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Court : Allahabad

Decided On : May-08-2006

Reported in : 2006(4)AWC3217

Judge : S.U. Khan, J.

Acts : Uttar Pradesh Land Revenue Act - Sections 34; Uttar Pradesh Zamindari Abolition and Land Reforms Act - Sections 229B

Appeal No. : Civil Misc. Writ Petition No. 23686 of 2006

Appellant : Pawan Kumar and anr.

Respondent : Additional Commissioner (Judicial) and ors.

Judgement :

S.U. Khan, J.

1. It is shocking to note that merely on the basis of an application, given on a prescribed proforma, name of the petitioners was mutated over the agricultural land on the basis of an alleged Will, left behind by Jagdish Kumar, without making the wife of Jagdish Kumar, who was his natural heir, a party or issuing notice to her.

2. When ever mutation is sought on the basis of Will, it is utmost essential that those persons, who could have inherited in case there had not been any Will,

should be made parties and notices should be served upon them before passing any order. Mutation on the basis of application on standard proforma without any opposite party and personal notice to interested persons is permissible only in the case of uncontested inheritance / succession.

3. Learned Counsel for the petitioner has argued that there is no such provision under the U.P. Land Revenue Act or Revenue Court Manual. Even if there is no such provision, it will have to be read under the relevant Act, Rules or Manual, because it is fundamental principle of procedural law and natural justice that no order should be passed against a person without hearing him. In case Will is not opposed by natural heirs, they will willingly give their consent before the officer concerned where the mutation proceedings are pending. However, in most of the cases Will is contested. In some of the States, unless probate is obtained no right may be claimed, on the basis of a Will. However, in Uttar Pradesh it is not essential to obtain probate before asserting or defending a claim on the basis of a Will. However, it is too much to record the name of some one in the revenue records merely on the basis of his assertion that deceased tenure holder had executed some Will in his favour without even issuing notice to those persons who are natural heirs of the deceased person and who may contest the Will.

4. Petitioners alleged that deceased Jagdish Kumar had executed some Will in their favour on 20.3.2002. On 7.4.2004 petitioners' names were mutated in the revenue records on the basis of the said Will. Later on, respondent No. 3, Shrimati Neelam Devi, widow of Jagdish Kumar filed an application for recall of the said order which was initially rejected but later on allowed. As the order dated 7.4.2004 was utterly illegal having been passed without hearing respondent No. 3, hence this Court is not at all inclined to interfere with the order through which the said order has been set aside.

5. Accordingly writ petition is dismissed. Naib Tahsildar, Madhya Kshetra, Karchhana is directed to decide the case No. 297 / 839 after hearing both the parties.

6. It is interesting to note that in the mutation application petitioners impleaded Jagdish Kumar, who was already dead, as opposite party. It is unintelligible as to

why dead persons are impleaded as opposite parties in the mutation applications.

7. Learned Counsel for the petitioners states that the name of Jagdish Kumar as opposite party was written by the Court. Learned Counsel has further stated that it is the general practice of the Naib Tahsildars. If it is so, Naib Tahsildars should at once stop that practice. Deceased persons can not be made opposite parties in any proceeding or case. In mutation applications next of kins of deceased should be impleaded as parties as is done in probate proceedings, particularly when mutation is sought on the basis of Will.

8. It is also important to note that in revenue matters people were manufacturing forged Wills indiscriminately particularly when some one died leaving behind agricultural land but no son. In order to check this mal-practice since August, 2004 it has been made mandatory under U.P. Zamindari Abolition and Land Reforms Act that Will in respect of agricultural land in of Uttar Pradesh must be registered. However, this observation is not meant for this case. I am not expressing any opinion regarding the Will in dispute or the conduct of the petitioners. Correctness of the Will shall be decided by the Court concerned after hearing both the parties.

9. It may also be added that findings recorded in proceedings under Section 34 of the U.P. Land Revenue Act are summary in nature and always subject to the result of the regular suit under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act, Any of the party is at liberty to file the the said suit even during the pendency of the mutation proceedings in question.

10. Writ petition is accordingly disposed of.