

Dharm Singh Vs Deputy Director of Consolidation, Meerut and others

Court: Allahabad High Court

Date of Decision: Dec. 12, 2008

Hon'ble Judges: Krishna Murari, J

Final Decision: Dismissed

Judgement

Krishna Murari, J.

Heard Sri K. R. Sirohi, learned Senior Advocate, assisted by Sri S. D. Yadav, appearing for the petitioner and Sri V. K. Goel appearing for

contesting respondents.

Dispute relates to Chaks no. 175 and 958 situate in village Mulhaida, Pargana & Tehsil Sardhana, district Meerut which was recorded in the name

of Smt. Chawali wife of Bharat Singh. On her death, petitioner filed an application for mutation of his name on the basis of ""Will" dated 8.2.1997

said to have been executed in his favour. Proceedings were contested by respondent no. 4, the daughter of recorded tenure holder Smt. Chawali

also claiming on the basis of ""Will" in her favour. Consolidation Officer held that both ""Wills" were not proved in accordance but directed to

mutate the name of respondent no. 4 over the land in dispute in place of deceased tenure holder on the basis of inheritance. Appeal and revision

filed by the petitioner were also dismissed by the Settlement Officer Consolidation and Deputy Director of Consolidation vide orders dated

4.6.2001 and 15.10.1997 respectively. Aggrieved, petitioner has approached this Court.

It has been urged by the learned counsel for the petitioner that all the three consolidation courts have committed manifest error of law in ignoring

the ""Will" in favour of the petitioner, the execution of which was duly proved. It has further been urged that consolidation courts have wrongly and

illegally doubted the genuineness of the will deed only on the presumption that there had been litigation between the husband of Smt. Chawala and

petitioner without taking into account the fact that said litigation was with the sons of the petitioner.

In reply, learned counsel appearing for the respondent has tried to justify the impugned orders.

I have considered the arguments advanced by the learned counsel for the parties and perused the record.

All the three courts have rejected the claim of the petitioner based on the basis of ""Will" on the ground that since there has been litigation between

husband of Smt. Chawali and petitioner in respect of the property in dispute as such the ""Will" is surrounded by suspicious circumstances which

the petitioner has failed to dispel.

It has been vehemently urged by the learned counsel for the petitioner that earlier dispute was between Smt. Chawali and the sons of petitioner

who were claiming the property in dispute on the basis of ""Will" said to have been executed by Bharat Singh, husband of Smt. Chawali in their

favour and they lost the said case. Petitioner has nothing to do with the said case and Smt. Chawali being aunt of the petitioner used to live with

him after death of her husband and bequeathed her entire property in his favour by the said ""Will" and ignoring this aspect of the matter,

consolidation courts have wrongly and illegally held that ""Will" is surrounded by suspicious circumstances.

Sri V. K. Goel appearing for the contesting respondent produced before me the certified copy of the order passed by this Court in Civil Misc.

Writ Petition No. 2429 of 1994. The said writ petition was filed by the sons of the petitioner as well as petitioner himself challenging the orders

passed by the consolidation authorities rejecting the claim made by the petitioner on the basis of ""Will" dated 15.5.1988 said to have been

executed by Bharat Singh in their favour. The claim of the petitioner based on the basis of ""Will" executed by Bharat Singh was rejected by the

consolidation courts and this Court by the judgment dated 6.1.1994 dismissed the writ petition and confirmed the judgment of the consolidation

authorities.

A perusal of the aforesaid judgment clearly goes to establish that present petitioner was petitioner no. 6 in the earlier writ petition and was litigating

with Smt. Chawali from whom he claims on the basis of ""Will". In view of the fact that there has been a long drawn litigation between the

petitioner and Smt. Chawali with respect to the property which travelled up to High Court, it is very unlikely that in such circumstance she would

execute any ""Will" in favour of the petitioner. Will is clearly clearly surrounded by suspicious circumstances which the petitioner has failed to

dispel. In such circumstances, no illegality has been committed by the consolidation authorities in rejecting his claim based on the said ""Will".

For the reasons stated above, petitioner has failed to make out any case for interference under Article 226 of the Constitution of India. Writ

petition accordingly fails and stands dismissed.