

Court No. - 18

Case :- WRIT - C No. - 9701 of 2023

Petitioner :- Dev Mani Mishra

Respondent :- Addl. Commissioner, Devi Patan Mandal, Gonda And Others

Counsel for Petitioner :- Deo Prakash Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Lavania,J.

1. Heard.

2. The present petition has been filed with the following prayer:-

"I. Issue, a writ order or direction in the nature of Certiorari quash the order dated 16.03.2023 passed by the opposite party no.1 in Revision No.00071/2015 (Computer Case No. C201508000000071) ;Dev Mani Mishra Vs. Bhupendra Kumar. & Others under Section 219 of U.P. Land Revenue Act, 1901 by which rejected the revision of the petitioner. (The order dated 16.03.2023 is annexed as Annexure No.1 to this petition)"

3. This petition under Article 226 of the Constitution of India has been filed challenging the order dated 16.03.2023 passed by respondent No.1-Additional Commissioner, Devi Patan Mandal, Gonda in revision No.00071/2015 (Computer Case No. C201508000000071); (Dev Mani Mishra Vs. Bhupendra Kumar. & Others), filed under Section 219 of the U.P. Land Revenue Act, 1901 (in short "Act of 1901").

4. The impugned order dated 16.03.2023 relates to mutation proceedings.

5. From the record it appears that the claim of the petitioner is based on sale deed dated 08.10.2013 executed in his favour by one Shyam S/o Patan Deen and Phoolmati W/o Dulare (a beneficiary of 'Will') and claim of opposite party no.4/Bhupendra Kumar S/o Akbal Bahadur is based upon the sale deed dated 29.01.2015 executed in his favour by brothers of Patan Deen namely Ram Tahal and Ram Raj.

6. It also appears from record that regular suit No.1331 of 2015 for cancellation of sale deed dated 29.01.2015 filed by petitioner is pending consideration.

7. Further on the application of opposite party no. 4, the order dated 11.06.2015 passed in mutation case was recalled on the ground that it was an ex-parte order and the same has been affirmed vide order dated 16.03.2023.

7. Further, it is trite law that mutation proceedings are summary in nature and they do not decide any right or title between the parties; rather they are drawn only for fiscal purposes. 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.

8. Section 40A of the U.P. Land Revenue Act, 1901, (now repealed) as also Section 39 of U.P. Revenue Code, 2006, which is applicable w.e.f. 11.02.2016, make it clear that no mutation order shall debar any person from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.

9. Considering the facts of the case, indicated in brief herein-above including that the suit for cancellation of sale deed dated 29.01.2015 is pending consideration as also the law related to mutation proceeding and that the issue pertaining to claim over the property, in issue, can be adjudicated, as per law, by the competent court of jurisdiction, I am of the view that in the instant case, proper adjudication regarding claim of the respective parties is required. Accordingly, I am not inclined to entertain this petition, which is **disposed of** with liberty to the petitioners to contest the mutation and also to press the pending suit and/or institute a regular suit, if required, seeking declaration of their rights.

10. In regard to interim relief, it is open for the petitioners to seek interim relief before the Court/Authority concerned.

11. It is further provided that the fact/details of the suit if brought to the notice of the concerned revenue authority, then the said revenue authority shall indicate the details of suit in the revenue record. It is for the reason that the entry of details of the suit in revenue records would avoid further litigation, which can be on account of transferring the property in issue or by creating charge over the same.

Order Date :- 8.11.2023

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