

(2009) 11 AHC CK 0164

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 5844 (M/S) of 2009

Raghav Ram

APPELLANT

Vs

Board of Revenue, U.P. and
others

RESPONDENT

Date of Decision: Nov. 6, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Land Revenue Act, 1901 - Section 34
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 172(1)

Hon'ble Judges: Y.K.Sangal, J

Final Decision: Dismissed

Judgement

Y.K.Sangal, J.

1. This petition has been filed for a writ of certiorari to quash the impugned order dated 25.8.2009 passed by opposite party No. 1 Board of Revenue .

2. Triveni Prasad was recorded tenure holder of the property in dispute. He has three sons. Swami Nath, Raghav and Talukdar. Swami Nath died in the life time of his father. Smt. Vijay Luxmi was his widow. Triveni Prasad died in the year 1984. After the death of Triveni Prasad, name of Smt. Vijay Luxmi, Raghav and Talukdar were mutated in the revenue record. These are undisputed facts. It is said that Smt. Vijay Luxmi had remarried with Lakhpatt in the year 1993, so both other sons of Triveni Prasad deceased have applied to mutate their names in place of Smt. Vijay Luxmi under section 172 of the U.P.Z.A & L.R.Act. A case was registered as case No. 1470 of 1995 in the court of Tahsildar concerned. Smt. Vijay Luxmi filed objection on 6.12.1995 denying her remarriage and contested the case. During the pendency of this case, Smt. Vijay Luxmi sold her share in the property by sale deed dated 4.10.1997 in favour of Sri Rajesh (her son in law) and Smt Phoolan wife of Talukdar, other son of Sri Triveni Prasad. Rajesh has also applied to mutate his name and a

separate case was registered. Later on Rajesh, vide sale deed dated 28.5.2002 also sold his share in favour of Smt. Phoolan, wife of Talukdar and Smt. Phoolan had applied to mutate her name in place of Smt. Vijay Luxmi saying that now she became owner of the share of Smt. Vijay Luxmi of the property in dispute.

3. All the three cases were transferred to the court of Tahsildar, Gonda under the order of Board of Revenue. These three cases were consolidated and evidence was recorded before the Tahsildar, Gonda. After perusing the record and hearing the arguments of the parties, Tahsildar, Gonda had decided the cases and held that Smt. Phoolan's name to be mutated in place of Smt. Vijay Luxmi and claim of petitioner Raghav and Talukdar was rejected. Aggrieved by the order of Tahsildar, an appeal was filed before the Sub Divisional Officer, Gonda by petitioner and opposite party no. 5 Talukdar. The appellate court had dismissed the appeal and confirmed the order of the Tahsildar. Against the order of appellate court, petitioner filed a revision before the Additional Commissioner Administration, Devipatan, Gonda and the learned Commissioner after considering the case of the parties held that remarriage of Smt. Vijay Luxmi is established and he allowed the revision and ordered to mutate the name of petitioner and Talukdar in place of Smt. Vijay Luxmi applying the provisions of Section 172 of U.P.Z.A & L.R. Act.

4. Aggrieved by this order, a revision was filed before the Board of Revenue by Smt. Phoolan and by the impugned order dated 25.8.2009 this revision was allowed by the Board of Revenue and the order passed by Tahsildar, Gonda and the first appellate court was confirmed and order passed by the Commissioner was set aside.

5. Aggrieved by this order of Board of Revenue, this writ petition has been filed by Raghav.

6. Heard learned counsel for the petitioner and learned standing counsel for respondent Nos. 1 to 3 and the learned counsel for respondents No. 4 and 5 and perused the record.

7. Learned counsel for petitioner argued that Additional Commissioner Administration Devipatan, Gonda after considering the entire oral and documentary evidence on record and also considering the statement of the witnesses recorded and admission made by Smt. Vijay Luxmi allowed the revision filed by the petitioner and thereby ordered to mutate the name of petitioner and Talukdar, opposite party No. 5 being the nearest surviving heirs of Sri Triveni Prasad as Smt. Vijay Luxmi had contracted second marriage with Lakshpat, but without setting aside the findings of the Commissioner by a very cryptic order Board of Revenue has allowed the revision and passed the impugned order. No reason has been assigned by the Board of Revenue while allowing the revision and setting aside the order of the Commissioner. Hence the order passed is illegal, unreasoned and not sustainable in law.

8. On the other hand learned counsel for respondent No. 4 argued that there was concurrent findings of facts of two courts, Tahsildar Gonda and Sub Divisional Officer, Gonda, respondents No. 2 and 3. Revisional court, learned Commissioner had exercised his jurisdiction improperly and with material irregularity by reappreciating the evidence available on record. Revisional court should not have interfered in the findings of facts even if the order of the two courts below right or wrong or in accordance with law or not unless it exercised the jurisdiction illegally and with material irregularity. Revisional court must however, guard itself in the guise of the revision to substitute its view on the view taken by the courts below and where two views are possible, view taken by two courts below should not have been disturbed in revision. An interference in exercise discretion not amenable to the revisional court.

