Raj Dhar and ors. Vs. Additional Commissioner (Administration) and Bhorik S/O Gaya

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SooperKanoon Citation : sooperkanoon.com/487254

Court : Allahabad

Decided On : Apr-04-2006

Reported in : 2006(3)AWC2593a

Judge : S.N. Srivastava, J.

Acts : Uttar Pradesh Land Revenue Act - Sections 33A and 34

Appeal No. : Civil Misc. Writ Petition No. 18139 of 2006

Appellant : Raj Dhar and ors.

Respondent : Additional Commissioner (Administration) and Bhorik S/O Gaya

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : Salil Srivastava, Adv.

Disposition : Petition dismissed

Judgement :

S.N. Srivastava, J.

1. This writ petition is directed against order dated 6th March, 2006, passed by Additional Commissioner (Administration), Vindhyachal Division, Mirzapur allowing

revision of Opp. party No. 2.

2. The matter relates to mutation on the death of Sunri.

3. It transpires from the record that on the basis of an ex parte report submitted by Revenue Inspector/Supervisor Kanungo, petitioners' names were entered into revenue records in exercise of power under Section 33-A of the U.P. Land Revenue Act. Thereafter contesting Opp. party No. 2 also filed an application for mutation claiming possession on the basis of a will allegedly executed by Sunri. This application was rejected by Additional Tehsildar and by the Appellate authority. A revision preferred against said orders was allowed and the matter was remanded back to the Mutation authority to decide the same on merits in accordance with law.

4. Heard learned Counsel for petitioners and learned Standing Counsel.

5. Learned Counsel for petitioners urged that Revisional authority erred in law in remanding the matter of mutation to the Additional Tehsildar to decide application for mutation of Opp. party No. 2 on merits. It is vitiated in law as application of Opp. party No. 2 was not maintainable as order for mutation was already passed by Revenue Inspector/Supervisor Kanunago in exercise of power under Section 33-A of the U.P. Land Revenue Act. He further urged that impugned order of Revisional authority suffers from error of law apparent on the face of record.

6. In opposition, learned Standing Counsel urged that the impugned order was rightly passed in accordance with law by the Revisional authority directing Mutation authority to decide the matter of mutation on merits in accordance with law after giving opportunity of hearing to the parties.

7. On consideration of arguments of learned Counsel for parties and materials on record as well as relevant provisions under the U.P. Land Revenue Act, this Court is satisfied that the order of Additional Commissioner directing Mutation authority/Additional Tehsildar to decide application of Opp. party No. 2 on merit was rightly passed in accordance with law. The order passed by Revenue Inspector/Supervisor Kanunago in exercise of power under Section 33-A of the

U.P. Land Revenue Act was an order passed on the basis of a report presented in an uncontested mutation case. Thereafter, Opp. party No. 2 claimed possession of the property in dispute on the basis of a will allegedly executed by Sunari. Parties claiming mutation on the basis of aforesaid will as well as on succession will get full opportunity of hearing before mutation authority on merits. Application filed by Opp. party No. 2 claiming possession on the basis of a will was maintainable under Section 34 of the U.P. Land Revenue Act. The Revisional authority rightly passed the impugned order. There is no error of law apparent on the face of record.

8. Writ petition lacks merit and is dismissed.