

Neutral Citation No. - 2025:AHC:50427

Judgment reserved on: 03.10.2024

Judgment delivered on: 05.04.2025

Court No. - 68

Case :- WRIT - B No. - 3857 of 2018

Petitioner :- Kapil Maheshwari

Respondent :- Board Of Revenue And 3 Others

Counsel for Petitioner :- Abhishek Kumar Yadav, Bhola Nath Yadav

Counsel for Respondent :- C.S.C., Ishwar Kumar Upadhyay

Hon'ble Ashutosh Srivastava, J.

1. Heard Sri Bholanath Yadav along with Sri Abhishek Kumar Yadav, learned counsel for the petitioner, Sri Ishwar Kumar Upadhyay, learned counsel for the respondents and also the learned Standing Counsel for the State-respondents and perused the records.

2. The instant writ petition has been filed questioning the legality, propriety and correctness of the order dated 01.02.2018 passed by the Board of Revenue, UP at Lucknow in Case No. REV/310/2016, District-Meerut (Kapil Maheshwari vs. Smt. Malti Maheshwari and others) under Section 219 of the U.P. Land Revenue Act as also the order dated 25.01.2016 passed by the U.P. Ziladhikari, Meerut in Appeal No. 37 of 2015 under Section 210 of the U.P. L.R. Act (Smt. Malti Maheshwari and others vs. Kapil Maheshwari).

3. The dispute between the parties relates to land situate in Village Panchali Khurd, Kashi, Itayara, Kunda and Gogaul, Pargana Tehsil and District Meerut and house property bearing house no. 310 situate in Brahampuri Meerut city. The aforesaid properties belonged to one Ved Prakash Maheshwari s/o Late Mansukh Das Maheshwari R/o 25/1 Brahampuri Meerut. The said Ved Prakash Maheshwari happened to be the father of the petitioner and Manoj Kumar (respondent no. 4) and husband of Smt. Malti (respondent no. 3).

4. It is the case of the petitioner that his father Late Ved Prakash Maheshwari executed a registered will dated 17.07.2007 bequeathing his

above-mentioned properties to the petitioner and his mother indicating adequate reasons for excluding his daughters and elder son, respondent no. 4. Ved Prakash is stated to have expired on 18.05.2009.

5. It is also the case of the petitioner that the landed properties situate in villages Panchali Khurd, Kashi, Itayara, Kunda and Gagaul were Plot No. 1301-ka area 0.013 hectares, Plot No. 1302 area 0.190 hectares, Plot No. 1303-ka area 0.759 hectare, Plot No. 1300-kha area 0.309 hectares situate in village Kashi, Plot no. 322-M area 0.073 hectares, Plot No. 328 area 0.137 hectares situate in village Kunda, Plot No. 407-M area 0.506 hectare situate in village Gogaul, Plot No. 324 area 0.126 hectares, Plot No. 308 area 0.194 hectares, Plot No. 322 area 0.034 hectares, Plot No. 321 area 1.296 hectare, Plot No. 198 area 0.683 hectare, Plot No. 314 area 0.038 hectare situate in village Pancholi Khurd and Plot No. 46M area 0.9320 hectare situate in village Itayara were bequeath under the Will dated 17.07.2007. The petitioner filed separate Mutation Applications on the strength of the Registered Will seeking mutation of his name over the landed properties bequeath. All the mutation applications were consolidated. The Tehsildar, Meerut vide order dated 12.10.2009 decided the mutation applications and allowed the same. However, no order was passed in respect of Mutation application regarding Village Itayara which case was also consolidated subsequently. The order dated 12.10.2009 was, however, recalled at the instance of the respondent no. 3 and 4 vide order dated 10.10.2014 and mutation cases were restored to their original numbers. After considering the objections of the respondent no. 3 and 4 and counter objections of the petitioner, the Tehsildar, Meerut proceeded to allow the mutation in favour of the petitioner vide its order dated 03.12.2015 except the land of Village Kunda. The respondent no. 3 and 4 filed appeal under Section 210 of the U.P. L.R. Act before the SDO, Meerut registered as Appeal No. 37 of 2015. The appeal was allowed vide order dated 25.01.2016. The revision of the petitioner against the order dated 25.01.2016 before the Board of Revenue registered as Revision No.

310 of 2016 was dismissed vide order dated 01.02.2018. Both the orders dated 25.01.2016 and 01.02.2018 have been impugned by means of the instant writ petition.

