

Court No. - 6

AFR

Case :- WRIT - C No. - 1002187 of 2004

Petitioner :- Smt. Sanwari Devi

Respondent :- Addl. Commissiognor Judicial Faizabad And 12 Ors.

Counsel for Petitioner :- S.K. Tewari, Ram Kushal Tiwari

Counsel for Respondent :- C.S.C., Pankaj Kumar Singh, Prabhat Kumar, R.L. Ojha, Ram Shiromani Pandey, Vinay Kumar Mishra, Virendra Kumar Shukla

Hon'ble Alok Mathur, J.

1. Heard Sri Ram Kushal Tiwari, learned counsel for the petitioner as well as learned Standing Counsel for respondent nos. 1 to 3 and Sri Virendra Kumar Shukla, learned counsel appearing on behalf of respondent nos. 4 to 8 and Sri Pankaj Kumar Singh, learned counsel appearing for respondent nos. 9 to 13.

2. The dispute involved in the resent case is with regard to the two will deeds purportedly made by one Dharamraji. One of the will deed which is unregistered was made in favour of respondent nos. 4 to 8 who are the sons of the sisters of Dharamraji, while on the other hand another will is said to have been executed on 19.07.1994, which is registered in favour of petitioner alongwith respondent nos, 9 to 13, all of whom are daughters of Dharamraji.

3. The dispute in the present case pertains to the date of death of Dharamraji. According to the petitioner Dharamraji is said to have died on 30.09.1994, but date of her death was wrongly recorded by the Registrar of Birth and Death as 30.06.1994. Smt. Sanwari Devi - petitioner has moved an application under Section 34 of the Land Revenue Act before the Tehsildar for mutation of the property bequeathed by Dharamraji in favour of petitioner and her sisters namely respondent nos. 9 to 13. In the said proceedings objections were filed on behalf of respondent nos. 4 to 8 who also produced a will executed by Dharamraji on 28.05.1994, stating that Dharamraji had executed the said will in their favour while contesting the application of the petitioner stating that on the face of it the said will has been executed 19 days after death of Dharamraji and consequently registered document cannot be believed.

4. Before the competent authority, under Section 34 of the Land

Revenue Act no appearance was made by Dharamraji after filing the registered will and after recording statement of one of the witness of the said will. The statement of the attesting witness was duly recorded but no cross examination was made thereafter. It is in the aforesaid circumstances that proceedings before the competent authority proceeded ex-parte. The application was moved on behalf of petitioner for recall of the ex-parte order which was allowed on 02.01.1997 and despite the said application being allowed, no appearance was made on behalf of petitioner-applicants and again orders were passed for proceeding ex-parte on 26.05.1997, 21.02.1998 and 31.03.1998 and the application was rejected by order dated 31.03.1998.

5. Against the order of rejection of application, petitioner had moved an appeal before the Sub Divisional Magistrate, Kadipur, Sultanpur. It is before the appellate authority that all the documents were filed by the petitioner who was staking claim over the property of Dharamraji on the basis of registered will dated 19.07.1994.

6. Before the appellate authority it was submitted that on noticing the defect/infirmity in the date of death of Dharamraji, an application was moved which has been allowed by means of order dated 13.08.1998 and the date of death of Dharamraji in the Register of Birth and Death has now been recorded as 13.08.1998 and consequently, it is submitted that there is no infirmity in the will which is registered in favour of petitioner on 11.07.1994.

7. The appellate authority while considering the submissions made on behalf of petitioner rejected the contention, observing that correction was not validly and legally made with regard to date of death of Dharamraji. The appellate authority was of the considered view that correction, if any, in the Register of Birth and Death could have been made only pursuant to approval of a First Class Magistrate and same could not be done by the Registrar on his own accord. While returning such finding the appellate authority has relied upon Section 13 of the U.P. Registration of Birth and Death Act, 1969. He further held that the petitioner by her own conduct had failed to adduce any evidence and did not prosecute the matter before the competent authority. The matter was proceeded ex-parte and in the aforesaid circumstances did not find any ground for interference with the order of competent authority and rejected the appeal filed by the petitioner by means of order dated 06.07.2002.

8. Aggrieved by the order dated 06.07.2002, passed by the Sub Divisional Magistrate, the petitioner preferred revision before the Additional Commissioner (Judicial), Faizabad Division,

Faizabad. Before the revisional authority entire evidence was again reapprised. The revisional authority also looked into the entire record and affirmed the findings of the appellate authority and held that the petitioner was not able to prove the will which was filed in support of the application under Section 34 of the Land Revenue Act and consequently dismissed the revision.

