्याय के सिद्धान्तों के विपरीत की गयी है। जब तक उभय पक्षों के द्वारा प्रस्तुत साक्ष्यों का परीक्षण विधिक रूप से नहीं होता, तब तक अन्तिम निर्णय लिया जाना विधिक नहीं है।

अतः उपरोक्त बिन्दुओं के आधार पर यह सिद्ध किया जाना है कि क्या वसीयत गवाहों द्वारा पुष्टि होती है या नहीं। मृतक श्यामादेवी की मृत्यु की तिथि की जो भिन्नता पाई गयी है वह किस प्रकार से सिद्ध होती है। मृतक श्यामादेवी उर्फ कुसुमा द्वारा निष्पादित पंजीकृत वसीयतनामा के आधार पर अपीलान्त जन किस प्रकार से सिद्ध नहीं होते हैं। इस प्रकार उक्त बिन्दुओं का निस्तारण/साक्ष्यों का अवसर देते हुये परीक्षण करके अन्तिम आदेश पारित किया जाय। ऐसी दशा में अवर न्यायालय द्वारा पारित आदेश विधि विरुद्ध परिलक्षित होता है, जो निरस्त किये जाने योग्य है। ”

11. In the aforesaid, the appellate court found that Girija Devi though had filed an objection against the application for mutation but she had not stated about the death of Shyama Devi and only dispute was raised that the claimant is not wife of the deceased Devkali and reply of the same was also filed by Shyama Devi on 28.02.1994. The appellate court also found that Suresh Chandra was claiming right over the land in dispute on the basis of registered Will and as per the respondents i.e. the appellant in the said appeal, Shyama Devi had died on 09.01.1995 but it has not been considered. One other material evidence i.e. report dated 31.12.1994 of Police Station Ram Sanehi Ghat, through Sub Divisional Magistrate, Ram Sanehi Ghat under Section 145 Cr.P.C showing Shyama @ Kusuma alive and Dev Kali died on 14.07.1993 has also not been considered. According to which, after death of Devkali on 14.07.1993, Smt. Shyama @ Kusuma Devi is the legal heir of the property of Devkali. One other report of Gram Panchayat Adhikari has also not been considered.

12. On perusal of the order passed by the trial court, this Court does not find that the said reports have been considered by the Tehsildar. Learned counsel for the petitioner also failed to point out consideration of the said reports. He tried to argue that the same have already been considered in the previous orders passed but once the finding has been recorded by this Court in its order

dated 21.05.2012 that the opposite parties have not beenl afforded opportunity of evidence, it could not have been considered and it can also not be considered at this stage because the order passed by this Court is unchallenged and the earlier order stands quashed. The contention of learned counsel for the petitioner cannot be accepted and liable to be repelled only and repelled only.

13. In view of the above and considering overall facts and circumstances of the case, this Court is of the view that there is no illegality or error in the appellate order dated 10.01.2022 and the revisional order dated 17.08.2023 passed by the Board of Revenue, which may call for any interference by this Court.

14. At this stage, learned counsel for the petitioner submits that since the case is pending since long time therefore, direction may be issued for disposal of the case within some short stipulated period. To which, there is no objection by the learned counsel for the opposite parties including the learned Standing counsel. Therefore, considering the same it is provided that the concerned court shall decide the case expeditiously within a period of six months from the date of production of certified copy of this order.

15. With the aforesaid, the petition is **dismissed**. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 28.10.2023/Harshita