

Court No. - 18

Case :- WRIT - C No. - 3837 of 2024

Petitioner :- Vijay Kumar Singh And Others

Respondent :- Addl. Commissioner (Admn), Ayodhya Division, Ayodhya And Others

Counsel for Petitioner :- Ravi Shanker Tewari, Sheo Pal Singh, Vishwakant Srivastava

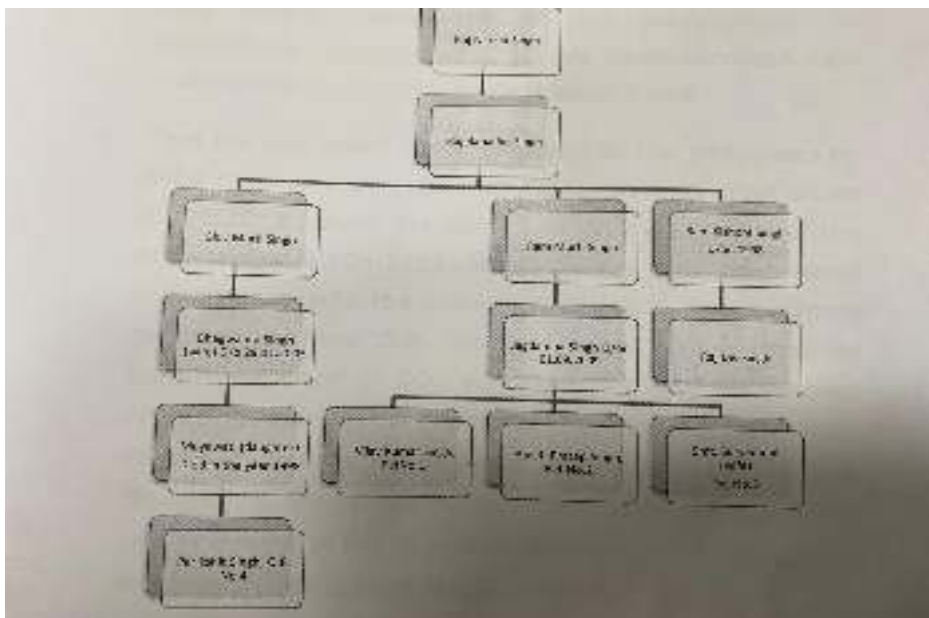
Counsel for Respondent :- C.S.C., Brijesh Kumar Singh, Mohan Singh

Hon'ble Manish Kumar, J.

1. Short counter affidavit has been filed by learned counsel for the respondent no. 4, which is taken on record.
2. Heard Shri Ravi Shanker Tiwari, learned counsel for the petitioners, Shri Hemant Kumar Pandey, learned Standing Counsel and Shri Brijesh Kumar Singh, learned counsel for the private respondents.
3. Learned counsel for the petitioners has submitted that he does not want to file any rejoinder affidavit to the short counter affidavit filed by counsel for the respondent no. 4.
4. With the consent of the parties the matter is being finally decided at this stage itself.
5. The present writ petition has been preferred for quashing of the impugned revisional order/judgment dated 09.04.2024 passed by respondent no. 1/Additional Commissioner (Admn), Ayodhya Division, Ayodhya in revision no. 341/2024 (computerized no. C202404000000341 titled as Parikshit Kumar Singh vs. Vijay Kumar and Ors., under Section 210 of the U.P. Revenue Code, 2006.
6. Sri Hemant Kumar Pandey, learned Standing Counsel and Sri Brijesh Kumar Singh, learned counsel for the respondent no. 4 have raised a preliminary objection regarding the maintainability of the present writ petition as the petitioners have an alternative remedy to file a suit under Section 144 of the U.P. Revenue Code, 2006 (hereinafter referred to as the Code, 2006).

7. Learned counsel for the petitioners has submitted that the writ petition is maintainable before this Court and the alternative remedy to file a suit under Section 144 of the Code, 2006 is not attracted in the case of the petitioners as per exceptions (iv) & (v) carved out by this Court in the case of **Hadisul Nisha v. Additional Commissioner (Judicial), Faizabad [(2021) 6 ADJ 176]** which has been followed in the case of **Kalawati v. Board of Revenue & ors. [(2022) 4 ADJ 578]**.