6. Sri Bhola Nath Yadav has further submitted that the revenue authorities while rejecting the mutation in favour of the petitioner omitted to consider that plot no. 308-ka area 0.0194 hectare, Plot No. 322 area 0.034 hectare and Plot No. 321 area 1.296 hectare situate in village Panchali Khurd were purchased by Ved Prakash and son Manoj Kumar (respondent no. 4) vide Sale deed dated 08.09.1999, the name of the petitioner was liable to be mutated in place of the name of Ved Prakash pursuant to the Will dated 17.07.2007. Likewise, Plot No. 198 area 0.683 hectare, Plot No. 314 area 0.038 hectare and 1/2 share of Plot No. 321 area 1.296 hectare situate in Village Pancholi khurd was also purchased by his father Ved Prakash in his name and in the name of Respondent no. 4, the name of petitioner was liable to be recorded after the demise of Ved Prakash on the strength of the Will. It has also been submitted that a civil suit for injunction being OS No. 997 of 2014 has been filed in the Court of Civil Judge, Sr. Div. Meerut in which an order dated 26.08.2014 has been passed restraining the Respondents Nos. 3 and 4 from creating any third party rights, executing any transfer and also from interfering in the peaceful possession of the petitioner in any manner. It is also submitted that separate appeals against the order dated 03.12.2015 passed in case no. 381, Case No. 382 under Section 34 of the U.P. L.R. Act are still pending in Revision.

7. Sri Bhola Nath Yadav, learned counsel for the petitioner has vehemently argued that the Testator Ved Prakash executed the Will dated 17.07.2007 in sound mind and on his own free will. The sale deeds dated 28.11.2007 and 03.12.2007 executed after execution of the registered will dated 17.07.2007 shows that the Will was executed in a sound state of mind and could not be said to be under any suspicious circumstances. It is argued that mere allegation or inference of fraud is not sufficient and in

the absence of any pleading and evidence led by the respondent no. 3 and 4, the Will could not be treated to having been executed in suspicious circumstances. The Will dated 17.07.2007 having not been questioned or set aside by any competent court of law was not liable to be discarded. The petitioner duly proved the execution of the Will in accordance with law. The original Will having been lost and a Police Report to that effect having been lodged, filing of certified copy of the registered Will dated 17.07.2007 was permissible as secondary evidence and not fatal. It has also been argued that the Appellate Authority without application of mind proceeded to record perverse finding holding that the Will was executed under suspicious circumstances as the Will did not take into account house no. 25/1, Brahampuri, Meerut in which the family of Ved Prakash resided without verifying the correct fact that the house did not belong to Ved Prakash but to his wife Malti Devi, respondent no. 3 and could not have been bequeath. It is also argued that the Appellate Authority and the Revisional Authority without reversing the findings of fact recorded by the Tehsildar, Meerut regarding the statement of Smt. Krishna Sharma based their order relying upon the statement which was false on the face of it. It is submitted that mutation courts have no power to ignore registered Will and must order mutation on that basis. Mutation orders being summary in nature shall abide by the outcome of the proceedings if a challenge is laid to the basis of mutation. It is accordingly, prayed that the impugned orders have been passed ignoring the settled principles of law and as such are liable to be set aside.

8. Per contra, Sri I. K. Upadhyay, learned counsel who has appeared for the private respondents 3 and 4 in opposition to the writ petition on the strength of the counter affidavit filed on behalf of respondent no. 4 submits that the Tehsildar, Meerut illegally directed the mutation of the name of the petitioner over the plots without examining the legal procedure for proving the will as per the evidence act and the said order of the Tehsildar was rightly set aside in Appeal and Revision by the

impugned orders. The petitioner has never been in possession over the properties and also was in job and never looked after his parents. The Appellate Authority and the Revisional Authority have recorded findings of fact against the petitioner which call for no interference by this Court. The writ petition deserves outright dismissal.

