

(2011) 09 AHC CK 0448

Allahabad High Court

Case No: C.M.W.P. No. 52833 of 2006

Ram Vilas

APPELLANT

Vs

Board of Revenue and
another

RESPONDENT

Date of Decision: Sept. 3, 2011

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 171

Citation: (2011) 114 RD 244

Hon'ble Judges: Amreshwar Pratap Sahi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Amreshwar Pratap Sahi, J.

Heard Sri. A.K. Narain, Learned Counsel for the petitioner and Sri. Atul Sharma, Learned Counsel for the respondent No. 2 and the learned Standing Counsel for the respondent No. 1.

2. This petition has a chequered history relating to the claim of mutation over the holding of deceased Chhedi son of Veer as disclosed in the pedigree contained in paragraph 4 of the writ petition and to that extent having not been disputed in paragraph 5 of the counter-affidavit. There is a variance between the parties on the pedigree and the claim of succession.

3. The petitioner Ram Vilas is the grand-son of one Nagesar. He claims succession through one Chhedi son of Gokula. According to the case set up by the petitioner in paragraph 4 of the writ petition, it is alleged that the petitioner succeeds under the said pedigree to the holding of late Chhedi son of Veer who died issueless and was a

bachelor. This position of the pedigree was contested by one Smt. Muraiya who claimed succession through a Will which is said to have been executed and registered in her favour by late Chhedi son of Veer.

4. This claim of Smt. Muraiya was contested by Chhedi son of Gokula contending that Smt. Muraiya is the wife of one Narsing and she is not the widow of Chhedi son of Veer, nor Salhanti is her daughter.

5. On 17th of August, 1987 an order came to be passed by the Tehsildar in favour of Chhedi son of Gokula recording his name by way of succession to the said disputed land. A restoration application was filed by Smt. Muraiya and on 6th of March, 1990, the order of mutation was set aside and the proceedings were restored. An appeal came to be filed by Chhedi son of Gokula against the said order of recall which was allowed on 8th April, 1993. Smt. Muraiya preferred a revision against the same which was dismissed on 17th July, 1995 where after a second revision was filed before the Board of Revenue which was allowed on 27th October, 1995. The entire matter was remanded back to the Tehsildar for decision afresh.

6. During the tendency of these proceedings both the contestants died. Smt. Muraiya came to be represented by respondent No. 2 Salhanti who claims herself to be the married daughter of Smt. Muraiya and the petitioner claims himself to have succeeded to the claim of Chhedi son of Gokula.

7. After remand, the Tehsildar passed a fresh order on 21st March, 2003 which has given rise to the present proceedings. This order went in favour of the petitioner and accordingly, it was directed that the name of petitioner should be mutated as he had succeeded to the claim of Chedi son of Gokula. An appeal was filed against the same which was dismissed on 30th August, 2003. The respondent No. 2 went up in revision and the same has now been allowed, against which the petitioner has filed the present writ petition.

8. Sri. A.K. Narain, submits that the Board of Revenue has travelled beyond its jurisdiction to record findings on the claim of title of the respondent No. 2 and these findings are beyond the scope of section 34 of the U.P. Land Revenue Act, 1901. He further submits that not only the question of title has been disposed of but the Board of Revenue has further recorded findings of succession in favour of the respondent No. 2 invoking the provisions of section 171 of the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950. He, therefore, submits that the Board of Revenue in these summary proceedings, if had any doubt about the facts, having been recorded by the Tehsildar or by the Appellate Court, or there was any perversity in the same, then the Board of Revenue ought to have remanded the matter back, but it could not have proceeded to record findings relating to title as claimed by the respondent No. 2 Salhanti and she could not have been declared to be the legal heir in proceedings u/s 34 of the 1901 Act. He, therefore, contends that on all scores, the impugned order of the Board of Revenue

deserves to be set aside and he relies on the judgment of this Court in the case of [Rudra Pratap and Another Vs. Board of Revenue, U.P. and Others](#),

