

Jethu Singh Vs. Bhanwar Singh and ors.

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Court : Rajasthan

Decided On : Jan-21-2003

Reported in : 2003(2)WLC745; 2003(1)WLN489

Judge : B.S. Chauhan, J.

Appeal No. : S.B. Civil Writ Petition Nos. 1033, 1034, 1035 and 1036 of 2001

Appellant : Jethu Singh

Respondent : Bhanwar Singh and ors.

Advocate for Def. : Mr. J.R. Beniwal

Advocate for Pet/Ap. : Mr. Varun Goyal

Disposition : Petition dismissed

Judgement :

B.S. Chauhan, J.

1. All these petitions involve identical questions of law and facts and, therefore, they are being disposed of by this common order.

2. The facts and circumstances giving rise to these cases are that one Sukan Singh was having agricultural land but he did not have a male issue. He died of illness on 29.9.1991. Subsequent thereto, mutation in respect of the said

agricultural land was entered in the name of petitioner Jethu Singh on the basis of adoption being his daughter's son, vide order dated 20.12.1991. Being aggrieved and dissatisfied, five appeals were preferred against the said order of mutation by the contesting respondents Bhanwar Singh and Arjun Singh on the ground that Wills had been executed in their favour by Sukan Singh on 27.9.1991. The appellate authority rejected all the five appeal vide order dated 13.6.1995 observing that the mutation proceedings, being fiscal in nature, did not manifest title over the property and the matter should be adjudicated before the appropriate forum. Against the said order dated 13.6.1995, further appeals were filed before the Additional Commissioner (Colonization) cum Revenue Appellate Authority, which were allowed vide order dated 31.8.1996 on the ground that the matter of title was Sub-judice before the competent court and the issue of title can be decided therein. Being aggrieved and dissatisfied, five revision petitions were filed by the present petitioner before the Board of Revenue, which were dismissed vide order dated 23.4.1998. Being aggrieved, petitioner further filed review petitions which have also been dismissed vide impugned order dated 30.12.2000. Hence these petitions.

3. Mr. Varun Goyal, learned Counsel for the petitioner has submitted that Sukan Singh was ill during the period the Wills had been executed. Moreso, it becomes suspicious as the alleged Wills had been executed on 27.9.1991 just three days before the death of Sukan Singh. Moreso, the Wills executed in favour of the contesting respondents are forged documents and Sukan Singh, being Gair Mumkin Khatedar of the land, had no competence to execute the Will, therefore, the mutation proceedings had wrongly been removed from his name. The Board of Revenue has erred in observing that the matter can be adjudicated before the appropriate forum as the suit pending between the parties had been dismissed in default on 31.1.1996, hence the, petitions deserve to be allowed.

4. On the other hand, Mr. J.R. Beniwal, learned Counsel for the respondents has submitted that fiscal entries do not represent title and questions as to whether the Wills are genuine or forged and whether the adoption of the petitioner is in accordance with law and valid, are disputed questions of facts and the same cannot be determined in writ jurisdiction, nor the said issues can be determined in

fiscal proceedings like that of mutation, therefore, the petitions are liable to be rejected.

5. I have heard the learned Counsel for the parties and perused the record.

6. From the record, it appears that Sujan Singh had been ill from 13.9.1991 till he died on 29.9.1991. Wills had been executed on 27.9.1991. Moreso, the adoption had been made. The questions as to whether the adoption is valid and legal and Wills had been executed when the executant thereof was not in a sound state of mind and as to whether he was competent to execute the Wills in favour of the contesting respondents being a Gair Mumkin Khatedar and as to whether the Wills are forged and fabricated documents, are disputed questions of facts which can be determined only before the appropriate forum and not in fiscal proceedings like mutation. The positions, which emerge today by the impugned orders are that: (i) the Authorities below have left open to the parties to prove their title before the appropriate forum; (ii) even if the suit had been dismissed in default, there can be no bar in law to get it restored, satisfying the court how the proceedings could not be executed diligently; (iii) there has been no adjudication upon the title over the property or regarding the genuineness of the Wills allegedly executed in favour of the contesting respondents or legality or validity of the adoption in favour of the petitioner, nor it could have been in fiscal proceedings; and (iv) mutation entered in the name of the petitioner has been cancelled without making mutation in favour of the contesting respondents, therefore, it is evident that till today, mutation order is not in favour of either of the parties.

7. Thus, in view of the above, it is appropriate for the contesting parties to prove their title or right of inheritance by way of adoption or Wills before the appropriate forum.

8. In *Nirman Singh v. Lal Rudra Pratab Narain Singhji Thakur and Ors.* AIR 1926 PC 100, the Privy Council placed reliance on the judgment in *Corea v. Appu Hamy*, 1912 Appeal Cases 230, and observed as under:

(Mutation proceedings) are much more in the nature of fiscal inquiries instituted in the interests of the State for the purpose of ascertaining which of the several

claimants for the occupation of certain denominations of immovable property may be put into occupation of it with the greater confidence that the revenue for it will be paid. It is little less than a travesty of judicial proceedings to regard the (mutation) orders as judicial determinations expelling proprio vigore individual from any proprietary right or interest he claims in immovable property.

9. In *Smt. Sawarani v. Inder Kaur*, (1996) 6 SCC 23, the Hon'ble Apex Court held that the question of title must be settled before the competent court and if anybody is aggrieved of any order, he must file a suit for declaration of title and possession over the disputed land, claiming his rights and interest in the property either by succession or any other mode. Dealing with the mutation proceedings, the Apex Court held as under:

Mutation of a property in the revenue record does not create or extinguish title, nor has it any presumptive value of title. It only enables the person, in whose favour the mutation is entered, to pay the land revenue in question.

10. Similar view has been reiterated by the Hon'ble Supreme Court in *Balwant Singh and Anr. v. Daulat Singh and Ors.*, : AIR 1997 SC2719 , placing reliance upon the judgment in *Sawarani* (supra).

11. In *Gurbaksh Singh v. Nikka Singh*, : AIR 1963 SC1917 , the Hon'ble Supreme Court held that the entries in the revenue record must be made in accordance with the facts proved and admitted, but once it is made the presumption of its correctness has to be carried out unless proved to be wrong.

12. Thus, in view of the above the law on the subject can be summarised that fiscal entries like mutation do not represent or create any title or interest in the property, nor the complicated issue of succession, either by way of will or adoption can be settled in mutation proceedings and the parties have to approach the appropriate forum for adjudication of title.

13. The instant case requires to be examined in the light of the above settled legal proposition. As till today, there has been no adjudication or determination of the title or right or interest of the rival parties in respect of the land in dispute on the

basis of adoption or Wills, such complicated issues cannot be determined in fiscal proceedings and the Board of Revenue had not issued any direction to make the mutation entry in favour of either of the parties, rather it left open to be made in accordance with the decision of the competent court/forum. Thus, the impugned orders do not require any interference in writ jurisdiction.

14. The petitions are dismissed with liberty to the petitioners to agitate the issue before the appropriate forum.

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