9. The averments made in the counter affidavit have been refuted by the petitioner by filing Rejoinder Affidavit stating *inter alia* therein that the Tehsildar, Meerut passed the order mutating the name of the petitioner in place of his late father Ved Prakash after examining the entire materials on record on the strength of the registered Will which was proved in accordance with law. The execution of the Will has been admitted and it has only been alleged that it was executed under suspicious circumstances. It is settled law that the legality and validity of the registered Will cannot be tested and decided by the Revenue Court. The execution of the Will being not disputed, the mutation ought not to have been refused/set aside. It is also submitted that the injunction order operating in the civil suit was vacated on 10.10.2019 against which an FAFO No. 3290 of 2019 was filed and this Court vide order dated 09.12.2019 directed parties to maintain status quo with regard to nature and possession in respect of the property in dispute. The other pending appeals before the SDO were allowed vide order dated 04.12.2019 and Revision No. 42 of 2019 and 43 of 2019 are pending before the Court of Commissioner, Meerut Division, Meerut. It has also been submitted that the petitioner though on duty always took care of his father and mother by remitting financial assistance as and when required. The petitioner always remained in communication with them. The funeral rites was also done by the petitioner in spite of he being younger son of Late Ved Prakash Maheshwari. Both the Appellate Authority as also the Revisional Authority have recorded perverse findings without reversing the categorical finding recorded by the Tehsildar. It is prayed that the impugned orders passed are liable to be quashed.

10. I have heard the learned counsel for the parties and have perused the records.

11. Admittedly, the mutation has been sought by the petitioner on the strength of the registered Will dated 17.07.2007 executed by the Late father of the petitioner and respondent no. 4 and husband of the respondent no. 3. Execution of the Will is not disputed and the only objection taken by the contesting respondents is that the Will has been executed under suspicious circumstances. From the pleadings and submissions made by the respective parties in the opinion of the Court, the following issues arise for consideration of the Court:

- i. Whether the registered Will dated 17.07.2007 which forms the basis of the mutation proceedings, execution whereof is not denied can be discarded merely on the ground of alleged suspicious circumstances alleged?
- ii. Whether the Appellate as also the Revisional Authority i.e. the Sub Divisional Officer and the Board of Revenue were justified in ignoring the certified copy of the Will dated 17.07.2007 filed as secondary evidence?
- iii. Whether the Appellate Authority as also the Revisional Authority were justified to conclude that the Will dated 17.07.2007 was not executed in accordance with law and drawing an adverse inference therefrom?

12. The Court now proceeds to adjudicate the above issues on the strength of the materials brought on record.

13. Before the Court dwells into the above issues, it would be appropriate to discuss the salient features of the Will dated 17.07.2007 photocopy whereof has been brought on record as Annexure-3 to the writ petition. A perusal of the Annexure-3/photocopy of the registered Will shows that it has been executed on a Rs. Ten (10/-), Non Judicial Stamp Paper purchased in the name of the Testator Ved Prakash Maheshwari, bears a

photograph of the Testator identified by the Rajendra Kumar Jain, Deed Writer, Meerut, bears the signature of the Testator Ved Prakash in English and his thumb impression on each page, left hand finger impression on the 5th and 6th page of the Will, signature of witness Ramphal and Rajendra Kumar Jain who is also the scribe of the document. The Will is registered at Book No. 3, Volume 105 at pages 385 to 396 at SL. No. 377 as is evident from the endorsement of the sub registrar, III, Meerut dated 17.07.2007.

14. Now coming to the Issue No. 1, learned counsel for the petitioner contends that the Tehsildar, Meerut vide order dated 12.10.2009 directed mutation of the name of the petitioner over the plots in dispute holding that proclamation was issued in accordance with law, no objections were received, certified copy of the Will, Khatauni extracts of the relevant plots, death certificate of Ved Prakash were filed on record. Evidence of applicant Kapil Maheshwari in the form of statement, statements of the witnesses Rajendra Kumar Jain and Naresh Kumar Gupta were recorded and taking note of the Section 65 of the evidence act, mutation was ordered.

15. In appeal against the mutation order, it has been stated that the will in question was executed in suspicious circumstances, inasmuch as admittedly the testator Ved Prakash had left behind the contesting respondents as his heirs besides daughters. There was no occasion to exclude the heirs and bequeath the landed properties and house property in favour of the petitioner. The petitioner is not in possession over the properties willed. The original will had not been brought on record and the certified copy relied upon was not proved in accordance with law.

16. In the case at hand, a bare perusal of the recitals of the Will dated 17.7.2007 photocopy whereof has been brought on record as Annexure-3 shows that adequate reasons have been stated to exclude the contesting respondents as also the daughters and bequeathing the property in favour

of the petitioner. The mind of the testator is clearly discernable and due consideration to the wishes of the testator is liable to be given.

