

Rajendra Vs. D.D.C. and Others

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Court : Allahabad

Decided On : Apr-13-2011

Judge : Amreshwar Pratap Sahi, J.

Appeal No. : WRIT - B No. - 6541 of 1975

Appellant : Rajendra

Respondent : D.D.C. and Others

Advocate for Def. : S.C. Adv

Advocate for Pet/Ap. : Kailash Narain, Adv

Judgement :

1. This petition has been taken up after 35 years of its institution. The writ petition was admitted on 22nd May, 1975 and all further proceedings pursuant to the impugned order of the Deputy Director of Consolidation were stayed.
2. Notices were issued to the respondent no. 3 but it appears that neither the respondent has turned up nor anybody has put in appearance for claiming any rights. The reason is simple as the impugned order itself records that respondent no. 3 was issueless.
3. Another issue was directed to be framed that why the property in question should not be vested in the Gaon Sabha.

4. The challenge is to the order of the Deputy Director of Consolidation on the ground that the Consolidation Officer and the Settlement Officer, Consolidation found faovur with the petitioners as they had successfully proved the Will executed in their favour by Pyare, the recorded tenure holder. There was a dispute as to whether the respondent Smt. Dharma was the wife of Pyare or not. On this point the finding of the Deputy Director of Consolidation is that Smt. Dharma is not the wife of Pyare. He, therefore, carved out a new case that firstly a separate issue should be framed to find out as to whether Pyare was in a conscious state of mind at the time of execution of the Will or not, and the second issue should be framed as to whether the property would vest in the Gaon Sabha or not. This order of the Deputy Director of Consolidation has been assailed by the petitioners contending that the findings arrived at with regard to the execution of the Will was proved to the hilt by surrounding circumstances as well as the statements and testimony of the witnesses. The Deputy Director of Consolidation, therefore, could not have reversed the said findings on a mere surmise and conjecture simply because Pyare had put his thumb impression instead of his signatures on the Will.

5. Having perused the records, it was nobody's case that the thumb impression was not of Pyare. On the contrary, the Deputy Director of Consolidation appears to have entered into the realm of assessing the veracity of the testimony of the witnesses who in his opinion had made contradictory statements. The Deputy Director of Consolidation, in my opinion, has committed an error without upsetting the findings of fact of the authorities below who have found the execution of the Will proved. If Pyare was ailing at the time of the execution of the Will, then it was quite possible that he was not comfortably energetic enough to sign and may have put his thumb impression. The thumb impression of Pyare has not been disproved nor any expert evidence was led to dislodge the same.

6. In such a situation, the Deputy Director of Consolidation acted beyond his jurisdiction in proceeding to frame two additional issues and remit the matter back. Surmises and conjectures cannot be pressed into service to cover loopholes.

7. Keeping in view the aforesaid facts and circumstances, the writ petition deserves to be allowed and the the order dated 25.02.1975 is set aside. The writ

petition is allowed in the absence of the learned counsel for the parties as it would be a travesty of justice to treat any default on their part after 37 years of pendency.

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