

Board of Revenue, Uttarakhand, Dehradun
(Division Bench)

Review Application No.- 177 /2013-14 U/S 220 U.P. L.R. Act

(Revision No.- 94/2007-08)

Parmendra Kumar & Othrs.^{e2}

V/S

Smt. Sheela Devi & Othrs.^{e2}

Present : Sri S. Ramaswamy, Chairman

: Sri P.S. Jangpangi, Member(Judicial)

Advocate, Applicant : Sri Arun Saxena

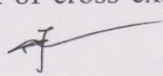
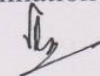
Advocate, Respondent : Sri Premchand Sharma

Order

This review application has been heard by the Division Bench of this court.

The sole ground taken for the review of this court's judgment and order dated 5.5.2014 in Revision No.- 94/2007-08, contested between the same parties, is certification of the recording of oral examination of a witness and signature of the Presiding Officer at the end of such record of oral examination are not mandatory as they are only a procedural necessity. The learned Counsel for the review applicant has cited three rulings, one of this court, UAD 2006 P 331, and, two of the Board of Revenue U.P, RD 1983 P 14 & RD 1976 P 339 to underpin his argument and the contentions of the review application.

The judgment & order passed by the learned Addl. Collector, Dehradun in Appeal No. 14/2007-08 under Section 210 U.P. L.R. Act on 30-06-2008 points out inconsistencies in the oral examination of the attesting witnesses, absence of certificate and signature of the Presiding Officer at the end of the record of the oral examination of one of the attesting witnesses and lack of cross examination of witness Rajendra

Kumar respectively. The learned Addl. Collector has also come to the conclusion that the 'Will' has not been proved as per the relevant provisions of the Indian Evidence Act. He has, accordingly, remanded the mutation case for decision afresh in light of the observations as aforementioned. Thus, it is evident that the judgment and order of the learned Addl. Collector is not solely based on the deficiencies of recording of the oral examination of the attesting witnesses of the alleged 'Will'. The remand of the mutation proceeding requires the defects/deficiencies pointed out to be set right/made good, opportunity to cross examine the uncross examined witness and to prove the signature of the testator to be afforded and, thereafter, a fresh order passed. Even assuming that lack of procedural niceties with regard to recording of oral examination of a witness or witnesses might be ignored, as the learned Counsel for the review applicant has argued, the cross examination of the attesting witness can not be dispensed with. The opportunity to cross examine the attesting witness has to be afforded so that the oral examination can be read in evidence and taken in to account. Besides, the stipulation with regard to the signature of the testator as mentioned in the judgment and order of the learned Addl. Collector also has to be complied with.

The case deserved to be remanded for the cross examination of a witness and the proof of the signature of the testator even after treating the deficiencies of certificate and the signature of the Presiding Officer on the oral examination of one of the witnesses as not necessary. The revisional court has, thus, correctly concurred with the remand order of the learned Addl. Collector.

The review application has not addressed the entirety of the above legal and factual position of the case under review.


In addition, the plea raised in the review application has been taken for the first time for which there is no explanation even though the

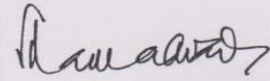


review applicant/revisionist was free to raise it even at revisional stage. Even the rulings now cited were not so done by the learned Counsel while arguing the revision earlier. Therefore, it is not incumbent on this court to look at them. Moreover, rulings can not supersede express legal provisions.

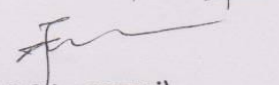
The remedy of review of a judgment or order is very limited in scope. It is not an appellate remedy. A wrong judgment or final order is not ipso facto amenable to review. There is no discovery of a new fact or evidence in the instant case which the review applicant could not present/produce earlier after due diligence, no error or mistake apparent on the face of the record or any similar or like ground to review the judgment and order in question.

The review application, therefore, being devoid of merit, is, accordingly rejected.


(P.S. Jangpangi)
Member(Judicial)


(S. Ramashwamy)
Chairman

Pronounced, signed and dated in the open Court today i.e. 6/01/2017


(P.S.Jangpangi)
Member (Judicial)