8. It is further submitted that late Raj Bahadur Singh was the original tenure holder of the agricultural land in villages Raipatti and Gehnaar in Tehsil- Milkipur, District Faizabad/Ayodhya. The pedigree which the petitioners are relying is admitted to the respondent no. 4 also. For convenience, the pedigree is given below:-



9. It is further submitted that as per the pedigree mentioned above, the petitioner nos. 1 and 2 are great Grandsons of late Raj Bahadur Singh being the son of Jagdamba, who was son of Ram Murti Singh and Ram Murti Singh was the second son of Raj Bahadur Singh whereas the petitioner no. 3 is the grand daughter-in-law of late Raj Bahadur Singh i.e. w/o late Jagdamba Singh, grandson of Late Raj Bahadur Singh. The respondent no. 4 was the maternal great grandson of Late Raj Bahadur Singh i.e. Son of Mayawati and Mayawati was daughter of Bhagwanta,

who was wife of Shiv Murti Singh, who was eldest son of late Raj Bahadur Singh.

10. It is further submitted that after the village had come under consolidation, on the application of respondent no. 4, the land was entered in his name by the Consolidation Committee under Section 6A of the Act, 1953 on 10.04.2013 passed by Chakbandi Karta, which was challenged by the petitioners by filing revision before the Deputy Director of Consolidation in which, an interim order dated 19.06.2013 was passed which was challenged by the respondent no. 4 by filing Writ Petition No. 795 of 2013 (Consolidation). The said writ petition was disposed of with a direction to decide the revision expeditiously. The respondent no. 4 filed an objection on 02.09.2013 and stating that his mother predeceased his grandmother i.e. maternal grandmother of respondent no. 4. During the pendency, the petitioners had approached this Court by filing a Writ Petition No. 795 of 2013 and this Court by its judgment and order dated 18.05.2016 disposed of the writ petition with liberty to the petitioners to file their objections under Section 9-A(2) of the Act, 1953.

11. It is further submitted that before the petitioners could have filed their objections, the notification under Section 6 was published denotifying the consolidation proceedings. After the de-notification under Section 6, the petitioners had moved an application for mutation under Section 34 of the U.P. Revenue Code, 2006 which was allowed in their favour by order dated 28.09.2020. Against which the appeal was preferred by the respondents and for the first time, in the said appeal, a U-turn was taken by the respondent no. 4 and took the stand that his mother expired after the demise of her mother i.e. maternal grandmother of respondent no. 4 and in support of his submission, the respondent no. 4 filed a photocopy of the death certificate for the first time in the year 2021. The appeal was dismissed by the judgment and order dated 09.01.2024 with a

finding that the photocopy of the death certificate cannot be accepted as admissible piece of evidence.

12. It is further submitted that against the appellate order, the respondent no. 4 had preferred a revision which was allowed in favour of the respondent no. 4 by the impugned judgment and order dated 09.04.2024 against which the present writ petition has been preferred.

13. It is further submitted that the revisional court was adamant to pass an order in favour of respondent no. 4 and this fact could be seen from the objections filed by the petitioners before the revisional court mentioning all these facts as it has been pleaded in the present writ petition along with documents but none of the documents or the submission of the petitioners were considered by the revisional court.

14. It is further submitted that the petitioners had also moved an application for summoning of original death certificate and the *parivar* register which could prove the case but no orders were passed even on the said application.

15. It is further submitted that when the revisional authority was not hearing the petitioners, the petitioners had moved an application for transfer of the case on 05.04.2024 and the moment the application was filed, within four days the impugned order has been passed by the revisional court.

16. On the other hand, learned counsel for the respondent no. 4 has submitted that the petitioners had filed a mutation application with an inordinate delay and that too, without making or arraying the respondent no. 4 as an opposite party.

17. It is further submitted that the birth and death certificate issued under Section 8 of the Registration of Births and Deaths Act, 1969 (hereinafter referred to as the Act, 1969) and the documents issued under Section 8 of the Act, 1969 would be in existence until and unless the same is cancelled under Section 15 of the Act, 1969, whereas the

petitioners had not filed any application for cancellation of the said death certificate.