9. Before this Court, learned counsel for the petitioner has vehemently submitted that main issue in the present case is with regard to the proving of registered will before the competent authority, appellate authority as well as revisional authority. He has submitted that undoubtedly, before the competent authority the will was filed and only one attesting witness was produced but he could not be cross examined due to non appearance on behalf of petitioner, the matter was decided ex-parte. The petitioner does not contest the fact that application for recall was allowed and even thereafter no appearance was made on behalf of petitioner before the competent authority and in absence of any evidence having been lead in support of the registered will, the competent authority had rejected the application of the petitioner.

10. It is submitted that before the appellate authority all the material was produced including the corrected date of birth of Dharamraji, but the appellate authority has erroneously returned finding that correction in the Register of birth and death may only be made only after approval of a Magistrate Ist Class. Learned counsel for the petitioner has submitted that as per Section 15 of the U.P. Registration of Birth and Death Act, 1969, it has to be demonstrated before the Registrar that in the register kept with him, erroneously an entry has been made fraudulently and on demonstrating the aforesaid power is vested with the Registrar of Birth and Death to correct or cancel such an entry by suitable entry in the margin of the said register without making any alteration in the original entry. It is stated that approval of Magistrate Ist Class would be required only as per Section 13 of the Act, 1969 where there is delay in information given with regard to birth and death. It is submitted that the present case do not fall under Section 13 and only in exercise of power vested under Section 15 an application was moved for correction of date of death of Dharamraji and consequently the finding recorded by the appellate authority in this regard are infirm and deserve to be interfered with.

11. It is further submitted by learned counsel for the petitioner that the revisional authority while affirming the order of competent authority and appellate authority has also failed to exercise jurisdiction vested in him and accordingly has assailed all the said orders.

12. Learned counsel for the respondents have opposed the writ petition. It is submitted that claim for mutation under Section 34 of the Land Revenue Act was made by the petitioner solely on the basis of registered will dated 19.07.1994. It is submitted that firstly, neither was the will proved before the competent authority nor before the appellate authority and neither before the revisional authority. It is submitted that the will had to be proved in accordance with law as per provisions contained in Section 68 of the Indian Evidence Act.

13. According to Section 68 of the Indian Evidence Act, it was necessary for the petitioner to have produced one attesting witness in support of the will. In the present case he had produced one of the attesting witness, but before the said witness would be cross examined, the said proceedings had proceeded ex-parte against the petitioner and in the present circumstances without cross examination the evidence of the said witness could not have been considered by the competent authority or by the appellate authority and also not by the revisional authority and consequently, the competent authority had no other alternative except to reject the application made by the petitioner.

14. It is further submitted by learned counsel for the respondents that the finding of the appellate authority with regard to correction of will are in accordance with the provisions contained in the Registration of Birth and Death Act, 1969. Lastly it has been submitted that in the present case the dispute is only with regard mutation of property of Dharamraji. It is submitted that proceedings under Section 34 of the Land Revenue Act are summary in nature and consistently this Court has held that in such matters writ jurisdiction of the High Court cannot be invoked.

15. Learned counsel for the respondents has relied upon the judgment of coordinate Bench of this Court in the case of **Gauri Dutt Vs. State of U.P. and 8 Others - Writ - C No. 21014 of 2021** (decided on 21.09.2021), wherein this Court relying upon numerous other judgments of this Court has held that orders for mutation are passed on the basis of the possession of the parties and since no substantive rights of the parties are decided in mutation proceedings, ordinarily a writ petition is not maintainable in respect of orders passed in mutation proceedings unless found to be totally without jurisdiction or contrary to the title already decided by the competent Court. The parties are always free to get their rights in respect of the disputed land adjudicated by the competent Court.

16. Learned counsel for the petitioner in response to the arguments raised by the respondents has submitted that this Court in the case of **Hadisul Nisha Vs. Additional Commissioner (Judicial)**, AIR Online 2021 All 2060 had carved out certain exception with regard to issue pertaining to maintainability of the writ petition arising out of mutation proceedings. He has relied upon para 19 of the said judgment to canvass and buttress his submissions, in case it is demonstrated that mutation has been directed not on the basis of possession or simply on the basis of some title deed, but after entering into a debate of entitlement to succeed the property, touching into the merits of the rival claims, the writ petition could be entertained.

17. It is submitted by learned counsel for the petitioner that his case would fall within the exceptions provided by the Court and accordingly the writ petition in this regard would be maintainable.

