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**(2002) 12 AHC CK 0108**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 50930 of 2002

Ram Kumar

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

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**Date of Decision:** Dec. 3, 2002

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Land Revenue Act, 1901 - Section 34

**Citation:** (2003) 1 AWC 505(2)

**Hon'ble Judges:** S.K. Singh, J

**Bench:** Single Bench

**Advocate:** S.K. Purwar, for the Appellant; V.S. Kushwaha and S.C., for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

S.K. Singh, J.

Heard learned counsel for the petitioner and Sri V. S. Kushwaha, learned advocate who appeared for the private respondent.

2. Challenge before this Court is the decision/orders passed by the three revenue authorities, i.e., Board of Revenue, Additional Commissioner and the Sub-Divisional Officer by which the petitioner's name in the mutation side in proceedings u/s 34 of the U. P. Land Revenue Act stands rejected. It appears that the Tehsildar has accepted the claim of the petitioner and directed for mutation of his name which was passed on the basis of adoption. When the matter was taken up by the opposite party to the next higher forum, it has been held by the three Courts referred above while rejecting the petitioner's claim that the adoption deed as is being claimed by the petitioner is not valid and is not approved and they preferred to rely upon the Will deed upon which the respondents laid their claim.

3. Learned counsel for the petitioner submits that the findings recorded by the three revenue authorities discarding adoption deed in favour of the petitioner is totally illegal and perverse and in fact the findings recorded by the Tehsildar has not been reversed and, therefore, on this ground alone petitioner is entitled to get relief from this Court. It is further submitted that the objection which is being taken by the opposite party that the writ petition being against the orders passed u/s 34 of the Land Revenue Act to be not maintainable is unsustainable as in the recent decision as has been given in the case of Lal Bachan v. Board of Revenue and Ors. 2001 ACJ 1465, it has been held that availability of the alternative remedy, i.e., filing of regular suit for declaration of rights is not an absolute bar and the writ petition can be entertained. Learned counsel for the opposite party has placed reliance on a decision given by this Court in Nagal and Anr. v. Board of Revenue and Ors.. 2002 (93) RD 365.

4. In view of the aforesaid, matter has been examined on merits. So far submission of the learned counsel for the petitioner which relates to the merit, suffice it to say that the three revenue authorities have consistently taken a view that the adoption deed in favour of the petitioner is not proved and is not valid. Additional Commissioner appears to have applied his mind in full detail and he after dealing various aspects about the validity of the adoption deed has recorded a finding that the adoption deed was legally not permissible on the facts of the present case besides the same having not been proved. Learned counsel for the petitioner has tried to take the Court to various factual aspects to demonstrate the perversity in the finding of the three revenue authorities and to accept the finding as has been given by the Tahsildar but, this Court feels that the aforesaid argument leads to the prayer for interference by this Court on reassessment of the entire evidence and thus question involved in this petition being pure question of fact, last three authorities having taken the view one way, no interference is required in the limited jurisdiction of this Court, so far the findings of facts are concerned. On the other aspect about maintainability of writ petition the decision as has been referred by the learned counsel for the petitioner do not help him in any manner for the simple reason that in the aforesaid decision by giving reference to series of decisions of this Court, learned single Judge has taken a clear view that the writ petition against the orders passed in the mutation side is not maintainable subject of course to an exception that if the order has been passed by the authority who has no jurisdiction. Decision in this respect that the writ petition against the order of mutation is not maintainable as these orders are passed in summary proceedings which are subject to regular suit is not to be repeated here. There may be another exception for maintainability of the writ petition, as this Court feels that if the rights and title of the parties have already been adjudicated in any competent forum, i.e., in the regular suit by the consolidation courts, then it may be a futile exercise if the petitioner is again relegated to take recourse to the regular suit.

5. In view of aforesaid discussion, this Court feels that the case in hand is not covered in any of the exception on which interference is permitted by this Court by entertaining the writ petition against the order passed in the mutation side. For all the reasons recorded above, this Court is of the view that under Article 226 of the Constitution of India no interference is required and thus writ petition fails and is dismissed.

6. However, it is always open to the aggrieved party to approach the competent revenue court for getting his rights adjudicated and needless to say that the findings so given in the summary proceedings is always subject to the final adjudication by the regular court in the light of the fresh evidence which will have to be lead by the parties concerned.