

SUPREME COURT OF INDIA

Ehson Beg

Vs.

Mohd.Yaseen Beg

C.A.No.608 of 2009

(R. V. Raveendran and J. M. Panchal JJ.)

30.01.2009

ORDER

1. Leave granted. Heard.

2. The lands in question originally belonged to one Irfanul Haq Beg. He is stated to have died leaving a will dated 13.12.1967 bequeathing the suit lands to one Naseer Baig (father of appellants) subject to a life interest in favour of Mariyam Bibi (wife of the testator). The first respondent is a transferee from Mariyam Bibi under sale deed dated 11.10.1990. On the death of Mariyam Bibi, the first respondent sought mutation to his name in the revenue records. The appellants objected. The Tehsildar by order dated 26.4.2001 overruled the objections of the appellants and directed mutation from the name Mariyam Bibi to that of first respondent.

3. Feeling aggrieved the appellants appealed to the Additional District Magistrate (Sadar), Sultanpur, who allowed the appeal by order dated 9.10.2002 and directed that the names of appellants be entered as the Bhumidars in place of Mariyam Bibi and remanded the matter for rehearing on merits after granting opportunity to the parties. The first respondent filed a revision against the said order.

“The Additional Commissioner (Judicial), Faizabad rejected the revision by order dated 25.10.2005 thereby affirming the order of the appellate authority. The said order was challenged by the first respondent in a writ petition. A learned Single Judge of the High Court by order dated 29.3.2006 dismissed the writ petition filed by the first respondent. Having dismissed it, he however observed that until the matter was decided by the Tahsildar on remand as directed by the appellate authority, the entry of first respondent's name in the revenue records will continue and the possession of the first respondent will also continue undisturbed.”

4. Being aggrieved by the said observation of the High Court while dismissing the first respondent's writ petition the appellants have filed this appeal by special leave.

5. The Additional District Magistrate set aside the order of the Tahsildar directing mutation in the name of first respondent, and directed that the name of the appellants should be entered pending rehearing. The said order was affirmed by the revisional authority. The said order was also affirmed by the High Court by dismissing the writ petition filed of the first respondent. Having dismissed the writ petition, the High Court ought not to have added any observation which would tend to virtually nullify the dismissal of the writ petition as also orders of the appellate authority and the revisional authority which were affirmed by its order. Further, the observation in regard to possession was not warranted, as it was not the subject matter of the writ petition.

6. In the circumstances, we allow this appeal in part and set aside the observations in the impugned order to the effect that the entry of first respondent's name in the revenue records will continue until the decision of Tahsildar and the first respondent's possession will not be disturbed. Having regard to the nature of the dispute, the Tahsildar will decide the matter as per the order of remand, in accordance with law, expeditiously.