18. It is further submitted that the submission of learned counsel for the petitioner which he has pressed hard that he had moved an application for summoning the parivar register and the death certificate and the same was never decided is also an incorrect submission for the reason that in para 16 of the revisional order, it has been mentioned that the death certificate and parivar register in original were in the court and it was seen and on that the petitioners who were respondents there had not raised any strong objection. Para 16 of the revisional order is quoted hereinbelow:-

"16. मायावती की मृत्यु का प्रमाण पत्र और परिवार रजिस्टर मूल रूप से इस न्यायालय में उपलब्ध कराये गये हैं। इस पर विपक्षी कोई ठोस आपत्ति प्रस्तुत नहीं कर सकते।"

19. It is further submitted that the finding regarding that the mother of the respondent no. 4 predeceased his mother was due to the fault of the counsels and the same has been followed in the subsequent proceedings but at the appellate stage it was rectified by the respondent no. 4 by filing the photo copy of the death certificate.

20. At this stage, learned counsel for the petitioners has submitted that though the original death certificate was filed by respondent No.4 but the petitioners had raised the objection even the original documents are forged and fabricated and when the same was not considered then an application was moved on 27.03.2024 for summoning the original record and the officer who had issued the said certificate but the revisional court has not paid any heed to the same and had not passed any order on the application of the petitioners and without proving the death certificate, the same was taken into consideration by the revisional Court.

21. After hearing learned counsel for the parties and going through the record of the case, the position which emerges out in the present case is that the agricultural land belonged to Late Raj Bahadur Singh. The petitioners belong to the family of Late Raj Bahadur Singh being great

grandfather of the petitioners and respondent No.4 is the maternal great grandson of Late Raj Bahadur Singh. The agricultural land was entered in the name of late Raj Bahadur Singh in two villages namely Raipatti and Gahnaar, Tehsil Milkpur District Ayodhya. Dispute involved in the present writ petition is with regard to the agricultural land situated at Village Raipatti. The petitioners got their names mutated on the basis of succession/inheritance which was objected by the respondent No.4 by raising his claim at three stages with an admission on affidavit that her mother predeceased her mother i.e. maternal grandmother of the respondent no. 4 and he falls under category 171 (2) (h) of the Act, 1950 whereas, petitioners fall under category (e) of Section 171(2) of the Act, 1950. For convenience, the Section 171 of the Act, 1950 is quoted hereinbelow:-

171. General order of succession. - (1) Subject to the provisions of Section 169, when a bhumidhar or asami, being a male dies, his interest in his holding shall devolve upon his heirs being the relatives specified in sub-section (2) in accordance with the following principles, namely :-

(i) the heirs specified in any one clause of sub-section (2) shall take simultaneously in equal shares;

(ii) the "heirs specified in any preceding clause of sub-section (2) shall take to the exclusion of all heirs specified in succeeding clauses, that is to say, those in clause (a) shall be preferred to those in clause (b), those in clause (b) shall be preferred to those in clause (c), and so on, in succession;

(iii) if there are more widows than one, of the bhumidhar or asami, or of any predeceased male lineal descendant, who would have been an heir, if alive, all such widows together shall take one share.

(iv) the widow or widowed mother or the father's widowed mother or the widow of

any predeceased male lineal descendant who would have been an heir, if alive, shall inherit only if she has not remarried.]

[(2) the following relatives of the male bhumidhar or asami are heirs subject to the provisions of sub-section (1), namely :-

(a) [widow, unmarried daughter] and the male lineal descendant per stirps:

Provided that the widow and the son of a predeceased son how low-so-ever per stirps shall inherit the share which would have devolved upon the predeceased son had he been alive;

(b) mother and father;

(c) [];*

(d) married daughter;

(e) brother and unmarried sister being respectively the son and the daughter of the same father as the deceased; and son of a predeceased brother, the predeceased brother having been the son of the same father as the deceased;

(f) son's daughter;

(g) father's mother and father's father;

(h) daughter's son;

(i) married sister;

(j) half sister, being the daughter of the same father as the deceased;

(k) sister's son;

(l) half sister's son, the sister having been the daughter of the same father as the deceased;

(m) brother's son's son;

(n) mother's mother's son;

(o) father's father's son's son.]

22. Firstly, the said admission was made by the respondent no. 4 in para no. 13 of the objections dated 02.09.2013, which is quoted hereinbelow:-

" Para 13- that the recorded tenant Smt. Bhagwanta had no any male issue except a daughter named Smt. Mayawati who was died during the life time of his mother and as a real son of Smt. Mayawati or as a son of daughter of the deceased Smt. Bhagwanta opposite party no. 2 named Parikshit Kumar son of Raghaw Bihari Singh is the only legal heir of the deceased."

