

Jyoti Prasad Deceased And 4 Others vs Geetam Singh And 16 Others on 4 February, 2025

Author: Saurabh Shyam Shamshery

Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:14914

Judgment Reserved on 21.1.2025

Delivered on 4.2.2025.

Court No. - 10

Case :- CIVIL MISC REVIEW APPLICATION No. - 22 of 2025

Applicant :- Jyoti Prasad Deceased And 4 Others

Opposite Party :- Geetam Singh And 16 Others

Counsel for Applicant :- Brij Raj Singh, Mahendra Nath Pandey

Counsel for Opposite Party :- Yogendra Kumar Srivastava

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Brij Raj Singh, learned counsel for review-applicant (Respondent-3 in writ petition) and Sri Yogendra Kumar Srivastava, learned counsel for petitioners in writ petition.

2. This is a review application to review an order dated 9.12.2024 passed in above referred writ petition. Relevant part of the order under review is reproduced hereinafter:

"16. The Consolidation Officer accepted the objection of respondent no.3 that names

of brothers of Bateshwari were recorded without any order or legal basis. Said finding was upset by the Settlement Officer of Consolidation that their names were recorded with the consent of Bateshwari and since it was not challenged by him during his lifetime, his son cannot challenge the same at a belated stage. Said finding was confirmed/upheld by the Board of Revenue.

17. There is no order on record which could prove the basis of the names of the brothers of Bateshwari and suddenly, in the year 1349 Fasli, claim of the petitioners appeared that their forefathers name was entered with the consent of petitioners.

18. In this regard Court takes note of statement recorded during consolidation proceedings of Jyoti Prasad and Jagjit though they have not referred any basis of entries in the year of 1349 Fasli, but they have stated that their ancestors i.e. Ghanshyam, Makkhan Lal and Harnam have taken benefit of entries which were very old and Bateshwari has never stopped them.

19. There is no allegation that entries were made fraudulently or surreptitiously.

20. The only question before this Court is the effect of long standing revenue entries especially in circumstances when Bateshwari has never challenged the said entries during his lifetime and it was objected by his son at a very belated stage.

21. It is also relevant to note that there is no material on record to support the submissions in regard to consent.

22. In this regard Court takes note of a judgment passed by Supreme Court in Shri Pratap Singh (Dead) through LR's. Vs. Shiv Ram (Dead) through LR's (2020) 11 SCC 242. Relevant paragraphs being 25, 26 and 27 thereof are as under:

25. The presumption of truth attached to the revenue record can be rebutted if such entry was made fraudulently or surreptitiously (Vishwa Vijay Bharati case [Vishwa Vijay Bharati v. Fakhrul Hassan, (1976) 3 SCC 642]) or where such entry has not been made by following the prescribed procedure (Bhimappa Channappa Kapali v. Bhimappa Satyappa Kamagouda [Bhimappa Channappa Kapali v. Bhimappa Satyappa Kamagouda, (2012) 13 SCC 759 : (2014) 5 SCC (Civ) 419]). Even in Guru Amarjit Singh [Guru Amarjit Singh v. Rattan Chand, (1993) 4 SCC 349 : AIR 1994 SC 227] , where thirty years' old lease deed was produced, this Court had not accepted the proof of the relationship between landowner and tenant in absence of receipt of payment of rent.

26. Therefore, we find that the presumption of truth attached to the record-of-rights can be rebutted only if there is a fraud in the entry or the entry was surreptitiously made or that prescribed procedure was not followed. It will not be proper to rely on the oral evidence to rebut the statutory presumption as the credibility of oral

evidence vis-à-vis documentary evidence is at a much weaker level.

27. In view thereof, we find that the High Court has erred in law in allowing the defendant's appeal relying upon oral evidence to rebut the statutory presumption of truth attached to the revenue record. The onus of proof was placed on the defendant by the learned trial court. The burden is on the person who asserts such a relationship as per Section 109 of the Evidence Act. The defendant has failed to rebut the presumption of truth on the basis of reliable, trustworthy and cogent documentary evidence to prove the relationship of a tenant."

23. In aforesaid circumstances, I am of considered opinion that only the basis that there was no order to record the names of Ghanshyam, Makkhan Lal and Harnam in the entries of 1349 Fasli would not be a sole ground to rebut the presumption of truth in the long standing revenue entries specially when it is not under dispute that Ghanshyam, Makkhan Lal and Harnam were real brothers of Bateshwari as well as Bateshwari has never objected the entries during his lifetime.

