
(1980) 04 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1800 of 1972

Abdul Rahman Khan

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 01-04-1980

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 172(2), 18

Citation : (1980) 04 AHC CK 0049

Hon'ble Judges : R.B.Misra, J

Final Decision : Allowed

Judgement

R. B. Misra, J.

The present petition under Article 226 of the Constitution seeks to challenge the order of the Deputy Director of Consolidation dated 18th November, 1971.

The dispute between the parties centres round Khata No. 114 with an area of 3.30 acres, and two other Khatas, Nos. 1320 area 0.15 acres and 1836 area 0.80 acres.

The relationship between the parties will be clear from the pedigree set out in para 3 of the writ petition. One Talwar Khan had four sons, Khan Mohd. Khan, Akbar Khan, Sammo Khan and Sher Khan. The line of Akbar Khan and Sammo Khan has become extinct. Petitioner Abdul Rahman Khan and respondent No. 7 Mohd. Sayeed represent the branch of Khan Mohd Khan. Smt. Bashiran represents the branch of Sher Khan. It appears Smt. Bashiran Khan had transferred her interest in favour of respondents Nos. 4 to 6, namely, Ishtiaq All Khan, Ishraq Ali Khan and Ishaq Ali Khan.

In the basic year the plots were recorded in the name of respondents No. 4 to 6. An objection was filed by petitioner, Abdul Rahman that respondents Nos. 4 to 6 have no share in the aforesaid Khatas. They are the purchasers from Smt. Bashiran who initially had 1/8 share in the land in dispute but that right was also lost as she had remarried and, therefore, she had no saleable interest in the

property and no title passed to respondents Nos. 4 to 6 on the basis of the saledeed executed by Smt. Bashiran.

The claim of the petitioners was resisted by respondents Nos. 4 to 6 on the ground that they are the transferees of Smt. Bashiran and, therefore, she had every right to transfer her interest.

Admittedly, the land in dispute was acquired by the four brothers, namely, Khan Mohd. Khan, Akbar Khan, Sammo Khan and Sher Khan, as shown in the pedigree. The entire land in dispute was Sir and Khudkasht, of the aforesaid four brothers. Mashooq Ali and Mahboob Ali shown in the pedigree had left the village for more than 50 years and they have not been heard of and they were presumed to be dead.

The Consolidation Officer came to the conclusion that Smt. Bashiran had 1/2 share in the disputed property irrespective of her remarriage, although he came to the conclusion that she had remarried but still the parties being Mohammadans, their rights would be governed by Mohammadan Law and not by U. P. Zamindari Abolition and L. R. Act, and Smt. Bashiran would not lose her right in the holding merely on account of remarriage. He, on that basis, determined the share of Smt. Bashiran and found (he saledeed executed by Smt. Bashiran in favour of respondents Nos. 4 to 6 to be a valid saledeed. On appeal, the Settlement Officer (Consolidation) set aside the order of the Consolidation Officer relating to Khata No, 114, In the order the name of petitioner Abdul Rahman, and Abdul Sayeed Khan were recorded as cosharer in Khata No. li4, and, accordingly, he partitioned the property as under;

Mohd. Sayeed 1/12

Abdul Rahman 1/12

Ishaq Ali Khan 5/12

Ishrad Ali Khan 5/241

Ishtiaq Ali Khan

He, however, maintained the order of the Consolidation Officer with regard to plot No. 1320 and 1836.

The petitioner still feeling aggrieved by the order of the Settlement Officer, went up in revision, and the revision was allowed by the Deputy Director of Consolidation in part in respect of Khata No. 114, but he maintained the order of the Settlement Officer (Consolidation) with regard to two other plots. He determined the shares of the parties afresh and found the petitioner and Mohd. Sayeed to be the cotenant in khata No. 114 to the extent of 7/8 share, while the share of Ishaq Ali and others was held to be 1/8. The petitioner has now come to challenge the order of the Deputy Director of Consolidation dated 18th November, 1971, by filing the present writ petition.

Learned counsel for the petitioner has contended that the Deputy Director of Consolidation has committed a manifest error of law in applying the personal law instead of U. P. Zamindari Abolition and Land Reforms Act. It is admitted by the parties that Smt. Bashiran remarried in 1955. She had married after the date of vesting. A Sir of Khudkasht holder would become the bhumidhar of the plot in dispute on the date of vesting under Section 18 of the U. P. Zamindari Abolition and Land Reforms Act, and, therefore, Smt. Bashiran became bhumidhar of the disputed plots. Now if she remarried in 1955 she loses her rights in view of Section 172 (2) of the U. P. Zamindari Abolition and Land Reforms Act. The Deputy Director of Consolidation is of the view that the rights of Smt. Bashiran would be governed by personal law.

It is true that under the U. P. Tenancy Act Sir and Khudkasht rights were governed by personal law, in case of Hindu by Hindu law, and in case of Mohammadan by Mohammadan law. But the position after the date of vesting is different. All Bhumidhars are to be governed by the U. P. Zamindari Abolition and Land Reforms Act. If Smt. Bashiran became bhumidhar under Section 18 of the U. P. Zamindari Abolition and Land Reforms Act then the personal law will have no application. Therefore, the Deputy Director of Consolidation, in my opinion, has committed a manifest error of law in applying Mohammadan Law instead of U. P. Zamindari Abolition and Land Reforms Act, and on that erroneous conception of law he did not think it necessary to decide whether Smt. Bashiran had remarried or not. He started by saying that even if she had remarried she would not lose her rights. For the view expressed by this Court, it is not necessary for the Deputy Director of Consolidation to record a definite finding whether Smt. Bashiran had remarried or not. The Court would consider the evidence on that point and record a definite finding whether Smt. Bashiran had remarried or not. If Smt. Bashiran had, remarried then she would lose all her rights under Section 172 (2) of the U. P. Zamindari Abolition and Land Reforms Act and in that case she had no saleable interest in the property and no title could pass on respondent Nos. 4 to 6 on the basis of the safedeed executed by her. If on the other hand, Smt, Bashiran had not remarried then she would not lose her rights and she would be fully competent to execute a saled deed in respect of her share. The Deputy Director of Consolidation would determine the share according to law.

I had no advantage of hearing the counsel for the respondents as fresh notices had been issued to the respondents to engage another counsel in place of Sri S. J. Hyder, now Hon. S. J. Hyder, J. and the notices have not been received back after service and, therefore, the respondents are presumed to have been served under order VIII, Rule 12 of the Rules of the Court.

For the reasons given, above, the Writ petition must succeed. It is, accordingly allowed. The order of the Deputy Director of Consolidation dated 18th November, 1971 is quashed and the case is sent back to him for deciding the revision afresh according to law and in the light of the observations made above. As no body

represents for the respondents, there is no order as to costs.