9. Sri. Atul Sharma, Learned Counsel for the respondent No. 2 raised a preliminary objection to the effect that a writ petition arising out of summary proceedings u/s 34 of the 1901 Act should not be entertained and even otherwise, the contention raised on behalf of the petitioner on merits are unsustainable as the findings recorded in favour of the answering respondent by the Board of Revenue leave no room for doubt that the answering respondent is the legal heir of late Chhedi son of Veer and even otherwise, the evidence led has been correctly appreciated by the Board of Revenue. He further contends that the petitioner has failed to establish the claim of succession on the basis of the evidence that was adduced before the Tehsildar and in this view of the matter, the writ petition deserves to be dismissed. He submitted that the pedigree is highly disputed and that the pedigree set up in paragraph 5 of the counter-affidavit is correct. He has further submitted that as a matter of fact, there was no one in the pedigree by the name of Chhedi son of Gokula and in the absence of physical existence of any such person, the claim of succession by the petitioner through such a non-existent person has been rightly disbelieved by the Board of Revenue. He has relied on the decisions in the case of *Ishu v. State of U.P. and others*, 2003 (94) RD 217 and in the case of *Kari Naimuddin v. Commissioner Meerut and others*, 2002 (93) RD 125 (HC) and further an unreported decision in the case of *Neeresh Sharma v. Board of Revenue U.P. Allahabad and others* (Writ Petition No. 14070 of 2011) decided on 6.4.2011. Since reported in [Neeresh Sharma Vs. Board of Revenue U.P. and Others](#),

10. Having heard Learned Counsel for the parties, this Court has only to examine the issue as to whether the Board of Revenue did proceed in accordance with law to entertain the revision and allow the same within the precincts of section 34 of the U.P. Land Revenue Act, 1901 or not. If the Board has exceeded in its jurisdiction then the writ petition would be maintainable or else proceedings u/s 34 of the 1901 Act being summary in nature, it is always be open to the parties to get their stakes decided through a regular proceeding, and it should not be entertained by this Court under Article 226 of the Constitution of India.

11. In the instant case, the Tehsildar being the Court of first instance proceeded to record findings on fact in favour of the petitioner. The said findings were affirmed in appeal. On revision, the Board of Revenue has reversed the same and has further recorded findings on the claim of the respondent No. 2 on the basis of her title. In the opinion of the Court, the Board of Revenue could have remanded the matter back for decision on such issues on the basis of the evidence led, in case it found that the orders of the authorities below were perverse. The Board of Revenue could not have substituted itself as the original authority to proceed to record findings on the issue of title and to that extent Learned Counsel for the petitioner has rightly relied on the decision in the case of *Rudra Pratap* (supra).

12. The contention of Sri. Atul Sharma that the petition should not be entertained as it arises out of proceedings u/s 34 of the 1901 Act would have been acceptable if the Board of Revenue had remanded the matter back to the Tehsildar for recording findings if there was any perversity in the same. The Board of Revenue instead recorded findings in favour of the respondent No. 2 holding her to be the valid legal heir u/s 171 of the 1950 Act. This was in excess of the jurisdiction and the powers that are available u/s 34 of the 1901 Act.

13. However, on the facts as brought on record, the order of the Tehsildar as indicated by Sri. Atul Sharma also does not conform to the correct position of law, inasmuch as, if the evidence had been led by the contesting respondents in relation to the claim of succession, the Tehsildar was bound and obliged to refer to the said evidence and then record findings whatever worth it might have been. The Tehsildar, therefore, committed an error in completely ignoring the said contention raised on behalf of the contesting respondent. In this view of the matter also the order of the Tehsildar, in the opinion of the Court, cannot be sustained. The said approach of the Tehsildar comes within the purview of non-consideration of relevant material, and therefore, is perverse and hence the order cannot be sustained. Accordingly, in this situation, the only option left is to remand the entire matter back to the Tehsildar for a decision afresh. Apart from this, it is left open to the parties to get their claims adjudicated by instituting regular proceedings.

14. Accordingly, the writ petition is allowed. The impugned order dated 25.7.2006 as well as the order of the Tehsildar dated 21.3.2003 and the appellate order dated 30th August, 2003 are set aside.

15. Since this dispute is going on for the last two decades, it is expected that the Tehsildar shall decide the matter as expeditiously as possible preferably within a period of six months from the date of presentation of a certified copy of this order before him in the light of the observations made hereinabove.