24. There is a reference of revenue entries of the year 1349 Fasli that all the recorded tenure holders were having possession for last 23 years, therefore, the objection of respondent no.3 was not sufficient to rebut the presumption of correctness of long standing revenue entries."

3. Learned Counsel appearing on behalf of review applicant/respondents in the Writ Petition submitted that the order under review is liable to be reviewed.

4. Learned Counsel appearing on behalf of review applicant referred following grounds mentioned in the review application which are reproduced hereinafter:

"14. Because, the impugned judgment and order dated 09.12.2024 passed by Hon'ble Justice Mr. Saurabh Shyam Shamsheeri without considering the evidence on record. It is wrongly mentioned in the judgment, there is no dispute, the disputed land belong to Pitambar. In fact there is sole dispute in respect of owner of the land in dispute as much as this land is not belong to Pitambar in the revenue record any Fasli year, the disputed land was recorded in the name of Parsadi S/o Viridi R/o Samogar in settlement year 1310 Fasli Mauza Azamabad Araon Pargana and Tehsil Shikohabad District Mainpuri present district Firozabad Khasra No. 239/ 0.15, 268/1.05, 2831/0.4, 2834/1.28, 2865/0.6, 2866/0.29, 2868/0.34, 2870/0.1, 2883/0.45, 2899/0.45, 2900/1.55, 2901/0.74, 2950/0.6 total rakba 13 area 7.50 Acre thereafter same land was recorded in the name of Bateshwari S/o Pitambar R/o Shadipur, District Mainpuri in Fasli year 1346. It is clear the disputed land was not hereditary land. Therefore, the ancestors of the petitioner have no right to claim joint tendency. It is material to state 1310 Fasli year the land in dispute was recorded in the name of different person he is not connected with the family of the petitioners as well as the respondent No.3. The nature of the tendency was occupancy, thus the joint acquisition by the party have not foundation at all.

15. Because, the impugned order dated 12.09.2024 was passed without considering the provision of U.P. Tenancy Act, 1939. According to provision of Tenancy Act, the name of other person were not recorded in the revenue record without permission of the Zamindar. There is no evidence available on the record that so the permission of the Zamindar was taken before increasing the name of the ancestor of the petitioner, Ja, Ga was written in the khatani 1349 Fasli in the disputed land. It means the name of the ancestor of the petitioner were added in the khatauni in absence of Zamindar."

5. Learned counsel appearing on behalf of writ petitioners has supported the order dated 9.12.2024 that no circumstances exist which could be a legal basis to review the above referred order under review.

6. I have considered the above submissions.

7. Law in regard to review as reiterated by the Supreme Court in the case of Sanjay Kumar Agarwal vs. State Tax Officer (1) and others, (2024) 2 SCC 362 would be relevant and its relevant paragraphs are quoted below:-

"16.1.A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2.A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

16.3.An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

16.4.In exercise of the jurisdiction under Order 47 Rule 1CPC, it is not permissible for an erroneous decision to be "reheard and corrected".

16.5.A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

16.6.Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

16.7.An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

16.8.Even the change in law or subsequent\ decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review."

8. Main argument of the review applicants/respondents is that the entries made in revenue records were forged and only on basis that it remained for number of years in the revenue records could not be considered to be ground such entries were true or genuine and if there was a fraud, then no relief could be granted to the writ petitioners.

9. The Deputy Director of Consolidation has accepted the claim of review applicants that there was no legal basis for entries in favour of writ petitioners and accordingly the revision petition filed by the review applicant was allowed. However, this Court has considered the above submissions that since the entries in the revenue records were not only very old, but the effective persons i.e. Bateshwari has never challenged it during his lifetime and it was objected by his son at a belated stage.

10. Court takes note of presumption of law attached to the revenue records. Though it can be rebutted, but the Court also takes note that Ghanshyam, Makkhan Lal and Harnam were real brothers of Bateshwari and since no objection was made during his lifetime, therefore, objection at a belated stage does not survive and it was the basis of passing the impugned order, as such it could not be considered that it was an error on the face of record and as referred in Sanjay Kumar Agarwal (supra) in the garb of review, it cannot be considered as an Appeal.

11. A view has been taken by this Court on basis of material i.e. factual and legal, which could not be disturbed under jurisdiction of review.

12. Review Application is accordingly rejected.

Order Date:-4.2.2025 SB