23. The second time in his objection dated 08.01.2014 with regard to the agricultural land situated at Gahnaar , para nos. 4 to 6 of the said document filed alongwith the supplementary affidavit are quoted hereinbelow:-

"धारा-4 यह कि शपथी परीक्षित कुमार की नानी भगवन्ता के जीवनकाल में ही माता माया की मृत्यु हो चुकी थी जिससे प्रार्थी नानी के साथ रहकर उनकी सेवा परवरिश करता था

धारा-5 यह कि शपथी परीक्षित कुमार की माता माया की मृत्यु नानी भगवन्ता से पूर्व हो जाने के कारण पं०क० 11 में विद्वान राजस्व निरीक्षक ने भगवन्ता की मृत्यु के बाद उत्तराधिकार/वरासत का निर्धारण कर भगवन्ता की आराजी को शपथी परीक्षित कुमार के नाम दाखिल खारिज कर दिया जो नियमानुसार विधि संगत है।

धारा-6 यह कि शपथी परीक्षित कुमार का नाम भगवन्ता मृतक के स्थान पर पं०क० 11 पर दर्ज किया जाना उ०प्र० जमी० विनास और भूमि व्यवस्था अधिनिय 1950 की धारा 171 ज के उपबन्धों के अन्तर्गत न्यायसंगत है।"

24. In which, it has also admitted that the respondent no. 4 falls under category (h) of Section 171 (2) of the Act, 1950. In Hindi language, it has been mentioned as (ज) in the affidavit.

25. Again, third time the respondent no. 4 before this Court at the time of filing of the Writ Petition No. 795 of 2013 (Consolidation) has averred in para no. 5 of the writ petition. The relevant para no. 5 is quoted hereinbelow:-

" That unfortunately the mother of the petitioner Smt. Mayawati died in the life time of his mother Smt. Bhagwanta and thus

after the death of Smt. Bhagwanta the maternal grand mother of the petitioner, the name of petitioner was mutated in the Shattwarshik Khatauni of Fasli year 1407 to 1412 by the consolidation officer by exercising the power vested under Section 6-A of the C.H. Act on dated 14.04.2013. The copy of Sharwarshik Khatauni of the land in question is being filed as annnexe no. 2 to with writ petition. "

26. The respondent no. 4 filed an appeal against the mutation order dated 28.09.2020 passed in favour of the petitioner and changed the stand completely and took u-turn from his earlier admissions made on oath before the Court below even before this Court by stating that her grand mother Bhagwanta had predeceased her daughter i.e. mother of respondent no. 4. The appeal was dismissed by the judgment and order dated 09.01.2024, where only the photocopy of the death certificate was produced and a detailed finding was given by the appellate authority. The relevant extract of the same is quoted hereinbelow:-

"17 -पत्रावली पर प्रस्तुत साक्ष्यों से यह भी स्पष्ट हुआ कि प्रश्नगत भूमिधर के मृत्यु प्रमाण पत्र की मात्र छायाप्रति या जो सत्यापित भी नहीं है, ऐफेडेबिट से समर्थित नहीं है, अपीलार्थी द्वारा प्रस्तुत की गयी है, जिसे विद्वान अधिवक्ता उत्तरदाता पक्ष द्वारा जाल साजी युक्त करार दिया है, बताया कि प्रस्तुत प्रश्नगत मृत्यु प्रमाण पत्र की छायाप्रति जिसमें श्रीमती मायावती सिंह की मृत्यु दिनांक 07.02.2006 लिखी हैं तथा रजिस्ट्रेशन का दिनांक 22.02.2006 तथा जारी होने का दिनांक भी 22.02.2006 दर्शाया गया है, वह फर्जी है, जो येन-केन जारी कराया गया है, इसकी प्रमाणित प्रति न्यायालय में प्रस्तुत नहीं की गयी है, वस्तुतः सूचना मृत्यु के मूल अभिलेख से लिये जाने का प्राविधान है, लेकिन उक्त मूल अभिलेख को अपीलार्थी द्वारा न्यायालय के समक्ष प्रस्तुत नहीं किया गया, अपीलार्थी द्वारा परिवार रजिस्ट्रर की नकल दिनांक 27.12.2021 प्रस्तुत की गयी है, अपीलार्थी ने मृत्यु प्रमाण पत्र निगमन दिनांक 22.02.2006 प्रस्तुत किया है अतः उक्त सूचना

