

(1985) 01 AHC CK 0015

Allahabad High Court (Lucknow Bench)

Case No: Refrence No. 187 LR 79-80

Shiv Shanker Lal

APPELLANT

Vs

Savitri Devi alias Sudei

RESPONDENT

Date of Decision: Jan. 1, 1985

Hon'ble Judges: Ghairmar, J and Sri P.R.Vyas Bhiman, J

Final Decision: Allowed

Judgement

1. This reference by the Additional Commissioner in regard to correction of papers proceedings arises in the following circumstances. One Smt. Savitri Devi, who appears presently as the O. P., was recorded as a cotenure holder alongwith her husband's brother over two khatas. It appears that the Supervisor Kanungo purporting to act under Section 33A of the U. P. Land Revenue Act, on the information that the said Savitri Devi was dead, ordered expunction of her name and the entry of her husband's brother's heirs as her heirs. The present correction proceedings started on the application of Smt. Savitri Devi alleging the above facts, stating that she was very much alive and praying" that the unauthorised expunction of her name be corrected. After the inquiry from the tahsil authorities and hearing the present revisionist the S. D. O. came to a clear finding that Smt. Savitri Devi, the original cotenure holder was not dead. He, therefore, ordered restoration of her name. Aggrieved by this order the present revisionist took up the matter before the Addl. Commissioner, Allahabad. Both before the S. D. O. and the Addl. Commissioner it was argued on behalf of the revisionist that since the order of the Supervisor Kanungo under Section 33A of the U. P. Land Revenue Act was not challenged either through a regular mutation proceedings or by a review or revision it could not be disturbed in correction proceedings. This view did not find favour with either the S. D. O. or the Addl. Commissioner who persistently pointed out that the ruling referred to in this case, namely that of a single Member, vide 1977 R. D. page 65, could not be said to apply to a case where the person was not dead at all. This view is correct because under Section 33A the Supervisor Kanungo gets jurisdiction only when a person obtains possession by succession which necessarily

implies that the person originally entered is dead. If that person is still alive, there is no question of succession and the Supervisor Kanungo cannot get any jurisdiction to expunge the name of a living person under this section. The Addl. Commissioner has also not found that the finding by the trial court that Smt. Savitri Devi was still alive was perverse or in any other way erroneous. He, however, found two difficulties in sustaining the order of the S. D. O. one was that there is no extract of Khatauni on the file in respect of holding No. 305 and so he could not ascertain who was the cotenure holder. The other difficulty was that one of the recorded cotenure holders, Hari Shanker Lal, who is the present O. P. No. 2 (since substituted) had sold his share to a third person Tribhuwan Nath Shukla and this Shukla had not been impleaded as a party. In the light of these facts he has recommended that the order of the S. D. O. dated 29379 be set aside and the trial court directed to proceed afresh after impleading the said Tribhuwan Nath Shukla and also obtaining extract of Khatauni in respect of plot No. 305; and also impleading such persons as would be found necessary after looking into the extract.

2. Learned counsel for the revisionist supports the reference on the grounds given in the reference itself. Learned counsel for the O. Ps. who arrived a little late but participated in the proceedings, has pointed out that the S. D. O. had clearly found Smt. Savitri Devi to be alive and this finding has not been challenged or reversed by the Additional Commissioned

3. I have gone through the record of the case and considered the above arguments. As stated above, the finding about continued existence of Smt. Savitri Devi is now final and I also agree with the view of the courts below that the unauthorised entry made by the Supervisor Kanungo in respect of a living person can certainly be corrected in these proceedings. But the fact remains that one of the persons who had an ample interest in the property namely, Tribhuwan Nath Shukla, was not heard and it is not very clear from the Naib Tahsildar's report whether the question of Khata .No. 305 was gone into in detail. The report itself seems to concern mainly with khata No. 304, and in the beginning khata No. 305 seems to have been added as afterthought. I, therefore, find myself in agreement that this point should also be looked into before correction is ordered in both the Khatas. To sum up, I accept the reference, set aside the impugned order of the S. D. O. dated 29379 and direct him to proceed according to the observations contained in the Addl. Commissioner's order. I once again make it clear that the question of jurisdiction to correct the Supervisor Kanungo's entry or the question of Smt. Savitri Devi's existence are final and need not be gone into. Parties to appear on 2531985 before the S. D. O. Chail, Allahabad.

(Ref. accepted.)