18. Heard learned counsel for the parties and perused the record.

19. Undisputed facts of the present case are that Dharamraji is related to the contestants of both sides. She had executed registered will in favour of petitioner as well as respondent nos. 9 to 13 on 19.07.1994. It is also alleged that she has executed another deed on 28.05.1994 in favour of respondent nos. 4 to 8. Application for mutation under Section 34 of the Land Revenue Act was preferred by the petitioner before the competent authority. The said application was contested by respondent nos. 4 to 8. The competent authority had rejected the claim made on behalf of petitioner on the ground that she has been unable to prove the registered will inasmuch as she did not participate in the proceedings which were held ex-parte and her application was accordingly rejected.

20. Considering that the proceedings were held ex-parte against the petitioner, no finding were to be recorded by the competent authority in such a situation. The petitioner had agitated the matter before the appellate authority who returned finding with regard to correction made in the date of death of Dharamraji and the correction made at the behest of petitioner correcting the date of death from 30.06.1994 to 30.09.1994, is invalid and illegal inasmuch as no prior approval of a Magistrate First Class was taken. He further refused to interfere with the findings recorded by the competent authority on the ground that the petitioner did not participate in the proceedings before the competent authority and even the attesting witness could not be cross examined and consequently the application for mutation was rejected and therefore there is no infirmity in the same and

nor any can be pointed out by the petitioner.

21. The revisional authority also affirmed the findings of appellate authority and rejection the revision. The first issue which deserves to be considered is with regard to maintainability of the writ petition, as to whether she has remedy to approach the competent Court with regard to her grievance. It is noticed that there are several decisions of this Court where view has been taken that mutation proceedings being summary in nature do not decide a question of title and the orders passed in such proceedings do not come into the way of a person getting his rights adjudicated in the regular suit and accordingly this Court has held that writ petition under Article 226 of the Constitution of India would not be maintainable. For the sake of convenience few of such judgments are quoted herein below :-

21(i). A coordinate Bench of this Court in case of **Mahesh Kumar Juneja and Ors. Vs. Addl. Commissioner Judicial, Moradabad Division and Ors. 2020 (3) ADJ 104** reiterated the same view and held as under;

"16. The settled legal position that entries in revenue records do not confer any title has been considered and discussed in a recent judgment of this Court in Harish Chandra Vs. Union of India & Ors.13.

17. In view of the foregoing discussion, it may be restated that ordinarily orders passed by mutation courts are not to be interfered in writ jurisdiction as they are in summary proceedings, and as such subject to a regular suit.

18. The mutation proceedings being of a summary nature drawn on the basis of possession do not decide any question of title and the orders passed in such proceedings do not come in the way of a person in getting his rights adjudicated in a regular suit. In view thereof this Court has consistently held that such petitions are not to be entertained in exercise of powers under Article 226 of the Constitution of India."

21(ii). In **Harish Chandra Vs. Union of India & Ors. 2019 (5) ADJ 212** Division Bench of this Court while dealing with an issue in regard to the land acquisition proceedings had the occasion to discuss the matter relating to revenue records and held as under;

"37. This Court may also take into consideration that it is settled law that the revenue records do not confer title and even if the entries in the revenue record of rights carry value that by itself would not confer any title upon the person claiming on the basis of the same.

38. *The Supreme Court in Guru Amarjit Singh Vs. Rattan Chand & Ors.*³ held that entry in Jamabandi (revenue records) are not proof of title, and it was stated as follows:-

"2. ...It is settled law that entries in the Jamabandi are not proof of title. They are only statements for revenue purpose. It is for the parties to establish the relationship or title to the property unless there is unequivocal admission..."

21(iii). Apex Court in case of **Union of India (UOI) & Ors. Vs. Vasavi Co-op. Housing Society Ltd. & Ors.** MANU/SC/0001/2014 while dealing with the entries of the revenue records relying upon the earlier judgments of the Apex Court, held that revenue records are not the document of title and the same cannot be basis for declaration of title. Relevant paragraph no. 17 is extracted here as under;

"17. This Court in several Judgments has held that the revenue records does not confer title. In *Corporation of the City of Bangalore v. M. Papaiah and another* (1989) 3 SCC 612 held that "it is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law." In *Guru Amarjit Singh v. Rattan Chand and others* (1993) 4 SCC 349 this Court has held that "that the entries in jamabandi are not proof of title". In *State of Himachal Pradesh v. Keshav Ram and others* (1996) 11 SCC 257 this Court held that "the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff."