के दिनांक के कागजात जिनके आधार पर यह प्रमाण पत्र प्रस्तुत करना अपेक्षित था, ताकि यह सिद्ध हो पाता की श्रीमती मायावती कि मृत्यु श्रीमती भगवन्ता सिंह के जीवनकाल में हुई थी अन्यथा की स्थिति में विद्वान अधिवक्ता उत्तरदाता के तर्क अति तथ्यापक है कि श्रीमती मायावती सिंह की मृत्यु दिनांक फर्जी तरीके से कूट रचना कर बाद की तिथि की दार्शयि जा रही है।”

27. Against the appellate order, the respondent no. 4 had preferred a revision and on being asked from the learned counsel for the respondent no. 4 whether the finding given by the appellate Court regarding death certificate as mentioned above was challenged in the revision or not, learned counsel for the respondent no. 4 in his reply has submitted that it was challenged by taking a specific ground and the pleadings and in support of his submissions he has drawn attention of this Court to para nos. 5, 7, 13, 14 and 23 of the revision, which are quoted hereinbelow:-

"Para-4:

Because the learned Tehsildar has acted with substantial illegality in allowing the mutation application moved by the opposite party Vijay kumar & others cryptically, even without hearing to me applicant / revisionist by way of violating his right of natural justice and thereafter, appeal moved by the applicant / revisionist has been dismissed by the learned Dy. Collector (J.) Milkipur, Ayodhya relied on the false & inadmissible facts adduced by the opposite party regarding death of revisionist's mother late Smt. Mayawati with the sole object for providing undue & influential advantages to the opposite party no.1 to 3. Hence, both the orders impugned are liable to be set aside.

Para-5:

Because applicant / revisionist had adduced evidences regarding death of his mother as well as recorded tenure holder of the land in question and accordingly, real daughter of

the recorded tenure holder Smt. Mayawati Singh proceed to death on 07.02.2006 after the death of her mother Smt. Bhagwanta dated 29.11.2005 but this fact has been fully overlooked by the learned Courts below in passing the orders impugned as such liable to be set aside.

Para-7:

Because whole approach of the learned Courts below in deciding the case was arbitrarily & cursorily, overlooking the entire material evidence on record adduced by the applicant / revisionist and orders impugned have been passed upon surmise grounds, keeping illegal grounds regarding death of real daughter of late Bhagwanta while there was no objection from the side of the opposite party before the Consolidation Court claiming outrightly their rights on the basis of alleged legal heirship.

Para-13:

That subsequently, against the order aforesaid dated 15.04.2023 passed by the learned Consolidator, there was filed a revision u/s-48 (1) of UPCH Act which was decided by the revisional Court on 17.12.2016 by way of confirming the order aforesaid passed by the learned Consolidator.

Para-14:

That the opposite parties concerned are habitual litigants and accordingly, they approached before the Hon'ble High Court by way of preferring a Writ Petition No.10519/2017 under Article 226 of Cons. of India which disposed off.. by the Hon'ble High Court on 12.05.2017 by way of dismissing the writ petition. The operative portion of the order of Hon'ble

*High Court is being reproduced as below:
 "By means of order dated 17.12.2016, opposite party no.1 has dismissed the revision on the ground that if the petitioners have any grievance in the matter in question, he may agitate the same under Section 9 of the U.P. Consolidation of Holdings Act. So, I do find any good ground or reason to interfere in the matter because parties will get ample opportunity by way of oral & documentary evidence before Consolidation Officer, so at this stage no legal injury has been caused to the petitioner by means of order dated 17.12.2016 passed by the opposite party no. 1.
 For the foregoing reasons, the writ petition lacks merit and is dismissed."*

Para-23:

- 1. That in the interest of justice, it is necessary to allow the revision and the order impugned dated 19.01.2024 passed by the learned Dy. Collector (J.) Milkipur, Ayodhya as well as order of learned Tehsildar Milkipur dated 28.09.2020 to be set aside and appreciating the order of Consolidation Court as well as Hon'ble High Court, it would be just & expedient to be passed an appropriate order in favour of the applicant / revisionist by way of recording the land property in question in favour of the applicant / revisionist as legal heir of the recorded tenure holder late Smt. Bhagwanta w/o Shiv Murat Singh as well as her real daughter late Smt. Mayawati w/o Raghav Bihari Singh. Otherwise. the applicant / revisionist will put to irreparable loss which may not be compensated by any other means.*

It is, therefore, prayed that the order & judgment may kindly be passed in the following manners:

(i) The revision moved by the applicant / revisionist, may kindly be allowed.