17. The Apex Court in the case of ***Leela Rajgopal and others versus Kamala Menon Cocharan and others*** reported in ***2014 (6) AWC 5450 (SC)*** while placing reliance on its earlier decision in ***Mahesh Kumar (dead) by Lrs versus Vinod Kumar and others*** ***2012 (4) SCC 387*** and ***Ved Mitra Verma versus Dharam Deo Verma*** ***2014 (9) SCALE 219*** has clearly held that mere exclusion of other heirs will not vitiate the disposition made by the will. As noted above, the recitals of the Will are clear and unambiguous. Adequate reasons have been stated to exclude other heirs. The Will is registered. There is no occasion to ignore the Will. The Will cannot be said to have been executed in suspicious circumstances.

18. This Court in ***Vishwanath and another versus Board of Revenue U.P. Lucknow and others***, reported in ***2004 (96) RD 678*** after a detailed analysis of the issue as to whether a registered Will or any registered document filed before a mutation Court seeking mutation on that basis cannot be ignored ruled that registered documents cannot be ignored on insufficient grounds. In the case at hand the Appellate Authority as also the Revisional Authority have both disbelieved and discarded the Registered Will merely on the basis of it having been executed under suspicious circumstances. The suspicious circumstances alleged and discussed in the preceding/paras in the opinion of the Court, are not sufficient to dislodge the sanctity of the bequest particularly when its execution is not denied. The Will in question being a registered document executed by the testator being a solemn document, it is the bounded duty of the authorities including the Courts to give effect to the last wishes of the testator. In the considered opinion of the Court, the registered Will dated 17.7.2007 could not have been ignored on the ground of alleged suspicious circumstances in the absence of any challenge to it. The issue No. 1 is accordingly, decided.

19. Now, coming to the second question, the Court finds that the Appellate Authority as also the Revisional Authority proceeded to discard the Will on the ground that the original will had not been filed and the mutation was sought on the strength of a certified copy of the Will filed as secondary evidence. A certified copy of the registered Will is not automatically admissible as a valid piece of evidence without proof of its originals loss. However, a certified copy of a registered Will can be used as secondary evidence to prove the contents of the original Will especially when the original is unavailable or is lost as per Section 65 of the Evidence Act. In the writ petition in Para 27 an averment has been made that the original Will was lost on 21.8.2009 along with the handbag in which it was kept and an application was given to the Police of Police Station Sadar Bazar, Meerut Cantt., on 9.9.2009 informing of such loss. The said para has not been specifically controverted by the contesting respondents. In the opinion of the Court, in the absence of any denial by the respondents that the original Will had been lost, the certified copy could very well be relied upon. Moreover, the respondents have not denied the execution of the Will. It has also been submitted that initially in 2009, the original copy of the Will had been submitted which was later on returned back to facilitate transfer of Bank accounts and pistol. The certified copy was brought on record later on when the original got lost. The Appellate Authority as also the Revisional Authority committed manifest error in ignoring the Will.

20. Now coming to the third question, it has been argued that execution of the will was not in accordance with law in as much as the scribe of the will i.e. Rajendra Kumar Jain could not be both the scribe as also the witness of the will. The other witness namely Ramphal could not be examined as he had expired. The Court finds no substance in the submission of learned counsel for the contesting respondents that the scribe of the will cannot be a witness of the will. The precise question was considered by the Apex Court in **Mathew Oomen Vs. Sushila Mathew**.

Civil Appeal No. 2034 of 2003 reported in **2006(1) SC 519** wherein the Court held that there was no requirement in law that a scribe cannot be an attesting witness. Rajendra Kumar Jain had appeared as witness and deposed that he had signed the will both as a scribe and attesting witness. There is nothing unusual in the same and the will could not have been dislodged on this ground.

21. From the above discussion, the Court is of the opinion that the Appellate Authority as well as the Revisional Authority i.e. the Board of Revenue committed manifest error of law in dislodging the registered will dated 17.07.2007 in favour of the petitioner and set aside the mutation order dated 03.12.2015. As a result the impugned orders dated 25.01.2016 passed by the Sub Divisional Officer in Appeal No. 37 of 2015 as also the order dated 01.02.2018 passed by the Board of Revenue in Revision No. 310 of 2016 are set aside. The order of the Tehsildar dated 03.12.2015 is restored. Needless to say, if the contesting respondents are aggrieved by the registered will dated 17.07.2017 they may draw appropriate proceedings under the law to challenge the same. The writ petition stands allowed. No order as to costs.

Order Date:- 05.04.2025

VS