9. It was further argued that it was not proper on the part of the revisional court, learned commissioner after going through the evidence said to have been available on the record to hold the case of remarriage of Smt. Vijay Luxmi, as taken on behalf of the petitioner. There was no admission of Smt. Vijay Luxmi of remarriage. There was also no eye witness of the remarriage of Smt. Vijay Luxmi. Smt. Vijay Luxmi had denied the case of remarriage. No documentary evidence was on record to hold that her remarriage has taken place. An affidavit of Lakhpat, alleged husband of Vijay Luxmi was on record taken in consideration by learned Commissioner which was not admissible. It was simply in the form of examination in chief which is said to have been filed by him in another suit pending in the civil court as suit No. 15 of 1998 which was filed by the petitioner for cancellation of the sale deed executed by Smt. Vijay Luxmi in favour of her son in law Rajesh etc. Whether any opportunity of cross examination on the affidavit of Lakhpat was allowed or not by that court, whether this affidavit was relied or not, it is not clear from the record. It was further argued on behalf of the respondent that it is also clear from the record that some litigation was going on between Lakhpat on one side and Smt. Vijay Luxmi on the other side and Lakhpat was not at cordial terms with Smt. Vijay Luxmi. He was claiming himself the owner of the property of Smt. Vijay Luxmi, after her death. So he cannot be placed in the category of an independent witness and his submission through affidavit cannot be relied. If the learned Commissioner was of the opinion that the evidence was ignored and the findings of the courts below were not proper, case should have been remanded only. Learned counsel further argued that after taking into consideration of the above facts and evidence available on record, Member Board of Revenue by means of impugned order had set aside the judgment passed by the Additional Commissioner and upheld the findings of respondents No. 2 and 3. There is no reason to disturb the finding of the Board of Revenue in the circumstances of the case.

10. Learned counsel for respondent had also cited the case law reported in 1989 All.CJ 537 Smt. Gajodhari Devi Vs. Gokul In this matter before the apex court, the appellant Gajodhari Devi was the wife of son of Ram Sewak recorded tenure holder

who became widow in the year 1953. Her father in law Ram Sewak died in the year 1961 leaving behind his two sons and the appellant, the widowed daughter in law of Ram Sewak and as such, she was entitled share in the property on that basis. Admittedly she remarried. Apex court held that right of appellant has to be determined with reference to the time when Ram Sewak died. The right in the property relating to her share vested in her on the death of her father in law Ram Sewak could not be divested subsequently by applying section 172 (1) U.P.Z.A. & L.R. Act. Facts of the case before hon"ble court are almost common with the facts of the present case.

11. Other arguments raised on behalf of the learned counsel for respondents that present petition arises out of the proceedings under section 34 U.P. (sic land) Revenue Act. It was held by this court in (1999 All. CJ 816) Narain Singh and others Vs. Additional Commissioner, Meerut that the proceedings under section 34 U.P. Land Revenue Act are summary in nature. In these proceedings, right and title of the parties to the property in dispute are not decided. The order passed in the said proceedings are not binding upon the parties or upon the courts in regular suit or proceedings. The said orders are subject to the decision by the court on the regular side. The parties aggrieved by the said order may file a regular suit before the court of competent jurisdiction for declaration of his title, therefore, a writ petition under Article 226 of the Constitution of India challenging the validity of the orders passed in such proceedings is illegal and not maintainable. Hon"ble Judge has made a reference of another decision of Division Bench of this court in the case of Ram Bharosey Lal Vs. State of U.P. and others, 1990 All.CJ 749) wherein it was ruled: (All. CJ p.750 Para 8)

"By now it is well settled that where a dispute is in mutation proceedings which do not not adjudicate upon the rights or title of the parties, this court need not interfere under Article 226 of the Constitution of India. In such matters, person aggrieved shall have rider to seek remedy in the appropriate court."

12. Considering the arguments raised by the both the parties and facts available on the record and also law laid down, cited above, and above discussion, This court is of the view that there is no illegality, invalidity and impropriety and also jurisdictional error in the impugned order. It may not be a detailed order but law laid down by this court referred above supports the view taken by the Member Board of Revenue by the impugned order. Alternative remedy of filing a suit to get declaration his right and title in the property in dispute is open to the petitioner. There is no reason to interfere in the impugned order. The writ petition has not been filed bonafidely and the petitioner has not approached this court with clean hands.

13. The writ petition is accordingly dismissed.