(ii) The order & judgment in question under revision dated 19.01.2024 passed by the learned Dy. Collector (J.) Milkipur Ayodhya as well as order of learned Tehsildar Milkipur dated 28.09.2020 please be set aside. And

(iii) Appreciating the order of Consolidation Court as well as Hon'ble High Court be pleased to be passed an appropriate order in favour of the applicant / revisionist for recording the land property in question in favour of the applicant / revisionist as legal heir of the recorded tenure holder late Smt. Bhagwanta w/o Shiv Murat Singh as well as her real daughter late Smt. Mayawati w/o Raghav Bihari Singh. Or

(iv) Any other relief / relives which this Hon'ble deems fit, just & proper be pleased to be passed an. appropriate order in favor of the applicant / revisionist in the interest of justice."

28. From the perusal of the aforequoted paragraphs relied by the learned counsel for the respondent no. 4, it is clear that he has failed to indicate that the findings given by the appellate Court with regard to the death certificate was challenged before the revisional court.

29. The petitioners had filed objections in the revision taking all these pleas including the forged death certificate adduced by the respondent no. 4 and about the earlier proceedings where the respondent no. 4 had admitted that the mother of the respondent no. 4 predeceased her mother i.e. the maternal grand mother of the respondent no. 4 but the revisional Court was not ready to hear any of the objections. Under these compelling circumstances, the petitioners had approached this Court by

filing a Writ Petition No. C No. 2230 of 2004 (Vijay Kumar Singh and 2 others Vs. Additional Commissioner (Administration) and others. The said writ petition was disposed of by this Court by its judgment and order dated 11.03.2024 with an expectation from the revisional Court that it will consider the objection of the petitioners. The relevant extract of the same is quoted hereinbelow:-

"Considering the facts and circumstances and also noticing that the issue is still alive before the revisional court and even though the petitioner has filed his objections, yet the same is yet to be considered on merits. Accordingly, at this stage, this Court is not inclined to interfere leaving it open for the petitioners to press their objections before the revisional court and since the matter is already listed on 15.3.2024, it is expected that the revisional court shall hear the parties on the aforesaid issue on 15.3.2024 and pass necessary orders and in case if the same is not possible, then within next two weeks."

30. The submission of learned counsel for the petitioners finds force, so an application was moved on 27.03.2024 for summoning the original record of the alleged original copies which are said by the revisional Court to be before it and also to summon the officer who had issued the said certificate but no orders were passed on the said application. Thereafter, the petitioners had no other option except to move an application for transfer of the case by moving an application on 05.04.2024 and within four days of moving the application, the impugned judgment has been given by the revisional court. The revisional court in complete derogation to the orders passed by this Court dated 11.03.2024 has decided the revision. The case/objections of the petitioners have not been discussed and decided the revision in favour of the respondent no. 4 and erred in giving the following findings:-

(i) Firstly, that the court below had failed to appreciate the death certificate produced by the respondent no. 4 without appreciating that original copy of death certificate was never adduced by the respondent no. 4 before the Court below. It is for the first time as per para no. 16 of impugned revisional order, as mentioned in preceding para, there is a reference of original death certificate. It is also revealed from the record that the revision was filed on 03.02.2024 by the respondent no. 2. The objections were filed by the petitioners, who were respondents in the revision in the month of February, 2024 itself and after more than one and a half months from the date of filing of the revision by the respondent no. 2 and after filing of the objections by the petitioners, an application was filed by the respondent no. 2 on 27.03.2024 bringing on record certain documents including death certificate of Late Mayawati i.e. the mother of the respondent no. 2 dated 22.02.2006 in which the date of death has been shown as 07.02.2006 but no death certificate of late Bhagwanta was filed by the respondent no. 2 and without filing the same, it could not be determined that who predeceased whom.

(ii) Secondly, as far as the finding that when the Will was in favour of the father of the petitioner was executed by Late Bhagwanta why he had not claimed the agricultural land on the basis of the same is concerned, it is not at all relevant for the purposes of determining the claim of respondent no. 4. The petitioners did not claim their right on the basis of the Will executed by Late Bhagwanta in favour of Jagdamba Singh, the father of the petitioners. They have raised their claim on the basis of inheritance/succession.

