

Shiv Dhani and Others Vs. D.D.C. and Others

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Court : Allahabad

Decided On : Mar-23-2011

Judge : Amreshwar Pratap Sahi, J.

Acts : U.P.Z.A.&L.R. Act. - Section 171;

Appeal No. : WRIT - B No. - 8995 of 1975

Appellant : Shiv Dhani and Others

Respondent : D.D.C. and Others

Advocate for Def. : K.M. Sahai; Prakash Kumar; Sachhidand Singh; Sc, Adv

Advocate for Pet/Ap. : S.D. Pathak

Judgement :

1. Heard learned counsel for the parties.
2. The dispute in this petition relates to the inheritance of the land holdings of late Sri Dahau. The admitted pedigree is that the petitioners Sheodhani, Murahoo and Babu Nandan are the collaterals of the branch of two uncles of late Dahau. This is evident from the pedigree, which is extracted in the orders passed by the authorities below. The respondent nos.4 to 7 are the daughters of late Dahau, who claim succession to his property under the provisions of Section 171 of the U.P.Z.A.&L.R.; Act.

3. The petitioners claim succession through an unregistered will dated 3rd August, 2010 that was set up by them, and on the strength thereof, the matter was contested before the consolidation authorities for recording their names to the exclusion of the daughters. It is also undisputed that late Dahau died on 21st September, 1970. One of the contesting respondents, namely, Smt. Rajdei admitted the claim of the petitioners whereas the other contesting respondents refuted the same. The dispute centered around the validity of the unregistered will set up by the petitioners.

4. In support of their plea, the petitioners got one of the marginal witnesses Sri Bikrama examined, and also produced the sale deeds that had been executed in original by late Sri Dahau, to contend that the signatures on the will and that on the sale deeds tallied.

5. The Consolidation Officer proceeded with the matter and the respondents also led their evidence including oral evidence denying the execution of the will. After having assessed the evidence, the Consolidation Officer vide his judgment dated 2nd January, 1973 held that the signatures appearing on the registered sale deeds executed by late Dahau and that on the unregistered will appear to tally except with a difference that in one of the documents the signature is as Dahau and on the other is as Dahau Prasad. The sale deeds were also challenged. The Consolidation Officer came to the conclusion that since one of the daughters, namely, Smt. Rajdei has admitted the will, therefore, the will cannot be said to be fabricated. He further concluded that the other defendants did not file any application for getting the signatures examined through a handwriting expert in order to tally the signatures of late Dahau and, therefore, it can be presumed that the will is genuine. Apart from this, the Consolidation Officer did not record any finding on the statements of the oral witnesses except for having narrated the statements made by them.

6. Aggrieved, the contesting respondents appear to have filed an appeal before the Settlement Officer of Consolidation. The Appellate Authority proceeded to assess the entire oral and documentary evidence on record and came to the conclusion that so far as the will is concerned, the mere admission by one of the

daughters will not be sufficient to prove the validity of the will, inasmuch as, Bikrama the attesting witness of the will had clearly indicated in his statement that the daughters of late Dahau were not present at the time of execution of the will.

7. The Appellate Authority further went on to discuss the surrounding circumstances of the execution of the will and held that the statement of Bikrama was inconsistent and he could not afford any explanation as to why the will was unregistered when according to his own statement, the sale deeds were all got registered by Dahau. The Appellate Authority further found inconsistency in the statements with regard to the date of execution of the will, the timing of the execution and presence of the daughters and then held that in view of this inconsistency in the statements of the witnesses, the surrounding circumstances created a serious cloud over the execution of will which becomes doubtful. Accordingly, after having discussed the entire evidence in detail, the Settlement Officer of Consolidation reversed the order of Consolidation Officer and allowed the claim of the contesting respondents to succeed to the holding in terms of the provisions of the U.P. Z.A. & L.R. Act.

8. A revision was preferred by the petitioners before the Deputy Director of Consolidation, who affirmed the decision of the Settlement Officer of Consolidation with a further modification in relation to the revision filed by the other defendants. The claim of the petitioner was, therefore, rejected which was on the strength of the will, hence this petition.

9. Sri Pathak, learned counsel for the petitioners submits that while reversing the order of Consolidation Officer, the appellate authority did not advert to the finding upon comparison of the signatures that were made by the Consolidation Officer. He, therefore, contends that without reversing the finding of the Consolidation Officer, the Settlement Officer of Consolidation erred in rejecting the claim of the petitioners. He further contends that the will was proved by the marginal attesting witness Sri Bikrama and, therefore, the execution could not be doubted merely, on account of some inconsistency, which was bound to occur in the statements as this dispute arose almost after 20 years of the execution of the will. He, therefore, submits that the order of the Settlement Officer of Consolidation as affirmed in

revision deserves to be set aside.

10. Sri Amit Kumar Singh, learned counsel for the contesting respondent contends that clear findings of fact have been recorded by the appellate authority after having assessed the veracity of the oral statements that left no room for doubt that the unregistered will as set up was an out come of manipulation. The execution of the will has been doubted on the basis of the evidence on record and the Consolidation Officer could not have sat as a hand writing expert to accept the genuineness of the documents, therefore, the reversal of the order of Consolidation Officer does not suffer from any infirmity. He submits that the orders impugned do not require any interference of this Court.

11. Having heard learned counsel for the parties, the Consolidation Courts cannot sit as a hand writing expert or convert themselves into such an authority. The Consolidation Officer wrongly shifted the burden on the daughters for sending the matter to an expert, inasmuch as, the Consolidation Officer if had any doubt as noted by him in the order itself, he could have called upon the petitioners, who had pleaded their case to prove it through an expert opinion in respect of the signatures. The burden was on the petitioners to have proved the originality of the signatures and the Consolidation Officer was not justified in acting as an hand writing expert on behalf of the petitioners and then to have shifted the burden on the contesting respondents. The Officer himself found that in one document the executor had signed as Dahau and in the other Dahau Prasad.

12. Apart from this, the Settlement Officer of Consolidation has taken into account all the surrounding circumstances of the execution of the will that leaves no room for doubt, that the statement of the witness including that of marginal witness of the will, had not been able to definitely and clinchingly prove the execution of the said will. The proximity of the date of death of Dahau with that of the date of execution of the alleged will also raises a serious doubt in the circumstances in which the will was executed, as the witness has also stated that Dahau died in Gaya, a district in Bihar. The production of the will has also been discussed by the Settlement Officer of Consolidation and a serious doubt has been raised about the source from where the will emanated. All these circumstances were taken into

consideration by the Appellate Authority and the order of the Consolidation Officer was reversed. The order of the Consolidation Officer had not discussed any of the aforesaid material basis of evidence and, therefore, the Settlement Officer of Consolidation was justified in proceeding to have passed the appellate order.

13. The Deputy Director of Consolidation, therefore, in the opinion of the Court has not committed any error in affirming the said finding of the Settlement Officer of Consolidation and there is no other possible argument available to the petitioners to persuade this Court to interfere with the impugned order. The writ petition must fail and is hereby dismissed.

14. No order as to costs.

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