21(iv). In a recent judgment in case of **Bhimabai Mahadeo Kambekar (D) through L.R. Vs. Arthur Import and Export Company & Ors.** MANU/SC/0112/2019, decided on 31.01.2019, Apex Court held that mutation of a land in revenue records does not create or extinguish the title over the land nor it has any presumptive value on the title. Relevant paragraph nos. 8 and 9 are extracted here as under;

"8. This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor it has any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. (See *Sawarni (Smt.) vs. Inder Kaur*, (1996) 6 SCC 223, *Balwant Singh & Anr. Vs. Daulat Singh(dead) by L.Rs. & Ors.*, (1997) 7 SCC 137 and *Narasamma & Ors. vs. State of Karnataka & Ors.*, (2009) 5 SCC 591).

9. The High Court while dismissing the writ petition placed reliance on the aforementioned law laid down by this Court and we find no good ground to differ with the reasoning and the

conclusion arrived at by the High Court. It is just and proper calling for no interference."

21(v). In a recent judgment, Apex Court in the case of **Jitendra Singh vs. The State of Madhya Pradesh & Ors., Special Leave Petition (C) No.13146 of 2021** decided on 6th September, 2021 has held as under :

"6. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter. 6.1 In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqrudin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70.

7. In view of the above settled proposition of law laid down by this Court, it cannot be said that the High Court has committed any error in setting aside the order passed by the revenue authorities directing to mutate the name of the petitioner herein in the revenue records on the basis of the alleged will dated 5 20.05.1998 and relegating the petitioner to approach the appropriate court to crystalise his rights on the basis of the alleged will dated 20.05.1998. We are in complete agreement with the view taken by the High Court."

22. We have also considered another judgment of the coordinate Bench of this Court in the case of **Smt. Hadisul Nisha Vs. Additional Commissioner (Judicial), AIR Online 2021 All 2060**, where the Hon'ble Judge of this Court has carved out certain exceptions for entertaining a writ petition arising out of mutation proceedings. In order to entertain present writ petition it was to be demonstrated by the petitioner that mutation has

been directed not on the basis of possession or simply on the basis of some title deed, but after entering into a debate of entitlement to succeed the property, touching into the merits of the rival claims.

23. Considering the case of the petitioner with regard to aforesaid exceptions carved out by this Court, it is noticed that the competent authority did not dwell into the issue with regard to validity of the registered will which is being relied upon by the petitioner. He did not return a finding that the said will was fraudulently made after death of Dharamraji (testator) nor did he return any finding with regard to unregistered will, but had rejected the application merely on the ground of the fact that the applicant did not participate in the proceedings and also that she was not able to prove the registered will which formed basis of her claim for mutation. Though, it was open for the petitioner to submit all the facts and evidence at the appellate stage but she did not do so and merely contested the order of the competent authority on merits. Further at the appellate stage the attesting witness were neither produced nor were they cross examined consequently the material on which the decision was made by the appellate authority remained the same which was before the competent authority and even before the appellate authority the will was not proved and once the basis of petitioner's claim has not been proved, no finding could have been returned in favour of petitioner even at the appellate stage. Though the proceedings under Section 34 of the Land Revenue Act are summary in nature, but when a document is denied, then proper and adequate evidence has to be adduced to prove the said document.

24. The revisional Court has also not interfered with both the orders passed by the authorities below. Accordingly, it is in the aforesaid facts that this Court is of the considered view that neither of the authorities below have entered into the discussion with regard to rival contentions and nor had any discussion made with regard to validity of the registered will vis-a-vis unregistered document. Had a finding been returned with regard to validity or otherwise of the registered will, then certainly case could have been made out for interference by this Court as per the exception carved out by the coordinate Bench of this Court in the case of **Smt. Hadisul Nisha Vs. Additional Commissioner (supra)**.

25. It is in the aforesaid circumstances, this Court finds itself bound by the consistent view taken by this Court in the case of **Guridutt Vs. State of U.P. and 8 Others - Writ - C No. 21014 of 2021** (decided on 21.09.2021), where this Court has held that in such matters it is open for the petitioner to take his/her claim

before the regular Courts.

26. In the aforesaid circumstances this Court is not inclined to entertain present writ petition or interfere with the orders impugned herein. Accordingly, for the reasons stated above, present writ petition is **dismissed**.

27. However, the petitioner would be at liberty to demonstrate her case before the appropriate Court, if so advised.

Order Date :- 7.2.2024

A. Verma

(Alok Mathur, J.)