(iii) And thirdly, if some typographical mistake is committed by the counsel by cutting and pasting the paras in the earlier affidavits, the revisionist could not be said to be a party to the same as the earlier admission of the respondent no. 4 could not be said to be an admission by the respondent no. 4 as it is the fault of the lawyer or typing mistake,

who had drafted the documents by cut and paste even that finding is not tenable, for the reasons the documents as relied above and mentioned in the preceding paragraphs, affidavits were not only in one language, they were in different language somewhere it was in English and somewhere it was in Hindi and even somewhere the contents are additional or changed. The said finding is also not tenable as in the application/affidavit, in para nos. 4 & 5 as mentioned in the preceding paragraph, it is admitted by the respondent no. 4 that his mother predeceased her mother i.e. the maternal grandmother of respondent no. 4 could not be said that it is on the fault of the Lawyer or typing mistake when the same is read with para 6 where the respondent no. 4 himself admitted that he falls under the category 171 (2)(h) of the Act, 1950.

31. The observation/ finding of the revisional Court that it might have been mistake of the counsel has no substance but it is only conjectural. The revisional court has erred, in case the original which are said by the revisional Court to be before it and when the same was objected by the petitioners who were respondents there and moved an application for summoning the original record and the Officer who had issued the same and particularly under the circumstances that since the year 2013, the respondent no. 4 filed affidavits before different authorities and the courts including before the High Court had never ever been placed the copy of the death certificate and made averment on oath that her mother predeceased her mother and the detailed finding in the appellate order treating that the photocopy of the death certificate is not an admissible piece of evidence then it is incumbent upon the revisional court before deciding the case in favour of respondent no. 4 must require the document to be proved by the party relying upon it.

32. The case of the petitioners falls under the exception no. (iv) & (v) of the judgment in the case of Hadisul Nisha (supra). The relevant extract is quoted hereinbelow:-

"The Courts in the aforecited decisions have laid down a few parameters for entertaining writs arising out of mutation proceedings. The exceptions that have been carved out being very few, for example:

(i) If the order is without jurisdiction;

(ii) If the rights and title of the parties have already been decided by the competent Court, and that has been varied by the mutation Courts;

(iii) If the 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;

(iv) If rights have been created which are against statutory provisions of any Statute, and the entry itself confers a title on the petitioner by virtue of the provisions of the U.P. Zamindari Abolition and Land Reforms Act;

(v) Where the orders impugned in the writ petition have been passed on the basis of fraud or misrepresentation of facts, or by fabricating the documents by anyone of the litigants.

(vi) Where the Courts have not considered the matter on merits for example the Courts have passed orders on restoration applications etc (Vijay Shankar v. Additional Commissioner; MANU/UP/0255/2015 : 2015 (3) ADJ 186 (LB))"

33. The writ petition is maintainable as per condition no. (v) of the judgment in the case of Hadisul Nisha (supra).

34. The submission of counsel for respondent no. 4 that petitioners had claimed their rights after an inordinate delay could also not be material for

the adjudication in the present case but the said submission is not tenable in the circumstances of the present case as the petitioners prior to moving an application of mutation in the year 2019 had continuously fighting for their rights since the year 2012/13 when the consolidation proceedings had started and the name of respondent no. 4 was entered by the Consolidation Committee under Section 6 of the Act, 1953.

35. The admission of respondent no. 4 not once but more than once before different authorities including before this Court in the writ petition filed by the respondent no. 4 that his mother predeceased her mother i.e. maternal grandmother of respondent no. 4 and that his case falls under category of (h) of Section 171 (2) of the Act, 1950 and it is best piece of evidence in the light of Section 31 of the Indian Evidence Act, 1872, though it is not a conclusive proof but they may operate as estoppel. The Hon'ble Supreme Court in the case of **Divisional Manager, United India Insurance Co. Ltd. and Anr. vs. Samir Chandra Chaudhary [2005(5) SCC 63]** has held that admission is the best piece of evidence against the persons making admission by following the judgment of Hon'ble Supreme Court in the case of **Avadh Kishore Das vs. Ram Gopal [AIR 1979 SC 861]** in the backdrop of Section 31 of the Indian Evidence Act.

36. In view of the facts, circumstances and the discussion made hereinabove, the present writ petition is **allowed**.

37. The revisional order dated 09.04.2024 passed by respondent no. 1/Additional Commissioner (Admn), Ayodhya Division, Ayodhya in revision no. 341/2024 (computerized no. C202404000000341 is hereby quashed and the case is remanded to the Revisional Court to consider the matter afresh in the light of the observations made in the judgment.

Order Date :- 03.05.2024

Ashish