

(2011) 11 AHC CK 0338

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 67959 of 2011

Shailendra Kumar and Another

APPELLANT

Vs

Deputy Director of Consolidation
and Others

RESPONDENT

Date of Decision: Nov. 28, 2011

Acts Referred:

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 4, 5, 6A, 6A(1), 6A(2)
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 171

Citation: (2012) 1 ADJ 205 : (2012) 3 AWC 3084

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Hon'ble A.P. Sahi, J.

Heard Sri Ramesh Singh learned counsel for the petitioners and Sri Brijesh Shukla for the caveator. The contention raised is that it was not a matter of uncontested succession empowering the consolidated u/s 6A of the 1953 Act to pass an order of mutation in favour of a person claiming entitlement through succession u/s 171 of the U.P. Z.A. & L.R. Act, 1950.

2. Learned counsel submits that the village has been notified u/s 4 of the U.P. C.H. Act, 1953 but no further proceedings have been undertaken as yet. He therefore submits that the mutation could have awaited further notifications under Sections 5 and 8 thereof but the consolidator in a hurry has proceeded to record the names of the respondent No. 3 and 4, the sons of late Babu Singh, which approach is erroneous. He further submits that this has been done without any notice to the petitioners who are claiming succession through a will, said to have been executed by their grand-father late Babu Singh on 28.8.2003. Babu Singh died on 3rd November, 2009.

3. A caveat has been filed on behalf of the opposite party No. 3. Sri Shukla learned counsel has produced a certified copy of another will said to have been executed by late Babu Singh, which according to him is the last will dated 21.11.2008, by virtue whereof the earlier will in favour of the petitioners has been cancelled, and a fresh arrangement of disposition of the property has been made by the tenure holder. He therefore contends that the claim of the petitioners on the basis of the earlier will is absolutely unfounded. The stage of setting up the will has not yet arrived which can be done through an objection to be filed u/s 9-A(2) of the U.P. C.H. Act, 1953.

4. Sri Ramesh Singh contends that the consolidator has proceeded on a wrong assumption and the stage of filing objections would arrive later on, as such he should have left the entries either as they were, or should have recorded the names of the petitioners as well.

5. From the facts that emerge, it appears that a stage has been set up for contest between two competing wills, the later will purporting to cancel the earlier will. The names which have been mutated for the time being are that of the respondent Nos. 3 and 4 who admittedly are the sons of late Babu Singh falling within the natural course of succession. This being the position, in my opinion, no error has been committed by the consolidator, and if the petitioners or any other party claiming succession under the subsequent will dated 21.11.2008 seek to reclaim the property, then it is always open to them to file objections u/s 9-A(2) of the U.P. C.H. Act, 1953, inasmuch as, sub-section (2) of Section 6-A makes it abundantly clear that no bar in filing objections would operate in relation to any such orders having been passed u/s 6-A(1).

6. The parties have therefore not been prejudiced at this stage and it is open to them to stake their claims before the appropriate authority in accordance with law. I am not inclined to interfere with the impugned order at this stage.

7. The writ petition is dismissed. The certified copy of the will produced by Sri Shukla shall be taken on record.